

complaint

Ms W's representative has complained, on her behalf, about advice she was given by The Prudential Assurance Company Limited (Prudential) to set up a free standing additional voluntary contribution (FSAVC) plan.

background

Ms W's representative has said the following about her circumstances at the time of setting up her FSAVC:

- She was a member of a public sector scheme that offered the option to make additional voluntary contributions (AVCs).
- Prudential didn't tell her the public sector scheme offered an AVC plan, nor that it was likely to provide better value for money.
- The adviser didn't discuss the difference in charges, investment choice and method of investment between the FSAVC and the AVC.
- Prudential didn't mention the option of added years.

The representative's also said that, at the time of meeting the adviser in 1996, Ms W's salary was above average at around £33,000. Her profile was of someone who was career-oriented. By the time she retired she'd held several senior roles and had a salary of over £100,000. At the time of meeting with the adviser, she had excellent salary prospects, so added years would've been a better option for her. There was no discussion of the additional benefits from added years, such as index linked increases in pensions in payment, spouse's and dependants' pensions, ill health or death in service benefits, nor lump sum. The representative's said that Ms W had a risk adverse attitude and added years would've been a better option for her. The pension mis-selling review assumed that, given a choice between defined benefits or money purchase, most consumers would be better off with the former.

The representative added that Ms W's loss should be measured by reference to the lost added years she would've purchased. It said she had a career starting at age 22 which enabled her to accrue 38 years service in public sector pension schemes - and she was eligible to buy added years. Ms W also had a long term partner, so the dependant's benefit attached to added years would also have been of value for her. It was estimated that the contribution for added years could've started at around £70 per month compared to more than twice that as a payment into her FSAVC. Added years was also a better way to target maximum benefits and avoid over funding.

Prudential noted that, when Ms W started her FSAVC in November 1996, she was a member of the Local Government Pension Scheme (LGPS) and had a low to medium attitude to risk. She was advised to contribute over £140 per month gross into an FSAVC. But it said it couldn't find any record that the in house AVC options in the LGPS were discussed with her and it apologised for this. It completed a "charges only" loss calculation and offered approximately £11,250 in compensation, plus 8% simple interest from the date of the calculation.

Prudential added that it wouldn't have been able to give advice on added years, but this was something her employer should've made her aware of. It couldn't comment on whether added years or the in house AVC would've been most appropriate for her.

Having looked at the case, our investigator said that she wouldn't be asking Prudential to do more than it had. Because Prudential couldn't demonstrate whether Ms W had been given enough information when she was sold the FSAVC, she looked at whether or not it was likely Ms W would've bought added years instead of contributing to an AVC. She felt Ms W had an established career in one sector and was likely to remain in it until retirement. However, she didn't think this necessarily meant that she would've purchased added years at the time.

The investigator said that, at the time, added years were often more expensive because of the conservative assumptions used and the fact there was no employer subsidy for the cost of purchase. Even if the cost had been cheaper at the time, the cost would've increased as Ms W's salary increased, which the investigator thought made it less likely she would've purchased added years. In the fact find, when asked if her financial circumstances were likely to change in the next five years e.g. promotion etc, Ms W said "no". So the investigator concluded that, at the time, Ms W didn't anticipate her future career progression.

In terms of risk, the investigator noted that, although Ms W's representative had said she had a "low" attitude to investment risk, the fact find had recorded that Ms W had a "low to medium" attitude to risk. The investigator said this suggested she was prepared to take some risk, which meant a money purchase AVC option wouldn't have been ruled out as an option. While it involved more risk, she couldn't say that FSAVCs or an AVC plan were unsuitable, given that Ms W was willing to take some risk and already had guaranteed benefits in her public sector final salary scheme. She said it was also likely that projections at the time would've indicated a greater benefit than that provided by two years added service. So she wasn't persuaded that Ms W would've bought added years.

Ms W's representative made further submissions, which can be summarised as follows:

- It was Ms W's intention to stay within the field she was working at the time – and she did, remaining in it until her retirement in 2018
- Her salary at the time of the advice was above the national average, and due to successive promotions, she had a high salary at retirement. She would therefore have benefitted most from buying added years.
- Ms W was on course to accrue close to the maximum number of years' service in the final salary scheme. She would have been able to "target" maximum benefits with great accuracy. But with a money purchase arrangement, there would have been a real danger of over funding – and paying a punitive 55% tax charge.
- The cost of buying the extra years would have been significantly lower than the amount she was paying to her FSAVC.
- Ms W was close to achieving the maximum benefits permitted under HMRC rules as they were then.
- Attitude to risk was of secondary importance in this case – the much more likely course of action for Ms W would have been to buy added years, had she been aware of that possibility.

But the investigator didn't change her view. She felt she had considered all the points except for the issue of over funding. And she thought it was only with the benefit of hindsight that the issue of overfunding had come to light. She didn't think that the risk of overfunding would've meant Ms W would've chosen added years instead of a money purchase AVC – if this had ever been a risk, an AVC plan had the flexibility to increase or reduce contributions.

Ms W's representative didn't agree, however, saying that, as Ms W would be in the same line of work, it was foreseeable that she would run the risk of over or under funding with a money purchase AVC. The representative said that added years would've been the logical and cheaper option.

As agreement's not been reached on the matter, it's been referred to me for review.

my findings

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

In this case Prudential has accepted it should've considered the AVC and that the charges would've been lower - and has offered compensation for the difference. So the matter I need to consider is whether a money purchase AVC arrangement was suitable for her circumstances, having regard to the option of added years in a public sector pension scheme.

The Prudential adviser was a tied adviser, and so could only recommend products marketed by Prudential. But they still needed to draw Ms W's attention to the availability of the "in house" options— and recommend that Ms W investigate these options further. And as the FSAVC was sold after January 1995, there should have been a 'reasons why letter' and 'fact find'. I would've expected that to say that there was potentially better value available from the in house options and encourage Ms W to look further,

However, it's possible that having done so Ms W might still have opted for the money purchase AVC. In particular taking added years was often perceived as an expensive option to achieve the same overall benefit. Ms W may have paid significantly less to buy the two "missing" added years which would have taken her to full accrual, but the benefit she'd be expecting from the amount paid to the FSAVC would be correspondingly greater than that provided by those additional two years – at least in the early years at that level of contribution. And it would have been pointless Ms W buying more than two years' additional service in the scheme, if indeed she was confident that she'd remain in the same type of employment until retirement.

It's of course possible that Ms W could have achieved both. It would have been possible for Ms W to buy the added years, and then if she wished to improve upon those prospective guaranteed benefits further, pay an additional amount to either the in house AVC (subject to scheme limits) or the FSAVC.

Ms W had an amount which she was willing to commit to enhancing her pension benefits. With suitable advice, she would have explored the options of doing so within the main scheme. And that exercise would have revealed the potential for Ms W to both enhance her guaranteed final salary benefits to the "two thirds" maximum, with the possibility then of enhancing this further through the money purchase AVC route.

But there are other aspects of this case, which I think makes the case for added years less compelling.

Future job prospects.

By the time of setting up the FSAVC plan, Ms W had 13 years service in a public sector scheme and had taken on some management roles. At the time of the review, she had moved into a new role as an adviser to others who did her previous role. The fact find said she didn't anticipate future change in role or salary in the next five years. She would've been best placed to judge her future prospects. And such an answer wouldn't necessarily have pointed toward added years being the clear choice, because there was no suggestion of significant future salary increases which might make added years the more obvious choice. And although Ms W has seen significant salary increases, I cannot give weight to that perspective just because in hindsight that is what happened.

Attitude to risk

Ms W's representative has said her attitude to risk was low, but as I've said above, the fact find suggested it was low to medium. Ms W's representative has said that too much importance has been attributed to this aspect. But I disagree. Ms W was due to be very close to maximum accrual of her final salary scheme membership, and so she had a significant amount of guaranteed benefits. I therefore have to consider whether the possibility of higher returns in a money purchase scheme with her additional contributions would have appealed to her. If an individual had a very cautious or risk averse approach, it could be argued that maximising the guaranteed benefits through added years would have been the sensible choice. But Ms W wasn't recorded as such – her risk rating suggests a willingness to take some investment risk. And combining guaranteed benefits with money purchase investment – in that type of ratio - wouldn't be unsuitable for someone who was prepared to take some investment risk.

Other benefits of added years

The added years carried additional benefits such as death in service, ill health and dependant's benefits. Ms W confirmed she'd been in a long term relationship since 1990. As the review was in 1996/7 it is clear it was an established relationship. However, in the fact find she indicated that she was only considering her own additional benefit rather than for any spouse or dependant. So I don't think the provision of such benefits through added years would have been a deciding factor here.

Maximum benefits and HMRC limits

At the time the maximum pension benefits through the scheme would've been broadly two thirds of earnings at retirement. As Ms W started work at 22 and, as far as I can tell, envisaged retiring at 60 (albeit I note she actually retired in 2018 at the age of 57), this meant she could've purchased around another two years of service as added years to give her 40 years pensionable *service the 50% salary at retirement she wanted* (her notes indicate a target pension of around £16,000 based upon her salary at the time). However that maximum could also be met via AVCs – with the flexibility to amend the contribution level of funding looked like it was becoming an issue. And for the reasons given above, I'm not persuaded that Ms W's risk attitude precluded investment in AVCs.

HMRC rules on maximum benefits have changed significantly and the current provisions relating to the lifetime allowance couldn't have been anticipated at the time. We cannot in any case apply current understanding to impose a view in hindsight. But at that time, funding an AVC plan with the flexibility to amend contributions if limits were close to being breached wouldn't generally have been considered to cause an issue in a situation such as this.

I also note that Ms W didn't increase the amount she paid into her FSAVC despite significant increases in salary. Her salary increased from around £33,000 per annum at the time of the advice to over £100,000 by the time she retired. Had she bought added years, the contribution would've been a percentage of salary. And this would have outstripped the contribution being made to the FSAVC plan as Ms W's salary increased with successive promotions. Ms W may have been comfortable with that, and it may of course be the case that, had automatic contribution increases been applied to the FSAVC, Ms W would have been prepared to accept this. But it wasn't set up with yearly increments, and the lack of increases in the FSAVC contribution – whilst not perhaps being a definitive indication either way – nevertheless doesn't corroborate the notion that Ms W would at the time have preferred to buy added years.

Summary

And so, on balance, for the reasons set out above, I'm not persuaded that Ms W would have chosen to buy added years instead of money purchase AVCs if she'd been advised to investigate that option. I do, however, agree that the in-house AVC option, with the associated lower charges, would have been a more obvious and suitable choice for Ms W, had her attention been drawn to that possibility. And so I think Prudential's offer to put her back in the position she would've been in had she taken an AVC rather than an FSAVC of £11,216.63 plus 8% simple per annum interest to the date of payment, for charges only loss calculated as at 1 October 2018 (subject to tax on the interest), is fair and reasonable in the circumstances of this case.

my final decision

My decision is that the offer made by The Prudential Assurance Company Limited is fair and reasonable in the circumstances of this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 8 February 2020.

Colette Bewley
ombudsman