

The complaint

Mrs G complains that The Prudential Assurance Company Limited (“Prudential”) mis-sold a Teachers’ Additional Voluntary Contribution (“TAVC”) plan which has caused her to suffer a financial loss.

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 Mrs G and Prudential. I don’t intend to repeat here what our investigator stated but will instead provide a summary.

Mrs G was employed as a teacher and joined the Teachers’ Pension Scheme (“TPS”) in September 1997. She was interested in increasing her retirement provision. Prudential advised her to start a TAVC plan. The application form for the TAVC plan recorded that Mrs G’s risk profile was rated as 2 (Very Cautious). The TAVC plan started in February 1998 with a selected retirement age of 60 to align with her normal retirement age under the TPS. She was aged 38 at that time.

Mrs G started to suffer with ill-health in 2005 which resulted in her leaving paid employment and the TPS in 2007. She paid her last contribution to the TAVC plan in August 2007 aged 48.

This complaint

In 2022, Mrs G complained to Prudential about the sale of her TAVC plan. She believed she should’ve been advised to purchase Past Added Years (“PAYs”) but this option hadn’t been discussed or presented to her. She thought that Prudential had acted unfairly by only presenting the TAVC option. And that had she known about the PAYs option she would’ve selected it in favour of the TAVC because it would’ve been better for her circumstances and she would now be in a better financial position. She believed that Prudential only presented the TAVC option because its representatives were incentivised to sell those plans and not PAYs. To put things right, she requested that Prudential pay her compensation on the basis that she had instead purchased PAYs between 1998 and 2007.

Prudential didn’t uphold Mrs G’s complaint. It said that its representatives weren’t permitted, under the regulations in place at that time, to advise on the merits or otherwise of purchasing PAYs compared to the TAVC option. But its representatives were required to make members aware of the alternative PAYs option and then it was up to members to approach the TPS if they wanted more information. Based on the documentary evidence available, it was satisfied that the information it, and the TPS, had given to Mrs G provided her with an awareness of the PAYs option so it had met its regulatory responsibilities. Prudential apologised and paid £50 compensation to Mrs G for the delay in issuing its final response letter to her complaint.

Mrs G didn’t accept Prudential’s response. She continued to believe that the TAVC plan had been mis-sold and so referred the matter to this service.

Our investigator didn't recommend that this complaint should be upheld. He was satisfied Prudential had complied with the regulatory expectations at the time and that its representative had adequately signposted the availability of the PAYs option to Mrs G before she decided to proceed with the TAVC plan. In addition, he said that Mrs G's recorded risk profile suggested the TAVC plan was likely to be the better option for her based on reasonable expectations in 1998 about future investment returns. He noted that the cost of PAYs wasn't clear and may have been considered expensive at the time and so Mrs G may have discounted it as a viable option in any event.

Mrs G didn't accept our investigator's assessment and provided comments in response. She essentially reiterated her previous comments that the PAYs option wasn't discussed or presented to her and so she was prevented from making an informed decision at the time. She thought this fact alone meant the TAVC plan had been mis-sold to her. Our investigator considered Mrs G's comments but wasn't persuaded to change his opinion. Since agreement couldn't be reached, this complaint has been referred to me, an ombudsman, to review and 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, guidance and good industry practice at the time. I've also carefully considered the submissions made by Mrs G and Prudential. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've 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.

This service

At the outset I think it's 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've been if the problem hadn't occurred.

Prudential's role

In 1989, Prudential was appointed, by the predecessor of the Department for Education ("DfE"), to provide an AVC scheme alongside the TPS. The TAVC 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 TAVC scheme. As part of its contract with the DfE, Prudential was required to make applicants aware of the other pension top up options that were available to them such as PAYs. Generally, the TAVC scheme was seen as the lowest cost option for topping up pension provision for teachers.

Mrs G joined the TPS in September 1997. On joining the scheme, she should've been given a scheme information booklet. That booklet provided some information about the ways in which the TPS pension could be supplemented by the payment of additional contributions. In particular it noted that the three options available were:

- PAYs
- AVC with Prudential

- Free Standing AVC (“FSAVC”) with a different pension provider

I cannot be sure that Mrs G received this booklet when she joined the TPS. And of course there is a possibility that, even if she had received the booklet, she hadn’t read it in any detail.

Regulatory expectations at time

The rules and requirements relating to AVCs have varied over time. The Prudential representative that met with Mrs G was what was known as a “tied” adviser. This meant they could only recommend products offered by Prudential – in this case the TAVC plan. They couldn’t actively recommend any other products from any other product providers including PAYs offered by the TPS or other FSAVC products. Under the relevant rules, Prudential was required to 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 was also required to 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.

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

Did Prudential make Mrs G aware of the PAYs option?

I acknowledge that Mrs G says that she wasn’t made aware or given any information about the PAYs option. I’ve seen a sample of the application form that she would’ve signed when applying to pay additional contributions. This 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 PAYs. While I think it most likely that Mrs G didn’t complete the form herself, I would expect that she read it, or that the representative checked some of the details with her.

As a tied adviser, the representative could only consider Prudential products. He wasn’t required to analyse or compare the TAVC plan with PAYs – he was only required to draw Mrs G’s attention to the PAYs option. It was then up to her to make further enquiries with the TPS including establishing the cost of PAYs and deciding whether it was an option she wanted to proceed with.

Bearing in mind the evidence I’ve seen, and the regulatory expectations placed on Prudential at the time, I think it’s more likely than not that its representative made Mrs G aware that there were other contribution options open to her such as PAYs in addition to the TAVC scheme. I appreciate that she might not now remember that conversation in any detail – the advice was given to her over 25 years ago, and over such a lengthy period even the most careful of memories can, and do, fade. But, on balance, I think that the PAYs option would’ve been part of the discussion she had.

But even if that wasn’t the case I don’t think, at that time, Mrs G would’ve made a different decision had she investigated the PAYs option. Generally, at that time, there was more perceived value in an arrangement that depended on investment returns such as the TAVC plan. Expected growth was high and annuity rates were better than now, so the expected return under the TAVC plan was likely to be considered more beneficial than PAYs. TAVC illustrations were based on assumed interest rates recommended by the regulator and weren’t unrealistic at the time. And PAYs were expensive compared to the projected benefits

of an AVC at that time. Mrs G was 38 so there was less time for her to spread the cost of PAYs over the term to age 60. And the extra benefits and contributions were fixed, whereas the TAVC plan had flexibility and there was no cap on what she could achieve with its investment.

The evidence shows that Mrs G wanted to pay additional contributions to increase her retirement provision. She had capacity to make further provision. The application form for the TAVC plan recorded that her risk profile was rated as 2 (Very Cautious) on a scale of 1 to 4, where 1 (Capital Security) was lowest risk and 4 (Adventurous) was highest risk. This shows that she was willing to accept some investment risk and wasn't completely risk adverse. So, with the projected growth of the TAVC plan at the time, I think the risk attached to it opposed to the cost and longer commitment of PAYs, meant the TAVC plan was likely to appear the better and most cost-effective option for Mrs G.

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 and annuity rates have fallen. But I don't think Mrs G would've found the PAYs option attractive in 1998 based on the reasonable projections that would've been made 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 Mrs G in connection with its advice to start the TAVC plan – or to take any further action in response to this complaint.

My final decision

For the reasons given above, I don't uphold this 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 G to accept or reject my decision before 27 April 2023.

Clint Penfold
Ombudsman