DRN-3203440

The complaint

Mr P complains that Prudential Assurance Company Limited (Prudential) didn't give him clear and full information when he set up his Teachers' Additional Voluntary Contribution (TAVC) plan. He says that if had he would've purchased added years within the Teachers' Pension Scheme (TPS) instead.

What happened

In 1994, Prudential advised Mr P to take out a TAVC, as well as death benefit cover due to having inadequate life cover. He was 31 and says he had around four years pensionable service as a teacher. He began by contributing 3.83% per annum from his salary to the TAVC but says he increased this to 9% several months later, when he could afford it.

In 2021, Mr P complained to Prudential saying, in summary, that he wasn't made aware past added years was an option. He said the application was completed by the adviser, with no reference to this, and that they made unrealistic projections for the TAVC.

Mr P also said that as he had gotten married a few years before seeking the advice, and he planned to have children, he was concerned about not being able to work due to ill-health. So he took out Mortgage Payment Protection Insurance and an Income Protection Policy ('IPP') and had life cover as part of an endowment plan. He said he then met with Prudential to address his pension shortfall, which he recalls well due to sadly losing a family member shortly before. He said he made it very clear he wanted to retire at 55 but would have a 13-year shortfall. And that he was told he could easily make this up with a TAVC.

Mr P said that in 2013, aged 51, he retired early due to ill health from his TPS. And that he contacted Prudential who said he couldn't access his TAVC until he was 55, which wasn't unexpected as he'd been advised it didn't have ill-health provision. He said he noticed he'd have a shortfall between aged 60 when his IPP ends and 67 when he could take his state pension. And, in 2021, despite his TAVC having grown steadily since he started monitoring it, he lost confidence in receiving a reliable pension from it due to a large drop in value.

Mr P said that if he'd been told about added years he might have gone for a TAVC based on cost and projected value alone. But not if he'd known that with added years he could have paid a nominal amount from the lump sum on ill health retirement to make his contributions up to 40 years' service, as well having valuable death benefits.

In response, Prudential said, in summary, that:

- When joining the TPS Mr P was given literature on options to increase his pension, including through past added years. It only had to make a general reference to his other options and it was up to him to approach the TPS about these, as it wasn't allowed to advise on added years. Mr P's TAVC application wasn't long and made him aware this was an option. It's reasonable to expect him to have read it and asked questions if anything wasn't clear, but he chose a TAVC.
- Added years was expensive compared to the projected benefits of a TAVC. Mr P was 31, so there was less time for him to spread the cost of those. And the extra benefits

and contributions were fixed, whereas there was no cap on what he could achieve with a TAVC and it had flexibility.
- In 1994 there was more perceived value in an arrangement that depended on investment returns. Expected growth was high and annuity rates were better, so the expected return was more beneficial than added years. TAVC illustrations were based on assumed interest rates recommended by the regulator and weren't unrealistic at the time. Mr P's TAVC was invested in the with profits fund, with a broad spread of assets. And the booklet noted the value can go up and down and that there wasn't a guaranteed income. Mr P was also using the TAVC to provide life cover – which wasn't an option with added years – where the cost was deducted from his monthly contributions, reducing the investment value.
- The documentation explained Mr P could take his TAVC benefits before turning 60 if he retired due to ill health from the TPS. In 2013, Mr P called to say he was doing this, but didn't want to take his TAVC benefits until he was 60. He was told he might be entitled to an enhanced annuity from aged 55 and what would happen to the benefits if he died before and after taking them. And because of this call it didn't send Mr P the documents to take benefits when the TPS confirmed he'd retired.
- It said that while it had offered Mr P £50 compensation for not giving him a copy of his review document sooner, it's cancelled the payment as he said he didn't want it.

Mr P replied to Prudential adding, in summary, that:

- He's wasn't given the TPS documentation to be aware of added years before meeting with it. And that if Prudential was able to rely on this it would defeat the point of it having to make its customers generally aware of added years.
- The adviser identified a shortfall in life cover, he didn't choose the TAVC for this and wouldn't have done so above added years, as his priority was his pension shortfall.
- While Prudential told him in 2013 that he might be entitled to an enhanced annuity at 55, he was told he wasn't when he called back around 2017. So he decided to leave his TAVC until he turned 60, as it would have cancelled out what he'd receive from his IPP. If he was entitled to an enhancement he would have considered it though and should still be able to access it, as it might have given him a better return when that ends. So he asked Prudential to look into the call and let him know what he would have been entitled to.
- Its offer of £50 when he'd asked for the documents twice to help make his complaint is patronising and shows a lack of empathy.

Prudential told Mr P it had given its response. So Mr P brought his complaint to our service. He confirmed he doesn't want to complain about the underperformance of his TAVC. And, in relation to added years Mr P said, in summary, that a blank tick box on his application could be overlooked. There was no typed statement at the end confirming added years had been mentioned or anything to that effect in the handwritten '*Summary of Your Financial Review*' section. He only had sight of the application to sign it, so his access was limited and he couldn't reflect on it. And he said he follows everything up to ensure he is fully covered, so he would have done the same with added years and opted for this if he'd been told about it.

One of our investigators looked into it and said they weren't persuaded Mr P was told about added years. And that if he had it's likely he would have purchased those, given one of his main objectives was to ensure protection for his family, which added years provides in a superior way to AVCs.

Prudential didn't agree, adding that the questions on Mr P's application form showed there were other ways to make retirement provision and were such that the adviser would have asked if Mr P was contributing to added years. It said the unticked box means he wasn't. And that as Mr P signed the form it shows he was aware of added years.

So the complaint's been passed to me for a decision.

Since doing so, Mr P's said that the maximum number of added years he could buy during the 24 years until he intended to retire was just under 11. He said that while paying 9% into TAVC would achieve the 13-year shortfall, added years would allow him to make up 11 years and be risk free, take a lump sum and have ill health provision. And that the superior ill health benefits would have been the deciding factor.

I asked Prudential for information from the time Mr P increased his TAVC contributions. In response, it said this took place in 2000 and, while it doesn't have Mr P's application form from the time, it provided a specimen of what it says this would have looked like.

I let Mr P know I'm not minded to ask Prudential to do anything. This is because I think it's likely he was made aware of the past added years option when he joined the TPS and by Prudential, both in 1994 and 2000. I also said that, in any case, I'm not persuaded Mr P would have bought past added years instead, as I think that resolving his pension shortfall was an immediate concern in contrast to a possible risk of ill health. The expected returns of AVC's was high. Whereas buying past added years would have left Mr P with a five-year shortfall, as he would have only been able to buy eight and intended to retire at 55.

I also said I can see Mr P asked Prudential to investigate the call he had with it in 2017, saying that if he was in fact entitled to an enhanced annuity then he would have considered taking it, but it didn't respond. I said Mr P should let us know if he wants me to address this, as I'd need more information from Prudential to do so.

Mr P made a number of submissions in response. And I've summarised what I consider to be his main points as follows:

- In 1995, Prudential asked all teachers joining the TAVC to confirm they'd been made aware of PAY in response to claims it hadn't been. Mr P provided examples of TPO determinations and decisions given by our service, which he says support that the 1994 application form, like his, didn't adequately alert applicants to past added years. He added that the TPO said this as recently as February 2015.
- As he was just looking to increase his contributions in 2000, he wouldn't have noticed every aspect of the amendment form beyond the sections that related to that. Mr P said his actual form doesn't exist and it isn't fair to rely on the specimen Prudential's provided. Where this doesn't exist we've always said that it can't be considered.
- Mr P said the nature of his ill health means he has a duty to be truthful and do the right thing. He said that, in particular, he excessively adheres to social conventions. And that he's sought to put in place guarantees that if something should happen to him then he'd be covered. He said this led to him taking out IPP, as well as other cover that was unfit for purpose. So ill-health provision wasn't just a 'concern' or 'general goal', but an obsession of his.
- He was aware that if he needed to retire early due to ill health, while his IPP would cover him until he was 60, he'd be left with a reduced pension because he couldn't contribute to his TAVC beyond that. So, ill health provision was a goal for him, which is why he asked the adviser about it. The TPS would have offered to make good all outstanding payments up to the age of 60, meaning he wouldn't miss out beyond when his IPP ended.
- Only being able to purchase eight past added years wouldn't have deterred him. It would have been just as affordable as the TAVC, which was based on investment

return and not linked to final salary. So, had he gone on to secure promotions and significant pay rises, he can't see how it could keep up with the benefits that buying past added years could give. This means he was advised based on speculation, as the adviser had no idea what Mr P's final salary or the implications of the 13-year shortfall would be for him.

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.

Mr P has made a number of representations and, while I've considered them all, I've only commented on what I think is key to reaching my decision here. And, while I know Mr P will be very disappointed, I'm not asking Prudential to do anything. I'll explain why.

Mr P hasn't said that he wants me to consider the conversation he had with Prudential in 2017, where he recalls being told he wasn't entitled to an enhanced annuity. So I haven't considered this any further.

I think it's likely Mr P would have been given the scheme booklet when he joined the TPS, even if he no longer recalls this. This would have explained the options he had to contribute to his pension, including past added years. So I think he was given information to make him aware of these before he took out the TAVC. In any case, I've also thought about whether I think it's likely, on balance, that Prudential made Mr P generally aware added years was an alternative in 1994 when his TAVC was set up and when he later increased his contributions.

I can see Mr P's application form from 1994 had a section dedicated to asking about any other pension contributions and arrangements he had. And within this it asked if he was currently making additional contributions under the TPS. One of the options given to do so was past added years and, in the event Mr P was contributing to these a tick was required, but it was left blank.

Mr P's said he wasn't asked this, the adviser filled out the form and he was just asked to sign it. He's also said the box being left blank means it could have been overlooked. But, while I appreciate his comments and what he's said about why his recollections from the time are heightened, I'm also mindful it was 28 years ago. And I don't think this question is likely to have been overlooked by the adviser considering it's the first in a section that's half a page long and the application form is only four pages. I also think the nature of the question, asking if Mr P was contributing to the TPS via methods including past added years, shows it was an option. I think it's likely the adviser would have asked Mr P this when going through the sections with him, filling it in, making him generally aware about added years in doing so. And that his signature shows it's likely he read the form and was made aware of its contents.

Mr P's referred to decisions from TPO to support that he doesn't think this question was enough to make him aware of added years. But he's brought his complaint to our service. And the rules under which each scheme operates are different. I determine complaints in accordance with Part XVI and Schedule 17 of the Financial Services and Markets Act 2000 (as amended) and the DISP section of the FCA Handbook. TPO decides complaints in accordance with rules made under the Pensions Schemes Act 1993. So, while we may reach similar outcomes, this isn't necessarily the case.

I also note that the two most recent decisions given by TPO and our service that Mr P's given as examples, refer to the same, or at least a similar, question about past added years as his 1994 application form. And both conclude that it can't be said the customer wasn't made aware of added years. In any case, I don't think the decisions Mr P's mentioned, that were given based on their own circumstances, are of great assistance here. No two cases are identical and it's for me to reach a decision based on the individual merits of Mr P's complaint. And, for the reasons I've given above, I can't safely conclude he wasn't told added years was an option in 1994.

Turning to Mr P's application in 2000 to increase his contributions, while Prudential doesn't have his completed amendment form from the time, it has provided a specimen of what it says this would have looked like. Mr P said it isn't fair to rely on this. But I think it's likely the form he filled out would have been the same, or very similar, to this. I've seen others from around the time and in my experience they do look like this. So I think it's fair and reasonable to rely on it here.

I can see that in a section headed '*Declaration*' on the final page of the form it says '*I have been made aware of the booklet entitled 'A guide to the Teachers' Pensions Scheme' with regard to the 'Past Added Years' option*'. This is the last bullet point and it's right before where Mr P would have had to sign the form. And I think he would have had the opportunity to read this before signing and increasing his TAVC contributions. So I think it's likely Mr P was also made aware added years was an option in 2000.

Mr P's said he wasn't looking at other ways to top up his pension, so he wouldn't have noticed every aspect of the form beyond the sections about increasing his contributions. But, regardless of whether Mr P paid much mind to this section and why, Prudential only had to make him generally aware added years was an option, which I think it's likely to have done for the above reasons.

In summary, I'm not satisfied Mr P wasn't made aware of the past added years option by Prudential in 1994 and 2000.

Even if I was persuaded Mr P wasn't made aware of past added years – which I'm not – I can't say he would have bought these instead of taking out his TAVC. I've taken into account what Mr P's told us about the way his health impacts him – which I can't imagine was easy to do – in particular that he's said ill health provision was an obsession of his. And the reasons he's given as to why he feels he would have purchased added years instead.

But I have to consider what I think is likely to have happened at the time, without the benefit of hindsight. At the time of the advice Mr P had already made some ill-health provision in recent years. And he's said his pension shortfall was his priority and reason for seeking the advice. This is because he wanted to retire at 55 but had identified a 13-year pension shortfall. So, while I don't doubt what he's said about how he viewed providing for ill-health, I maintain that I think it's likely his pension shortfall was more of an immediate and certain concern for him to resolve at the time.

TPS had a maximum number of years' service a member could build up – often 40 years. Any plans the member might have had to retire early weren't usually considered. So, if a member joined the scheme full-time at aged 28 instead of 20 but intended to retire before the normal retirement age, as in Mr P's case, they would still only be able to buy eight past added years. Mr P seems to accept this means that, with his intended retirement age of 55, the maximum number of years' service he could have achieved with past added years was 35 rather than 40, leaving him with a five-year pension shortfall still in that case.

I've taken into account that Mr P's said that, overall, he would still have opted for past added years though as there was no investment risk, it would have provided a lump sum and been just as affordable as the TAVC. But, given resolving his shortfall was his main priority at the time, I think the prospect of being left with a five-year shortfall still in that case – just under 40% of the 13-year shortfall he was looking to resolve – would have felt very significant. And, when also considering the expected returns of AVC's was very high at the time and Mr P's said he was advised he could easily resolve the full shortfall with a TAVC, I can't safely say that I think he would have purchased added years instead.

I appreciate Mr P says the adviser acted on speculation, as he can't see how the TAVC could keep up with the benefits buying past added years could give when accounting for promotions and pay rises. But the adviser wasn't expected to make such a comparison. As mentioned, the adviser was acting on the understanding that the projected returns for AVC's was very high at the time. Mr P would have been given an illustration for his TAVC. And the projected benefits from it might not have been easy for Mr P to compare with buying past added years if he'd gotten a quote for that from the TPS himself, if it wasn't produced to the same age with the same level of contributions.

In summary, I'm not asking Prudential to do anything. I note it offered Mr P £50 compensation for failing to initially send him his review document. Mr P should contact Prudential directly if he now wishes to accept this.

My final decision

For the reasons I've given, my final decision I don't think Prudential Assurance Company Limited needs to do anything to settle Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 June 2022.

Holly Jackson
Ombudsman