

The complaint

Mrs H complains she was misadvised to take out a Free Standing Additional Voluntary Contribution pension policy (FSAVC) by Prudential Assurance Company Limited (Prudential). She wants to be put back in the position she should have been in.

Mrs H is represented in his complaint by a claims management company (CMC) but for ease I will just refer to Mrs H except where necessary in this decision.

What happened

Mrs H was advised to take out a FSAVC (the plan) in 1998 to provide additional pension benefits. She says this was likely to have had higher charges than the in-house AVC scheme that was offered by her employer at the time. So, she may have suffered losses as a consequence. Through her CMC she raised a complaint with Prudential raising several points about the suitability of the advice she'd been given saying she would have joined the in-house AVC if she'd been informed about it properly.

Prudential didn't uphold the complaint. It said it's adviser couldn't provide advice about the in-house AVC as he could only advise on its own products. It said the advice had complied with regulatory requirements at the time. In particular that she'd been made aware of the "*alternative option of using her employers' in house AVC*". It said the contributions had been affordable to Mrs H and the investment fund recommended was appropriate for her attitude to risk.

Mrs H referred her complaint to our service and our investigator looked into it, but he didn't uphold it.

Our investigator said he thought records from the time showed that the advice was suitable because there had been a discussion about the in-house AVC alternative as required by the financial service regulations. He said Mrs H had signed a declaration on the fact find document completed confirming that the information she'd provided was correct. In the notes section, the adviser had written that the in-house AVC had been discussed. And this was confirmed in the recommendation letter sent to her the next day which said, "*The relative merits of FSAVC's and AVC's were covered.*" And that Mrs H had been given and had explained to her a leaflet called "*AVC-some important features*", which confirmed that charges might be lower with an in-house AVC.

Our investigator said this evidence showed alternatives had been discussed. And Mrs H ought to have been aware that the charges of the in-house AVC might be lower. But she'd decided to proceed with the FSAVC anyway due to other features like additional flexibility. And she hadn't queried anything when the subsequent recommendation letter said AVCs and FSAVC had been discussed. He said that the recommended investment, the with-profits fund was appropriate to the level of risk identified for her. And that the premium paid was affordable for her. Because he thought regulatory guidelines had been followed, he didn't uphold the complaint.

Mrs H disagreed. She said the FSAVC offered no more flexibility than the in-house AVC and that charges were the “*overriding factor*” in her being able to make an informed choice and she hadn’t been given enough information. She said there was no evidence that Prudential had discussed that charges were likely to be lower for the in-house AVC as this wasn’t referred to in the recommendation letter and the leaflet “*AVC-some important features*” was inadequate.

As Mrs H doesn’t agree it has come 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.

Having done so I am not upholding the complaint.

Mrs H made several complaint points, but I think most of these aren’t relevant as Prudential could only advise on its own products. So, it wasn’t required to directly compare it’s FSAVC to the in-house alternative. I think the investment fund recommended was suitable at the time. As with-profits was widely regarded as a relatively low risk investment. And one appropriate to Mrs H’s “*very cautious*” attitude to risk identified by Prudential and confirmed in the recommendation report.

I think the crux of the complaint is whether Prudential complied with the then regulatory requirements confirmed in Regulatory Update 20 (RU20) issued in 1996. Whilst a tied adviser like Prudential couldn’t give Mrs H advice about the in-house AVC or added years options, it was expected to:

- draw the customers attention to the in-house alternative,
- discuss the generic differences between and in-house AVC and a FSAVC,
- direct the customer to their employer or occupational pension scheme for more information on the in-house option.

RU20 also said that charges would be generally lower on in-house AVC’s and that of;

“all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefits to the client.”

Mrs H argues the requirements of RU20 weren’t met. Prudential that they were.

The events Mrs H complains about took place nearly 25 years ago, so it isn’t certain what was said in the meetings that took place between her and the adviser. But there are some written records which summarise the situation at the time. These are, the fact find document, which was signed by Mrs H. And the recommendation report sent after she completed the application form for the FSAVC.

Mrs H doesn’t appear to have disputed she received the report or signed the fact find document. So, I think these documents are important evidence as to what is likely to have happened at the time.

The fact find which Mrs H signed contains the handwritten note:

“I have discussed with (Mrs H) AVC as well as FSAVC she has decided she would rather have a FSAVC to give her more flexibility if her plans change in the future. In house AVC facility is with Equitable Life. . . .

Client believes that FSAVC will better suit her retirement planning needs and is prepared to accept possible higher charges”

It's possible that this note was added after Mrs H signed the document, but there is no evidence of that. And I think that the subsequent recommendation letter confirms that FSAVC and AVC's were discussed. There was no requirement that the adviser considered the in-house option with Equitable Life in detail or compare it to the FSAVC. But I think identifying the provider of the in-house AVC further suggests that alternatives were discussed.

The report itself does appear to be quite standardised. And, as Mrs H has said, it doesn't specifically refer to a “discussion” about in-house options or charges. What it does say the leaflet “AVCs some important features” has been provided and the contents have been “explained”. This leaflet gives an overview of AVCs and FSAVCs. It does confirm that charges for in-house AVC's may be lower and that more information about them can be obtained from the employer or pensions scheme itself. A section about “Costs” states:

“The cost of running your AVC or FSAVC is important as it will affect your final benefits.”

Later in the section it says;

“In many cases the employer bears some, or all of the administration costs whereas in the case of an FSAVC these costs are borne by the customer.”

Having referred to the leaflet, the recommendation report then continues:

“The benefits of additional savings for retirement have been explained to you. The relative merits of FSAVCs and AVCs were covered.”

If the content of the leaflet was “explained” and the “relative merits of FSAVC's and AVC's were covered” as stated in the report I think it's reasonable to say that there had been a discussion about the generic differences including charges and that Mrs H had been made aware of the in-house alternative.

And I think it's more likely than not that this leaflet was discussed. Because the letter enclosing the report requested that Mrs H retain both and said:

“Please get in touch if there is something which needs to be clarified, or if further information is needed, or you do not agree with the content of the report.”

I think if Mrs H hadn't been given the leaflet or it hadn't been explained and AVC's and FSAVCs discussed in the earlier meeting, then she would have queried this at the time. Or indeed when she met with the adviser again soon after in respect of her mortgage arrangements, but there is no evidence she did so.

Taking everything together I think it is more likely than not the leaflet was provided and discussed with Mrs H. I think it is clear from the leaflet that costs could affect benefits and that costs might be higher with the FSAVC. The leaflet confirms more information is available about in-house options from either the employer or the pension scheme itself. So, I think explaining or covering this did meet the requirements to “discuss” of RU20. And whilst the application appears to have been completed on the day of the fact find meeting, Mrs H could have chosen to obtain further details about the in-house options before she decided to proceed with the Prudential FSAVC.

So, I don't think Prudential has treated Mrs H unfairly and the advice it gave was in line with regulatory requirements at the time. And I can't uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 27 June 2023.

Nigel Bracken
Ombudsman