

## The complaint

Ms B complains that The Prudential Assurance Company Limited (trading at the time as Scottish Amicable) failed to provide her with appropriate advice, or information, regarding the payment of additional contributions to her pension savings.

## What happened

Ms B's dealings were with Scottish Amicable. That firm now forms part of Prudential, so it is Prudential that needs to deal with Ms B's complaint. For ease in this decision I will simply refer to the business as Prudential throughout.

Ms B has been assisted in making her complaint by a claims management company. Again for ease, in this decision, I will treat all communications as if they have been with, and from, Ms B herself.

I issued a provisional decision on this complaint last month. In that decision I explained why I didn't think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

*Ms B is a member of an occupational pension scheme ("OPS"). In May 1999 she discussed her retirement provision with Prudential, and received some advice from the firm the following month. In brief, Prudential advised Ms B that she should start making free-standing additional voluntary contributions ("FSAVCs") to a new pension plan with the firm. Ms B accepted that advice, and the new pension plan commenced.*

*Ms B has complained that the advice she received was unsuitable. In particular she says that Prudential failed to give her sufficient information about paying additional voluntary contributions ("AVCs") to her OPS instead. She says that the FSAVC plan would have been worse value for her circumstances, and Prudential hasn't shown any other reason why she would have not taken the AVC option instead.*

*The advice was provided to Ms B by Prudential in 1999. So the relevant regulatory guidance was contained in the May 1996 Regulatory Update 20 ('RU20'), which was produced by the Personal Investment Authority, one of the predecessors of the current regulator – the Financial Conduct Authority. RU20 gave guidance on the procedures for advising clients on the relative merits of FSAVCs and AVCs provided by occupational pension schemes. The guidance set out different requirements depending on whether the adviser was an independent financial adviser or a 'tied' adviser – one who is employed by, or contracted to, one organisation and can only recommend and sell that organisation's products. In this case the adviser was tied.*

*For tied advisers, RU 20 indicated that before selling an FSAVC advisers should:*

- *draw the client's attention to the in-house alternative;*

- *discuss the generic differences between the two routes (taking account, among other things, of the features described in this article); and*
- *direct the client to his employer, or to the OPS, for more information on the in-house option.*

*Among the features referred to in the article were that charges under in-house AVC's would usually be lower. In particular the article said;*

*Charges under in-scheme AVCs will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. 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*

*The regulator indicated that it would expect the advice file to have documentary evidence demonstrating that the procedures in the update had been followed.*

*So Prudential needed to make Ms B aware of the in-house AVC and to discuss the generic features of the in-house options and of the FSAVC. The key difference I would've expected Prudential to discuss with Ms B would be the likelihood of lower charges for the in-house AVC. I would also expect Ms B to have been directed to her employer and/or occupational pension scheme trustee to obtain more information on her in-house options*

*The advice process appears to have been in two parts. Prudential initially met with Ms B in May 1999. In that meeting it gathered details about Ms B's financial circumstances and no doubt discussed her requirement to make additional provision for her retirement. And then, around a month later, Prudential provided Ms B with a report summarising their discussions and recommending that she start paying into the FSAVC plan.*

*I think what Prudential said in its report is important, so I replicate the section relating to the in-house AVC scheme below. It said;*

*"We discussed the advantages and disadvantages of making Additional Voluntary Contributions to your company scheme or taking a separate Free Standing Additional Voluntary Contribution. You are aware that there may be the possibility of buying past years or having added year options within the company scheme, however you are particularly attracted to the flexibility of a Free Standing Additional Voluntary Contribution. This flexibility included portability and wider investment choice, together with the option of taking the benefits from this Free Standing AVC early, if you left your current employer, whereas you could not with an AVC. The charges within this plan however are likely to be greater than under your company scheme. You can obtain more information on your company scheme from your Employers or Scheme Trustees."*

*I think it unlikely that Prudential would have included information in its financial planning report that had not previously been discussed with Ms B. But there was an additional period of around three weeks between the date of the report, and it being signed by Ms B. And on the same day she signed the report, Ms B completed her application for the FSAVC plan.*

*It is possible that the report wasn't provided to Ms B until the day it was signed. But if the report contained new information, that she wasn't previously aware of, I think Ms B might have delayed signing the application form. Instead I think it more likely that the report simply confirmed the earlier discussions, or at the very least the three weeks between the date of the report, and the application form being signed, provided Ms B with the opportunity to make further enquiries about the AVC scheme.*

*I think it is important to note that Prudential was under no obligation to provide Ms B with specific information about the AVC scheme. As I've noted above, the regulator's requirement was for the provision of generic information. I think the paragraph above does suggest that the regulatory requirements were met. Ms B was made aware about the availability of the in-house AVC scheme, including the options to buy Past Added Years or an AVC plan. She was also made aware, in generic terms, of the advantages and disadvantages of starting a FSAVC plan compared to the in-house option, including the likely lower charges of the in-house AVC scheme. Finally, Prudential also explained that Ms B could obtain more information from her employer or occupational pension scheme trustees.*

*It wasn't for Prudential to advise Ms B whether or not the AVC plan would be better for her circumstances. That was essentially a decision Ms B needed to make for herself. But it did need to make sure that the FSAVC would be suitable for Ms B's needs.*

*The evidence shows that Ms B wanted to pay additional contributions to increase her retirement provision. She appears to have had the financial capacity to make those contributions. Prudential says it assessed Ms B's attitude to risk as that of a cautious investor for these pension savings. I think its recommendation, to use the with profits investment fund, was suitable in those circumstances.*

*Prudential recorded that Ms B was interested in a scheme that provided her with some flexibility should she change her employment. In its fact find document Prudential noted that Ms B had no plans, within the next five years, to change jobs. But I have seen that Ms B also held an AVC plan from her time with a previous employer – she had only been a member of her current OPS for three years. So I cannot reasonably discount the probability that Ms B might expect to change her employer again in the future.*

*I appreciate that my decision will be disappointing for Ms B. But, as a tied adviser, Prudential's representative could only consider the suitability of Prudential's FSAVC plan for Ms B. On balance, I'm currently satisfied that Ms B was given enough information during the advice process in 1999 to understand the important differences between the in-house schemes and the FSAVC plan before making her decision. As such, I currently think the recommendation for the FSAVC plan could be regarded as suitable in the circumstances when taking account of the limitations placed on a tied adviser at the time.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Prudential has said that it has nothing more to add. Ms B has said that she doesn't agree with my provisional findings and provided some additional comments. Although I am only summarising here what Ms B has said, I want to reassure her that I have read, and carefully considered, her entire response.

Ms B says that it wasn't until 30 June 1999 that HMRC permitted consumers to take AVC or FSAVC benefits at a different time to those provided by the OPS. Although she accepts that the actual date that the report was produced is a little unclear, Ms B says that the justification

it offered for the suitability of the FSAVC, in terms of taking benefits at a different date, was not actually relevant at that time.

Ms B says that the investment approach Prudential recommended would also have been available to her had she taken an AVC plan instead. She says she had no need of a wider availability of investment options. And she says that, given her child had been born shortly before she started her current job, it would have seemed likely that she might have remained with her employer until retirement.

Ms B says the tied advisor actually worked for a company called “NHS Staff Benefits”. So she says that he should have been able to provide her with greater detail than might be the norm about the additional contribution options offered by her employer. She says that the brevity of the relevant section of the suitability report suggests that any discussion she had with the advisor about the OPS must have been very short.

Ms B says the recommendation in the suitability report doesn’t evidence any explanation of the generic benefits of the AVC option were discussed. And she says there is nothing to demonstrate that she **should** [her emphasis] go and get additional information. Ms B says she cannot see any reason why the suitability report would have prompted her to think that she might be better off with the in-house options. Given her budget and contribution level it would have been critical that she was not paying more in charges than she needed to – she says the advisor should have better explained this to her.

### **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.

As I explained in my provisional decision, in deciding this complaint I’ve taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms B and by Prudential. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And once again I reflect on the role of this service. This service isn’t intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn’t occurred.

I’ve thought carefully about the additional comments that Ms B has made. And I can understand why she is disappointed that I have reached a different conclusion to that reached by our adjudicator. I’m sorry to tell her however that her additional comments haven’t caused me to change my mind – I don’t think her complaint should be upheld. But I would like to provide some further thoughts on the additional matters she has raised.

I am satisfied that the commentary in the suitability report is sufficient to support a conclusion that Prudential met its regulatory responsibilities when discussing the FSAVC plan with Ms B. The advisor from Prudential wasn’t able to recommend to Ms B that she should start paying AVCs rather than FSAVCs. So, beyond making Ms W aware of the “in-house” alternative and drawing attention to the key differences, and particularly that the

charges in the FSAVC policy would likely be higher, he didn't need to justify to Ms B why the FSAVC plan might be more suitable than the alternative AVC option.

I appreciate that Ms B says that Prudential should have explained why it thought the FSAVC plan would have been more beneficial to her than the AVC option. But I don't agree. Prudential simply needed to ensure that it had met its regulatory obligations in telling Ms B, in the terms I have set out, about the AVC option, and that a FSAVC arrangement would allow her to meet her needs of making additional provision for her retirement. I think that both those requirements were met, and so I don't think the complaint should be upheld.

### **My final decision**

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 2 June 2023.

Paul Reilly  
**Ombudsman**