

The complaint

Mrs A complains that Prudential Assurance Company Limited wrongly advised her to take out additional voluntary contributions when she could have purchased additional years on her occupational pension scheme instead.

What happened

Mrs A was sold a Teachers Additional Voluntary Contributions (TAVC) policy by Prudential in 1991. At the time she was working as a teacher and had been a member of the teacher's occupational pension scheme (OPS) since 1986.

Mrs A had a break from teaching in the UK and signed up to the TAVC for a second time in 1996.

As a member of her OPS she was eligible to purchase Past Additional Years (PAY) of service to be counted towards her benefit at retirement age.

Mrs A used a claims management company (CMC) to complain to Prudential that she was mis-sold TAVC's. They say that she wasn't made aware of the PAY option and that she would've been better advised to have opted for that rather than the TAVC. Mrs A's representative explained that Prudential failed to understand Mrs A's circumstances, her needs in retirement or her attitude to risk.

Prudential didn't uphold Mrs A's complaint. Prudential explained that they were appointed by the equivalent of the Department for Education in 1989 to provide the TAVC scheme. Prudential said that their advisers were required to make customers aware of other options but weren't allowed to advise on the PAY option.

Our investigator looked into this complaint and didn't uphold it. He thought that the point of sale information that Prudential had provided had indicated that PAY was an alternative to the TAVC they could provide. He explained that Prudential weren't independent financial advisers so would only provide advice on the product that they offered.

Mrs A didn't accept our investigator's view so the matter was passed for an ombudsman's decision. I issued a provisional decision on this case in order to give both parties an opportunity to consider my opinion and respond.

What I said in my provisional findings

Mrs A has explained that she attended a presentation from a Prudential representative about the TAVC scheme. Which led to a meeting where she signed up to the TAVC scheme. Mrs A provides no other recollections of the sale process though. This is understandable given that it occurred 28 years prior to the complaint being raised. When the sale took place in 1991 Prudential's advisor wasn't required to keep a record of everything discussed in the meeting either, so it's not possible for me to know what was discussed at the time.

Prudential were a tied adviser and so wouldn't have been able to advise Mrs A on her option of buying added years and they wouldn't have had to do a price comparison of the two

options as the CMC suggests. In this case Prudential were providing a limited service in the provision of their TAVC scheme for Mrs A's OPS. The option to purchase added years wasn't their product to advise on. But the rules at the time meant that Prudential still had to make sure that their product was generally suitable to her needs and that she was aware of her options, including PAY.

Prudential have provided us with the application form for the TAVC that Mrs A signed in October 1991. There's a section on the form entitled "*Pension Scheme Details*". It provided an opportunity to indicate if the applicant had other pension contributions or benefits. There was a question about PAY as well as one about Free-Standing Additional Voluntary Contributions (FSAVC). On Mrs A's application form this section is crossed out.

The CMC suggests this means Mrs A wasn't informed about those options. I'm not convinced that I can draw that conclusion. I can't say that the section wasn't crossed out simply because the areas weren't applicable, as Mrs A wasn't making those contributions. Neither can I really say that the questions on the form did more than serve to identify if other contributions were already being made. This would have been relevant to the level of contributions that Mrs A could have made to the TAVC scheme. So I'm not sure that those questions on the form serve to prove that Mrs A was adequately informed about her alternatives.

Mrs A hasn't provided any documentary information from the sale, so the only documentation I have to rely on in making a decision is what I've been shown by Prudential. Prudential have provided us with copies of point of sale information that would have been relevant in 1991. That document - entitled "Top up your pension with AVC's" - doesn't mention alternatives to the TAVC. So I can't say, based on the evidence, that Prudential informed Mrs A about the PAY option.

I've considered the likely impact on Mrs A of Prudential failing to draw her attention to the PAY option in 1991. Whilst it is difficult to know what Mrs A may have done so long ago, in this case Mrs A had a break in her teaching career, returning to teaching in 1996. So I've looked at what happened then too.

Mrs A's application for the TAVC scheme in 1996 was on a different type of form than in 1991. The declaration prior to her signature included the statement, "*I confirm that I have received a separate document outlining the features, likely benefits and costs for each of the products for which I have agreed that a quotation should be provided*". And Prudential have shown us a copy of the 1996 document entitled "*Additional Voluntary Contributions for Teachers*". This document included the statement:

Within the Teachers' Superannuation Scheme there are two ways to make AVCs:

- *The "added years" facility which allows you to "buy" extra years of service.*
- *The Prudential Additional Voluntary Contribution facility specially designed for teachers.*

So, whilst the evidence that Prudential made Mrs A aware of her options in 1991 isn't clear, the evidence of when she re-joined the scheme in 1996 is more persuasive. So I think that in 1996 Mrs A would have been aware that she could have purchased additional years instead of contributing to TAVC's.

Mrs A was faced with an almost identical choice about how to supplement her OPS in 1996, as she was in 1991. In that case I think that it was more likely than not that Mrs A had been told about the PAY option. And Mrs A still chose to make contributions to the TAVC instead. So I don't think it's likely that Mrs A would have purchased additional years in 1991 either,

even if Prudential had made that option clear at the time.

Mrs A was also concerned that Prudential didn't have adequate regard to her circumstances in advising her on that sale. Prudential have shown us that in both 1991 and again in 1996 they conducted financial reviews with Mrs A. The information completed shows that Prudential did what was required in both instances to understand Mrs A's circumstances. Given that the purpose of the advice was to look at Mrs A's provision in retirement, I can't conclude that the TAVC was an unsuitable product to recommend. And in the case of both reviews the level of contributions agreed seemed affordable to Mrs A.

The TAVC scheme involved the investment of Mrs A's contributions into a with-profits fund. The CMC questions whether Prudential understood her attitude to risk for her investment. In 1991 the obligations on Prudential's adviser would have been set out in LAUTRO's Code of Conduct. These rules didn't mean that Prudential's adviser had to formerly document Mrs A's attitude to risk.

The with-profits fund that was selected was one of a number of fund options chosen by the trustees of the Teachers Pension Scheme. With-profits funds are generally considered to represent a lower risk than investments that are linked directly to the stock market. This is because:

- with-profits funds usually include a mixture of assets, including those that are more secure;
- when determining the value of bonuses, providers apply a process of "smoothing". This means money is kept back in years when investment returns are high to support bonus payments in years where investment returns are lower; and
- annual bonuses cannot usually be taken away once they have been added.

For these reasons, with-profits funds are usually considered to be suitable for most consumers, including those with a more cautious attitude to risk. So, based on the information I have I don't think the choice of fund for Mrs A's TAVC policy was unsuitable.

The response to my provisional findings

Mrs A's representative has accepted my provisional findings and offered no additional evidence. Prudential have offered no response to my provisional findings.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons I explained above, I think that Prudential may not have provided Mrs A with clear enough information about the availability of alternative ways to increase her pension when she was sold the TAVC's in 1991. But it's not the role of our service to penalise businesses where they've made mistakes. We aren't the industry regulator. Our role is to try to resolve each complaint, on a case by case basis, in a fair and reasonable way.

Having determined that there may have been a mistake here, I've had to decide if that mistake was likely to have caused Mrs A any detriment. For the same reasons that I explained in my provisional findings, I don't think that it did. I think it's more likely than not that Mrs A would have still chosen to buy the TAVC, in the same way that she did in 1996 when I think her options were explained to her quite clearly.

Regarding assessing the suitability of the TAVC's for Mrs A, for the reasons I explained in my provisional decision, I don't think Prudential did anything wrong.

My final decision

For the reasons I've given I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 30 December 2020.

Gary Lane
Ombudsman