

The complaint

Mrs B complains that The Prudential Assurance Company Limited (Prudential) mis-sold her an Additional Voluntary Contribution Plan (AVC) causing her financial losses. She wants compensation for her losses.

Mrs B is represented by a claims management company (CMC) in bringing her complaint, but I will just refer to Mrs B unless necessary.

What happened

Mrs B was a teacher and member of the Teachers' Pension Scheme (TPS). In June 1996, when she was 29 years old, she took out the in-house AVC option offered by the TPS through Prudential. Having spoken with her CMC, it requested a copy of Prudential's records for Mrs B, and a complaint was raised in October 2024. Mrs B says that when advising her about the plan in 1996 it was required to have informed her about the alternative option to AVCs called added years, but didn't. She says had it, she would have selected added years instead as this option offered guaranteed benefits and she may have suffered losses as a consequence.

Prudential didn't accept the complaint. It said due to the time that had passed it had limited records. But as the appointed (by the Department of Education) provider of the Teachers' AVC scheme it was required to make teachers aware of the other options available if they wished to top up their pension. It said its advisers could only offer advice on the TAVC not these other options. And the adviser only needed to confirm there were alternatives, and it was up to the individual teacher to seek any further information. It said its standard documentation at the time which would have been given to Mrs B referred to the alternative options. It said whilst it no longer had a copy of her application form from 1996 which needed to be completed, this also referred to the added year and Free Standing AVC (FSAVC) alternatives. It said the form specifically asked for confirmation of whether she was already paying towards added years or FSAVC contributions. And it said the declaration Mrs B had signed on the application form confirmed a number of points around alternative options available including that,

"I have been made aware of the Teachers' Pension Agency booklet entitled "A guide to the Teachers Superannuation" with regard to the "Added Years" option."

Prudential said in 1996 its adviser would have been required to run through the application with Mrs B and the booklet referred to above, which set out details of both added years and AVC's. It said there were a number of reasons why Mrs B might not have chosen added years at the time. These included perceived higher cost and lack of flexibility.

The CMC said as Prudential didn't have specific records it couldn't show it had complied with the regulatory requirements at the time and the complaint should be upheld. It said Prudential hadn't provided a "*comparative analysis*" of the various options, preventing Mrs B from making an informed choice. And it said the failure to have retained records was a regulatory failure in itself which had caused Mrs B further distress.

Mrs B referred her complaint to our service and our investigator looked into it, but she didn't uphold the complaint.

Our investigator said there was little physical evidence to consider and no way of knowing what had or hadn't been discussed nearly 30 years ago. But at the time the regulations in place only required Prudential to inform Mrs B that there were alternatives and note their generic features and it couldn't advise on these alternatives. Our investigator said she thought it more likely than not that Prudential's adviser would have mentioned the added years alternative when the application was completed, which Mrs B had then signed to confirm she'd received information specifically referring to the added years option.

Mrs B's CMC didn't agree. It said our investigator had relied on samples of what documents should have been provided rather than the actual document (of which there isn't a copy) completed by Mrs B in 1996. It said the lack of records were breaches of the Financial Conduct Authorities rules around both record keeping and being able to demonstrate the suitability of recommendations made. It said the evidential burden rested with Prudential to show it had met regulatory standards through "*contemporaneous records*", not generic templates. Our investigator said it wasn't reasonable to apply more recent regulatory guidance and rules retrospectively. She said the crux of the complaint was whether Mrs B had been made aware of added years and that she must have completed an application form in order to take out the plan. The application used at the time, which Prudential had provided a sample of, clearly referred to added years and that information about them had been provided.

As Mrs B 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.

As has been noted by all parties there are no specific records to consider as evidence here. It isn't unusual for our service to consider complaints where the physical evidence is incomplete, particularly when the events complained about occurred many years ago. When the evidence is incomplete or disputed, we use the balance of probability to assess what was most likely to have happened at the time to decide what is fair and reasonable in the circumstances. In terms of what historical records should be retained Prudential has competing responsibilities. On the one hand it needs adequate records to administer Mrs B's plan, and there's no suggestion it doesn't have that information. On the other, data protection requirements strongly encourage the deletion of old records that aren't actively required.

Prudential had effectively been given the contract by the Government to offer and run the in-house AVC option for the TPS in 1989. That included the requirement to provide information about the alternative options for topping up benefits in the TPS. Regulatory rules around financial advice further required tied agents like Prudential's (who could only give advice on Prudential products) to provide generic information about the alternative options which would direct the pension scheme member to contact the scheme for further information. Prudential has said in view of this joint obligation; its internal processes were strict and booklets, giving this specific information were introduced, and were part of the sales process.

Prudential has provided samples of these booklets, and they do refer to the added years option. As it has also said the application form for the TAVC asks specific questions about

added years and contains a declaration stating that various documents containing information had been provided. And whilst a copy of the actual application form Mrs B completed isn't available, she must have completed one and answered the questions on it and authorised the deduction of contributions from her salary or Prudential wouldn't have been able to proceed. The last point of the declaration before signature specifically confirms that the booklet setting out details of added years has been received. So, as Mrs B did have to sign the declaration in order to take out the plan, I think it is more likely than not that these documents were provided. That isn't to say Mrs B necessarily read these documents, or if she did would recall having done so nearly 30 years later. But that she would have signed an application confirming this information had been provided is persuasive evidence that Prudential did comply with the requirement to tell Mrs B there were alternatives and provide basic details of them.

Mrs B hasn't said why she would have opted for added years other than that these were guaranteed. That is the case, but at the time based on the various assumptions used in pricing added years and made about future investment returns under AVCs it was also the case that added years were generally seen as being a more expensive option to provide a given amount of additional pension. As well as being one that required a far greater commitment to maintain to retirement age than AVC's, where payments could be reduced, stopped and restarted if required. So, AVC's were often seen as a good option to top up pension benefits and added years weren't the default choice.

So, whilst it would have been helpful if Prudential still retained the specific records from the time. I think given the regulatory position and the standardised processes and particularly the application form in use by 1996, it is more likely than not that Mrs B was provided with details about added years. This met the requirements at the time, so it wouldn't be reasonable for me to uphold her 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 B to accept or reject my decision before 20 August 2025.

Nigel Bracken
Ombudsman