

## **The complaint**

Mr H complains The Prudential Assurance Company Limited gave him unsuitable advice to pay Teachers' Additional Voluntary Contributions ('TAVCs') to his occupational pension scheme ('OPS'). He says that if it had told him about the alternative option of buying added years, he'd have opted for those instead.

Mr H is represented by a claims management company, but for ease I'll refer only to Mr H.

## **What happened**

In 1994 Mr H met with Prudential. He was in his mid-forties, employed as a teacher, and had been a member of his OPS since 1972. Following this meeting, he started paying TAVCs to increase his retirement benefits. In 2002, Mr H increased the amount of his TAVCs. And in 2009, he retired and took his pension benefits.

In 2020 Mr H complained to Prudential that in 1994, it hadn't told him buying added years had been one of his options. And if it had, he'd have chosen added years instead of TAVCs.

Prudential said Mr H had complained about this too late for our Service to consider it, as it was more than six years since he chose TAVCs and more than three years since he took the benefits which ought to have made him aware he had cause for complaint. Prudential also said it had explained Mr H's options in 1994, including added years, but he'd chosen TAVCs. And the time passed meant it no longer held Mr H's documents from 1994.

Mr H remained unhappy and came to our Service. Prudential agreed to us considering Mr H's complaint but still thought it hadn't done anything wrong. It also gave us a copy of the 'template' application form that would've been completed and signed by Mr H.

Two of our Investigators looked at this complaint and thought Prudential had made Mr H aware of the added years option. Mr H disagreed, saying the lack of original application form meant it wasn't possible to be reasonably sure what he'd been told or whether Prudential had complied with the regulator's instruction to revise the application form to make it clearer. Mr H pointed to separate complaints he thought to be similar to his, which he said our Service had upheld because the business couldn't provide the original application forms.

Our Service again asked Prudential for any documentation it still had regarding Mr H. Prudential explained Mr H's application paperwork was destroyed in line with data protection regulations, but ultimately was able to provide some information from its systems, including Mr H's salary and TAVC contributions.

Our Investigator changed his view and upheld Mr H's complaint. He now thought there wasn't enough evidence to say Prudential had told Mr H about the added years option. And he thought that if it had done, Mr H would have chosen added years and not TAVCs. Our Investigator thought Prudential should put Mr H into the position he'd be in now if Prudential had given him all the relevant information.

Prudential disagreed, and thought the template application form was enough to show it had told Mr H about added years. It pointed to a separate complaint in what it thought were similar circumstances, which we hadn't upheld. But the Investigator didn't change their view.

As an agreement couldn't be reached, this complaint came to me to consider. I contacted Mr H and Prudential to explain I wasn't upholding Mr H's complaint. I said the limited information now available meant I wasn't satisfied Prudential had told Mr H added years were an alternative option and referred him to the Teachers' Pension Scheme for further information. But I didn't think Mr H would have likely opted for added years if he'd known about them, because I didn't think he'd have considered added years the cost effective option or that added years matched what I could see of his attitude to risk at that time.

Prudential confirmed it had nothing to add.

Mr H told us Prudential hadn't complied with the relevant rules and regulations and his complaint should be upheld. In summary, he said:

- He didn't remember being given a scheme booklet at any time, and he was vaguely aware of added years but knew no details.
- Prudential was wrong to destroy the original application and would be reprimanded by the regulator if it didn't keep pension transfer documents, suggesting Prudential destroyed the application form to cover up wrongdoing.
- A court wouldn't accept a template application form as reliable evidence. Our Service didn't seem to consider each case on its individual merits. And it wasn't appropriate for us to decide complaints based on the balance of probabilities, or to not uphold complaints in which original application forms had been destroyed.
- Prudential's adviser couldn't provide impartial advice, as telling Mr H about added years available elsewhere would risk their sales and commission.
- Prudential hadn't ensured Mr H had the scheme booklet and knew about added years before he chose TAVCs, and hadn't allowed him enough time to research alternatives.

I'm now in a position to make my final decision.

### **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'd like to start by acknowledging that both Prudential and Mr H have sought to support their positions by referring to other separate complaints considered by our Service, in what they see to be similar circumstances. But, while Mr H may doubt it, it is the case that our Service considers the particular circumstances of each individual complaint. So I've considered the particular circumstances of Mr H's complaint and all the evidence and comments provided to me about that. I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS').

Unfortunately, the time passed since Mr H took the benefits of his TAVC means very little information from the time of the TAVC sale in 1994 is now available. Mr H suggests Prudential destroyed this information to cover up wrongdoing, but I think it's more likely it was destroyed so that Prudential could meet its data protection obligations, as Prudential says – the regulator didn't require businesses to indefinitely keep TAVC records in the same way it required them to keep certain other records, as Mr H suggests.

However, Prudential has been able to provide some limited information, including a template of the application form it says would have been completed, and information about Mr H's salary and TAVC contributions. I understand Mr H doesn't agree our Service should decide complaints on the balance of probability, or not uphold complaints where original application forms have been destroyed. But nonetheless, where the evidence is incomplete, inconclusive or contradictory, I must reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

When Mr H joined the Teachers' Pension Scheme in 1972, it's likely either his employer or the scheme administrators provided him with a scheme booklet, which likely explained the various options available to Mr H for paying extra contributions to increase his pension provision, including the option of buying added years. I know Mr H says he doesn't remember being given a scheme booklet at any time, but this would have been about 50 years ago and memories can fade over time. So I think it's more likely than not that Mr H was given information about the added years option before he met with Prudential in 1994, even though I appreciate Mr H may not recall this.

It's still possible Mr H wasn't aware of added years before he met with Prudential. And Prudential now only holds limited paperwork from the time of the sale, so I can't fairly conclude it definitely told Mr H about the option of buying added years. I must note at this point that Prudential was only authorised to provide advice on Prudential products, so it couldn't have advised Mr H on the added years option or told him that added years would have been of benefit to him. All Prudential had to do was make Mr H aware that added years were an alternative option and refer him to the Teachers' Pension Scheme for further information.

Mr H says he was vaguely aware of added years, and to my mind this supports Prudential's argument that it made him aware of the added years option. But with only very limited information, I can't be satisfied Prudential made him aware of it. So I've thought about whether Mr H would most likely have opted for added years, rather than TAVCs, if he'd known about them. And having done so, I can't fairly say Mr H would have chosen added years in 1994. I'll explain why.

Firstly, the cost of added years of service in the Teachers' Pension Scheme was determined by the Government Actuary using conservative assumptions of likely future investment experience, which made them more expensive than if a less conservative (or more optimistic) set of assumptions had been used. And 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 the three years of added service Mr H would have needed. So it's difficult to conclude that Mr H would have considered added years the cost effective option.

Secondly, I've thought about Mr H's attitude to risk at that time. As I say, the information available is now very limited. However, I accept that the template application form provided by Prudential is likely to contain the same information and questions as the application form that would have been completed by Mr H, or at least signed by him to declare he understood the information it contained and he agreed with the answers given. I realise Mr H says a court wouldn't accept a template application form. But our Service is an alternative to the courts, and as I say, where the evidence is incomplete then I must make my decision based on the balance of probabilities.

And the template application form shows Mr H had the choice of investing his TAVC into a range of funds, including the no risk option of a deposit fund. So Mr H could have chosen to invest his TAVC in a no risk fund. But it's my understanding that it was instead invested in

Prudential's with-profits fund which, while generally considered lower risk, still had an element of risk. So I don't think Mr H was risk averse. And added years would generally have been considered suitable for someone that was risk adverse. So it's difficult to conclude that added years matched what I can see of Mr H's attitude to risk at that time.

So even if Prudential had provided Mr H with clear information about the added years option, I don't think Mr H would have chosen added years instead of the TAVC. Therefore, I'm not upholding this complaint or asking Prudential to do anything further here.

I know Mr H says Prudential didn't ensure he had the scheme booklet and knew about added years before he chose TAVCs, and didn't allow him enough time to research alternatives. Mr H also suggests Prudential might not have complied with the regulator's instruction to change the application form to make it clearer. But I don't need to consider these points because as I've already said, the limited information means I can't be satisfied Prudential made Mr H aware of the added years option.

Mr H also suggests Prudential didn't tell him about added years because the adviser would get commission from TAVC sales. As with many other financial products, the advisers would've got commission through the sales. But, as Prudential's advice appeared not to be unsuitable or inappropriate, I can't fairly conclude Mr H was mis-sold the TAVC simply because Prudential's adviser received commission.

So while I realise this will be disappointing to Mr H, I'm not asking Prudential to take any action here.

### **My final decision**

For the reasons set out above, I'm not asking The Prudential Assurance Company Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2023.

Ailsa Wiltshire  
**Ombudsman**