

The complaint

Mrs A has complained, on Mr A's behalf, that The Prudential Assurance Company Limited has said that he would need to obtain financial advice in order to move his Free Standing Additional Voluntary Contribution (FSAVC) policy into an "income drawdown" arrangement.

Mrs A has said that Prudential should have informed Mr A that the terms of the policy changed in 2015 (with the advent of "pension freedoms") and that he would need to take costly financial advice to capitalise on being able to enter drawdown. Had it done so, Mrs A has said, Mr A could have transferred the policy to a drawdown policy with another provider at the normal retirement date of 65 (instead of deferring this to age 70 as he did) with no prospect of a market value reduction (MVR) being applied.

But if Mr A were to do this now, before his deferred retirement age of 70, he may face an MVR to do so.

What happened

When the pension freedoms were introduced in 2015, the legislation enabled policyholders to take (in most circumstances, but with exceptions) their pension benefits as a lump sum or to draw them down by way of income as and when required, rather than needing to take the benefits as an annuity, as had previously been the case.

When Prudential told Mr A that he would need to obtain financial advice before it would convert his FSAVC plan into a drawdown policy, Mrs A complained on his behalf on the above basis.

Prudential didn't uphold the complaint, however, saying that it had taken the commercial decision to require financial advice for policyholders who wished to enter drawdown. It also confirmed that, as at the date of issuing its final response letter, an MVR wasn't applicable to Mr A's policy.

Dissatisfied with the response, Mrs A referred the matter to this service. One of our investigators considered the complaint, but didn't think it should be upheld, saying the following in summary:

- As the options introduced by the pension freedoms in 2015 weren't available when the policy began, this wouldn't have been covered by the policy's original terms and conditions.
- It was up to Prudential as to whether it required, as a business decision, its policyholders to seek financial advice before entering income drawdown.
- Although he would expect Prudential to have informed Mr A of important changes affecting his policy, it wasn't reasonable to expect Prudential to write to all of its customers in advance of them thinking about how they might wish to access their pension benefits. This could instead be communicated to the relevant policyholders who wished to take that particular course of action.

- He considered Prudential's position on the application of the MVR – in that it could be applied at any point other than the selected retirement date – to be reasonable. It wasn't unusual for providers to not be able to confirm whether an MVR would apply at a later date, or how much the MVR might be.

Mrs A disagreed, however. Whilst Mrs A accepts that an MVR might apply unless the policy is taken at certain points, her point remains that, had Mr A been told in 2015 when the legislation changed that they would need to seek financial advice to enter drawdown, they would have transferred the policy in 2021 to a provider which didn't require financial advice, MVR free. Now Mr A will have to wait until his 70th birthday to ensure that his pension benefits aren't reduced by the MVR.

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.

I've carefully noted what Mrs A has said in response to the investigator's view on the matter, predominantly in the telephone call which she had with the investigator, in which she set out her objections as described above.

And so, I think the fundamental question here is whether Prudential should have told Mr A when the legislation changed to enable access to the FSAVC beyond an annuity that he would need to seek financial advice to go into drawdown.

But as with the investigator, I don't think that Prudential needed to proactively do so. It wasn't a change to the policy terms – the policy itself didn't change. The different ways of accessing pension benefits at retirement age changed as a result of the pension freedoms, but Prudential didn't change the terms of its policy. And as noted by the investigator, as the pension freedoms hadn't been implemented when the policy began, these different ways of taking pension benefits, and the requirements to do so, couldn't in any case have been incorporated into those original policy terms.

I also don't think Prudential needed to alter its policy terms to include the requirement for advice if a policyholder wished to enter into drawdown – and then contact all policyholders to confirm this. What Prudential needed to do, when people were seeking to take their benefits, was set out the range of options available to them. But I don't think that it needed to contact all policyholders to tell them about the requirement for advice if they were thinking of entering drawdown at some point in the future. As commented by the investigator, this is something which could have been clarified if a particular policyholder such as Mr A wished to enter into drawdown when it came to taking their benefits.

I understand Mrs A's point about the policy possibly being subject to an MVR before the deferred retirement age of 70. But Prudential has confirmed that, as at the date of issuing the final response letter, no MVR was applicable on the policy. And it's of course open to Mr A to seek confirmation of this once more if he wishes to transfer his benefits before age 70. Prudential will then be able to confirm whether an MVR currently applies to his policy.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 10 May 2023.

Philip Miller
Ombudsman