

The complaint

Mrs F complains that The Prudential Assurance Company Limited (Prudential) mis-sold her a free-standing additional voluntary contributions policy (FSAVC).

Mrs F is represented in bringing this complaint. But, for ease of reference, all comments and actions will be noted as Mrs F's.

What happened

Mrs F took advice from Prudential around October 1997, primarily about how she might generate extra income for her retirement. She was age 54 at the time and was expected to retire between the ages of about 60-65.

Prudential noted that Mrs F had recently become eligible to join the NHS pension scheme through her employment and had become a member of that scheme on 1 September 1997. Before that, she'd been contributing about £160 a month (gross) into a personal pension with Prudential. But due to changes in pension legislation, she was no longer able to contribute to the personal pension.

In a handwritten note within a 'fact find' document dated October 1997, the adviser noted he'd given Mrs F a leaflet explaining the key features of AVCs (which were employer schemes) and FSAVCs, and that he'd explained the differences in charges. The adviser indicated that Mrs F had opted for a Prudential FSAVC because of 'portability' and because she had an existing Prudential pension.

Prudential recommended that Mrs F switched her personal pension into an FSAVC and contribute to that plan at a rate of £90 a month over a term of six years. Mrs F accepted Prudential's recommendation. It looks like her contributions started around January 1998.

Mrs F complained to Prudential in early 2021 that the advice she received wasn't suitable and that the adviser hadn't taken all of the steps she'd have expected.

Prudential didn't uphold the complaint. Amongst other things it said:

- According to the fact-find, the adviser made Mrs F aware of the 'in-house' AVC through her employer's scheme and the difference in charges between an AVC and FSAVC. The adviser also noted he'd given Mrs F a leaflet which also explained the key differences between the two options and the differences in charges. And the leaflet itself said that the charges for an FSAVC can be more expensive.
- Prudential was satisfied it had explained the option of paying into the employer's 'in house' AVC. It said its advisers could only give advice about Prudential products, so couldn't have advised about options to buy 'added years' within the employer's scheme. And, as Mrs F had recently joined the employer's scheme, she'd likely have been made aware of the option to buy 'added years' via that route. So, Prudential felt Mrs F had been given the opportunity to obtain further information about that before taking out the FSAVC.

Mrs F brought the complaint to our service and said that there was no real evidence to demonstrate that her attention had been drawn to the 'in house' alternatives in any detail, especially the difference in charges between an FSAVC and an AVC. One of our investigators looked into it and didn't uphold the complaint. He felt that overall Mrs F was

treated fairly by Prudential and was given sufficient information to decide whether she'd like to proceed with the FSAVC or discuss other options with her employer.

Mrs F didn't accept the investigator's assessment. Amongst other things she said there was no evidence of the advisor explaining the likelihood of lower charges within the 'in house' AVC. Or the differences, generally, between 'in house' AVCs and an FSAVC. Mrs F didn't feel she'd been able to make an informed choice.

As Mrs F didn't agree, the complaint has been passed to me to make a decision.

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 think it's helpful to say at the outset that the adviser wasn't able to actively recommend products offered by other providers, including those available within the employer's 'in house' pension scheme. That's because, as a 'tied adviser', employed by Prudential, he could only recommend Prudential's products.

That's not to say that Prudential didn't have other important obligations though. The regulator set out a number of responsibilities for tied advisers. Whilst they couldn't actively recommend 'in house' options, they would have known they were available and were expected to inform the consumer that there were other options, as well as those offered by Prudential. They'd also be expected to refer to their generic benefits. For instance, money purchase AVCs often had lower charges than an FSAVC. And it's often the case that within an 'in house' scheme an employer would match or top up the amount the consumer contributed themselves.

The regulator issued an important regulatory update (RU20) in May 1996. This wasn't the regulator setting entirely new requirements, it was essentially restating rules that already existed. In simple terms the regulator made clear that tied advisers couldn't recommend an FSAVC until they had drawn the customer's attention to any 'in house' alternatives (enabling them to then seek further information from their employer if they wished to), or without discussing the generic differences between both schemes. In other words, it wasn't enough to simply give the consumer a leaflet.

And I think this is where the key dispute arises. Mrs F has argued, through her representative, that there was insufficient discussion to draw her attention to the general differences between the 'in house' scheme and the FSAVC, especially when it came to the lower charges applicable to the AVC. In contrast, Prudential feels it met its regulatory obligations.

Where the evidence is contradictory, as it is here, I need to make a decision about what I think is most likely to have happened. And after considering the available evidence very carefully, on balance, I'm satisfied that Prudential did enough to meet the regulator's expectations. I'll explain why.

I've been given some, but not all of the documents I'd typically expect to see when financial advice has been given. For instance, there's a 'fact-find' document within which Prudential recorded certain information relating to Mrs F's personal circumstances together with her investment aims. I haven't seen any evidence to suggest that Mrs F disputed the accuracy of what was recorded. But I haven't been given a copy of a suitability letter that typically follows a fact find. This would generally outline a summary of the discussions that have taken place along with any recommendations made. Naturally, the absence of this document makes it more difficult to say *exactly* what happened in Mrs F's case.

According to what has been noted, the adviser said he'd given Mrs F a leaflet explaining the differences between an 'in house' AVC and an FSAVC and had explained the differences in

charges. Bearing in mind that a fact find is generally a contemporaneous record of what happened at the time, it seems more likely than not that some form of discussion took place at the time of the advice.

So, I've thought about what format that discussion is likely to have followed. As it happened at the same time that Mrs F was given a leaflet (a copy of which I've seen) I think it's reasonable to conclude that the discussion likely covered, in general terms, the differences between AVCs and FSAVCs, following a similar format to the leaflet.

I can see that the leaflet sets out a number of key differences between FSAVC and AVCs under a heading "*Additional Voluntary Contributions – some important features*". Those include:

Since 1989, any employer who offers an 'in house' occupational pension scheme also has to provide an AVC facility, so, if you are a member of your employer's pension scheme, you will also be eligible to make contributions to the 'in house' AVC facility. Information on any 'in house' scheme will be available from your employer or pension scheme trustees.

Alternatively, you may choose to make contributions to a 'free standing' AVC plan (FSAVC). Your reasoning for making AVCs is likely to be the same in either case but there are some important points to consider before you decide which product to commit yourself to.

As 'in house' AVC contributions are deducted from your gross pay by your employer and sent directly to the AVC provider you automatically receive tax relief at your highest marginal rate. Whereas contributions to an FSAVC are sent by you to the provider and so are made net only of basic rate tax. You would need to claim back any higher rate tax from the Inland Revenue through your annual tax return.

Some employers offer to match a scheme member's contributions to an 'in house' AVC with extra contributions to the occupational scheme. If this is the case it is unlikely that you would be better off with an FSAVC.

Some in house AVC schemes offer additional benefits such as life cover which would require extra contributions with an FSAVC.

So, as I'm satisfied that a discussion took place and that it's likely to have followed the format of the leaflet, I think Prudential would have made Mrs F aware that an 'in house' AVC scheme existed. I can also see that, on her application form, when indicating the level of contribution she wished to make to the FSAVC, Mrs F appears to have indicated that she was aware her employer offered a similar scheme to the one she'd chosen to invest in. And, as she met with Prudential fairly soon after she'd joined her employer's pension scheme, it seems likely she'd also have received information about making additional contributions upon joining the scheme. Taking those things together, I think Mrs F would have been aware of the existence of an 'in house' option. And, given what the leaflet says, it seems likely to me that, during the discussion, Prudential would have told Mrs F she could obtain further information from her employer if she wanted it. So, I think it was open to her to seek further details if she thought it necessary. Based on what I've seen here, I think Prudential met at least two of the requirements set out in RU20.

The leaflet then goes on to say the following about charges:

"It is difficult to be specific with regard to the differences in costs between AVCs and FSAVCs as product structures vary considerably. The cost of running your AVC or FSAVC is important as it will affect your final benefits, however you should take into account other factors such as the funds you are investing in and the financial strength of your provider to be able to select the appropriate investments that make up these funds in the case of 'with profits' plans. In many cases the employer bears some, or all of the administrative costs whereas in the case of an FSAVC these costs are borne by the customer".

And

“Due to the close link between an ‘in house’ AVC facility and the main occupational pension scheme the benefits of both schemes have to be taken at the same time, which is usually the normal retirement date of your employer’s scheme. In the case of an FSAVC you could on leaving the main company pension scheme draw your benefits at any time between 50 and 75, irrespective of when the main scheme benefits are paid”.

As I’m satisfied Prudential discussed the leaflet, it seems likely it would have said it was difficult to explain the *actual* difference in charges due to the different product structures. But it does say quite clearly that *“in many cases the employer bears some, or all of the administrative costs whereas in the case of an FSAVC these costs are borne by the customer”*. So, again, it seems likely that during the discussion, Prudential would have told Mrs F that unlike an ‘in house’ AVC, she’d be responsible for meeting the costs associated with an FSAVC. And, as the FSAVC attracted costs and the ‘in house’ AVC didn’t, I think Mrs F ought to have been aware that the costs associated with the AVC were likely to be lower. Overall, I think Prudential did enough to explain the generic differences between the ‘in house’ option and the FSAVC. Mrs F also signed a declaration to say that she’d received key information about the FSAVC and had been made aware of its risks. And by approaching her employer, Mrs F would have had access to more information about its ‘in house’ scheme, including the option to buy added years.

On balance, I’m satisfied overall that Prudential met its regulatory obligations under RU20. And given her circumstances and needs at the time, I can’t say that its advice was unsuitable for Mrs F.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs F to accept or reject my decision before 28 October 2022.

Amanda Scott
Ombudsman