

The complaint

Mrs G complains about the suitability of the advice she received from The Prudential Assurance Company Limited (Prudential) to take out a Free-Standing Additional Voluntary Contribution (FSAVC) plan in 1998. She thinks she's lost out financially as a result and would like to be in the position she'd now be in had she received suitable advice.

What happened

Mrs G was employed by her county council as a nursery nurse and was a member of its occupational pension scheme. On 19 March 1998 she met with an adviser from Prudential to discuss retirement planning. She was 40 at the time of the meeting, and it was noted she hoped to retire aged 60 and to increase her retirement provision to two thirds of her final salary. As a result of the meeting Mrs G agreed to take out a Prudential FSAVC plan, making contributions of £75 per month over 20 years.

On 27 March 1998 Prudential wrote to Mrs G. This letter contained her 'Personal Financial Review Summary Report'. In this letter was the formal recommendation to take out the FSAVC plan and confirmation that Mrs G had decided to accept the recommendation.

In July 2020, using a representative, Mrs G complained to Prudential about the advice she received in 1998. Among a number of other generic complaint points, the representative said that Mrs G hadn't been made aware of the in-house scheme alternatives to the FSAVC, and no comparison had been made about the likely lower charges of those options. It said that if Mrs G had been made aware, she would have chosen the "*most suitable in-house alternative.*"

Prudential didn't uphold the complaint. It said, in summary:

- The FSAVC was suitable for Mrs G's circumstances at the time and she was provided documentation which explained how the policy worked.
- The available in-house options were discussed, along with the FSAVC, and a copy of the leaflet "Additional Voluntary Contributions – some important features" was provided, which included details about the relative merits of both the FSAVC plan and an in-house arrangement, including the cost implications.
- Although its representative had explained the benefits of each option, they couldn't give specific advice on the in-house options. And the leaflet explained Mrs G could contact her employer's scheme to discuss this if she wished.

But Mrs G wasn't happy with this response, so brought the complaint to our service where one of our investigators looked into the matter. But he didn't think the complaint should be upheld. He thought that Prudential had complied with the regulator's requirements at the time of the advice, so didn't agree that the FSAVC had been mis-sold.

Mrs G, through her representative, didn't agree. She said that making consumers aware of the generic differences between the FSAVC and in-house plans through the leaflet wasn't enough. There needed to be a discussion which included the likelihood of lower charges for the AVC, and there was very little documentation of what discussion took place, and it

appeared Prudential hadn't discussed the charges difference. She said that if she'd been properly advised she would've most likely chosen to contribute to her occupational scheme's AVC over the FSAVC given the likely difference in charges between the products.

As no agreement could be reached the matter has come to me for a final 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.

Having done so, I've reached the same conclusion as the investigator, for largely the same reasons. I'll explain.

As a starting point I want to highlight that the adviser was directly employed by Prudential so was a tied adviser. This meant he could only recommend products which were offered by Prudential. He couldn't actively recommend or give details of any other products from any other product providers, including Mrs G's in-house options.

The regulatory body at the time had put guidance in place which tied advisers were expected to adhere to when making recommendations for FSAVCs. It was expected that although they couldn't actively recommend the in-house options, they should've known they were available and mentioned to consumers the generic benefits, including the following:

- Money purchase AVCs could potentially offer lower charges than the FSAVC.
- 'Added years' might have been available under a defined benefit occupational scheme, particularly in the public sector - these provided a guaranteed benefit linked to salary and an additional component of tax-free cash, neither of which were available under an FSAVC.
- The consumer's employer might match or top-up the amount the consumer paid into either in-house option.

In May 1996 the regulator issued an update called "RU20" which set out the procedures it expected product providers to follow, although this wasn't new guidance but restating what was already in place. The update said that a tied adviser shouldn't recommend their own company's FSAVC until they had:

- Drawn the client's attention to the in-scheme alternative.
- Discussed the differences between the two routes in generic terms (taking account, among other things, of the features described in the article).
- Directed the client to his employer, or to the scheme trustees, for more information on the in-scheme option.

The differences included in the discussions should've included, among a number of topics, the difference in charges and expense deductions. It should've been pointed out that the charges associated with the in-house AVC option were likely to be lower than those applicable to the FSAVC policy.

So I've looked carefully at the documents Prudential has provided to evidence what was discussed and agreed at the time of the recommendation in 1998, particularly with respect to whether it satisfied the RU20 requirements.

Prudential have been unable to provide any record or notes of the discussions it had with

Mrs G during the meeting on 19 March 1998. But I have seen a copy of the 'fact find' in which it recorded details of Mrs G's personal circumstances. In this document Mrs G's primary goal was recorded as "Retirement" with the following generic objectives highlighted:

- understanding your retirement benefits
- achieving an earlier retirement
- maintaining your hobbies, interests and travel in retirement

And all the sections of the form which did not relate to retirement or income were scored through and marked "N/A" or "Not disclosed". Her attitude to investment risk was recorded as 2 out of 4 – which was described as "very cautious". The contents of this record haven't been disputed, so I accept they are likely to be accurate. So I'm satisfied it is likely that Mrs G's main focus during the meeting on 19 March 1998 was increasing her potential retirement income, with a view to retiring at age 60 whilst taking little risk with her investments. And I can also see that at that meeting she accepted Prudential's advice to take out its FSAVC plan and contribute £75 per month for 20 years.

On 27 March 1998 Prudential wrote to Mrs G with its "Personal Financial Review Summary Report". Having read this, I'm satisfied it constituted Prudential's formal recommendation of the advice given during the earlier meeting. This recommendation letter contained the following:

*"I advise you to make further retirement provision in order to try and achieve your desired retirement income. I recommend that you effect a **Prudential Free Standing Additional Voluntary Contribution Plan**. I advise you to contribute up to the maximum inland revenue limits. **Together we have established that this is not currently affordable and that you should commence contributions at a lower amount.** This meets your needs by providing [illegible] efficient disciplined way of investing towards your desired retirement income. I also advise you to review your contribution levels on an annual basis or more regularly, dependant on your circumstances. I have discussed with you the features of a with-profits fund and we established that this is consistent with your very cautious attitude to risk."*

It went on to say:

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

So although there is no record of the actual discussion between Prudential and Mrs G, given the contents of neither the 19 March 1998 meeting notes or the recommendation letter have been disputed, I think on balance that the discussion probably did happen. And I think it probably would've generally followed the subjects included in the leaflet described.

But what I need to decide, is whether I think that this discussion and the contents of the leaflet were enough to satisfy the requirements of RU20. And I'm satisfied Prudential did enough in this regard.

As I've said, I think it likely that the discussion occurred during the meeting on 19 March 1998, and probably generally followed the format of the leaflet Mrs G was given, a copy of which I have seen. And I can see that the purpose of additional contributions was documented, along with the fact that Mrs G's employer would provide an in-house AVC facility, details of which could be obtained from her employer or pension scheme trustees. So I'm satisfied that this met the first and third parts of the main requirements of RU20. This would have allowed Mrs G to find out more about the in-house AVC alternative. And I think the statement did confirm that the adviser drew Mrs G's attention to an "in-scheme

alternative” as it referred to in-house AVCs.

And although I think the various options probably were discussed in generic terms, as was required, the leaflet explaining the differences was also provided to Mrs G. This leaflet referenced the differences in charges and fees between the FSAVC and the in-house options under the heading “Cost”:

“It is difficult to be specific with regard to the difference 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 profit” 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”

I’m satisfied that this, when taken in conjunction with the discussion that probably occurred, makes it sufficiently clear that the charges associated with the in-house options were likely to be lower than with the FSAVC.

So I don’t agree Prudential didn’t do enough in explaining the differences between the FSAVC and her in-house options, and I’m satisfied it fulfilled its obligations for tied advisers under RU20 when recommending FSAVCs to a consumer. I’m satisfied that Mrs G was made aware of the availability of AVCs and that charges were likely to be potentially lower than the FSAVC option. I’m also satisfied she was made sufficiently aware of the potential for her to purchase added years as an alternative.

Given her circumstances and objectives at the time of the advice, I’m satisfied an FSAVC was not unsuitable for her.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G to accept or reject my decision before 25 May 2022.

Chris Riggs
Ombudsman