

The complaint

Mrs N complains that The Prudential Assurance Company Limited (Prudential) shouldn't have advised her to switch her personal pension to a free-standing additional voluntary contributions policy (FSAVC).

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

What happened

Mrs N sought retirement planning advice from Prudential in February 1998. It noted that her goal was to '*retire on a decent income*'. She was age 47 at the time; was working and wasn't expected to retire for 10 or more years. Her attitude to risk was described as very cautious.

Prudential noted, amongst other things, that Mrs N had recently joined her employer's pension scheme and was looking to make further contributions into AVCs or FSAVCs. In a later note, it said she preferred to invest in Prudential's FSAVC largely due to its flexibility.

Prudential sent Mrs N its personal financial review summary report (it looks like it was sent a few days after it discussed Mrs N's retirement needs with her). That set out its formal recommendation for Mrs N to invest in an FSAVC in an effort to achieve her desired retirement income. Prudential also noted the following:

- It had given Mrs N a copy of the leaflet "*AVC some important features*" and had explained the contents to her.
- It had explained the features of a with profits fund which was felt to be consistent with Mrs N's very cautious attitude to risk.
- It recommended Mrs N pay a premium of £74 a month into an FSAVC over a period of 16 years and 6 months.
- "*the relative merits of FSAVC and AVCs were covered*". Mrs N had chosen an FSAVC because of the choice of investment and its flexibility.

Prudential said its report should be read in conjunction with the key features document and personal quotation given to Mrs N.

Mrs N later complained about the sale of the policy to Prudential because:

- It didn't properly assess the level of risk she could take.
- There was no justifiable reason for her to have a portable FSAVC as she was likely to remain in the same employment until retirement.
- The adviser didn't establish if her employer's scheme had an 'added years' or any other enhanced benefit arrangement, which Mrs N would have chosen if she'd been properly advised.
- The adviser hadn't compared the benefits between an FSAVC and an AVC, or whether the employer matched or made further contributions in respect of an AVC.
- The adviser should have referred Mrs N to her company scheme for full details of the charges associated with an AVC.

- The adviser didn't make a comparison of charges between an FSAVC and AVC.
- Other suitable requirements weren't discussed in a fair and balanced way.
- If advised correctly, Mrs N would have contributed to the most suitable 'in house' option.

Prudential didn't uphold the complaint and said things such as:

- There was no evidence the adviser hadn't discussed the main features of the policy, or alternatives, in a fair and balanced manner.
- Charges were shown in the members booklet and the financial review summary confirmed the adviser gave Mrs N the leaflet "*additional voluntary contributions-some important features*" and explained the contents to her. Prudential added that Mrs N could have contacted her employer for more information about its 'in house' AVCs to discuss things further if she'd wanted to.
- Mrs N was also likely to have received information about how she could increase her contributions through her workplace NHS scheme, as she'd fairly recently joined it.
- The FSAVC offered the advantage of portability and there was nothing to indicate that Mrs N wouldn't have switched employer. It also suited her "*very cautious*" attitude to risk as it was invested in a 'with profits' fund.
- There were a number of reasons why Mrs N might not have opted to buy 'added years' in 1998, not least due to the cost, which would likely have been seen as expensive. The costs also needed to be agreed upfront, whereas with an FSAVC the contributions could be adjusted as circumstances allowed.
- Investment growth was higher in 1998, so the expected return from an FSAVC was potentially more beneficial than buying 'added years'.

In conclusion, Prudential didn't think the policy had been mis-sold. And it said that if she wasn't happy, Mrs N had had the option of cancelling it within the cooling off period.

Mrs N complained to our service. One of our investigators considered the complaint and didn't uphold it. The investigator said:

- As Mrs N had recently joined her employer's pension scheme, it was reasonable to assume she'd have been given information about her employer's 'in house' scheme.
- Prudential had given her a leaflet '*Additional Voluntary contributions-some important features*' and discussed the contents with her. That leaflet also explained some of the differences in costs, such as the costs being borne by the consumer in the case of an FSAVC.
- Mrs N chose the FSAVC because of its choice of investment and flexibility. The investigator thought the flexibility sought was perhaps indicative of Mrs N potentially changing jobs in future or wanting to control the contribution level.

Overall, the investigator thought Mrs N was made aware of the difference in features and charges between the FSAVC and 'in house' AVC.

Mrs N didn't agree that enough had been done to make her aware of the difference in charges and the effect that could have on her overall retirement provision. She also said (amongst other things):

- it was the adviser's responsibility to make sure she understood the differences between AVCs and FSAVCs and it should not have put the burden of liability on her.

- Prudential's argument regarding choices of investment was flawed on the basis that she'd invested in a 'with profits' fund, which was also an option available in the 'in house' scheme. Mrs N had remained in that scheme during the terms of the policy indicating fund choice was not a factor.
- Mrs N had recently joined her employer's 'in house' scheme. There was nothing to suggest she was looking to change employers in the foreseeable future. She thought 'flexibility' was a "*weak attempt at making the FSAVC suitable*".

The investigator considered Mrs N's comments. And whilst they didn't change her opinion overall, she did make the following points in response:

- Mrs N was given the information the investigator would typically expect from a tied adviser.
- The leaflet '*Additional Voluntary Contributions - some important features*' was used as a discussion tool, so the section relating to costs would have been covered and Mrs N would have been given an opportunity to question the differences. It was evident that she wasn't simply given the literature to read.
- Mrs N had recently started a part time role and had a young child. Whilst there was no mention of Mrs N's intentions one way or another concerning her employment, the investigator thought given her working and financial arrangements, flexibility would be a realistic need given Mrs N's young family.
- The financial review was arranged shortly after Mrs N started her new job and she'd recently joined her new employer's pension scheme. The investigator thought it likely Mrs N would already have received the information regarding her employer's scheme, which was probably the reason for the meeting. As such, she thought Mrs N was probably fully aware of the 'in house' option, especially given the notes in the fact find.
- The process was completed over two meetings giving Mrs N time to review the position.

Mrs N asked an Ombudsman to consider the matter afresh, so it's been passed to me to decide.

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 Prudential's 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 about them and their generic benefits.

As an example, 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.

Some of the responsibilities for tied advisers were reaffirmed in a regulatory update 'RU20', which was issued in May 1996. In short, that update said a tied adviser shouldn't recommend their own company's FSAVC until they had:

- Drawn the consumer's attention to the alternatives within the 'in house' scheme;
- Discussed, in generic terms, the differences between the 'in house' alternative and an FSAVC;
- Directed the consumer to their employer; or the pension scheme trustees, for more information about the 'in house' option.

These weren't new obligations. Rather, it was the regulator restating expectations that were already in place.

So, that's the backdrop against which I considered whether Prudential acted fairly and reasonably, and in line with the regulator's expectations, in Mrs N's particular case.

It is clear that Mrs N doesn't think Prudential did enough to make *direct* comparisons between the benefits and charges associated with her employer's 'in house' scheme and the FSAVC it recommended. Whilst I appreciate her point, I don't necessarily agree that as a tied adviser, it was for Prudential to go into things in that level of detail. Rather, it was required to let the consumer know about the existence of an 'in house' scheme and to explain the generic benefits offered. Doing those things wasn't simply a matter of giving the consumer information leaflets or other product information either. Amongst other things, Prudential needed to be able to demonstrate that it had discussed the key differences with Mrs N and let her know that it was open to her to seek additional information from her employer if she wanted it.

I've been given some documents from the time of the sale and Prudential's personal summary report to Mrs N, which it completed having met Mrs N to discuss her retirement needs. Within the personal summary report, Prudential states it had given Mrs N a copy of a leaflet "*AVC – some important features*" and had explained the contents to her. Bearing in mind that this report was produced following a meeting with Mrs N, it seems reasonable to conclude it was an accurate reflection of what was discussed. Especially as I've seen no evidence that Mrs N disputed its contents.

So, it follows that I'm satisfied Prudential had a discussion with Mrs N. And given what was noted at the time, it seems likely the discussion followed the format of the leaflet. That leaflet talks about the different options available and the key differences between an AVC and an FSAVC including, for instance, the way that contributions are taxed or the way that benefits can be taken. It also mentions that some employers offer to match a member's contributions to an 'in house' scheme with extra contributions to their workplace pension. And it says "*If this is the case, it is unlikely that you would be better off with an FSAVC*". It also says that further information on the 'in house' scheme can be obtained from the employer or pension scheme trustees.

Given these statements, I'm satisfied that Prudential would have made Mrs N aware of the 'in house' scheme and that she could seek further information from her employer before making a decision. And, as the advice process took place over the course of two meetings, it seems likely that Mrs N would have had the opportunity to find out more if she'd wanted to – even if she'd already received information upon joining the scheme (which seems likely). I'm satisfied that in discussing these things with Mrs N, Prudential would have met at least two of the requirements set out in RU20.

Similarly, in discussing the leaflet, I think Prudential would have explained (as the leaflet did) that it was difficult to be precise about the specific charges involved due to the differences in product structures. However, I think it would have said that the charges associated with an AVC are often met by the employer, whereas with an FSAVC they're met by the consumer. So, I think it should have been fairly clear to Mrs N that the charges associated with an AVC were typically lower.

I can fully appreciate why Mrs N might now think it's implausible she'd have invested in a product that was more expensive had she known more about the alternatives available. And

I can also see why, on reflection, she thinks Prudential must have been responsible or negligent in its actions. I'm not able to say with any certainty exactly what was discussed and why Mrs N took the decision that she did - bearing in mind that the advice was given over 20 years ago. But, I'm satisfied, on balance, that Prudential did enough to meet its regulatory responsibilities in giving Mrs N the information needed to help her to make an informed decision. Overall, given her circumstances and objectives at the time, I'm satisfied the advice Prudential gave wasn't unsuitable for her.

My final decision

I don't uphold this complaint.

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

Amanda Scott
Ombudsman