

complaint

Mr A complains about the information that the Prudential Assurance Company Limited ("Prudential") gave him when he set up his Teachers' Additional Voluntary Contribution (TAVC) plan. He says that if he'd been given clearer information, he would've purchased added years within the Teachers' Pension Scheme instead of setting up his TAVC plan.

background

At the time of advice, Mr A had been a teacher for around 15 years having become a teacher in his mid twenties. At the time, he was employed as an Assistant Head Teacher. He was 39 years old when he joined the TAVC and his normal retirement age was aged 60. Mr A continued to teach until he retired at 60.

Mr A received advice from one of Prudential's tied advisers in 1989, to join the TAVC scheme. He began by making contributions of 3% of salary, increasing these to 4.62% of salary in 1998.

Mr A complained to Prudential. Prudential didn't uphold his complaint. It said, in summary, its representative had taken all reasonable steps to make Mr A aware of the added years option in 1989 and again in 1998, when he increased the amount of his contributions.

Mr A referred his complaint to our service. Our adjudicator upheld Mr A's complaint, but Prudential didn't agree. So, Mr A's complaint now comes to me to consider.

my 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'm upholding Mr A's complaint. I'll explain why.

Neither Prudential, nor Mr A, have a copy of the paperwork from the time of sale. As some of the evidence is either incomplete or contradictory, I've made a decision on what I think is most likely to have happened – based on what's available.

In 1989, tied advisers were expected to follow the LAUTRO rules which required the adviser to have regard to:

- the consumer's financial position generally and to any rights they had under a workplace pension; and
- give the consumer all the information relevant to their dealings with the representative in question.

As a tied adviser, Mr A's adviser couldn't recommend products other than products provided by Prudential. The adviser wouldn't therefore have been required to advise Mr A on the benefits of any alternative options, including added years. But, the adviser did have to make Mr A aware that added years was an alternative option and refer him to the scheme booklet or the scheme to obtain further information about other available options.

Prudential said when Mr A joined the Teachers' Pension Scheme, he would've been told in the scheme booklet there were 3 ways he could increase his pension through paying extra

contributions; through added years, TAVCs or Free Standing Additional Voluntary Contributions (FSAVCs).

I think probably Mr A would've been given a scheme booklet when he joined the scheme. But, that was some 15 years or so before he met with Prudential's adviser. So, I also think it's likely that Mr A may not have remembered that, and he may not have retained the booklet.

Mr A's TAVC application form is no longer available. I can't know what he and the adviser discussed at the time. Prudential said it can't say if a fact find was completed, but there was no regulatory requirement at the time requiring this. It says the form Mr A would've had to complete to join the TVAC (and when he increased the amount of his contributions) would've asked him if he was paying additional contributions for family benefits, past added years, repayment of previously withdrawn contributions to the Teachers' Pension Scheme or FSAVCs, so this would've flagged up the available options. It says he would've also been given a Key Features Document explaining the other options. However, I'm not satisfied that in Mr A's particular circumstances, he did receive this information, or that having joined the Teachers' Pension Scheme and best case scenario having been provided with the scheme booklet 15 years before, this was enough to make him aware of the other available options.

Prudential also said often TAVC schemes were set up following a presentation by a Prudential representative who visited the schools. It said the presentation was part of an 'approved process' to ensure that all attendees received a fair and consistent message. But, I can't know if that was the position in Mr A's case, so I don't place any reliance on this.

Based on the available evidence, I don't have enough to be satisfied that more likely than not Mr A's attention was sufficiently drawn to the other available options when he met with the adviser. So, on the basis that more likely than not Prudential did something wrong, I must go on to consider whether he is likely to have lost out as a result of this.

The cost of added years of service in the Teachers' Pension Scheme was determined by the Government Actuary. Conservative assumptions of likely future investment performance were used and this made added years more expensive. The reason being that, the cost of added years was intended to be met by member contributions alone, rather than the employer having to pick up any shortfall.

If Mr A had opted to pay for added years, he would've had to give up a set percentage of his salary for a set term, often up to retirement. Partial years couldn't be purchased. Also, the amount he paid would've increased over time, in line with his salary increases. It seems Mr A would've needed to purchase four added years to receive the maximum benefit under the Teachers' Pension Scheme and he would've had 21 years (up to his normal retirement date) to purchase these added years. I'm told roughly, Mr A would've had to pay just under 4% of his salary for those 21 years to purchase four added years. He didn't need to purchase *all four* added years.

Also, Mr A had to pay fees to be part of the TAVC, whereas he wouldn't if he purchased added years within his existing Teachers' Pension Scheme. So, the savings he made here, could've gone directly towards his added years contributions.

If Mr A had purchased added years, rather than joining the TAVC, providing he made all the contributions, he would've had a guaranteed benefit at the end of it, rather than being reliant on investment performance as was the case with the TAVC.

The maximum Mr A could contribute towards the TAVC at the time was 9% and Mr A decided to contribute 3% initially, rising to 4.62% in 1998. Given that Mr A wasn't paying the full amount possible, this suggests to me that he was paying what he could reasonably afford. However, had Mr A realised his benefit would be guaranteed if he purchased added years, then I think the difference in what he paid (3%) and what he would've needed to pay (just less than 4%) for *all four* added years likely wouldn't have put him off purchasing the added years. In reaching this conclusion, I've taken into account what Prudential's said about investment growth expectations being higher in 1989, making the TAVC appear more attractive.

Prudential said that the cost of added years included provision for spouse and dependant benefits. It noted that Mr A was single at the time of taking out the TAVC and appeared to be single at the time of retirement. It said that Mr A would've been paying for something he didn't need. But, I can't see that this would've necessarily put him off taking out added years either.

Continuously from 1989 onwards, Mr A made contributions into the TAVC. The TAVC offered some flexibility over stopping and starting contributions; buying added years did not. I can't see that Mr A needed that flexibility from the outset. As it turns out, he didn't, although that wouldn't necessarily have been known at the time. However, I've also taken into account that Mr A had been in the teaching profession for 15 years already by the time he joined the TAVC. He had progressed to being an Assistant Head Teacher. So, I've not seen anything to suggest that it looked like he may leave the teaching profession and potentially lose out on partially bought added years if he stopped his contributions.

Taking all of this into account, I think had Prudential provided him with clearer information, he would've purchased added years instead of joining the TAVC. So, I think that Mr A has lost out because of what Prudential most likely did wrong.

fair compensation

A fair and reasonable outcome would be for the Prudential Assurance Company Limited to put Mr A, as far as possible, into the position he would now be in but for the unsuitable advice.

The Prudential Assurance Company Limited must undertake a redress calculation in line with the regulator's pension review guidance, as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using the most recent financial assumptions published at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of the decision

If the redress calculation demonstrates a loss, the compensation should if possible, be paid into Mr A's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for

income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

my final decision

For the reasons explained above, I uphold Mr A's complaint. I order the Prudential Assurance Company Limited to pay fair compensation as I have set out above.

Where I consider that total fair compensation requires payment of an amount that might exceed £160,000 I may recommend that the business pays the balance.

determination and money award: I require the Prudential Assurance Company Limited to pay Mr A compensation as set out above, up to a maximum of £160,000.

The compensation resulting from the loss assessment must where possible be paid to Mr A within 90 days of the date the Prudential Assurance Company Limited receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes the Prudential Assurance Company Limited to pay Mr A this compensation.

recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000 I also recommend that the Prudential Assurance Company pays Mr A the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes the Prudential Assurance Company Limited to pay Mr A from the date it receives notification of his acceptance of the decision, as set out above.

If Mr A accepts my determination, the money award is binding on the Prudential Assurance Company Limited. My recommendation is not binding on the Prudential Assurance Company Limited. Further, it's unlikely that Mr A can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr A may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 May 2020.

Kim Parsons
ombudsman