

The complaint

Mrs J complains that The Prudential Assurance Company Limited (Prudential) mis-sold her a Free-Standing Additional Voluntary Contribution (FSAVC) plan.

Mrs J is represented in her complaint by a Claims Management Company (CMC). But I'll only refer to her in my decision.

What happened

I understand that Mrs J and her husband met with a Prudential adviser on 9 June 1999 to discuss general financial planning. And that this led to Mrs J taking Prudential's advice to take out an FSAVC plan.

At the time, Mrs J was a member of her employer's Occupational Pension Scheme (OPS).

A fact find was completed in June 1999. At the time of the advice, the following information was recorded about Mrs J:

- She was 37 years old.
- She was employed and earned £15,000 each year.
- She was married with two dependent children.
- She had been a member of her employer's defined benefit OPS since she'd started work with them in November 1998.

Mrs J agreed to start an FSAVC plan on 29 June 1999, signing the application form on that date. She was going to pay monthly contributions of £52.

Prudential sent Mrs J a recommendations letter dated 2 July 1999. This stated:

"I have given you a copy of the leaflet "AVC – some important features" and have explained the contents to you".

The letter also stated:

"Please note: The benefits of additional savings for retirement have been explained to you. The relative merits of FSAVCs and AVCs were covered. You chose the FSAVC plan because of the choice of investment with Prudential and its flexibility".

On 16 July 2021, Mrs J complained to Prudential about the sale through her CMC. She felt that she'd been mis-sold the FSAVC plan. She made the following points:

- The adviser had failed to accurately assess the level of risk she was willing to take.
- There was no justifiable reason for her to have the portable FSAVC as she was likely

to remain in the same employment until retirement.

- The adviser had failed to establish if her OPS had an added years or an enhanced AVC arrangement that she would've chosen if she'd been properly advised.
- There was no evidence that the adviser had compared the benefits of the FSAVC with additional contributions to her OPS's AVC arrangement.
- The adviser should've referred her to her OPS for full details of the charges so she could make an informed choice.
- There was no evidence that the adviser made her fully aware of the comparison of charges with the FSAVC he'd recommended and the in-house AVC scheme.
- There was no evidence that more suitable retirement options had been discussed with her in a fair and balanced way.
- If the adviser had advised her correctly, she would've contributed to the most suitable in-house AVC arrangement.

Prudential issued its final response to the complaint on 21 July 2021. It didn't uphold it. It said it was part of the sales process for its advisers to discuss the main features of the arrangement they were recommending, including the risks involved. And it hadn't found any evidence that its adviser hadn't followed the normal sales process.

Prudential also said the FSAVC had been invested in the only fund available for that type of policy. And that this would've been explained to Mrs J at the time of the advice. It felt this was a relatively low risk investment, which was suitable for all types of investors.

Prudential also said that it'd found no evidence in the documentation that Mrs J had believed she was likely to remain with the same employer until retirement. It said she'd only just joined her employer. It also said that it couldn't offer any form of advice on the two in-house options. And that all it could do was refer Mrs J to her employer/OPS for further information.

Prudential also said that its 2 July 1999 recommendations letter had confirmed that Mrs J had been given the leaflet "*Additional Voluntary Contributions – Some Important Features*", which it said went into a lot of detail about the relative merits of the FSAVC and an in-house arrangement. It said its adviser had explained the contents to her. It felt that if Mrs J had wanted further details about the in-house AVC she could've contacted her OPS to discuss. Prudential also said why it felt that added years may not have been Mrs J's natural choice in 1999.

Unhappy with this response, Mrs J brought her complaint to this service, through her CMC, on 6 October 2021.

Our investigator didn't think the complaint should be upheld. She felt Prudential's adviser had provided Mrs J with a leaflet which she felt Mrs J would've considered before deciding on the FSAVC option. She also felt that the leaflet had contained clear information about the in-house AVC option. Therefore she considered that Mrs J had been informed in accordance with the regulator's expectations before starting the FSAVC plan.

Our investigator also considered whether Mrs J would've chosen the added years option if the adviser had informed her about it. While she felt she hadn't seen any evidence that the adviser had made Mrs J aware of this type of arrangement, she didn't think Mrs J would've opted to purchase added years. She said this was because she felt the added years option

would've likely appeared expensive compared to the projected returns and benefits available from the FSAVC or in-house AVC options. And because the recommendations letter had noted that Mrs J had said that she didn't want to contribute into the FSAVC plan at the maximum limit the adviser had initially recommended.

Overall, our investigator didn't think that Mrs J had been mis-advised.

Mrs J didn't agree with our investigator. Through her CMC, she made the following points:

- She felt that the sale had taken place well after the regulator had issued its regulatory update (RU20) in May 1996. So she felt that Prudential should've been used to following the guidance. But she didn't feel that the adviser had followed RU20, because she didn't consider she'd been given enough information to make an informed decision.
- She felt Prudential hadn't made her aware of the in-house AVC. And that it hadn't discussed the generic features of the in-house options and the FSAVC.
- In particular, she felt Prudential should've discussed with her the likelihood of lower charges for the in-house AVC.
- She also felt she should've been directed to her employer/OPS to obtain more information on her in-house options.
- Mrs J also said that the recommendations letter didn't cover charges. Nor did it mention any detailed discussions.
- She didn't agree that the leaflet Prudential said it had provided was sufficient to cover the points above. Instead, she felt the adviser should've done more. Mrs J said that if she'd been appropriately advised, she would've chosen the in-house AVC option. This was because it offered her substantially the same product at a cheaper cost.

Our investigator considered Mrs J's comments. But they didn't change her opinion. She still felt that Prudential had provided Mrs J with enough information to allow her to make an informed decision about whether the FSAVC or the in-house AVC was more appropriate.

As part of her investigation, our investigator also considered that the advice had taken place more than six years ago. So she considered whether time limits applied to this complaint. She said she hadn't seen anything to suggest that Mrs J ought to have been aware more than three years prior to the date of her complaint that she had cause to complain. Therefore she didn't consider the complaint to be time barred. But she said she'd be happy to consider any additional information either party provided on this point.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having done so, I'm not going to uphold it. I'll explain why.

Before I investigated the merits of the complaint, I first considered whether time limits

applied to this complaint. Based on what I've seen, I agree with our investigator that the complaint isn't time barred. So I've gone on to consider the merits of this complaint.

I first looked at the regulatory position at the time of the advice.

Regulatory position at the time of the advice

The advice complained about took place in June 1999. At this time, there were different rules on what advisers needed to do, depending on whether they were independent financial advisers or tied advisers.

Mrs J's adviser was a tied adviser. The rules he operated under meant he could only offer products from one provider - he wasn't allowed to sell products from any other provider. So we wouldn't have expected the adviser to investigate and directly make a recommendation on whether Mrs J's in-house AVC or added years options with her employer would've been better for her than the FSAVC.

In May 1996 Regulatory Update 20 (RU20) was issued. This codified the procedures it expected product providers to follow in future sales. It said that before selling an FSAVC tied advisers should:

- Draw the consumer's attention to the in-house alternative
- Discuss the generic differences between the two routes
- Direct the consumer to her employer or the OPS for more information on the in-house option

RU20 also referred to the lower charges under an in-house AVC in general terms. It said:

"Charges under in-scheme AVCs will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. Of all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefits to the client".

Both before and after May 1996, tied advisers needed to explain the generic differences of the AVCs and FSAVCs to the consumer. And advisers knew that the charges under the in-house AVCs were likely to be cheaper.

I next looked at what both Prudential and Mrs J said about the complaint.

Prudential's position

Prudential said that its recommendations letter had confirmed that Mrs J had been given the leaflet "*Additional Voluntary Contributions – Some Important Features*". It said this went into detail about the relative merits of the FSAVC and an in-house arrangement. And that its adviser had explained the contents to Mrs J. It therefore felt that it had met the requirements of RU20.

Mrs J's position

Mrs J didn't consider that the leaflet she'd been given had provided enough information to allow her to make an informed decision. She felt that Prudential hadn't made her aware of the in-house AVC. Or discussed the generic features of the in-house options and the FSAVC. She felt the adviser hadn't informed her about the likely lower charges for the in-

house AVC. And said these hadn't been covered in the recommendations letter.

Mrs J also felt that Prudential should've directed her to her employer/OPS to get more information on her in-house options. She said that if she'd been appropriately advised, she would've chosen the in-house AVC option, which she felt would've offered the same benefits for a lower cost.

I've carefully considered what both parties have told this service. Based on the regulatory regime at the time of the advice, I'd expect the adviser to have made Mrs J aware that an in-house alternative was available through her OPS. And to have discussed the generic differences between the two options. I'd also expect him to have directed Mrs J to her employer or the OPS for further information if she'd wanted it.

It's impossible for me to know exactly what the adviser discussed with Mrs J. But I've carefully reviewed the documentation from the time of the advice. This includes Prudential's recommendations letter dated 2 July 1999 and the AVC leaflet.

The leaflet Prudential said it discussed with Mrs J at the time of the advice contained the following statements:

Although free-standing AVCs and in-house AVCs essentially fulfil the same purpose there are some important differences which you should be aware of before you decide which product is most suitable for you...

Information on any 'in-house' scheme will be available from your employer or pension scheme trustees...

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...

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 also 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 administration costs whereas in the case of an FSAVC these costs are borne by the customer...

This service sees a number of this type of leaflets with complaints of this sort. Sometimes we consider that a leaflet may've been written in an unbalanced or biased way. But, having carefully reviewed this leaflet, I'm satisfied it wasn't unfairly biased towards the FSAVC plan. I say this because it contained a number of points which favoured the in-house AVC option over the FSAVC plan.

I acknowledge that there's no evidence in the meeting notes or the recommendations letter that Mrs J's adviser told her she should contact her employer/OPS to get more details about her in-house options. But I consider that the leaflet did clearly show that an in-house alternative would be available through Mrs J's OPS. I say this because it stated:

“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.”

I consider that this clearly shows that Mrs J did have an in-house AVC option with her OPS. I also note that the leaflet stated:

“Information on any ‘in-house’ scheme will be available from your employer or pension scheme trustees”.

In my view, this directed Mrs J to her employer or OPS for further information if she wanted it.

I’m also satisfied that the generic differences between the two options were covered in the leaflet, as shown in the extracts I’ve included above.

I also note that the 2 July 1999 recommendations letter stated that the adviser had given Mrs J a copy of the above leaflet. And also stated that the adviser had explained the relative merits of FSAVCs and AVCs within that explanation. I’ve no evidence that Mrs J didn’t get the leaflet. Or that she didn’t get the recommendations letter. Therefore I consider it more likely than not that Mrs J did receive the leaflet, and that the adviser did explain the contents of the leaflet to Mrs J. As such, I’m satisfied that the adviser did effectively tell Mrs J to contact her OPS to explore her options in order to make an informed choice, as she said they should’ve.

I agree with Mrs J that the recommendations letter didn’t cover the charges associated with the FSAVC. Nor did it explain that it was likely that the charges under the in-house AVC option were likely to be lower. But, as noted above, the letter did reference the AVC leaflet. I consider that this provided a clear explanation about why the in-house AVC option was likely to carry lower costs. I also consider that the leaflet clearly described the main differences between the in-house and FSAVC options. And that this would’ve given Mrs J enough information to understand that the in-house AVC could provide other benefits, as well as potentially being cheaper.

Overall, I’m satisfied that the adviser did enough to draw Mrs J’s attention to the existence of the in-house AVC option. And that he highlighted the main differences between the options. I’ve also seen that he directed her to obtain further information from her OPS.

Having considered all the evidence, I’ve found no evidence that Prudential failed to give Mrs J suitable advice. I consider that the adviser met his obligations under the regulations at the time. Therefore I don’t uphold the complaint.

My final decision

For the reasons I’ve given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs J to accept or reject my decision before 3 January 2023.

Jo Occleshaw
Ombudsman