

The complaint

Mr W complains about the information that the Prudential Assurance Company Limited (Prudential) gave him when he set up his Teachers' Additional Voluntary Contribution (TAVC) plan. He says that if he'd been given clear and full information, he would've purchased added years within the Teachers' Pension Scheme instead of setting up his TAVC plan.

What happened

Mr W took advice from one of Prudential's advisers in 1994 and joined the TAVC. He was 47 and planned to retire at 60, he already had around 20 years of pensionable service as a teacher. Mr W continued to teach until he retired shortly before he was 60. He began by making contributions of 9% of his salary to the TAVC and I understand these contributions continued at the same rate up to his retirement.

Mr W complained to Prudential in 2001 but Prudential didn't uphold his complaint. It said, in summary, that its representative recalled meeting with him and remembered that detailed information would have been provided including information about added years although there was no documentation still available that recorded the advice. Mr W was provided with the details of the complaints handling bodies he could refer his complaint to (this was before this service was created). I understand that he didn't pursue the complaint further at that time.

Mr W made this complaint in 2019. Prudential reconsidered the complaint but didn't uphold it. So, Mr W referred the complaint to this service.

Prudential hasn't objected to this service considering the merits of the complaint despite the passage of time and the earlier complaint.

An investigator considered the complaint, but he didn't think that it should be upheld. He said, in summary:

- The adviser believed they would have given Mr W what information they could about the additional years, so that he could seek advice elsewhere about this.
- Although Mr W didn't remember this and doesn't recall that it happened, there isn't sufficient evidence to prove whether this information was provided or not.
- The advice to recommend membership of the Teacher's AVC was not inappropriate. It provided a flexible way of improving Mr W's pension over the course of his remaining career.
- Although purchasing additional years may have had the potential to provide greater benefits, this could also have seemed significantly more expensive to achieve.

Mr W didn't agree. He said, in summary:

- He would have been better off with added years.

- He had a clear recollection that there was no reference to the option of added years in his meetings.
- From 1995 Prudential changed its procedure so that all teachers joining TAVC had to sign a form to confirm they had been made aware of the added years options.

As no agreement was reached, the complaint was referred to me to make a decision. I provisionally decided that I disagreed with the investigator and said that I thought the complaint should be upheld. I said:

“As some of the evidence is either incomplete or contradictory, I’ve made a decision based on what I think is most likely to have happened – based on what’s available. Prudential’s adviser couldn’t have advised Mr W on the added years option. But the adviser did have a responsibility to make him aware that added years was an alternative option and a duty to refer him to the scheme booklet or the scheme to obtain further information about other available options.

Prudential has said that the point of sale documents are no longer available. I note that these were not available when Mr W first complained in 2001, just six or seven years after the advice. I can’t know what he and the adviser discussed at the time and the recollections of the adviser and Mr W differ. The adviser says the options would have been discussed as a matter of routine, Mr W says that they were not. He makes the point that this was a one-off event for him, but the adviser would have had many similar meetings and so he says his recollection is more reliable.

Based on the available evidence, I’m not satisfied, on balance, that Mr W’s attention was sufficiently drawn to the other available options when he met with the adviser. I say this because I think there are strong grounds to conclude that if he had been referred to the option of added years, that is the option he would have chosen. Mr W was 47 and probably had a reasonably clear view about his future career. The flexibility the TAVC provided over added years may not have seemed so attractive to him. And given his age, his accrued service and the level of contribution he was prepared to commit to, he had the possibility of buying added years which would have achieved, or been close to achieving, the maximum benefits from the Teachers’ Pension Scheme, 40 years’ service.

I think it’s particularly significant in this case that Mr W decided to, and was able to, make the maximum contribution to the TAVC of 9% of his salary. If he had investigated the option of added years, I think he would have discovered that this level of contribution, if paid over the remaining years of his career to his intended retirement would have been enough to maximise, or almost maximise, his Teachers’ pension. I think this would have appeared to be a very attractive option to someone who had the capacity to make contributions ongoing at this level.

The cost of added years of service in the Teachers’ Pension Scheme was determined by the Government Actuary. Conservative assumptions of likely future investment performance were used, and this made added years appear to be expensive. This was because the cost of added years was intended to be met by member contributions alone, rather than the employer having to pick up any shortfall. If Mr W had opted to pay for added years, he would’ve had to give up a set percentage of his salary for a set term, often up to retirement. Partial years couldn’t be purchased. Also, the amount he paid would’ve increased over time, in line with his salary increases.

As I’ve said, Mr W was 47 at the time of the advice and so had almost 13 years to his intended retirement at 60. He already had around 20 years of service and so to reach the maximum pensionable service of 40 years he would need to buy 6 or 7 added years. My understanding is that given his age buying 6 added years would have cost just over 9% of

his future salary (120/13). So, he could have bought 6 added years for just a little more than he contributed to the TAVC.

I think Mr W could have maximised his occupational pension in an affordable way by purchasing added years. I think that is what he would most probably have done if his attention had been correctly drawn to that option, given his particular circumstances. I accept that added years are not always a natural choice for everyone, added years could have appeared expensive and expectations of future growth in 1994 would have been much higher than now. On the other hand, Mr W had to pay fees to be part of the TAVC, whereas he wouldn't if he purchased added years within his existing Teachers' Pension Scheme. So, the savings he made here, could've gone directly towards his added years contributions. If Mr W had purchased added years, rather than joining the TAVC, providing he made all the contributions, he would've had a guaranteed benefit at the end of it, rather than being reliant on investment performance.

Without wishing to repeat myself, I think that Mr W's age and his anticipation of the service he would complete to retirement (at 60) coupled with his ability to give up 9% of his salary to secure his pension, are significant factors which would have led him to choose added years over the TAVC.

Taking all of this into account, I think that if Prudential had provided him with clearer information, Mr W would've purchased added years instead of joining the TAVC. So, I think that Mr W has lost out because of what Prudential probably did wrong."

I went on to set out how redress should be calculated.

Prudential didn't accept that provisional decision. It submitted a detailed response. In summary it said;

- My decision was different to many previous decisions from this service and the Pensions Ombudsman on similar issues. In addition to the flexibility and suitability concerns, previous decisions have cited affordability as a major factor and have concluded that Added Years were prohibitively expensive, with age and salary key components of that cost, yet this provisional decision seems to take the opposite view.
- The TAVC is an unregulated product, and as such there is no regulatory obligation to complete a fact find, which would record any advice given. The standards in place at that time was that it was not a requirement to record that all options had been brought to the attention of the customer.
- Prudential were appointed in 1989 to provide teachers with an option to 'top up' their pension fund. This is the 'Additional Voluntary Contribution'. It had to make teachers aware that there were other 'top up' options available. In addition, all the literature it used in schools was agreed with the employer. Its representatives operated under strict internal guidelines for which they received full and thorough training. These guidelines meant our representatives had to explain the TAVC option in detail and to make a general reference to the member's other options. Prudential was not allowed to advise on the Added Years option.
- There are a number of reasons why Mr W may not have opted for buying added years. All of these factors need to be assessed to determine whether or not the added years option was the most appropriate.
- In this case there was an identified life cover shortfall, which was addressed by the TAVC proposal. Life cover wasn't a feature of the added years option.

- It is highly subjective to suggest that Mr W's recollection of a conversation that occurred 27 years ago can be relied upon. Certainly, there is nothing to indicate his recollections carry more weight than our assertion that a fully trained advisor, working within agreed and controlled procedures, would have followed those procedures. The proposal clearly includes a question regarding PAY. It is not conceivable that this question was not drawn to Mr W's attention.
- 7(b) of the declaration of the proposal form details that a customer should seek independent financial advice about whether contributing was in their best interests. The customer, in signing the proposal, accepts and takes responsibility for this recommendation.

Mr W was asked to consider some of the points Prudential had made. He responded and said, in summary:

- The proposal form hadn't been available in 2001 when he made his original complaint. He was surprised that it was available now.
- He didn't complete this form. It is not in his handwriting, other than his signature and the date below the declaration. It was completed by the Prudential representative. And, "I never read the form at the time, but she must have asked me about each section and filled in the form as she went along."
- The declaration only asked him to confirm the entries that the representative had made in sections 3 and 6. It did not ask him to confirm anything from Section 2 (where added years were referred to).
- If he had been asked whether he was making any additional pensions contributions currently he would simply have answered "No". Even if he had been asked more specifically about whether he was contributing to Past Added Years, he would have answered "No" and that cannot be considered as giving clear information about Past Added Years as an alternative to AVCs.
- He did choose to pay for the Death in Service Scheme only after he was told about it by the representative.

I reconsidered the evidence and made a second provisional decision. I said that having reconsidered all of the evidence, I'm no longer minded to uphold this complaint.

My findings in my second provisional decision were as follows:

"All Prudential's representative had to do was make Mr W aware that added years was an alternative option. I'd said that I wasn't satisfied, on balance, that Mr W's attention was sufficiently drawn to the other available options when he met with the adviser. But, given the additional evidence that's now been provided, I don't believe this conclusion is still sustainable.

Prudential has now been able to provide a copy of the original proposal completed in 1994. It's unfortunate that it's only been produced now when it was apparently not available in 2001 when the original complaint was made, or at any time before I made my provisional decision. But I accept Prudential's explanation that GDPR did lead to cleansing of its data and to its locating files that had previously been considered lost. And there seems to be no question that the document provided now is a genuine record of the proposal that followed Mr W's meeting with the adviser in 1994. I don't doubt that Prudential would've produced the document sooner, and in 2001, if it had been more easily available as I do think it tends to support its position in this complaint.

The proposal includes a question about whether the proposer is contributing to past added years. It requires a tick to give an affirmative answer, but it is left blank. Mr W says the proposal form was completed largely by the representative. But it's clear that he signed it.

Although the declaration he actually signed doesn't ask him to confirm the section of the form that references past added years, I think his signature should be considered as evidence that he did read, or was made aware of, the contents of the form.

Mr W says, "I never read the form at the time, but she must have asked me about each section and filled in the form as she went along."

I think the proposal form must be considered as evidence that the representative most likely did ask Mr W about each section of the form as he says, and this would include asking him about added years. I can't know exactly what was or was not said about added years at the time, but I'm no longer satisfied that it would be safe for me to conclude that there was no discussion about it. I'm not sure what reliance I can place on Mr W's recollection now, 27 years later, that he didn't read all of the proposal form. I also think this statement tends to undermine his evidence on his recollection that added years weren't discussed, which was critical to my provisional findings. I don't question Mr W's integrity, and his recollection in this complaint was consistent with his recollection when the complaint was first made in 2001.

But he has signed the form, and I think it's more likely that he read it. The proposal references added years and I restate that all Prudential's representative had to do was to make Mr W aware that added years was an alternative option.

In the light of this recently disclosed contemporaneous documentary evidence, I'm no longer satisfied that Mr W wasn't made aware of the option of added years. I'm no longer satisfied that Mr W couldn't have known about added years by other means, that he wasn't told about added years by Prudential's representative in 1994, and that he would have selected added years instead of the TAVC. I would need to be satisfied of all three of these key elements in order to uphold the complaint.

I do appreciate that this change of stance will disappoint Mr W, but I must remain impartial and make an evidence-based decision. Where new evidence is provided, I must consider it."

Prudential accepted the second provisional decision.

Mr W, understandably, didn't. He made a detailed response which I've considered. He said, in summary:

- An unanswered question about past added years couldn't be considered as evidence that he was properly made aware or what past added years were. He points to a number of decisions from the Pensions Ombudsman which conclude that an unanswered question wasn't accepted as evidence that information was given about this option.
- Added years wouldn't have been prohibitively expensive.
- Although there was no requirement that Prudential record that the option had been brought to his attention, it had undertaken to make clients aware of the past added years option.
- He was told nothing about past added years.
- Prudential changed its booklet in January 2005. The pensions Ombudsman has

accepted in its decisions that this is evidence that its literature before that date was defective.

- Although Prudential say its subjective to rely on the recollection of a conversation 27 years ago, he did complain in 2001.
- He trusted the advice process and didn't take independent financial advice, but that doesn't excuse Prudential from its responsibility to give sound advice.

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.

I've reconsidered the case given the responses received. I've decided not to change the conclusions I reached in my second provisional decision. I don't uphold this complaint. I'm sorry for any false hope that I've given Mr W, but I must make a balanced and evidence-based decision.

All Prudential's representative had to do was make Mr W aware that added years was an alternative option. Prudential has been able to provide a copy of the original proposal form. Whilst an unanswered question may not in itself evidence any detailed discussion took place about past added years, the evidence of the representative has always been that such a discussion did take place. The form may have prompted that discussion. Mr W says the proposal form was completed by the representative and I think that is most likely correct. But he did sign it and I think his signature should be considered as evidence that he did read, or was made aware of, the contents of the form.

Mr W also said that he must have been asked about each section of the form. I think that if he was asked about past added years but knew nothing about them, it's likely in a normal interaction that some information would naturally have been provided. And the representative insists that past added years would have been discussed. Mr W knew that in 2001 when he first complained. He was given referral rights back then to take the complaint further but chose not to do that at the time, we are now considering the complaint 20 years later.

As I said, I can't know exactly what was or was not said about added years at the time and I'm being asked to make a determination 27 years after the event. It's not just the late disclosure of the proposal form that causes me to question my earlier conclusions, Mr W's recollection that he didn't read all of the proposal form tends to undermine his own evidence and brings into question the weight I can attach to his recollection that added years weren't discussed.

Having reconsidered the entirety of the evidence I'm no longer satisfied that Mr W wasn't made aware of the option of added years. I'm no longer satisfied that Mr W couldn't have known about added years by other means, that he wasn't told about added years by Prudential's representative in 1994, and that he would have selected added years instead of the TAVC.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 August 2021.

Keith Taylor
Ombudsman