

The complaint

Ms H complains that The Prudential Assurance Company Limited failed to provide her with sufficient information when it advised her to start paying Additional Voluntary Contributions to her Occupational Pension Scheme.

What happened

Ms H has been assisted in making her complaint by a claims management company. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Ms H herself.

Ms H met with Prudential in July 1999. At that time she was aged 53 and employed as a teacher. She had been a member of her occupational pension scheme (“OPS”) since 1980. Prudential advised Ms H to pay Teachers’ Additional Voluntary Contributions (“TAVCs”) to help increase the benefits that would be available to her at retirement. Ms H retired in 2007 and used her TAVC savings to purchase retirement benefits from another pension provider.

Ms H says that, in 2020, she was discussing her pension provision with a friend. She says that, at that time, she became aware that she could have used her additional contributions to purchase Past Added Years (“PAY”) benefits rather than TAVCs. She said that if Prudential had made her aware of that option, it is one she would have chosen in 1999.

Ms H’s complaint has been assessed by two of our investigators. They both thought that Prudential had done enough to make Ms H aware that she had the option to make PAY contributions if she wanted. And they thought that the TAVC product was suitable for Ms H’s circumstances at the time. So they didn’t think the complaint should be upheld.

Ms H didn’t agree with that assessment. She said that the original information about the OPS would have been given to her many years earlier when she joined the scheme. And she says that the application form in itself doesn’t confirm that the advisor made her aware of the PAY scheme. She says that in later years the regulator required Prudential to alter the form to make the decision consumers were making clearer.

So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms H and by Prudential. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

A significant issue in considering this complaint is the lack of paperwork from the time the advice was given to Ms H. Prudential has explained that Ms H took her TAVC benefits around 15 years ago. So, in line with its data retention responsibilities it has destroyed much of the relevant sale information. But it has provided us with an example of the application form that was in use around that time. I don't think it is unreasonable for Prudential to no longer hold the paperwork from the time it advised Ms H so I don't draw any adverse conclusions from that. And I am persuaded that the application form Prudential has provided to us gives a reasonable representation of what Ms H is likely to have signed before starting her TAVC savings.

The advisor from Prudential that met with Ms H in 1999 would have only been able to recommend products provided by that firm. Prudential had been engaged by the OPS to provide the TAVC scheme. And so Prudential could recommend a consumer take that option. But it didn't have any involvement in the PAY scheme benefits – those were handled by the OPS itself. So Prudential's only responsibility in terms of the PAY option was to make sure that Ms H was aware that option existed so that she could research it for herself if appropriate.

Prudential has said that, on originally joining the OPS, Ms H would have been given a booklet setting out details of her pension scheme. And that booklet would have explained about the PAY scheme and that Ms H could make additional contributions if she wished. But that booklet would have been provided around 20 years before Ms H met with Prudential. I'm not persuaded that information would have still been available to Ms H such that I could consider it allowed Prudential to meet its responsibilities in making Ms H aware of the PAY option.

As I said earlier, Prudential no longer holds copies of the paperwork it says Ms H would have completed before starting her payments into the TAVC scheme. It is clear that Ms H did start making those payments. And so I think it entirely reasonable to conclude that she would have completed the relevant application form beforehand. Prudential has provided us with a redacted copy of an application form completed by another consumer around the same time. So I think I can fairly conclude that the form Ms H completed would have been the same.

I accept that it is entirely possible that Ms H didn't complete the entire application form herself – in my experience advisors often complete the form on behalf of consumers. But I am satisfied that Ms H would have signed the form. And that, by doing so, it would be reasonable to conclude that she had at least checked the information on the application form was correct.

The application form that I think Ms H would have completed made reference to the PAY scheme in three places. On the second page of the form it asked her to confirm whether she was already making any additional contributions to the Teachers' Pension Scheme, and in particular to PAY. And then there were two mentions of PAY in the declarations section on the final page – immediately above where Ms H would have needed to sign the form. The first statement, followed an estimate of the maximum TAVC contribution Ms H could make, and confirmed the estimate was;

“only appropriate where I am not paying FSAVCs, Past Added Years and have no other pension provision from previous employment”.

And the second statement confirmed that Ms H had;

“been made aware of the booklet entitled “A Guide to the Teachers’ Pensions Scheme with regard to the Added Years’ option”.

As I have said, there is no surviving record of the discussions that took place between Ms H and Prudential. So I have no way of knowing for certain what was discussed, and whether the PAY option was clearly brought to her attention in those discussions. But, given the prominence of that option on the application form, on the balance of probabilities I would conclude it is likely to have been something Ms H would have enquired about further, if Prudential hadn't provided information unprompted.

So on balance I think it more likely that Prudential did meet its regulatory responsibilities and ensured that Ms H was aware of the option to make PAY contributions. Although, with the benefit of hindsight, Ms H might now conclude that making use of the PAY scheme would have been better for her, I cannot reasonably conclude that would have been as clear at the time. Making TAVC payments appears to have been an appropriate way to increase her retirement savings. And I don't think it was an unsuitable recommendation for Prudential to make.

I appreciate that my decision will be disappointing for Ms H. Her CMC has provided details of other complaints on this matter that have been upheld both by this Service and by The Pensions Ombudsman. But comparing decisions reached on other cases isn't always appropriate or helpful as generally different circumstances will apply. As the CMC will be aware I am required to review each case on its own merits. And having done so here I am satisfied that the recommendation and information Prudential gave to Ms H in 1999 was suitable, and that it met Prudential's regulatory responsibilities. So I don't think the complaint should be upheld.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 10 August 2022.

Paul Reilly
Ombudsman