

## complaint

Mr M has made a number of complaints about the money purchase AVC sold by The Prudential Assurance Company Limited. These are:

- the option to buy added years pension benefits in employer's pension scheme was not drawn to his attention;
- a leaflet issued by Prudential said the AVC plan could be used to increase the scheme pension;
- the leaflet also said he must receive a pension from the AVC at the same time as his employer's scheme benefits started;
- in October 2002 he was told he could complain to the Pensions Ombudsman but he was not told he could complain to the Financial Ombudsman Service.

## background

In 1995 Mr M wanted to boost his pension by paying additional contributions. He assumed that he would do this by paying extra into his employer's pension pot. He says that when he asked the scheme about increasing his pension he received a large amount of sales literature from the Prudential and a visit from their salesman.

Mr M paid into the AVC arrangement with Prudential. In 2002 he complained that the added years option had not been drawn to his attention. That complaint was investigated by Prudential. Mr M then referred his complaint to The Pensions Advisory Service (TPAS). The complaint was not upheld; although Mr M was told he could refer his complaint to the Pensions Ombudsman.

In 2002 Mr M took his benefits from the scheme. He says that he was advised not to buy an annuity at the time using his AVC fund. He bought an annuity in 2012.

Mr M says he was completely misled when he started the AVC. The letter he received from Prudential in 1995 did not mention the added years' facility. He was also misled by a statement in the leaflet that he was sent that said he could use the money in the Prudential scheme to purchase a range of benefits including, "*Increase your ... Scheme Pension*". When he retired he found that this was completely untrue and his only option was to buy an annuity.

Although the complaint was considered by TPAS in 2002, Mr M says that he is now aware that many AVCs were mis-sold by Prudential. He wasn't aware of this in 2002 and thinks his complaint should be looked at again now.

I reviewed the file and decided that we could look at Mr M's complaint. However, as the complaint had already been reviewed by TPAS I didn't think that this was a complaint we should consider. Neither did I think that there was new evidence that Mr M's policy had been mis-sold.

I did think we could consider Mr M's complaint that benefits should have been taken in 2002. But I didn't think this should be upheld as the rules about taking AVC benefits had changed in June 1999. I didn't think Prudential had done anything wrong at that time.

Mr M didn't agree with my conclusions. He said:

- I had said the complaint had already been considered by the Pensions Ombudsman. That was not true. He was advised by TPAS not to pursue the matter further.
- TPAS is an advice service not an investigation organisation. It did not inform him that there was evidence of systemic selling of these policies by the Prudential.
- He has complained about being misled by TPAS advice.
- I had not commented on issues he had raised that his signature was required to show added years had been discussed. Neither had I commented on the misleading literature about increasing his scheme pension.
- He had still not been told whether it was a legal requirement to take his scheme benefits separately or a Prudential administrative procedure. He does not accept that Prudential did not know he had taken his scheme benefits.

### **my findings**

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 have not changed my decision. I shall explain why.

I said previously:

*"should we consider the complaint?"*

*This type of complaint is normally dealt with by the Pensions Ombudsman. TPAS considered the complaint in 2002. It was not upheld and Mr M was informed that he could take the matter to the Pensions Ombudsman. As I have said above, I think we could consider the complaint. But, I have to think about whether we should consider it.*

*In my view, it would be unfair for Prudential to have to reconsider complaints that have already been reviewed by TPAS or the Pensions Ombudsman. I think there has to be a point at which the complaint is finished.*

*I also have to think about whether it is a good use of the resources of the Financial Ombudsman Service to deal with complaints that have been considered elsewhere. In my view, it is not. So I would dismiss this part of the complaint. My decision on this part of the complaint has nothing to do with the merits of Mr M's claim. It is simply that I do not think it can be right that he referred his complaint to another complaints handling body and then be able to refer the same complaint to this service some years later."*

Mr M has made points about the roles of TPAS and the Pensions Ombudsman. In my view TPAS explained why they did not think his complaint would succeed. He was given the option of referring the complaint to the Pensions Ombudsman. I think that was the time for him to pursue his complaint.

I don't think the fact Prudential had a number of complaints is new evidence. I am not persuaded it would make a material difference to the outcome of the complaint.

I remain of the view that it is not appropriate for this service to consider Mr M's complaint, which was referred to TPAS in 2002.

### **my findings – benefits should have been taken in 2002**

I think that this is a separate, but related issue to the mis-sale of the AVC. When the AVC was sold the benefits had to be taken at the same time as the benefits with the USS. Those rules change in 1999. The Pension Schemes Office issued PSO Update 54 in June 99 with details of the change.

The evidence I have seen is that the scheme wrote to Prudential in 2002 explaining that Mr M was taking his benefits. However, Prudential says that it didn't receive the letter. Mr M was taking early retirement and says he was advised not to take the AVC benefits. I haven't seen evidence to show that Prudential knew Mr M was taking benefits in 2002. As Mr M was taking his benefits early I do not think Prudential should have realised he was retiring at that time. It is not unusual for scheme members to stop paying AVC contributions. But that doesn't mean to say they intend to take the benefits.

I do not think that Prudential did anything wrong when Mr M took his scheme benefits in 2002. Based on the available evidence I would not uphold this part of the complaint.

### **my final decision**

I do not uphold complaint for the reasons given above.

Under our rules, I'm required to ask Mr M to accept or reject my decision before 4 December 2017.

Roy Milne  
**ombudsman**