

The complaint

Mrs C complains that The Prudential Assurance Company Limited failed to provide her with appropriate advice, or sufficient information, when it discussed her future pension savings with her in 1993.

What happened

Mrs C was a teacher. In 1993 she met with Prudential to discuss her pension savings. Prudential had identified that Mrs C had previously been advised to leave the teachers' pension scheme ("TPS") and held a personal pension arrangement. It told her it thought that advice had been incorrect, and recommended she re-join the TPS. And Prudential advised Mrs C to start paying additional voluntary contributions ("AVCs") in order to increase her retirement provision.

Mrs C accepted Prudential's advice and applied to make AVC contributions in December 1993. But she has recently complained that Prudential failed to make her aware that she could instead pay additional contributions to the TPS that would purchase "added years" benefits. She says that taking that approach would have been better for her circumstances.

Prudential didn't agree with Mrs C's complaint. It said that it was only required to make sure that Mrs C was aware of the added years option – it wasn't permitted to advise her to take that approach. It said that the information it, and the TPS, had given to Mrs C provided her with an awareness of the added years options so it had met its regulatory responsibilities. And it thought that, in any case, paying added years contributions would have been less attractive to Mrs C than making AVC payments. So it didn't uphold Mrs C's complaint. But Prudential accepted that the time it had taken for Mrs C's calls to be answered when she wanted to discuss her pension had been unsatisfactory. So it paid her £75 for the inconvenience she'd been caused.

Mrs C's complaint has been assessed by one of our investigators. He said he couldn't definitively prove that Prudential had provided all the information to Mrs C that it should have. But he didn't think that, even if she had been given all the information, Mrs C would have chosen to pay added years contributions instead. At that time he thought it likely that she would have concluded that AVCs provided greater benefits at a lower cost. So he didn't think the complaint should be upheld.

Mrs C didn't agree with that assessment. 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 Mrs C 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.

I think I should first briefly mention what happened in the early 1990s when Mrs C was advised to opt-out of the TPS and open a personal pension instead. Prudential has said that it reviewed that advice in 1998 and concluded that it was inappropriate. So, at that time, it paid some compensation to allow Mrs C to be reinstated to the TPS for the years she had been advised to have a personal pension instead. I think it most likely that compensation was appropriate, and the original advice doesn't appear to form any part of the complaint Mrs C has now made. So I won't consider it any further in this decision.

In 1989 Prudential was appointed, by the predecessor of the Department for Education ("DfE"), to provide an AVC scheme alongside TPS. The AVC scheme offered teachers the opportunity to increase their pension provision at retirement by agreeing monthly deductions from their salary that were paid into the Prudential scheme. As part of its contract with the DfE Prudential says it was required to make applicants aware of the other pension top up options that were available to them.

As I said earlier, Mrs C had been advised to leave the TPS around 1990. But she re-joined the scheme in 1993. On joining the scheme Mrs C should have been given a scheme information booklet. That booklet provided some information about the ways in which the scheme pension could be supplemented by the payment of additional contributions. In particular it noted that the three options available were;

- Past Added Years
- Scheme Additional Voluntary Contributions (AVCs) with the Prudential
- Free Standing Additional Voluntary Contributions (FSAVs)

But I cannot be sure that Mrs C received this booklet, either when she first became a teacher, or when she re-joined the TPS in 1993. And of course there is a possibility that, even if she had received the booklet, she hadn't read it in any detail.

The advisor that met with Mrs C was what was known as a "tied" advisor. That meant they could only recommend products offered by Prudential – in this case the TPS AVC scheme. They couldn't actively recommend any other products from any other product providers including the added years option offered by the TPS or other FSAVC products.

However, a tied adviser was required to follow rules set in 1988 by the regulator at that time - LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The LAUTRO Code said advisers should maintain high standards of integrity and fair dealing, exercise due skill, care and diligence in providing any services, and generally take proper account of the interests of investors. It added that businesses should:

- Have regard to the consumer's financial position generally and to any rights they may have under an occupational scheme, and
- Give the consumer all information relevant to their dealings with the representative in question.

So, this means that tied advisers should have known that other contribution options would most likely be available to consumers like Mrs C. And in addition to highlighting the benefits of the AVC, a tied advisor needed to mention the generic features of the other options.

The application form that Mrs C signed, when applying to pay AVCs, asked her about other pension contributions she was making. In particular it asked whether she was already paying additional contributions to the TPS for family benefits or past added years, or if she was contributing to a free-standing AVC. Whilst I think it most likely that Mrs C didn't complete the form herself, I would expect that she read it, or that the advisor checked some of the details with her.

On balance I think it most likely that the advisor would have made Mrs C aware that there were other contribution options open to her in addition to the Prudential AVC scheme. I appreciate that Mrs C might not now remember that conversation in any detail – the advice was given to her almost 30 years ago, and over such a lengthy period of time even the most careful of memories can, and do, fade. But on balance I think that the added years option would have been part of the discussion she had.

It is also likely that, at the time, Mrs C might not have found the added years option to be attractive. Generally at that time there was more perceived value in an arrangement that depended on investment returns. Expected growth was high and annuity rates were better than now, so the expected return was more beneficial than added years. AVC illustrations were based on assumed interest rates recommended by the regulator and weren't unrealistic at the time. And added years were expensive compared to the projected benefits of an AVC. Mrs C was 29, so there was less time for her to spread the cost of those. And the extra benefits and contributions were fixed, whereas the AVC had flexibility and there was no cap on what she could achieve with its investment.

So in summary I am satisfied that it is more likely than not that Prudential met its regulatory responsibilities in making Mrs C aware that she could pay added years contributions instead. But even if that wasn't the case I don't think, at that time, Mrs C would have made a different decision. I appreciate that, with the benefit of hindsight, that might not be the case now – investment returns haven't been as strong as were reasonably predicted at the time. But I don't think Mrs C would have found the added years option attractive based on the reasonable projections that would have been made at the time.

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 Mrs C to accept or reject my decision before 10 November 2022.

Paul Reilly
Ombudsman