

complaint

Mr H's complaint is that he is unhappy about the advice he received from The Prudential Assurance Company Limited to start a Free Standing Additional Voluntary Contribution (FSAVC) plan. He considers that the recommendation did not match his personal and financial circumstances at the time, and that he should either have joined the 'added years' or investment-linked in-house AVC options offered by his employer instead.

background

In January 1993 Mr H met with a representative of Prudential. During this meeting a 'fact find' and an FSAVC application form were completed and signed.

The fact find document recorded that Mr H worked in the public sector and one month earlier, had been advised by Prudential to join his employer's final salary pension scheme. It noted that on joining that scheme, Mr H was aware of a shortfall of income at retirement – as he had not always been a member of an occupational scheme.

The adviser recommended Mr H cease contributing to his existing personal pension (for which he was no longer eligible), but continue his £53.33 gross monthly contributions to an FSAVC, to be invested in the with-profits fund. The fact find also notes a discussion about *'the facility of company AVC & flexibility of FSAVC'*.

One of our adjudicators concluded that Mr H's complaint should be upheld in part. In summary she considered that:

- Added years would have been expensive for Mr H in 1993 (because they were not intentionally subsidised by the employer), and would have involved a long term commitment. Payments would have increased in line with Mr H's salary, whereas his monthly FSAVC contributions have remained level at £53.33 gross to date. This suggested it was unlikely added years were a suitable option for Mr H at the time.
- There was insufficient evidence that Prudential highlighted the likelihood of charges under the investment-linked in-house AVC scheme being lower than the FSAVC. To remedy this, Prudential should carry out a 'charges only' loss assessment to compare the charges levied on all of Mr H's contributions to the FSAVC policy, with those he would have been charged had he contributed to this in-house AVC option.

Prudential did not agree with the adjudicator's assessment, saying:

- In 1993 it was only required to complete fact finds and there was no requirement to issue further correspondence confirming why the FSAVC was being recommended.
- Its fact find mentioned that the representative had advised Mr H to join his employer's pension scheme for the *'obvious benefits'* – and it separately referred to the existence of the in-house AVC options.
- Mr H would have received full details of his occupational scheme, including the in-house AVC and added years. This would therefore have been fresh in his mind at that time and he would have been able to make an informed decision.
- Since Mr H had only just joined the scheme, it is questionable whether he would have yet been eligible to purchase added years.

- Another ombudsman's decision had recently resulted in a similar complaint against Prudential not being upheld.

As an agreement was not reached, the case was referred to an ombudsman for a final decision. Mr H's representative did not make any further comments.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have arrived at the same overall conclusions as the adjudicator – and for very similar reasons.

I note that neither Mr H nor his representative have offered further comment on why they consider (if they do indeed consider) that Mr H would have purchased added years. With the benefit of hindsight, this may now be seen as a better option. The performance of stock markets generally has been poorer than anticipated, and this has also affected the bonuses under Prudential's with-profits fund. But this was not foreseeable at the time of advice. I agree with the adjudicator that – more likely than not – the added years option would have been seen as expensive by Mr H, had it been considered in any further detail at the time.

In my view the outcome of this complaint centres on whether or not Mr H was adequately informed about the likelihood of lower charges in the investment-linked AVC scheme. At this point I would like to mention the other ombudsman's decision to which Prudential has referred. Whilst it is not strictly necessary for me to make comparisons, as each case is considered on its own merits, the differences in that case actually go to the heart of why I consider Mr H's complaint should be upheld.

Prudential should be aware that in the other complaint, the weight of the evidence suggested that its adviser *did* specifically explain to the customer that the charges under the in-house AVC were likely to be lower. But in Mr H's case, the only mention of the in-house AVC on Prudential's fact find was that the 'facility' was available.

In previously referring to the 'obvious benefits' of joining his occupational scheme, I accept that the adviser is likely to have made clear that Mr H would receive a pension linked to his salary and subsidised by his employer. However nothing I have seen on the fact find in this case makes it more likely than not, in my view, that the adviser specifically highlighted the lower charges generally available in an investment-linked in-house AVC scheme.

Prudential was a member of the self-regulatory organisation LAUTRO in 1993. The relevant LAUTRO rules, contained in the code of conduct to Schedule 2, stated that a representative should:

- *have regard to the investor's financial position generally and to any rights he may have under an occupational pension scheme (paragraph 8.1); and,*
- *give the investor all information relevant to his dealings with him (paragraph 6 (a)).*

I recognise that Prudential was unable to provide specific advice at the time on the in-house AVC option. I also appreciate Prudential has said that Mr H would have been provided with full details of the occupational scheme when he joined it. But I am not persuaded that, even if Mr H became aware of the in-house arrangements, he would have acquired specific knowledge that the investment-linked AVC would typically have lower charges. Prudential has not provided any further evidence to justify such a conclusion.

In order to discharge the obligations I have highlighted above, I consider Prudential's adviser would have needed to explain that an in-house AVC was likely to provide better value for money, and recommend that Mr H investigate it further for that reason. I have not seen sufficient evidence to persuade me it is likely that the adviser did so in this case.

As the adjudicator mentioned, I consider that Mr H's actions in joining his employer's scheme a short while beforehand indicate that he was simply following Prudential's advice. In my view it is likely that Mr H proceeded to take out the FSAVC because he was advised to do so by Prudential, without being adequately informed of the generic cost advantages of the in-house arrangement.

The fact find actually suggests that the reason given for preferring the FSAVC was that it offered some flexibility over and above the in-house arrangement. Yet the FSAVC was constrained to much of the same legislation that governed the in-house options at that time – and its charging structure may have made it inflexible too, if Mr H received poor value from discontinuing the policy early.

Furthermore I note that Mr H invested into the Prudential with-profits fund, which does not suggest a particular need for investment specialism which could only be met by the FSAVC. Cost is an important consideration in most purchases. So overall, I consider it unlikely that Mr H would have still chosen the FSAVC for its supposed flexibility, over and above the very real prospect of paying lower charges under the investment-linked in-house AVC scheme.

my final decision

I uphold Mr H's complaint in respect of failing to join his employer's investment-linked in-house AVC scheme only.

The Prudential Assurance Company Limited must compensate Mr H by following the regulatory guidance issued for the "FSAVC review" – and conduct a loss assessment on a 'charges only' basis. Redress, if applicable, should be paid to Mr H in accordance with this regulatory guidance.

Gideon Moore
ombudsman