DRN-3626719

Financial Ombudsman Service

The complaint

Mrs P's representative has complained, on her behalf, that when she began paying into the Teachers Additional Voluntary Contribution (TAVC) arrangement administered by The Prudential Assurance Company Limited, it didn't make her adequately aware of the possibility of instead buying "added years" within the main Teachers' Pension Scheme (TPS).

What happened

Prudential hasn't been able to provide any point of sale documentation, but according to the contribution history, it seems that Mrs P began contributing to the TAVC arrangement in October 1996. Mrs P was a teacher, and had been a member of the main scheme since 1970. According to the contribution history, Mrs P began contributing £163 pm, which later increased steadily up to £189 pm, according to Mrs P in line with salary increases. But this then decreased to around £40 pm in December 2000 until contributions ceased in December 2006. Mrs P retired in 2007.

In July 2021, Mrs P's representative complained on the above basis, saying that there was no sales documentation which confirmed that a "know your client" process had been undertaken, and that there was no record of Mrs P's income requirement in retirement and whether this would be met by her prospective guaranteed scheme income.

Prudential declined to uphold the complaint, noting that Mrs P used the TAVC fund value to buy an annuity when she retired in 2007, and that more than six years had passed since then, during which it had had no contact from Mrs P about the arrangement.

It therefore didn't think that it would be able to investigate the complaint, but it did offer further detail about what it considered would have happened in 1996. It said that, when Mrs P joined the TPS, she would have been given all the documentation explaining its terms and conditions. The TPS booklet was also given to her and this showed the three options available to her to increase her scheme benefits – buying added years, making TAVCs, or establishing a Free Standing Additional Voluntary Contributions (FSAVC) policy.

The TPS booklet also explained that the TAVC investment returns weren't guaranteed, Prudential said. Further, its representative was only allowed to provide advice on the TAVC option, it added.

Dissatisfied with the response, Mrs P's representative referred the matter to this service, where one of our investigators assessed the complaint. He didn't think it should be upheld, saying the following in summary:

- He firstly said that the complaint had been made in time, as at the time of annuitizing in 2007, it was unlikely that the adviser would have discussed the alternative option of buying added years in 1996 – rather they would have focused on Mrs P's annuity options at that time. He was satisfied that Mrs P would only reasonably have had awareness of potential cause for complaint when she spoke to her sister about her own TAVC policy review which was offered by Prudential in 2018 - and this was therefore when the ”three year” period for Mrs P to raise a complaint and have it considered by this service started running.

- As to the merits of the case, he firstly noted that comparison had been drawn between Mrs P’s case and her sister’s, with the latter having been paid compensation. But he said that each case would be decided its own merits.

- He agreed with Prudential that Mrs P would have been provided with a scheme booklet when joining the TPS, and that this would have explained the various options she had to increase her pension provision, including buying added years.

- The Prudential representative was only able to advise on Prudential products, and it only needed to make Mrs P aware of the option of added years and refer her to the TPS booklet or scheme for further information on this. It didn’t need to say whether added years would have been of benefit to her, nor did it need to do a price comparison. It would then be for Mrs P to decide which option to choose.

- He thought it was more likely than not that Prudential had made Mrs P aware of the option of buying added years.

- The investment returns from the TAVC policy may not have met expectations over the years, and Mrs P may now consider that buying added years would have been the better option, but the case couldn’t be considered with the benefit of hindsight.

Mrs P’s representative disagreed, however, saying the following:

- It referred to a separate case decided by this service, which had been upheld, and appeared to contradict the investigator’s comments.

- Mrs P’s circumstances were identical to her sister’s, and there was historical evidence to suggest that Prudential’s sales practices weren’t sufficiently robust.

- Prudential was required to check that Mrs P had received the information from the TPS and to tick a box to confirm that she was aware of the added years option. If Prudential couldn’t provide this, then the balance of probability was that the document wasn’t provided to, or signed by, Mrs P.

- Prudential needed to advise Mrs P that an alternative to the TAVC was available, but it couldn’t evidence that this had happened.

- It disagreed that, on balance, it was more likely than not that Prudential had made Mrs P aware of the added years option – especially in the absence of the required signed forms.

- This was a common issue which had resulted in Prudential needing to amend its sales practices.

The investigator wasn’t persuaded to change her view on the matter, reiterating that each case was considered on its own merits. She further said that, due to the passage of time since Mrs P started making TAVCs, this service wouldn’t require Prudential to provide evidence of what had been discussed.

Mrs P’s representative replied, saying that in the absence of the point of sale documentation, it couldn’t safely be concluded that it had made Mrs P adequately aware of her options.

As agreement hasn't been reached on the matter, it's 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.

Having done so, my view is that it is of course impossible to know whether Mrs P was made aware of the option to buy added years in the scheme, or whether Prudential referred her to the TPS for further information on that option.

And in the absence of information which would confirm the positive position of Prudential's adviser having done what they needed to do here, I have some sympathy with the objection of Mrs P's representative to an assumption that it did.

Such cases need to be decided on the balance of probability, but where it's impossible to demonstrate that such a positive affirmation of Mrs P's options was made here, I think it would be difficult to fairly or reasonably conclude that it was.

I think it's fair to say that Mrs P would more likely than not have received information about enhancing her pension benefits by way of a scheme booklet or other documentation when she first joined in 1970. But this was around 26 years before the events which took place here. Had Mrs P met with the Prudential representative a short time after receiving the scheme information, I might be more inclined to consider that the options available would be fresh in her mind. But that's not realistically the position here.

But even if I were to conclude that it was more likely than not that Prudential hadn't made Mrs P sufficiently aware of the option of buying added years, in order to uphold the complaint I'd still need to be satisfied that, armed with such knowledge, Mrs P would more likely than not have chosen that route.

And so I've thought more about Mrs P's circumstances at that time. She was approximately 50 years old, and was initially contributing around £163 pm, which Mrs P recalls increased in line with later salary increases – as is borne out by the contribution history.

But this then reduced markedly down to around £40 in December 2000, and remained at that level until Mrs P retired. In answer to the investigator's question as to why this happened, Mrs P has said that this may have been around the time that her husband became self employed and finances became stretched.

Generally speaking, whilst I think that, as a teacher who was perhaps – 26 years into her teaching career – Mrs P was more likely than not to remain in the same profession until retirement, and so who would on the face of it have been a credible candidate for buying added years, added years are nevertheless best suited to those who are able to sustain the required payments until retirement.

My understanding is that (under current TPS rules), if the full added years payments to which a member committed at the outset aren't made by the time of retirement, the member has the choice of either receiving a "paid up credit" for the contributions already made, or to pay the outstanding amounts to receive the benefit of the added years. It seems unlikely, given Mrs P's much reduced contribution level when she ceased making the TAVCs, that she would have been in a position to make up any missed added years contributions when she retired. And so it's possible, albeit not certain, that even if the complaint was upheld, a redress calculation might in any case produce a "no loss" outcome.

It's fair to say that, at the time of beginning TAVCs, Mrs P wouldn't necessarily have anticipated needing to reduce her contributions over time due to straitened financial circumstances. But if the possibility of buying added years had been fairly brought to Mrs P's attention in 1996, this would nevertheless have been a consideration for her. And I think it's reasonable to suppose that the requirement for that kind of commitment, as opposed to the flexibility offered by the TAVCs – and upon which Mrs P later capitalised – would have been a contributing factor in her decision making at the time. This might reasonably especially be the case where the continuation of such contributions would be dependent upon the income – and financial co-dependency - of a spouse.

It's not possible for me to know with certainty what Mrs P would have decided in 1996. And I do think this is quite finely balanced. But in order to uphold the complaint, I think I would need to be persuaded that it was more likely than not that Mrs P would have opted for the commitment of the alternative option - added years - as opposed to the flexibility offered by the TAVCs – and, as noted by the investigator, the returns which were expected of "money purchase" arrangements at the time, which I think would also reasonably have been a consideration, with over ten years remaining until retirement.

On the basis of the available evidence, I don't think that I can fairly or reasonably conclude that Mrs P would more likely than not have opted for added years – or that I can in any case say with confidence, given the later significant contribution reduction, that this would have worked out to be in her best interests.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 31 January 2023.

Philip Miller
Ombudsman