

complaint

Mrs A complains that she was mis-sold a Free Standing Additional Voluntary Contribution (FSAVC) plan by The Prudential Assurance Company Limited (referred to from now on as Prudential) and that she should have been advised to purchase added years.

background

Mrs A met an adviser from Prudential in July 1995 and was advised to take out an FSAVC plan as she wished to retire earlier than her Normal Retirement Date (NRD) of 60. Mrs A wished to retire at age 50. Mrs A had joined her employer's pension scheme in 1995 when she was aged 18.

The adviser recommended Mrs A take out an FSAVC plan as a means to paying additional contributions outside her employer's pension scheme in order to make up the shortfall in her benefits on early retirement.

In December 2013 Mrs A's representative complained to Prudential on her behalf that she should have been advised to purchase Added Years as a cheaper alternative to taking out an FSAVC plan. Her representative further recommended that Mrs A *"would have purchased 6 years shortfall in her maximum potential pension service at a very small cost to her"*.

Prudential rejected Mrs A's complaint in January 2014. It said that the recommendation to commence an FSAVC plan was justified to bridge the shortfall in benefits. At the time, Prudential had estimated that Mrs A would be left with a *"funding gap, even with maximum service, of 4.17%"*. Prudential stated that Mrs A would have been provided with illustrations at the time of advice to *"to show what the potential benefit might be"*. Therefore, an FSAVC was recommended to bridge this gap and was suitable for her.

With regards to the issue raised by Mrs A's representative that the Added Years option was not recommended at the time, Prudential stated that this was because it could not be used as a means of purchasing future years' service. From Mrs A's circumstances recorded at the time, she *"had not missed any years of service since 1995"*, and therefore Added Years was not explored.

Mrs A then referred her complaint to this service where it was investigated by one of our adjudicators. She issued her assessment and recommended that Mrs A's complaint be upheld. The adjudicator concluded that the FSAVC was not suitable for Mrs A's circumstances at the time of advice.

The adjudicator had not seen any evidence to confirm that the potentially cheaper in-house AVC alternative was discussed or recommended to Mrs A at the time of advice. There was also no evidence that a charges comparisons was carried out between the FSAVC and the in-house AVC.

The adjudicator recommended Prudential carry out a 'charges only' loss assessment to compare the charges levied by Prudential on all of Mrs A's contributions to her FSAVC plan, with the charges she would have incurred had she contributed to the in-house AVC alternative.

Prudential was dissatisfied with the adjudicator's assessment. It said, in summary, that within the fact find document, under the heading 'Reasons Why – Pensions' a box was ticked which confirmed the following:

“The benefits of additional savings for retirement have been explained to me. The relative merits of FSAVCs and AVCs were covered. I choose the FSAVC product because of: (as appropriate) Flexibility/Independence/Choice of investment with Prudential/Availability of personal advice/A degree of confidentiality when funding for early retirement.”

Prudential also stated that the adviser

“was not required to comment on the relative cost between the FSAVC and in-house AVC available to [Mrs A], or highlight this, at the time the advice was given.”

And that there was

“no specific requirement at the time for [Mrs A] to have been referred to her employer for further information regarding the in-house AVC”.

As agreement has not been reached the complaint has been referred to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same outcome as the adjudicator and for broadly the same reasons.

The FSAVC plan was recommended to Mrs A as she intended to retire earlier than her NRD. However, I am in agreement with the adjudicator that the documentation provided to Mrs A at the time of advice specifically stated that all occupational pension scheme benefits had to be taken at the same time. Therefore, Mrs A ought to have known that she could not take the additional benefits from the FSAVC plan earlier than her main pension scheme benefits. I therefore do not uphold this aspect of the complaint. In any event the law has now changed to allow the benefits to be taken at different times.

I will now consider the overall suitability of the sale of the FSAVC plan.

At the time of advice in 1995 a life office representative should have:

1. Pointed out that AVCs were available
2. Explained that AVCs were likely to provide better value for money
3. Recommended investigation of the AVC arrangement.

In my opinion the adviser did not meet these requirements. I note that in this case, the only mention of the in-house AVC was contained in its fact find, in the form of a ticked box which stated that *“the relative merits of FSAVC's and AVC's were covered”*. I have not been presented with any other evidence to confirm that the higher level of charges on the FSAVC arrangement was discussed.

The Prudential has argued that the adviser “*was not required to comment on the relative cost between the FSAVC and the in-house AVC available to [Mrs A], or highlight this, at the time the advice was given.*”

However in 1995 firms were required to take into account the relevant rules set out in the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) rulebook. This stated that representatives should:

- Have regard to the investor’s financial position generally and to any rights he may have under an occupational pension scheme
- Give investors all the information relevant to his dealings with him.

There is no evidence that the key difference in the charges was brought to the attention of Mrs A. In my opinion had it been noted that the FSAVC was more expensive than Mrs A would have effected an in-house AVC arrangement rather than an FSAVC policy.

I have then considered whether added years alternative was appropriate. The cost of added years was fixed by the scheme actuary using conservative assumptions. This was to ensure that the costs were met by the members and not by the employer. This meant that they appeared at the time to be expensive. It was expected on realistic assumptions of future experience that the benefits from the money purchase approach would have been greater than those from the added years approach.

Whilst with the benefit of hindsight it can be seen that the added years approach would have been more attractive this was not expected at the time of advice on reasonable assumptions of likely future experience. I therefore do not uphold this aspect of the complaint.

my final decision

I uphold this complaint against The Prudential Assurance Company Limited and I direct it to carry out a loss assessment in accordance with the methodology and practice approved by the regulators for the ‘FSAVC Review’.

If a loss is shown to have arisen then appropriate redress should be paid in line with the guidance.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 15 June 2015.

Adrian Hudson
ombudsman