

The complaint

Ms L has complained to The Prudential Assurance Company Limited about the sale of her Teachers Pension Scheme Additional Voluntary Contribution (TAVC) plan.

What happened

Ms L took out a TAVC plan in 1991. Unfortunately, Prudential no longer holds any documentation from the time of this sale but it's been determined that at the time Ms L was working as a teacher and she was a member of the TPS. In the 1991 tax year Ms L contributed a total of £448 to the TAVC.

Ms L met with the adviser from Prudential again in 1998 to discuss savings for her child's further education and her retirement planning. The paperwork completed at the time of the sale confirmed that Ms L was divorced with a dependent child. She was working as a Head Teacher, earning just under £29,000. She'd been a member of the TPS since 1983. And although she had a normal retirement age of 60, she would like to retire earlier if possible. On a scale of 1 to 4, Ms L's risk profile was recorded as 2. The adviser recommend that Ms L start a 12 years savings plan, making a monthly contribution of £50. And Ms L was advised to restart contributions to the TAVC with monthly contributions of £94 for 23 years. Ms L accepted the recommendations and premiums to the TAVC plan were restarted.

In May 2021, Ms L complained to Prudential about the sale of her plan in 1998. In summary she complained that she was not told during the sale that she'd have to buy an annuity with the TAVC fund or that if she took it as a lump sum she would be taxed.

Prudential reviewed the complaint. In its final response letter, it explained that Ms L had started the plan initially in 1991 but it had been unable to find any documentation from that time. But it provided a copy of a blank application form that would have been in used at that time. This application form confirmed the benefits were not guaranteed. It also explained that Ms L would have been provided with a member's booklet which explained how the TAVC worked and that the fund had to be used to provide a pension in retirement. In terms of the sale in 1998, Prudential explained that the paperwork shows that Ms L was provided with advice to increase her contributions to her TAVC. And the Key Feature document explained how the TAVC worked. Prudential went on to explain that in 1991 and 1998, there was no option to take any of the TAVC fund as part tax free cash. However, since then it has become allowable to take 25% of the fund as a tax free lump sum.

Ms L didn't accept Prudential's findings so she referred her complaint to our service for consideration. In her complaint form she provided further details regarding her complaint. In summary she said:

- She only became aware of the need to buy an annuity or to pay a lot of tax on full withdrawal when this was explicitly stated in her annual documentation which started arriving in 2017. At no time was she advised that she'd have to buy an annuity and that the income would be reliant on the stock market at the time of withdrawal from the scheme.
- It's clear she had a very low attitude to risk as a single parent at that point and would never have taken a risk of this sort. All that was discussed was pension to be added to her Teachers' pension and there was no explanation of how this would work at retirement or projections of the amount of extra pension. There's no paperwork to show anything was fully and properly explained and her options under her employer's scheme were also not included. She bought added years from her new employer's scheme in 2006 to 2009 to add to her pension as she could no longer contribute to her TAVC having left teaching in 2001.
- She would have been better off putting the money in an ISA and taking that when she retired and so she would like Prudential to pay her what she would have now if she'd invested in an ISA from 1991 to 2001, instead of the TAVC.

One of our investigators reviewed the complaint but he didn't think Prudential had done anything wrong. In his view the investigator explained that:

"As previously set out, there's very little information from when the policy was sold to you in 1991. But we do know that when Pru sold the policy to you, it did so as an advised sale, so it had to recommend products that were suitable for you.

However, as part of its role, Prudential wasn't allowed to provide advice on alternative products that it didn't offer. Instead, it could only give you the basic details and it would've been for you to find out more about the alternatives such as added years or a Free Standing AVC (FSAVC).

There isn't much information here to say what information you were given or whether you were told about the alternative options. But, even if Prudential hadn't fulfilled its sales requirements, I don't think it would've made a difference in this case.

I say this because when considering the alternatives, an FSAVC was likely to be more expensive than an AVC at the time. And, added years were generally considered expensive and limited in how much you could purchase. But in any event, you've said that had you been given better advice, you would've taken out an ISA rather than the AVC so I've considered this aspect further.

I think it's important to explain the differences between an AVC and ISA. The AVC is a means of saving for retirement through your employer as part of your Occupational Pension Scheme. In your case, your employer uses Prudential to run the AVC. AVC contributions usually receive tax relief when they are paid. And when taking the benefits of the AVC, generally 25% is tax free with the remainder providing a taxable income. The tax on AVC's – or the any annuity you may choose to purchase with your AVC pot - works in much the same way that it does on a final salary pension.

ISA's are a form of general savings account, rather than pension savings account so the contributions don't attract tax relief in the same way that the AVC contributions do. But any

interest earned on these contributions is paid tax free. However, ISAs weren't available until 1999 and the equivalent cash predecessor, a Tax-Exempt Special Savings Accounts (TESSA) only benefitted from favourable tax treatment for five years. TESSAs weren't generally considered as products that an individual would use to save for retirement - because they didn't benefit from the tax relief that pension products did - so I wouldn't necessarily have expected the Prudential adviser to have mentioned a TESSA in a meeting about saving for retirement.

As such, I don't think the complaint should be upheld as I haven't seen enough to say that Prudential did make an error. And given you've said that you would've taken out an ISA rather than an AVC, I'm not persuaded that you would've acted any differently even if Prudential didn't fulfil its sales requirements in full."

Ms L didn't accept the investigators findings. She explained that when she returned to the SPPA scheme she transferred in via the Pensions Club, the pension earned from 2001-2005. She also made arrangements to buy added years as this was financially much better than having other bits of pension like AVCs, and would not require her to take out an annuity. She wasn't told about options other than the TAVC by Prudential, and added years were never mentioned as an option. She subsequently bought added years from SPPA and she is aware that the failure to mention Added Years has been a factor in upholding some complaints so she believes her complaint should be upheld.

The complaint has been passed to me to decide.

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.

I think it's very likely that when Ms L joined the TPS she would've been provided with a scheme booklet either by her employer or the scheme administrators. And I think it's likely that this booklet explained the various options she had for paying extra contributions to increase her pension provision – including the option of buying added years. So I think, on balance, Ms L had most likely been provided with information regarding the added years option before she met with the Prudential adviser in 1991. But given that Ms L joined the TPS in 1983, several years before starting the TAVC, I can appreciate that she may not recall receiving a booklet. It is of course possible that Ms L wasn't aware of added years before she met with Prudential. And because there is no paperwork available now from 1991 and only limited papers from 1998, I can't say with certainty that Prudential definitely told her about this alternative option for increasing her retirement benefits.

The Prudential representative was only authorised to provide advice on Prudential products; they couldn't have advised Ms L on the added years option. So they wouldn't have been able to say added years would have been of benefit to her. All the representative had to do was make Ms L aware that added years were an alternative option and refer her to the TPS for further information. With only very limited information, I can't be satisfied that it did this. So I've thought about whether Ms L would've most likely opted for added years, rather than the TAVC policy, if she'd known about them. But for the reasons set out below, I don't think I can say that she would've chosen added years in 1991 or 1998.

The cost of added years of service in the TPS was determined by the Government Actuary using conservative assumptions of likely future investment experience. This made them more expensive than if a less conservative (or more optimistic) set of assumptions had been used. The aim was to make sure, as far as possible, that the cost of added years would be met by the members. The intention was that this would mean there would be no shortfall that

would have to be picked up by the employer. So I think it's very likely that at the time it would've been shown that the projected benefits from the TAVC would be greater than the benefits provided by purchasing six years of added service. However, I do accept that Prudential has been unable to provide copies of illustrations that may have been issued so it's difficult to say this with certainty. However, there are other factors that I think would have influenced Ms L's decision over whether or not to buy added years.

Firstly, I've thought about Ms L's attitude to risk. She says she was a very low risk investor. And I can see that the sales paperwork from 1998 recorded her as 2 on a scale of 1 to 4. Just above where 2 has been entered on the form there are descriptions for each category. For categories 1 and 2, the description said:

"1 Capital Security – in saving or investing to achieve my financial objective over a pre-determined period of time, I want my capital growth to be guaranteed. However, I understand that this may mean that I will not achieve any real capital growth on the amount invested because of inflation.

2 – Very Cautious. In saving or investing to achieve my financial objective over a pre-determined period of time, I want the potential of some real capital growth. I understand that to have this potential I need to take a small risk with the capital I invest".

Added years would generally have been considered suitable for someone that was risk adverse and whilst I accept that Ms L was a low risk investor, the paperwork doesn't suggest she was risk adverse. Ms L's TAVC was invested in Prudential's with-profits fund which was generally considered lower risk. So I don't think the TAVC plan was unsuitable for Ms L in terms of risk at the time it was sold.

The cost to Ms L of purchasing added years was not intentionally subsidised by the employer (unlike the main pension scheme, which was non-contributory). And it is mainly with hindsight that it can be seen that choosing to purchase added years in the 1990s would have resulted in a much better pension now than a 'money purchase' scheme. The added years arrangement wasn't flexible inasmuch as once you had agreed to purchase added years, you were committed to this and the cost would increase with any salary rises. It wasn't possible to stop and start contributions like it was with the TAVC. Looking at what information is available, I don't think Ms L would have wanted to commit to paying into an ongoing arrangement in 1991. I say this because she only made contributions to her TAVC for one year at this point so it seems she may have appreciated the flexibility the TAVC provided over the added years arrangement. And had she taken added years in 1991 instead, she would have received a refund of her contributions if she'd only paid into the arrangement for a year.

I've also thought about what happened in 1998, when Ms L restarted contributions to the TAVC. Part of the charge for added years went towards providing benefit for a spouses' pension. However, the paperwork records that Ms L was divorced at this time. So, when viewed in the investment climate of 1998, a potentially more cost-effective option, albeit involving some risk, was for Ms L to contribute towards a scheme which provided a pension for her only, which the TAVC did. Whilst it is disappointing that the benefits from the TAVC may be lower than the benefits that the added years would've provided, this could not have been foreseen at the time of advice in 1991 or 1998. I'm satisfied that the advice to take the TAVC would've been reasonable, based on the expectation the TAVC arrangement would leave Ms L with greater benefits than the added years approach.

Ms L says that at no time was she advised that she'd have to buy an annuity and that the income would be reliant on the stock market at the time of withdrawal from the scheme.

However, I can see that the letter sent to her in 1998 confirmed that the adviser had gone through the policy terms and conditions and a leaflet was provided explaining how the AVC worked, in particular this explained that:

“The With Profits Fund This is a popular home for AVC contributions. This fund invests in a broad spread of assets. The mix of the portfolio is weighted towards company shares and property with the objective of maximising growth potential. Investment returns are distributed by way of bonuses, which are normally declared annually. This includes a reversionary bonus that we add to your account once a year, and we may also add a terminal bonus when the benefits are drawn. The bonus system is designed to smooth out the ups and downs of investment Performance. The value of the current tax privileges of our contracts will vary according to the financial circumstances of the investor. Past performance is not necessarily a guide to the future. The rate of future bonuses in the With Profits Fund and therefore the rate of growth cannot be guaranteed.”

And

“When you retire, you may use the value of your AVC account to buy a range of retirement benefits. You can use it to:

- supplement your pension from the Teachers' Pension Scheme;*
- supplement your own, and your dependant's pensions, following your death after retirement;*
- provide ongoing increases to your own, and your dependant's AVC pension.*

These can be bought from Prudential or, alternatively, you may take your AVC account to a provider of your choice to buy benefits. This is known as an Open Market Option.”

The leaflet also explained that any income would be taxed as earnings. This is the same as any income that would be payable from added years.

Ms L has also said that she wasn't told she would have to pay tax if she took the fund as a lump sum. This option has only been available since 2015, when major changes to pensions legislation were introduced. So the adviser wouldn't have been able to let Ms L know this when the plan was taken out. And, after any tax free cash is taken, generally 25% of the fund, any remaining lump sum is taxed as earned income. This isn't unique to the TAVC, most pension pots provide tax free cash with 75% of the fund being treated as a taxable income.

I know Ms L believes she would have been better off taking an ISA. But as our investigator explained, this is a different type of product and wouldn't generally be used as a vehicle to provide retirement benefits. This is because unlike the TAVC, contributions to an ISA wouldn't have attracted tax relief when they were paid. In the case of Ms L's TAVC, the tax relief essentially meant that she didn't pay tax on any payments to her plan. Whereas with an ISA, the payments would have been made after tax was paid and no tax relief would have been received. So overall Ms L would have contributed more to her TAVC than another type of plan that didn't provide tax relief. For this reason, I don't think it would have been appropriate for the adviser to have recommended an ISA for Ms L as a way to top up her retirement income and crucially, ISA's weren't available when the TAVC was sold.

I appreciate that Ms L may have gone on to buy added years through the next pension scheme she subsequently joined. But I have to consider what I think she would have done at the time of advice. And for the reasons explained, although I can't be certain that Prudential made Ms L aware that added years were an option for her to consider, on balance I don't think she would have chosen to buy them at that time. Overall, I don't consider Prudential needs to do any further and I don't uphold Ms L's complaint.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 3 January 2023.

Lorna Goulding
Ombudsman