

complaint

Mr J has complained to The Prudential Assurance Company Limited about the sale of his Local Government Additional Voluntary Contributions (LGAVC) pension plan.

background

Mr J took out a LGAVC plan in 1999. At the time, he was employed and a member of the Local Government Pension Scheme (LGPS). On joining the pension scheme, all members are given a scheme booklet, which explains the different options available to them to increase their benefits.

The LGAVC application form, signed by Mr J, indicates he wanted the LGAVC to increase his pension benefits. The LGAVC plan was set up with a contribution level of 9% of Mr J's salary and was invested in Prudential's with-profits fund. The last contribution made to the plan was in March 2006.

He complained to Prudential in 2018 that the LGAVC was mis-sold. Prudential didn't agree and Mr J brought his complaint to this service for an impartial review. Specifically, Mr J complained that:

- at the time he wasn't invited to have a full review of his pension options
- he can only take the pension as an annuity – not a lump sum
- he will be over 100 before he makes any profit out of the pension.

One of our investigators reviewed the complaint and concluded that Prudential hadn't done anything wrong. Mr J didn't agree and asked for an ombudsman's decision.

Mr J added that he was not being given the same options as other Prudential customers. He also said that the annuity offering was such a poor option that Prudential would profit on his death long before the annuity fund value was paid out.

Prudential made no further comment.

The complaint has now been passed to me to decide.

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'm not upholding the complaint. I will address each point in turn below.

the plan was mis-sold because he was not offered a full financial review

Mr J says that at the time he took out the LGAVC he wasn't invited to have a full review of his pension options. I've no doubt that this is Mr J's honest recollection of what was said to him at the time. But the sale took place over 20 years ago and I do need to take account of the fact that memories do tend to fade with time. And the documents provided from the time of sale suggest Mr J didn't want a full financial review, even if it was offered. I say this because the signed declaration on the application states:

Prudential's representative has clearly explained the two alternative methods available to me when considering the payment of additional voluntary contributions. I confirm I have chosen the following method:

Completion of a Personal Financial Review.

Prudential's advice is based on the information I have given. If the information I have given is incorrect or incomplete, Prudential may not be able to give me the best advice

Completion of the application form only.

Because Prudential has not completed a Personal Financial Review, I understand they are unable to give best advice. Any advice will relate only to the payment of additional contributions.

The box next to the second option 'Completion of the application form only' was ticked. I think this demonstrates that there likely was discussion around the methods of review and Mr J was made aware that he had the option to complete a full financial review. But he opted not to do so on this occasion.

This means Prudential couldn't advise Mr J on any retirement product other than the payment of additional voluntary contributions. But Prudential was required to make Mr J aware of the alternative option he had for topping up his retirement provision, that being the LGPS' in-house 'added years' option. I can see Mr J signed the declaration immediately above a statement which says that he's "been made aware of the 'Added Years' option". So I think it's most likely that Mr J was made aware that past added years were an alternative option for him to top up his retirement provision. And if it hadn't been explained, I would've expected Mr J to query this, before signing the declaration.

the plan was mis-sold because benefits must be taken as an annuity

At the time the LGAVC was sold, and up until the introduction of stakeholder pensions in 2001, there were only a limited number of options available for members of an occupational pension scheme (OPS) to top up their retirement provision. All employers operating an OPS had to provide an in-house AVC option. These were generally defined contribution plans – like the LGAVC. But some schemes, like the Local Government Pension Scheme, also offered its members a defined benefit option called 'added years'. If an OPS member didn't want to contribute to the in-house options, they could take out a Free Standing Additional Voluntary Contribution (FSAVC) plan instead.

I appreciate Mr J is unhappy he is not able to take benefits of his AVC as a lump sum – presumably under the pension freedom rules – and feels he is being treated differently than other Prudential customers. But this is because the LGAVC is treated as part of the main LGPS. And even though the LGAVC fund is held separately from the main scheme, Mr J does not have a separate plan with Prudential.

Instead, Prudential operates the LGAVC scheme in conjunction with Mr J's main LGPS. This would have been explained to him at the time he took out the plan. And Mr J signed the declaration which said in part "*I understand that the AVC arrangements are governed by the provisions of the Local Government Pension Regulations.*" He would have also received the Key Features document, a personal quotation and the members' booklet, which would have also explained how the plan worked. Mr J signed the application confirming he'd received these documents.

The introduction of pension freedom rules in 2015 mean that it is now permissible for pension benefits to be taken as a lump sum. But in 1999 when the plan was sold, this was not an option and Mr J took out the LGAVC on this basis. So I can't agree that the plan was mis-sold for this reason.

When Mr J comes to retire the value of his LGAVC will be added to his main scheme benefits and 25% of the total value can be taken as tax-free cash. If the amount of tax-free cash allowed is equal to or greater than the value of the LGAVC fund, in theory, the whole amount of the LGAVC can be taken as tax-free cash. This is dependent on a number of factors and differentials, some of which will only be known at the time Mr J chooses to retire.

Prudential explained if the main LGPS agrees, it would be possible for Mr J to transfer his LGAVC to another provider and exercise the options now available under pension freedoms.

the plan was mis-sold because he will be over 100 before he makes any profit from it

Mr J said that an annuity is bad value for money. I have some sympathy for Mr J's position here as I understand his disappointment that his funds will provide a much lower income now than his original illustrations in 1999 projected. But I don't think Prudential has acted unfairly here – or that the pension was mis-sold.

When Mr J started the LGAVC plan, he was provided with illustrations showing what his plan might be worth at retirement. These figures would have been based on assumptions set by the regulator at the time. Unfortunately, the financial market is not as robust as when the LGAVC was started, and annuity rates currently being offered are lower than what was expected at the time. But, as with any market based investment, the amount Mr J would receive from the LGAVC was not guaranteed. And having carefully considered everything that's been provided, I think Prudential made Mr J aware of this at the time the LGAVC was sold.

An annuity is purchased with a lump sum to provide a guaranteed income for life. The amount of income that can be purchased with a pension fund depends on a number of things, including: the size of the pension fund, the annuity rate, the type of annuity chosen (joint life or single) and the options selected for the annuity. If tax-free cash is taken before purchasing an annuity, the annuity offered will be based on the reduced fund value and so will likely be lower. Most importantly, the annuity rate offered will be different for different people and will vary from pension provider to pension provider. So it's possible that Mr J may be offered a higher annuity with another provider. Prudential explained to Mr J that he could take the funds built up in the LGAVC and purchase an annuity elsewhere. This is referred to as taking the 'Open Market Option' (OMO). Furthermore, as explained above, it may be possible for Mr J to take his entire LGAVC to another provider to make use of the pension freedom options.

my final decision

For the reason explained above, I don't uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 November 2019.

Jennifer Wood
ombudsman