complaint

Mr R's representative has complained that Mr R was unsuitably advised by The Prudential Assurance Company Limited in 1993 to take out a Free Standing Additional Voluntary Contribution (FSAVC) policy.

Mr R said that he was unaware of the difference in charges between an FSAVC and his employer's in-house AVC scheme, and it was unsuited to his attitude to risk. He also said that he had no plans to leave his employer at the time that the FSAVC was arranged, and that he would have joined the in-house AVC had he been shown a comparison of the two and been properly advised.

background

I issued my provisional decision on this complaint on 20 March 2014. A copy of this is attached and forms part of this final decision.

Briefly, I said that I was not minded to uphold Mr R's complaint on account of a comment on the adviser's 'fact find' suggesting that the potentially lower charges within the in-house scheme had been discussed. I also explained that in my view the fund selected for investment did not exceed Mr R's attitude to risk.

Prudential confirmed that it had nothing further to add following my provisional decision – but Mr R's representative made the following comments:

- Its understanding of the regulatory requirements (in 1993/4) was that there must be clear evidence in a 'Reasons Why' letter that the generic differences between the in-house AVC scheme and the FSAVC were discussed.

- It was not possible to say with any certainty what discussions there were surrounding the in house AVC. But the adviser was required to give at least one positive reason for not recommending the in house option, and this did not seem to have been followed. In particular the choice of a with-profits fund for investment did not suggest that greater fund choice was the reason for recommending the FSAVC.

- If a consumer had been given all the documentary evidence required there would have been very few reasons why they would have chosen the FSAVC. Mr R was not given all the evidence and therefore could not have made an informed choice surrounding his retirement provision.

- The sale seems to have been conducted over one meeting - so the adviser had already pre-judged the outcome and pressured Mr R into taking the FSAVC. This was despite pension planning being one of the most important financial decisions a consumer would make.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In particular I have taken into account the further comments made by Mr R's representative.

The requirement for a 'Reasons Why' letter was introduced by the former regulatory body in January 1995 – after Mr R's policy and the subsequent increment were both sold. So I do not accept the representative's points in this regard.

In relation to the other points, I have not found grounds to revise my conclusion that the likely discussion about the in-house scheme mirrored the comment on the fact find. So in my view Mr R *would* have been told that the in-house scheme likely had lower charges.

There is nothing I can usefully add in regard to the sale being concluded within the space of one meeting. As I mentioned, there was no obligation on the adviser to call a halt to the sale providing he highlighted this potential shortcoming in his recommendation.

It is not for me to now speculate, some twenty years later, what Mr R might have found persuasive about the adviser's recommendation – given that there was no formal requirement for the recommendation to be documented in writing and, understandably, Mr R's recollections of such discussions are likely to be limited. I also have to take into account that not all of the comments on the fact find are legible, as it is of poor reproduction.

Nevertheless it is notable that Mr R did not work for a public sector or other large employer, which can often be the types of organisation that are able to offer the best value and range of funds in an in-house scheme. As I suggested in the provisional decision, the with-profits fund was also a good match to Mr R's attitude to risk. There is no guarantee that Mr R's employer's scheme would have offered such a fund – or that if it did, Mr R would have preferred to contribute to it given Prudential's strength in the with-profits sector at the time.

As a result I have not been persuaded to revise my findings on this complaint.

my final decision

I do not uphold Mr R's complaint and I make no award.

Gideon Moore
ombudsman

PROVISIONAL DECISION of 20 March 2014

complaint

Mr R's representative has complained that Mr R was unsuitably advised by The Prudential Assurance Company Limited in 1993 to take out a Free Standing Additional Voluntary Contribution (FSAVC) policy.

Mr R said that he was unaware of the difference in charges between an FSAVC and his employer's in-house AVC scheme, and it was unsuited to his attitude to risk. He also said that he had no plans to leave his employer at the time that the FSAVC was arranged, and that he would have joined the in-house AVC had he been shown a comparison of the two and been properly advised.

background

Prudential's representative completed a personal financial review with Mr R in January 1993, which can only now be reproduced from a poor quality scanned copy. At the time Prudential investigated Mr R's complaint, it noted a comment was discernible on the review document: *"advised of the availability of AVCs through company scheme or independently".*

In 1994, Mr R was advised to increase the amount he contributed to the FSAVC. A further financial review noted his attitude to risk at that time was 'low risk'.

Mr R's representative complained to Prudential along the lines above in May 2013 and it did not uphold the complaint, relying in part on the quotation above. It also said that in 1993 there was no requirement for its representative to assess the level of risk Mr R wanted to take.

When one of our adjudicators considered the complaint, she took the view that simply referring to the availability of an in-house AVC scheme was not sufficient to discharge Prudential's responsibility to highlight that such a scheme was likely to be cheaper than the in-house arrangements. She also considered that Mr R should have been given time to ensure he could look into his in-house AVC options further. The adjudicator considered the complaint should be upheld, as it was likely Mr R would have joined the in-house scheme had he been appropriately advised and informed.

Prudential did not agree with the adjudicator's view and asked for an ombudsman's review of the case. It had been able to read another sentence from the personal financial review document in January 1993: *"Advised charge structure within company scheme likely to be less than FSAVC"*. It considered this *did* meet the standard of appropriate advice for 1993. In addition, Prudential was concerned that there was no requirement for it to wait for a set amount of time before proceeding to make the FSAVC sale to Mr R.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In my view the above passage Prudential has found in Mr R's review document from 1993 is fundamental to the outcome of this complaint. Despite the poor quality of the document I am satisfied that the writing is clear enough for this sentence to be distinguished. I understand

that Mr R's representative has previously been given copies of the form by Prudential, but I am arranging for the most legible copy the Financial Ombudsman Service has received to be attached to this provisional decision.

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)).*

In order to discharge these obligations, I consider that the adviser would have needed to explain that AVCs were likely to provide better value for money – and recommend that Mr R look further into the in-house scheme first. In my view what is noted on the review form is not materially different to this. I also note that this comment was made on the same page of that Mr R actually signed to confirm the advice he was receiving would be based on the information contained in the form.

I have not been provided with persuasive evidence that would suggest this comment did not mirror the likely content of the discussions between Mr R and the representative. Whilst I acknowledge that Mr R does not recall such a discussion, I have to take into account that he is unlikely to be able to accurately recall all the details of a conversation that took place about twenty years ago.

I note that Mr R's application form and the review document were signed and dated on the same day. However I am not aware that there was any requirement on Prudential to wait for Mr R to specifically confirm he had looked into the charges of the in-house alternative and wished to proceed.

Mr R would have been informed during his dealings with Prudential that under the regulatory system at that time the adviser was 'tied' to Prudential and only advised on its own products.

The adviser was not expected to actively investigate or recommend a competitor's product – but rather make his client aware of the potential shortcomings in the recommendation he *was* able to make.

The adviser was not in a position to *require* Mr R to undertake any particular level of investigation of his own, but it was important that he made Mr R aware of what he might be missing out on (ie lower charges). The adviser did this and it would, in my view, reasonably prompt an individual to look further into their in-house options if their prime concern was the level of charges they would be paying.

The available evidence, limited though it is, does suggest to me that Mr R proceeded to take out the FSAVC policy being aware that he could be subject to higher charges than if he went away and found out more about his employer's scheme. So I am not persuaded that Mr R's complaint about the difference in charges compared with an AVC should be upheld.

Mr R's representative has also commented on the risk level presented by the FSAVC. I do not consider Prudential was correct to suggest that the regulatory regime in 1993 did not require it to assess the level of risk Mr R wanted to take – as there was an overarching requirement for it to provide *suitable* advice. Suitability would reasonably take into account

what Mr R understood of the risk he was taking and whether he was prepared to take that risk.

However in this regard, the 1994 financial review classified Mr R as a 'low risk' investor, which was the lowest of three categories available. I have not been provided with plausible evidence that Mr R did not fit into at least this category in 1993 or 1994, bearing in mind that a pension plan was a long-term investment which could not be accessed until retirement.

I understand that under this type of FSAVC policy contributions were automatically invested into Prudential's with-profits fund. This fund incorporated basic guarantees that bonuses, once added, could not be taken away if Mr R remained in the fund until retirement – and was well-diversified across the main asset classes (shares, bonds, property and cash). I do not consider this was at odds with the likely risk profile it seems Mr R wished to adopt at the time.

my provisional decision

Having considered all of the above, I do not intend to uphold Mr R's complaint.

Gideon Moore
ombudsman