

The complaint

Mr W has complained that The Prudential Assurance Company Limited mis-sold him his Local Government Additional Voluntary Contribution Scheme.

What happened

In March 2014 Mr W completed an application form to join the Prudential Local Government Additional Voluntary Contribution Scheme (AVC). Prudential didn't provide any advice to Mr W when he took out his AVC.

Mr W made no investment choice on his AVC application form, so Prudential wrote to him on 27 March 2014 to tell him that his savings would be invested in the default investment choice for the AVC, which was the With Profit Cash Accumulation Fund. Mr W has not made any change to the investment of his AVC since it was set up.

Prudential also sent Mr W a key features document, and a Guide to Fund Options document. Mr W says that he also received a factsheet for Prudential's With Profit fund.

Mr W says, in summary, that the annualised growth rate shown on the With Profit fund fact sheet was exaggerated, as it was more than the annual return that he has been receiving on his AVC. Mr W says that this is proof that his AVC was mis-sold to him as he was not given accurate information in 2014 which would have enabled him to make an informed decision at that time.

Mr W spoke with Prudential by telephone on 5 October 2021 to discuss the investment returns that he was earning on his AVC. Mr W says that during this telephone call he was told that the annualised return on his AVC was 6.8%, but Mr W says that he hasn't been receiving this level of investment return and now wants Prudential to pay him an annual return of between 6% and 7% on his AVC savings.

Mr W complained to Prudential in July 2022 that he had been mis-sold his policy and in October 2022 Prudential issued their response to Mr W's complaint. Prudential didn't uphold Mr W's complaint, so he asked that the Financial Ombudsman Service review his complaint.

An Investigator within the Financial Ombudsman Service examined Mr W's complaint. Their view was that Mr W hadn't been mis-sold his AVC as the documentation provided to him had explained that returns shown on the With Profit fund factsheet were not guaranteed.

Mr W didn't accept the Investigator's view and asked for this complaint to be brought to an Ombudsman.

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 have seen a copy of the AVC application form that Mr W completed in March 2014. The investment choice section wasn't completed. I therefore think that it was reasonable for Prudential to invest Mr W's AVC savings into the default fund for the scheme.

Prudential wrote to Mr W to tell him that his AVC savings would be invested into the With Profit Fund, so that he was aware how his AVC was being invested. Mr W will have been able to change his investment choice since taking out his AVC, but has not done so to date.

When Mr W completed his AVC application he didn't receive any financial advice from Prudential. Nonetheless, Prudential still needed to provide Mr W with information so that he could make an informed decision on taking out his AVC.

Prudential provided Mr W with a key features document, and a Guide to Fund Options document. Mr W has said that he also received a With Profit fund factsheet.

I have seen a copy of Prudential's With Profit fund factsheet for 2018 and 2021. Whilst I have not seen a copy of the 2014 factsheet that Mr W says that he saw, the layout and information shown on the 2018 and 2021 factsheets are very similar to each other, and I therefore think it likely that the 2014 factsheet would have been similar to these factsheets.

The second page of the 2018 and 2021 factsheets sets out information about investment performance. Data is shown on past investment performance achieved by the With Profit Cash Accumulation Fund. Performance data is shown for 1 Year, 3 Year, 5 Year and 10 Year time periods.

Alongside this performance data is the following wording: *"The performance figures shown are overall annualised returns for contributions made on the dates specified. The returns include both regular and final bonuses added to a benefit paid at normal retirement date, but make no allowance for any applicable initial charges, allocation rates or early cash in charges (explicit charges). Final bonus may vary and is not guaranteed. The rate of future bonuses cannot be guaranteed. The value of an investment can go down as well as up and the fund value in the future may be less than the payments you have made. Please bear in mind that inflation will reduce what you can buy in the future"*.

Underneath the performance data the following information is also stated: *"The value of your policy will be sent out in your annual statement or is available on request. The value will depend on when you actually invested allowing for tax, charges and smoothing. The value could change by more or less than the underlying investment return of the overall fund. Past performance is not a reliable indicator of future performance"*.

I think that this is clear in explaining that the investment data shown in the factsheet was for the overall annualised return and included both regular and final bonuses and that future performance isn't guaranteed.

Mr W has said that Prudential should have shown the annualised final and regular bonus returns separately, and not as a single combined figure. Mr W says that this is because final bonuses are not guaranteed, whilst the regular bonus returns that he has been receiving on his AVC have typically been around 1% per annum or less, so much lower than the total annualised returns shown on the fund factsheets. Mr W has said that showing the total annualised returns in the way Prudential did was misleading.

However, I don't think that it was unreasonable for Prudential to only show data on the overall total historic annualised returns. They explained that this was what the data was showing and explained that final bonuses could vary and were not guaranteed. Prudential also explained that regular bonuses were not guaranteed and that the returns shown didn't

make an allowance for any explicit charges.

Prudential also explained that past performance was not a reliable indicator of future performance. I therefore don't think that the factsheet was saying that the investment returns shown were guaranteed to be the same as those which Mr W would earn on his AVC.

I have listened to a recording of the telephone conversation that Mr W had with Prudential on 5 October 2021. Mr W says that during this telephone call he was told that the annual investment return on his AVC is 6.8%. However, the Prudential representative that Mr W spoke to says that she has received this figure from the Prudential actuarial team, but she will ask the team to provide Mr W with an explanation of the investment returns that he has been earning on his AVC.

Mr W says during the telephone call that he wants to know what percentage return he has earned on his AVC. In response Prudential sent an email to Mr W on 25 October 2021. This email set out calculations which explained how Prudential had arrived at their figure of a 6.8% return between 31 March 2019 and 31 March 2020 for Mr W's AVC.

In these calculations Prudential used values for Mr W's AVC which included a final bonus, but Prudential did explain each time that the final bonus was not guaranteed. I therefore don't think that the calculation Prudential prepared for Mr W was misleading.

Mr W also says it is unfair that the importance of the final bonus to overall returns means the investor can't really know how much their pension is likely to be worth until retirement, which is too late. Mr W also seems to be suggesting that this leaves the investor vulnerable to unfair practices in relation to final bonus rates. In response, I repeat the point I made earlier, which is that I can't unreasonably say Prudential gave Mr W an over-inflated view of past performance, or a misleading picture of how overall performance is derived. It's also important to note that the governance of with profits funds is closely monitored by the regulator, meaning providers can't treat investors unfairly when it comes to determining final bonuses.

I therefore don't think that the information that Prudential provided in the With Profits factsheet was misleading. I also think that Prudential have set out calculations for Mr W and explained how they have calculated returns on his AVC. I therefore don't think that Mr W was mis-sold his AVC policy and I am not upholding Mr W's complaint.

My final decision

I am not upholding Mr W's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 July 2023.

Ian Barton
Ombudsman