

complaint

Mr T complains about advice he was given in 1997 by The Prudential Assurance Company Limited (Prudential) to take out a Free Standing Additional Voluntary Contributions (FSAVC) policy.

background

The FSAVC policy was arranged in 1997. At the time Mr T was a member of his employer's pension scheme. Mr T contributed £40 a month before tax relief to the FSAVC until October 2010 when his contributions ceased. The value of the policy was transferred to another provider in 2016.

Mr T, through his representative, complained to Prudential in 2017 about the sale of the FSAVC. Prudential didn't uphold the complaint. It said Mr T had been given information about the alternatives – his employer's in-house Additional Voluntary Contributions (AVC) scheme. Prudential didn't agree the policy had been mis sold or was unsuitable for Mr T.

Mr T referred his complaint to us. On his complaint form he said he was advised to take out a FSAVC rather than join his employer's AVC scheme or other in house pension top up arrangement. Although Prudential had said he was told about the alternative options, the information he was given was generic and too complex for a lay person to understand. Mr T had requested an explanation of his employer's pension scheme and information about early retirement. Prudential's adviser should have told Mr T to investigate his options before recommending a FSAVC plan.

At the time, when Mr T changed jobs and joined his new employer's pension scheme, he was also paying into a personal pension. Instead of referring him to his employer the adviser switched Mr T's contributions from the personal pension into a FSAVC plan.

Our adjudicator didn't uphold the complaint. She said Prudential had acted in line with Regulatory Update 20 (RU20). The adviser had made Mr T aware of alternatives to the FSAVC policy, given him generic information about the in house AVC and told him that specific information was available from his employer or the scheme trustees. The adjudicator thought Mr T was made aware that FSAVCs could be more expensive than AVCs.

The adjudicator didn't think the FSAVC policy was unsuitable. Mr T wanted to make additional provision for his retirement. He couldn't have continued to contribute to his personal pension and, given he'd been told about in house AVCs, the FSAVC was a reasonable option. A with profits fund (the only investment option offered) wasn't unsuitable for Mr T, given his medium attitude to risk.

Mr T's representative didn't agree. He said:

- The fact find (dated August 1996) records Mr T wanted '*an explanation of his company scheme*'. Mr T had changed jobs and was eligible to join his employer's pension scheme but the adviser was unable to advise him about that.
- The leaflet Prudential had said had been issued was dated 1998 and so couldn't have been given to Mr T.
- It didn't refer to added years and the adjudicator hadn't mentioned that in her view.
- There was nothing to support that Mr T had a medium attitude to risk.

- Mr T had a personal pension with Prudential which he'd been paying for several years. When he changed jobs the adviser simply advised Mr T to cease his current payment and pay into instead a replacement FSAVC policy.
- No fact find documents were given to Mr T so he wouldn't have known that no leaflet had been given to him.

Prudential was asked to comment. It said:

- The fact find was dated 4 July 1997. The FSAVC proposal was completed the same day.
- The leaflet didn't post date that – the date 1998 is a fax date, not the date the leaflet was produced.
- Its representative and literature didn't have to mention added years – it wasn't a Prudential product.
- The fact find was completed based on information and answers given by Mr T. It supports his attitude to risk. There's nothing to suggest he didn't have a reasonable financial awareness or a medium attitude to risk. His contributions were invested in with profits, so low to medium risk.
- The fact find doesn't record that Mr T had changed jobs. It says he'd been with his employer for nine years but in 1997 he'd joined his employer's pension scheme so he was no longer able to contribute to his personal pension. The representative did make Mr T aware of the important features of the merits of an FSAVC and in house AVCs. Mr T decided to start an FSAVC plan.

The adjudicator shared what Prudential had said with Mr T's representative. The adjudicator said she was satisfied the sale had taken place in July 1997 and had been in line with the regulatory requirements at the time.

Mr T's representative referred to a decision of the Pensions Ombudsman which appeared to challenge Prudential's view that its advisers couldn't discuss added years or suggest that the consumer research that option.

Mr T's representative said that when Mr T told the adviser he'd changed jobs the adviser should have ensured Mr T obtained a scheme booklet and fully investigated the options available to him. Instead the adviser's focus was simply to convert the existing personal pension contributions (which Mr T was no longer eligible to make) into a FSAVC contract, so retaining the business and avoiding any potential commission clawback. Prudential had confirmed the fact find and application were completed on the same day – so there was no expectation that Mr T explore the alternatives.

I've seen there were further exchanges between the adjudicator and Mr T's representative. I've noted all that was said. Essentially Mr T's representative thought insufficient weight had been given to the Pension Ombudsman's determination. Mr T's representative also said that Mr T had been given '*questionable*' advice on several occasions. Viewed individually there might not be a problem but taken collectively it seemed Mr T had been given '*unconventional*' guidance.

The adjudicator said she couldn't comment on decisions reached by the Pensions Ombudsman. She maintained Prudential had met the regulatory requirements when selling the FSAVC to Mr T.

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 T has also complained about earlier pension advice given by Prudential. That complaint is being dealt with under separate reference. But it was also referred to me. I've considered both complaints together and taking into account the wider background.

But, although I bear in mind the advice Mr T's been given over the years by the same adviser, I don't think this complaint, about the FSAVC, should be upheld. Essentially I agree with the adjudicator that Prudential complied with its regulatory obligations at the time. I don't have much to add to the reasons given by the adjudicator in her view and follow up opinions.

I'm required to determine the complaint by reference to what, in my opinion, is fair and reasonable in all the circumstances of the case. In considering what's fair and reasonable I have to take into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I consider to have been good industry practice at the relevant time.

Where, as here, the adviser was 'tied' (only able to sell products that Prudential offered) he should still have known that an AVC would be available and that it could potentially have lower charges than the FSAVC. We'd expect a tied adviser to have pointed out that AVCs were available; explained that money purchase AVCs were likely to be better value than AVCs; given information about the generic differences; and recommended that the consumer find out about their AVC options – which might include added years.

I know there's a dispute about whether or not Mr T was given a copy of the leaflet. It's impossible to with certainty, well over twenty years later, if Mr T did get the leaflet. The adviser wrote on the fact find that he'd given a copy of the leaflet to Mr T. I'm prepared to accept that even if, unsurprisingly, Mr T doesn't now recall it.

I don't think, for the reasons given by the adjudicator, that the FSAVC was unsuitable. I agree with her that Prudential gave suitable advice to Mr T and gave him sufficient information in line with the regulatory requirements at the time. In particular I think Mr T was made aware that his employer's scheme offered AVCs and that the charges could be lower.

I note what's been said about Mr T not having been given any time to investigate what his employer's scheme offered. But I don't think that's enough to uphold the complaint. The important point is that he was made aware that he did have options and he could have investigated them if he'd chosen. I think if he'd have done that he'd also have found out if his employer's scheme offered added years.

I've noted the decision Mr T's representative has referred to. I'm not bound by decisions issued by another ombudsman scheme – I have to determine the complaint on the basis I've set out above.

That said, I can understand there's an expectation for consistency. But I don't see the decision referred to is directly relevant. It appears that consumer was a teacher and a member of the Teachers' Pension Scheme (TPS). Prudential was appointed by the relevant government department as sole AVC provider for TPS. Prudential managed the AVC section of TPS. There were special arrangements about making sure TPS members were aware of

the added years option. But Mr T wasn't a teacher or a member of TPS. So I don't think the decision supports that, in his case, Prudential should have drawn to his specific attention the possibility of buying added years.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 February 2019.

Lesley Stead
ombudsman