

## The complaint

Ms M has complained that The Prudential Assurance Company Limited (“Prudential”) mis-sold a Free Standing Additional Voluntary Contribution (“FSAVC”) plan which led to her suffering a financial loss.

Ms M is represented in this complaint by a claims management company (“CMC”).

## What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both the CMC and Prudential. I don’t intend to repeat here what our investigator stated but will instead provide a summary.

Ms M was employed as a teacher and a member of the Scottish Teachers’ Superannuation Scheme. She was interested in increasing her retirement provision. Prudential advised her to start two FSAVC plans which started in January 1992 and April 1998, respectively.

### This complaint

The CMC, on behalf of Ms M, complained to Prudential about the suitability of the advice to start the two FSAVC plans.

Prudential upheld this complaint in part, as follows:

- FSAVC plan that started in January 1992 – it upheld this part of the complaint because it couldn’t establish whether it had made Ms M aware that charges for the FSAVC plan were likely to be higher than the in-house AVC scheme. So it offered Ms M £19,309.50 compensation based on a ‘charges only’ comparison.
- FSAVC plan that started in April 1998 – it didn’t uphold this part of the complaint because it was satisfied it had explained to Ms M how the FSAVC plan worked and made her aware of the in-house options available, including pointing out that the charges for the FSAVC plan were likely to be higher than the in-house AVC scheme. So it was satisfied that Ms M had made an informed decision to start the FSAVC plan.

The CMC didn’t accept the final response provided by Prudential regarding the FSAVC plan that started in April 1998. It continued to believe that the plan had been mis-sold and so referred the matter to this service.

Our investigator limited his assessment to the sale of the FSAVC plan that started in April 1998. He recommended that this complaint shouldn’t be upheld. He was satisfied that Prudential had complied with the regulatory expectations for tied advisers set out in the Regulatory Update published by the Personal Investment Authority (“PIA”) in 1996 regarding the sale of AVCs and FSAVCs (“RU20”).

The CMC didn’t accept our investigator’s assessment and provided substantial comments in

response. In summary, it stated that it didn't agree that Prudential had complied with RU20 at the time it advised Ms M and that, had she been made sufficiently aware of the critical differences between the FSAVC plan and the in-house AVC scheme, she would've undoubtedly chosen the in-house option.

Our investigator considered the CMC's comments but wasn't persuaded to change his opinion. Since agreement couldn't be reached, this complaint has been referred to me for 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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

#### Scope of this final decision

Prudential previously offered compensation to Ms M in respect of the advice it provided in connection with the FSAVC plan that started in January 1992. So it's not necessary for me to consider the suitability of that advice. All that remains is for me to consider the suitability of the advice in connection with the FSAVC plan that started in April 1998. I've considered this below.

#### 1998 advice

The rules and requirements relating to AVCs and FSAVCs have varied over time. Details are on our website. In 1996, the PIA published RU20. This set out different expectations for tied advisers and independent financial advisers ("IFAs"). The obligations placed on IFAs were more onerous.

The advice here, in 1998, postdates the PIA's update. Ms M was advised by a tied adviser representing Prudential only and not an IFA. So at the time of Prudential's advice, in accordance with RU20, it was required to:

- draw Ms M's attention to the in-house AVC scheme;
- discuss the differences between the FSAVC plan and the in-house AVC schemes in generic terms, including the likely lower charges of in-house AVC schemes; and
- direct Ms M to her employer or occupational pension scheme trustees for further information about the in-house AVC scheme

In response to our investigator's assessment, the CMC stated that under RU20 it wasn't sufficient for Prudential to simply make a passing comment that the charges of the FSAVC plan were likely to be higher than the in-house AVC scheme. Rather, it stated that Prudential was required to highlight the "difference" in the charging structure. I take this to mean that the CMC believes Prudential should've carried out a personalised charges comparison so that it could establish and highlight the cost difference to Ms M. But this isn't what RU20 specified for tied advisers. The PIA's expectations at the time, as set out in RU20, required Prudential to discuss the differences in "*generic*" terms. So informing a client in broad terms

that the charges of a FSAVC plan were likely to be higher than the in-house AVC scheme is, in my view, sufficient.

I've reviewed the information provided to Ms M before she accepted the recommendation to start the FSAVC plan in April 1998. This included the provision of a four page 'Recommendation' report which Ms M signed on 3 March 1998 confirming she had read it and that the contents had been fully explained by Prudential's representative. Under section 2 titled, 'In-house and Added Years AVC Schemes', it stated:

*"We discussed the advantages and disadvantages of making Additional Voluntary Contributions to your company scheme or taking a separate Free Standing Additional Voluntary Contribution. You are aware that there may be the possibility of buying past years or having added year options within the company scheme, however you are particularly attracted to the flexibility of a Free Standing Additional Voluntary Contribution. This flexibility includes portability and wider investment choice, together with the option of taking the benefits from this Free Standing AVC early, if you left your current employment, whereas you could not with an AVC. The charges within this plan however are likely to be greater than under your company scheme. You can obtain more information on your company scheme from your Employers or Scheme Trustees."*

Based on this, I'm satisfied that Prudential met the requirements set out in RU20. There's reference to a discussion that took place during which Ms M was made aware about the availability of the in-house AVC scheme, including the options to buy Past Added Years or an AVC plan. She was also made aware, in generic terms, of the advantages and disadvantages of starting a FSAVC plan compared to the in-house option, including the likely lower charges of the in-house AVC scheme. Finally, Prudential also explained that Ms M could obtain more information from her employer or occupational pension scheme trustees.

The evidence shows that Ms M wanted to pay additional contributions to increase her retirement provision. She had capacity to make further provision. As a tied adviser, Prudential's representative could only consider the suitability of Prudential's FSAVC plan for Ms M. On balance, I'm satisfied that Ms M was given enough information during the advice process in 1998 to understand the important differences between the in-house schemes and FSAVC plan before making her decision. As such, I think the recommendation for the FSAVC plan could be regarded as suitable in the circumstances in the context of the limitations placed on a tied adviser at the time.

Because of this, I don't consider it would be fair or reasonable for me to require Prudential to pay compensation to Ms M in connection with the FSAVC plan that started in April 1998 – or to take any further action in response to this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 November 2022.

Clint Penfold  
**Ombudsman**