

complaint

Mr G complains about the sale and administration of his Teachers Additional Voluntary Contribution (TAVC) plan by The Prudential Assurance Company Limited.

background

Prudential sold Mr G a TAVC plan in 2000. Mr G made contributions to the plan until 2011, when the plan was paid up and the proceeds were used to buy an annuity.

Mr G made a complaint to the Pensions Ombudsman in 2012 about being mis-sold his TAVC as it wasn't suitable for him. The pensions ombudsman considered the paperwork available from the time the TAVC was sold but didn't uphold his complaint. Since then, Mr G raised a number of other concerns to Prudential that he believes the pensions ombudsman did not consider.

Mr G believes Prudential acted fraudulently in its handling of his TAVC application, the administration of his TAVC and subsequent communication. His arguments focus on the following:

- a missing "other benefits form" and failure to tell the Teachers Pension Scheme (TPS) about his TAVC, which meant his TAVC wasn't amalgamated with his Free Standing Additional Voluntary Contribution (FSAVC) plan;
- Prudential couldn't prove it sent him annual statements;
- the delay in starting contributions to his TAVC;
- cheques for overpayments were not sent to him, bonuses applied incorrectly and charges applied to his TAVC; and
- Prudential's failure to send him key information

Prudential responded, explaining why it didn't uphold Mr G's complaints. Unhappy with Prudential's response, Mr G referred his complaint to our service. One of our investigators reviewed Mr G's complaint, but didn't uphold it. She explained that we could not consider issues the pensions ombudsman had already looked at.

Our investigator didn't conclude there was a financial loss caused as a result of Mr G not completing the other benefits form or a failure to inform the TPS about his TAVC. She explained it would not be for Prudential to arrange for Mr G's TAVC to be amalgamated with his FSAVC.

Our investigator explained why Prudential couldn't prove Mr G was sent annual statements.

Our investigator noted the letters sent to Mr G about the overpayments, and explained she wouldn't expect Prudential to provide evidence to show the cheques weren't cashed. Our investigator didn't uphold Mr G's complaints about charges and bonuses applied to Mr G's TAVC and supplied him with Prudential's brochure, which explained its agreement about charges and bonuses.

Our investigator looked at Mr G's concerns about his communication with Prudential. She didn't conclude that Prudential had acted fraudulently. Mr G was directed to the Information Commissioner's Office (ICO) if he had concerns that Prudential withheld his personal information.

Mr G disagreed with our investigator's opinion, reiterating his previous complaints about Prudential. So this has come to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr G has gone to great lengths to detail the background to his complaint and each individual failing on Prudential's part, which he believes paint a picture of fraudulent activity. I have considered all of Mr G's submissions. But because of the informal nature of our service, I've focused on what I consider to be the crux of his complaints. And where the pensions ombudsman has already considered events and similar arguments to those Mr G has raised as part of this complaint, I've not reviewed these again.

a missing "other benefits form"

Mr G's TAVC application says it was a requirement to complete an "other benefits form" if the applicant had an FSAVC. It said a failure to provide the form will result in the application being rejected.

Mr G says he didn't provide an "other benefits form", which shows Prudential acted fraudulently in his TAVC application. He goes on to say that because the form wasn't provided, the TPS wasn't notified of his TAVC and it wasn't amalgamated with his FSAVC.

Prudential say the form wasn't essential to set up the TAVC, and it was aware of Mr G's FSAVC. Prudential also say its standard process is to notify TPS of a member's TAVC plan.

It's possible Mr G didn't complete the other benefits form. But Prudential would have known the TPS would need to be notified of an additional plan. And in the absence of any evidence Prudential didn't notify the TPS, I think it's likely Prudential followed the established practice of notifying the TPS. I've not been made aware that Prudential should have notified the TPS of Mr G's FSAVC, as that was likely to be the responsibility of the FSAVC provider when it was taken out.

Whilst Mr G says he lost out on an opportunity to amalgamate his TAVC with his FSAVC, Prudential couldn't have advised him to do this or arranged this for him as it could only advise on products provided by Prudential. Mr G was aware he had a TAVC as well as an FSAVC, held with another provider, so the Prudential couldn't have provided advice on this. However, there's no evidence to suggest Mr G sought advice about his FSAVC and it wasn't Prudential's role to give advice that wasn't requested.

I've not seen evidence that any failure to tell the TPS about Mr G's TAVC caused a loss either. It doesn't appear he was contributing more than the maximum allowed to his pensions, TAVC and FSAVC. I note Prudential's letter of 27 June 2016 referred to "a letter from the Teacher's Pension Scheme" which "expressly states that there are "no implications for Teachers Pensions (TP) not having been informed of your AVC". So even if I were to conclude Prudential made an error, it doesn't appear that there's any loss I could ask Prudential to compensate Mr G for.

Mr G has made reference to other paperwork he thinks was missing from the sale, including a missing "ready reckoner". Amongst other perceived failures, he says Prudential failed to make him aware of the option to buy past added years. Mr G says these paint a picture of systemic failures and fraud in the sale of his TAVC.

The sales process was considered in some detail by the pensions ombudsman in December 2012. The pensions ombudsman noted there were disputes about the paperwork completed at the time of the application. The ombudsman said:

"You also say that you were sold the product by default having received what you consider to be false information and inflated promises that did not exist in reality".

The pensions ombudsman has already considered Mr G's concerns about the suitability of the TAVC against the background of his existing concerns about the paperwork and application process. It would not be appropriate for me to review the sales process further.

annual statements

Mr G says he didn't receive annual statements. As he didn't receive the statements, he didn't have the opportunity to see how his AVC performed and stop his contributions.

The decision reached by the pensions ombudsman in December 2012 explained the following to Mr G:

"I appreciate that you are disappointed with the eventual value of your AVC fund and the annuity it has purchased for you. However, I am satisfied that any shortfall against your expectations is as the result of investment performance and not maladministration. I also note that you contributed to the TAVC for more than ten years, during which time you would have received annual statements providing you with an indication of the performance of your fund. If you were dissatisfied with the investment you had the option to switch at any time."

The Pensions Ombudsman has already commented on the performance of Mr G's fund, and the possibility that he might have switched funds, so I won't consider the issue further. I can consider only the new issue of whether Mr G would have stopped contributing to his fund had he received his statements.

Mr G bought his annuity in 2011, which is when Prudential say his last statement should have been sent. I would have expected Mr G to ask Prudential about any missing statements sooner than he did. Prudential no longer has copies of Mr G's statements, and our investigator has explained the processes Prudential says it would have followed at the time. I don't find it surprising or concerning that Prudential no longer have historic statements, given more than six years have passed since his TAVC was paid up. On

balance, I don't think there's enough evidence to show the statements weren't sent. It follows that I've don't uphold this aspect of Mr G's complaint.

delay in making contributions to the TAVC

The letter sent to Mr G by the pensions ombudsman in September 2012 says he signed the TAVC application form on 22 May 2000. But Mr G's first contribution into his TAVC wasn't paid until 7 September 2000. Mr G thinks his contributions should have started sooner.

It's likely Mr G's payslip from his employer would have shown whether contributions to the TAVC were being taken and if Mr G thought his TAVC should have been set up sooner, I would have expected him to raise this with Prudential or his employer at the time. It's going to be difficult to tell, some 18 years later, whether the employer would have been able to start the contributions any sooner.

In addition, I should clarify this isn't money Mr G missed out on – Mr G had the use of the money that was not deducted from his salary to pay a contribution into his TAVC. It's possible he could have missed out on a small amount of tax relief and growth if he had made a contribution in, say, June 2000. But he would likely have been taxed on most of the proceeds of the TAVC when he received it as a pension – and I note he's complained separately that the performance of the TAVC was poor in any event. But I don't think this is a significant loss we could quantify even if I were to conclude there was an error.

missing funds

charges

In 2000, Prudential applied a charge of 1% to Mr G's contributions, which meant 99% of his contributions were invested in his TAVC. Prudential say Mr G would have been provided with a copy of the TAVC guide at the point of sale. Page 3 of the booklet lists the charge is 1% of the contribution. But Mr G says he wasn't made aware of the charges that would be applied to his TAVC in 2000.

I've considered the letter sent to Mr G by the pensions ombudsman in September 2012. The letter says the application form was signed by Mr G on 22 May 2000. The application included a declaration which included the following statement:

- *"I have received "Your Personal Quotation" and the Member's brochure "An easy way to top up your pension" paying particular attention to the section entitled 'Key Features' on pages 2 and 3"*

The brochure, which Prudential have provided a copy of, does indeed list the proportion of contributions that will be invested into the TAVC. The pensions ombudsman found that Mr G signed a declaration confirming he'd been provided with this booklet.

In Mr G's submissions to our service, he has said it has come to light that Prudential are taking nearly 10% in charges. There are likely to be ongoing costs to run the TAVC in addition to the one-off amount taken from each contribution set out above. Prudential deducts ongoing charges from the bonuses applied to Mr G's fund and I've not been provided with details of any specific charges Mr G thinks were applied incorrectly.

bonuses

Mr G says the bonuses applied to his TAVC dropped dramatically from 2001. Prudential say all bonuses were applied correctly in line with its bonus declarations. Having reviewed Mr G's contributions, the bonuses applied increased year on year from April 2001 and Mr G hasn't provided evidence to show the bonuses were calculated incorrectly. However, our investigator has explained to Mr G that any remaining concerns about the performance of his fund should be directed to the Financial Conduct Authority which (under its predecessor, the FSA) supervised Prudential's management of its with-profits fund at the time.

missing cheques

Prudential says it sent Mr G two cheques to return overpayments to the TAVC – the first was sent in June 2010 and the second was in October 2010. Mr G doesn't seem to dispute the dates of the letters Prudential provided to show the cheques were sent, and the cheques appear to have been sent to his correct address. Mr G still says Prudential should prove the cheques weren't cashed – but I don't think the responsibility here should lie with Prudential. If Mr G believes he didn't receive the cheques, I'd expect him to provide some evidence to support his claim. I don't think it's reasonable to ask Prudential to check its records, particularly as it's unlikely it would have records going back over seven years.

communication

Mr G thinks Prudential withheld key information from him and acted fraudulently throughout. Mr G has been directed to the ICO for any concerns that Prudential withheld his personal information.

Having reviewed the history of this complaint, it's clear Mr G feels very strongly that he should not have been sold his TAVC.

Mr G bought his TAVC 18 years ago. He paid up his TAVC and bought an annuity in 2011. Throughout the years, Mr G has continued to bring new complaints about his TAVC to Prudential. Because we're dealing with events so long ago, it was inevitable that some information would no longer be held, or easily retrievable, by Prudential. I think Prudential has made efforts to respond to these long after it was obliged to, given the time that's passed since Mr G paid up his TAVC.

I know my decision is likely to disappoint Mr G. I can see that dealing with Prudential has caused Mr G a lot of frustration, particularly against the background of his personal circumstances. Having considered Mr G's complaints made over the many years about his TAVC as thoroughly as possible, I would hope Mr G feels able to draw a line under his past dealings with Prudential.

my final decision

For the reasons explained above, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 March 2019.

Vicki Blackwood
ombudsman