

## complaint

Mr E is unhappy with the compensation offered by The Prudential Assurance Company Limited (Prudential) for the mis-sale of his Free Standing Additional Voluntary Contribution (FSAVC) plan.

## background

I issued a provisional decision on 29 January 2020. I've recapped the background below:

*"In 1993 Mr E started an FSAVC plan with Prudential. At this time, it was recorded that he planned to 'leave his employer's scheme in 1-2 years' time due to poor returns.' Mr E also had a workplace pension administered by Prudential.*

*In 1995 Mr E changed employers and his FSAVC plan was updated accordingly.*

*Mr E began enquiring about both his workplace pension and his FSAVC plan in January 2017. The correspondence provided by Prudential indicates he called them at least twice in February 2017 to discuss his FSAVC and he asked about it again in March 2017.*

*In December 2017 Mr E complained to Prudential that it had calculated his annual pension from his FSAVC incorrectly. Prudential didn't uphold this complaint.*

*Mr E complained to Prudential again in January 2018 regarding the illustrations and quotations he'd received. Prudential's call note from this time says: 'call from PH explaining clearly why he doesn't understand the figures' and he wanted his complaint reopened as 'he is not at all clear these figures are correct.' A recording of the call isn't available so I can't be sure what Mr E said about why the figures weren't correct, but from what has been provided, it seems Mr E thought the figures should have been higher.*

*Prudential accepted Mr E had received a poor level of service as it wasn't made clear throughout the illustrations that his income was based on an estimated inflation rate. Prudential apologised for letting Mr E down and offered him £50 'as a token of our regret for the service' he received.*

*Unhappy with this, and with Prudential's response to his ongoing complaint about his workplace pension, Mr E complained to The Pension Ombudsman. The part of his complaint relating to the FSAVC was subsequently referred to this service. By email of 4 June 2018 we let Prudential know his complaint was with us, summarising it as 'consumer is complaining about advice. (complaint is about FSAVC with Prudential and the performance of the funds invested in)'. Mr E's complaint form, a copy of which was provided to Prudential said he wanted 'compensation for losses caused by advice and fund management.'*

*One of our investigators looked into his complaint, and let Prudential know that it seemed to be about the sale of the FSAVC plan as Mr E didn't think the performance was reflective of what was told to him at the time he started the plan.*

*Prudential agreed to look into the sale of the FSAVC plan and issued its final response in October 2018. In it Mr E's concerns were summarised as:*

- *You feel the performance of your plan is not reflective of the guarantees you were provided when your FSAVC was arranged.*

- *You are unhappy with the fund value and believe you were told at the time of sale this would be much higher.*
- *You have received a letter from us about the figures we have provided you with and we have also sent you a cheque for £50, you are unhappy with this offer.*

*Prudential didn't uphold the complaint points raised. But it said it was not certain the difference in charges between the FSAVC plan and an in-house AVC – with likely cheaper charges – were made clear to Mr E at the time of sale. Prudential said:*

*Whilst I can see you were aware of the alternative option of an in-house AVC, it is not clear if you were made fully aware of the difference in charges between the FSAVC policy and the in-house AVC arrangement offered by your employer's pension scheme when your policy was first taken out. ... I am very sorry this happened.*

*Because of this failing in their sales process, Prudential conducted a loss calculation on a 'charges only' basis and determined Mr E had suffered a financial loss. It offered him a lump sum payment of £8,771.18 in full and final settlement for the mis-sale. This sum represents the difference in fund value without any plan or investment charges, plus interest.*

*Mr E didn't accept this offer. He said in summary:*

- *He had not received an apology either in writing or by financial compensation.*
- *All the offer does is to replace funds "that they took for not making me aware of the substantial financial penalty for having a FSAVC as opposed to an ordinary AVC".*
- *He wanted the compensation paid into his fund 'where it should have been all along'.*
- *He would like a written apology and increased financial compensation for the distress the situation has caused him.*

*Our investigator considered Mr E's complaint and what he said about the redress offered. The investigator concluded:*

- *The approach used by Prudential to redress the failing in the sales process they identified is in line with the guidance set by the regulator, the Financial Conduct Authority (FCA) and Prudential doesn't need to do anything more.*
- *There wasn't sufficient evidence that Mr E was provided with guarantees regarding the plan's performance at the time of sale.*
- *The £50 compensation offered was fair for the inconvenience caused by the lack of clarity in Prudential's illustrations. Without evidence of financial loss or specific detriment he thought this was sufficient.*

*Mr E didn't agree and said he hasn't been compensated for the mis-selling. He also said he's lost sleep worrying and the level of distress he's experienced dealing with this since 2017 is incalculable."*

As agreement couldn't be reached, the matter was referred for a decision. After the complaint was passed to me, I got in touch with Prudential to let it know I thought additional compensation for the trouble and upset Mr E experienced was warranted and suggested it pay a further £300.

Prudential explained it felt no additional compensation was needed because it timely investigated the mis-sale complaint and so it wasn't responsible for any distress and inconvenience Mr E may have suffered.

Mr E later said he would accept compensation as a lump sum payment.

I considered everything that had been provided and thought the complaint should be partially upheld. My provisional findings were as follows:

*“Prudential has agreed that it made a mistake in the quotation it sent Mr E. It offered him £50 for this. And Prudential has accepted the FSAVC plan was mis-sold. It conducted a loss assessment and offered redress. Prudential agreed to provide redress because it wasn’t satisfied the sale of the FSAVC was compliant with the requirements in place at the time. Prudential has not said the FSAVC was unsuitable and I am not making a finding about the suitability of the plan. The only issue for me to consider is whether the redress offered is fair and reasonable in the circumstances.*

*I understand Mr E believes he should be entitled to more compensation than has been offered and I appreciate his strength of feeling about this. In rejecting Prudential’s offer to redress the FSAVC mis-sale, he said he hadn’t received an apology either in writing or by financial compensation. He said the compensation offered only put him where he ought to be.*

*Given this, I think it is useful to reflect on the role of this service. This service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been in if the problem hadn’t occurred. This service isn’t intended to regulate or punish businesses for their conduct – that is the role of the industry regulator, the FCA. If Mr E has concerns about Prudential and the way it does business, he can report this to the regulator.*

*Once Prudential identified problems with the sale of the FSAVC plan, it undertook a loss assessment to put Mr E in the financial position he would have been in had he taken out an in-house AVC plan with his employer. Having reviewed the redress offer letter, including the key facts and assumptions document included with it, I’m satisfied Prudential conducted the loss assessment in line with the methodology established by the industry regulator and offered the difference, plus 8% interest, to Mr E as an ex-gratia payment. I’ve seen no evidence to suggest the redress calculations are incorrect or otherwise do not accurately reflect the financial loss resulting from the difference in charges between the FSAVC plan and the in-house AVC option. So I think this offer provides fair and reasonable compensation for Mr E’s financial loss. And I note that Prudential did offer Mr E a written apology for the mis-sale in its final response letter, as I’ve quoted above.*

*But in putting consumers where they ought to be, I must also consider any non-financial loss suffered, including any trouble and upset the consumer may have suffered as a result of the business’s actions. In this case, Mr E has been complaining about the value of his FSAVC pension since early January 2017. Although he didn’t phrase his complaint as the FSAVC plan being mis-sold, it’s clear from what I’ve been provided, Mr E believed his FSAVC benefits should have been higher. Prudential responded to Mr E’s complaints on the narrow basis of whether the current information it provided him was accurate and clear. In this regard, Prudential didn’t think it had done anything wrong, except not explaining more clearly the income quotations were based on an estimated rate of inflation. It offered Mr E £50 for this. I think on this tailored view of Mr E’s concerns, £50 is fair and reasonable compensation.*

*That said, Prudential could have done more to address Mr E's concerns. It appears Prudential didn't look at the underlying reasons for Mr E's belief that his FSAVC benefits should be higher. I consider this a lost opportunity to have resolved things sooner for Mr E. I say this because from everything I've been provided, it seems clear Mr E thought his benefits would be greater because of what he said he was told when he was sold the plan. Yet it wasn't until Mr E brought his complaint to this service that Prudential considered the sale of the plan. That Prudential then investigated the sale and issued a timely response doesn't assuage the distress Mr E experienced over the value of his plan since at least early 2017.*

*But Mr E also complained about his workplace pension throughout this time and I'm mindful this would have also contributed to the feelings of uncertainty, stress and worry he experienced.*

*So taking all of the above into consideration, given what I know about the amount of time and effort Mr E's spent to sort out his concerns about the FSAVC plan and bearing in mind what he's said about his sleepless nights, stress and worry, I intend to direct Prudential to pay Mr E a further £300."*

I invited both Mr E and Prudential to comment on my provisional decision.

Prudential responded that it had no further comments to make.

Mr E also confirmed he had nothing more to add.

### **My findings**

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. With no additional comments to consider, there is little more to say other than my decision remains as before for the reasons I've explained in my provisional decision, restated above.

This means I am partially upholding Mr E's complaint and Prudential should compensate Mr E as directed in my provisional decision and set out above.

**my final decision**

My final decision is that I partially uphold Mr E's complaint.

In addition to the £8,771.18 ex-gratia payment and the £50 already offered, I direct The Prudential Assurance Company Limited to pay Mr E a further £300 for his distress and worry.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 April 2020.

Jennifer Wood  
**ombudsman**