

complaint

Mrs E's complaint is that she was inappropriately advised by The Prudential Assurance Company Limited from 1993 onwards to pay contributions to a Free-Standing Additional Voluntary Contribution (FSAVC) plan instead of the in-house AVC scheme that would have been available to her.

background

Mrs E met with an adviser in April 1993 and a fact find and application form were completed and signed. This recorded that the adviser recommended an AVC with a £40 gross monthly contribution to make up for a shortfall in pension on retirement. The adviser wrote, *"I also advised that this facility is available in her existing [employer's] scheme, she was aware of this and stated she did not want to contribute to her works scheme"*.

In August 1994 Mrs E was advised to increase her contributions and this happened once more in June 1997, when the gross amount reached about £121 per month. At this point the adviser recorded *"I have given a copy of the Leaflet 'AVC Some Important Features' and explained the contents to the client"*.

Prudential responded to Mrs E in December 2012 and did not uphold her complaint. Amongst other reasons, it said that Mrs E was aware of the in-house AVC but did not wish to contribute to it. It also said that the Prudential representative was only able to give advice on Prudential products.

The complaint was investigated by one of our adjudicators who recommended that the complaint should be upheld. She considered that Prudential's adviser did not discuss the likely difference in charges between the FSAVC and the in-house AVC, nor did he encourage investigation into Mrs E's in-house AVC option.

Prudential did not agree with the adjudicator's assessment. In particular it said:

"Before 1996 there was a requirement to point out the availability of the in house AVC, explain it was likely to provide better value and recommend considering the AVC. Given the comments on the 1993 fact find...she was aware of this and said she did not wish to contribute to her works scheme. On balance it is more likely this was covered."

Prudential also considered that the leaflet Mrs E was provided with in 1997 put her in an informed position. This two-page leaflet was broken down into sections covering taxation, fund selection, flexibility and so on. The section entitled 'costs' at the foot of the first page read in part as follows:

"It is difficult to be specific with regard to the differences in costs between AVCs and FSAVCs as product structures vary considerably. The cost of running your AVC or FSAVC is important as it will affect your final benefits, however you should also take into account other factors such as the funds you are investing in and the financial strength of your provider to be able to select the appropriate investments that make up the funds in the case of 'with-profits' plans.

In many cases the employer bears some, or all of the administration costs whereas in the case of an FSAVC these costs are borne by the customer."

As agreement could not be reached the case was referred to an ombudsman for a final decision. Mrs E's representative did not make any additional 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.

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)).*

The application form for the FSAVC was signed and dated on the same day as the fact find on which the adviser had recorded that the AVC option had been discussed. Mrs E worked for a relatively small employer and it is unlikely that the adviser would already have known very much about the in-house scheme, such as its cost. However I consider that in order to discharge his obligations under the LAUTRO rules, the adviser would have needed to explain that AVCs were likely to provide better value for money – and recommended that Mrs E look further into the in-house scheme first.

I note that the adviser recorded Mrs E did not want to contribute to her works scheme – but he did not record that he had explained the likely benefit of at least considering that option to Mrs E. The cost is usually the principal consideration in most purchases – and Prudential has not provided any evidence to indicate that there were any other – perhaps less quantifiable, but more compelling – reasons why Mrs E preferred the FSAVC.

In particular I note that Mrs E 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. No further evidence emerged at the time of Mrs E making her 1994 increment to the policy. In the absence of such evidence I consider it more likely than not that Mrs E chose the FSAVC without being fully aware of the potential cost disadvantage in doing so.

If Mrs E had been put on notice to consider the in-house scheme for this reason, proceeded to do so and found out that it was cheaper than the FSAVC, I consider it likely that she would have then chosen the in-house option. Whilst I do not have details of the relative cost of the two arrangements, the regulator introduced guidance for an industry wide FSAVC review in 2000 which covers this issue.

The guidance provides that the overall level of charges under the in-house scheme and the FSAVC are compared by reference to the same 'benchmark' index of investment growth – and any loss suffered by the consumer on contributing to the FSAVC on that basis is paid to them as redress. I consider that conducting such a review of Mrs E's case – on a so-called 'charges only' basis – would represent fair and reasonable redress in this case. If the charges in the in-house scheme turn out to be higher than the FSAVC, which might in turn suggest Mrs E would not have contributed to it, then no redress will be payable.

Prudential has referred to the comparison leaflet Mrs E was given at the time of her 1997 policy increment. I accept that this leaflet does refer to the likely lower charges of the in-house arrangement – but it is important to recognise that Mrs E had already decided to

contribute to a FSAVC in 1993 and again in 1994 on Prudential's advice. I am not necessarily persuaded that someone in Mrs E's position would then have chosen to leave one scheme and start another even if the level of information provided in 1997 had been better.

In particular I am drawn to a comment made on Mrs E's 1994 fact find which reads, *'I have advised her that there is no surrender value on this contract and transfer values in the early years may be less than premiums paid'*. This suggests to me that Mrs E was told that her FSAVC had what would be termed a 'front-loaded' charging structure – and much of the cost in setting up the policy was borne at the beginning. That being the case, it might be less likely that there was as much of a cost differential *in future* between the two arrangements from 1997 onwards.

So overall, I am not persuaded that Mrs E's decision to continue contributing to the FSAVC in 1997 has a significant bearing on how she might have decided in 1993. If the initial costs of the FSAVC in 1993 meant it was likely to be more expensive than the in-house arrangement, I consider Mrs E would have begun contributing to the in-house scheme – and continued to do so in 1997. On that basis the FSAVC review calculation the adjudicator has asked to be undertaken will identify whether overall the FSAVC or the in-house scheme had the lowest charges throughout, and provide redress accordingly.

my final decision

I uphold this complaint.

I direct The Prudential Assurance Company Limited to carry out a loss calculation in accordance with the methodology set down by the regulator for the industry wide review of FSAVC policies. This calculation should be carried out on a 'charges only' basis and any redress paid to Mrs E accordingly.

Gideon Moore
ombudsman