

Complaint

Ms W complained that Scottish Amicable unsuitably advised her to start a Free Standing Additional Voluntary Contribution (FSAVC) with themselves in 1994. Responsibility for this now lies with the Prudential Assurance Company Limited.

Background

Ms W joined the NHS pension scheme in August 1989. On 1 August 1992 Ms W started an FSAVC with another provider (not Scottish Amicable or Prudential). At the time she was a Doctor working for the NHS. She said she wanted to retire at 50; albeit the NHS scheme was set up to enable her to take benefits aged 60.

In December 1994 Ms W started an FSAVC with Scottish Amicable (now Prudential). It was around this time she submitted a complaint to the provider with whom she'd started the first FSAVC.

More recently, Ms W with the assistance of a representative, complained about both plans. These complaints have been considered separately. But I consider some of the historic information in relation to the other FSAVC is of some relevance to this complaint.

The application documents in respect of the Scottish Amicable FSAVC started in 1994 recorded the following:

- Ms W worked as a Doctor for the NHS and was paying into the in-house pension scheme.
- The NHS scheme administrator's details including their contact information were provided on the application form.
- Ms W had previously met the adviser and had then asked about starting an FSAVC.
- She wanted to retire at age 55.
- She was engaged to be married.
- The plan was started with monthly contributions of £100 to increase at 10% a year.
- No FSAVC transfer was taking place when this plan was started.
- 6% of earnings were being paid into the NHS scheme as a personal contribution.
- Discussions regarding overfunding took place and were used to inform the level of contribution selected.
- No death benefits/ spousal benefits were required.
- Her monthly expenditure set out her mortgage and life assurance payments and that she was making no pension contributions.
- On Scottish Amicable's fact find document from the time, under the section on pension arrangements, her membership of the NHS final salary scheme was recorded; but no other pension arrangements/ assets were recorded.
- She confirmed she was contracted out.
- It was indicated that no existing contract would be surrendered or made paid up.
- In the section where details (providers, contributions etc.) of surrendered or paid up contracts, arrangements or pensions are requested- 'N/A' has been recorded.

She accepted this recommendation and the plan started on 26 December 1994 with gross monthly contributions of £100 invested in the with-profits fund. The retirement date was set to age 55.

In 1995 Ms W expressed dis-satisfaction with the advice and product provided in relation to FSAVC she had started in 1992. In a complaint document completed by Ms W in December 1995 she indicated the following:

- She was a member of her company (NHS) scheme at the time of starting her 1992 FSAVC.
- At the time of starting the 1992 FSAVC she didn't have any previous or existing FSAVC.
- She hadn't known there was an in-house AVC (additional voluntary contribution) option when she started her 1992 FSAVC.
- At the time of starting the 1992 FSAVC she intended to retire at the age of 50.
- She had ceased making contributions to the 1992 FSAVC as she was unhappy with the product/ advice; specifically, she said the contributions were too high in proportion to her income and she was unhappy with service provided. She added that she had since joined another scheme.
- She also thought the providers of the 1992 FSAVC had given her the wrong information.

In February 1996 the providers of the FSAVC started in 1992 wrote to Ms W. Their letter concludes that based on her occupation and the scheme to which she already belonged it may have been more appropriate for her to have joined her in-house (NHS) AVC scheme. They suggested she might want to review her pension arrangements and also suggested she contact the NHS scheme administrators for advice.

They offered to refund contributions plus interest, to be paid into her in-house scheme. Ms W replied that on the "*advice of her financial adviser*" she would like a copy of her paid up schedule for the FSAVC and that she no longer intended to make contributions to the plan; but she said that on advice she intended to leave the plan where it was.

Ms W's representative has told us that Ms W contributed to her Scottish Amicable FSAVC from 1994 until 2006. It appears monthly contributions had reached £194.86 by 2006.

In Ms W's recent complaint about the plan she started with Scottish Amicable it has been said:

- Ms W was not given sufficient information about her in-house AVC scheme alternative that would have enabled an informed comparison.

In her complaint she said the adviser didn't refer to her in-house scheme, which would allow additional contributions to be made; nor that this was likely to be better value for money.

- It was said the adviser didn't set out the difference in charges between an FSAVC and in-house scheme; nor the difference on investment options or buying previous years of service. It was also said the added-years option wasn't referred to and that this would have been a much better option for her. As she was risk averse, this and

other benefits to the added-years/ in-house option would have suited her attitude to risk better.

- It was also said the adviser failed to conduct analysis of the in-house scheme or refer Ms W to the in-house scheme administrators for more information.

Prudential didn't agree. Prudential say the product information, illustration and plan documents provided at the time gave sufficient information; including on charges. In addition the fact find notes record that relevant conversations took place at the time the plan was started. And the investment fund selected was based on her cautious attitude to risk.

An investigator at this service didn't uphold the complaint. In her view she set out details of the historic framework as well as her reasoning. She referred to the regulatory update 20 (RU20) issued by the then industry regulator in May 1996, in respect of the sale of AVCs and FSAVCs. The update set out that:

A representative should not recommend his own company's FSAVC until he has:

- *drawn the client's attention to the in-scheme alternative;*
- *discussed the differences between the two routes in generic term; and*
- *directed the client to his employer or to the scheme trustees, for more information on the in-scheme option.*

Before this, financial businesses should have followed the relevant rules of the previous regulator. The investigator set out that the following rules applied from 29 April 1988. A business should:

- Have regard to the consumers financial position generally and to any rights they may have under an occupational pension scheme; and
- Give the consumer all information relevant to their dealings with the representative in question.

So representatives when advising, such as the one seen by Ms W, should have:

- pointed out that AVCs were available
- explained that AVCs were likely to provide better value for money; and
- recommended considering the AVC.

Having considered the available evidence, the investigator agreed with Prudential that their advisor did these things at the time and met the regulator's requirements.

Ms W said the adviser did not discuss the differences between FSAVCs and AVCs and in particular the difference in charges. She also said the adviser didn't mention the NHS scheme allowed additional contributions and did not tell her this would likely be better value for money.

The investigator thought the fact find document from the time demonstrated that the representative provided general information about AVCs, and discussed the generic differences between FSAVCs and AVCs. And if Ms W had been unclear on the relative merits and differences of AVCs and FSAVCs, the investigator thought it was reasonable to have expected her to question this further at the time.

The investigator thought the evidence demonstrated the adviser talked through the AVC option in some detail. She thought the adviser had discussed the management charges and told Ms W that the charges on an AVC would no doubt be lower than the FSAVC option.

And the investigator accepted Ms W had felt the flexibility and better potential investment growth were also of value and believed an FSAVC could offer these benefits. So that, although the FSAVC plan was more expensive than an AVC, it didn't necessarily mean the plan was unsuitable for her.

The investigator noted that in the recent complaint letter Ms W's representative believed that at the time of sale an adviser had a duty to analyse the in-house AVC and provide illustrations comparing the FSAVC and in-house AVC. But she set out that Prudential's adviser, being a tied representative was not required to carry out a detailed, personalised, comparison between the FSAVC and AVC. Only Ms W's employer, not Prudential, could provide information about the in-house options available.

So the investigator was satisfied Prudential fulfilled the obligations when advising Ms W to take out the FSAVC.

She went on to conclude the investment had reflected Ms W's attitude to risk; so she was satisfied the plan met her needs and objectives at the time of the sale.

Ms W's representative didn't agree with the view and replied with the following main points.

- It had been inaccurate and untruthful for Ms W to have been told the FSAVC had "*potentially better growth*" and "*more flexibility*" than the in-house option.

It's not understood how this could be possible as it's suggested it was the same basic product as the in-house option but with lower charges and thus the potential for better growth.

- At the time of sale, the FSAVC had no greater flexibility than the in-house option (other than potentially being more easily ported if Ms W changed employer. But as an NHS doctor, this was most unlikely).
- At the time of sale, Ms W would not have been able to access her FSAVC benefits without leaving service first. The FSAVC would not have been sufficient on its own to support her if she had done that.

The investigator considered these points but was not persuaded to change her opinion and replied in summary:

- Even if Prudential were an administrator of the NHS AVC scheme, it would have been different areas; and the tied representative only had a duty to point out that AVCs were available, explain that they were likely to provide better value for money and recommend considering the AVC.

As tied representatives, they could not advise on the NHS AVC scheme and were not required to go into any further detail such as discussing added years. They could only refer the consumer to their employer or pension scheme for further information.

- The issue of whether the FSAVC benefits alone would have been enough to support Ms W was a wider question than the complaint about the suitability of the FSAVC

The investigator also set out that the view had been that the potential for better growth related to the fact that in general FSAVC schemes have a wider range of investment choices so were had been believed to offer a potential for better growth. And the fact find said Ms W felt the flexibility and better potential investment growth were of greater value.

So she hadn't changed her thinking which she thought was consistent with the requirements or a tied adviser at the time.

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 agree with the investigator, for broadly the same reasons.

I appreciate this will disappoint Ms W, but I think Scottish Amicable did what they were required to do at the time. I've looked with care at everything that has been provided and all that has been said. But having looked at the documents from the time, I think the requirements were met by the adviser.

My thinking in this is supported also by what Ms W said in her complaint to the provider of the earlier FSAVC in 1995. I think the information Ms W provided in this complaint, as well as the response received at the time, demonstrates her attention had been sufficiently drawn to there being an in-house option and the potential advantages and value in finding out more. Indeed the response at the time suggests that in relation to the other plan, it was likely she would be better off as a member of the in-house scheme.

I appreciate it's said that the Scottish Amicable representative advised Ms W on this. But I think the words used in the documents from the time are all clear enough to have sufficiently informed and alerted Ms W; not only to what she was required to be told but also some of the other factors that she might want to find out more about.

I think this complaint is particularly fact sensitive, given the complaint that was being made about the earlier FSAVC, around the time this one was being started. It might be said that the complaint made in 1995 was about the same type of plan and was made on the same terms that she now complains about. So I think at the time she would have been particularly alive, to the requirements and to the relevant issues.

I understand what's said about the difficulty accepting that the FSAVC had the potential for better growth and more flexibility. But to an extent that's with the benefit of hindsight and the knowledge of what Ms W might have been able to achieve in-house. Here I am looking at what was required at the time and the thinking at the time. It's right to say the ability to make personal investment choices, potentially improve growth, and have greater flexibility were considered to be of value; performance and investment growth hasn't met the levels that were considered achievable at the time.

Neither Ms W nor Scottish Amicable would have been expected to know the details of the in-house option at the time; nor would they have been expected to conduct a comparison. But here I accept that it would have been in the forefront of her mind that her in-house option may have valuable benefits and that it may be of value for her to explore and understand these further.

Overall I accept the tied adviser did what was required at the time, and I think Ms W had her attention drawn to the necessary information.

Final decision

So for the reasons given I don't uphold Ms W's complaint against The Prudential Assurance Company Limited. Under our rules, I'm required to ask Ms W to accept or reject my decision before 27 March 2020.

Louise Wilson
ombudsman