

## **complaint**

Mr S complains about the advice he was given to improve the death benefits of his employers' occupational pension scheme through a Teachers Additional Voluntary Contribution (AVC) plan with The Prudential Assurance Company Limited (Prudential). He says this has had an impact on the level of pension benefits he expected. He also complains that the premiums required to improve the death benefits were "*extortionately*" high and exceeded the 15-year term he agreed initially.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 2 June 2020 – a copy of which is attached and forms part of this final decision.

In summary, Mr S applied for an AVC with Prudential in 1998. He paid the maximum contribution allowed and split the premiums between enhancing his pension and death benefits. The death benefit that would be payable included both a lump sum payment and an increased dependent's pension. But, under the terms of the life cover part of the AVC, there was a need to regularly increase the premium required to maintain the same level of cover. This premium increased within certain age bands and meant by 2019 the annual cost was due to rise to £456.96. However, this also meant that there was less money invested to increase Mr S's retirement benefits.

Mr S queried this situation with Prudential and, although he accepted that he had agreed to make contributions to increase the death benefits, he thought the premiums were expensive and said he hadn't agreed to pay for longer than a 15-year term. Prudential said Mr S had been made aware of all the conditions of the AVC's including the facility to increase premiums for additional death benefits with age. It also said Mr S had benefitted from a tax efficient method of increasing his death benefits and could have stopped the cover at any time.

Mr S remained unhappy and brought his complaint to us, where one of our investigators said the cover had been suitable as Mr S should have been aware, from the documents and letters he received about the cover, that it wouldn't stop after 15 years. He also said Mr S should have known he could have cancelled the cover at any time. Mr S didn't accept that outcome, so the matter was passed to me for review.

In my provisional decision I said that Mr S had been made aware of the additional death benefits from what I'd seen within the various brochures and documentation he would have been given. I said it was also clear that the premiums would increase every few years and that they'd continue until Mr S drew his retirement benefits. I thought the cost of the cover had been applied correctly according to the table within the original brochure. I thought Prudential was entitled to change the costs as it thought necessary provided it applied them correctly – which I thought it had.

But I didn't think the AVC's were a suitable recommendation for the lump sum element of the additional benefits. I thought the amount of cover that was recommended to increase protection for Mr S's family was suitable but the part that was recommended to cover his outstanding mortgage wasn't. I thought it was more appropriate for Prudential to have recommended a level term life cover policy for the outstanding mortgage amount over the outstanding term of the mortgage.

I told Prudential to compare the cost of such a policy against the total premiums Mr S had paid through his AVC's towards the additional death benefits – but only that part that provided the capital sum element. I also said Prudential should pay Mr S £100 for the disruption to his retirement planning.

I invited both parties to send any additional comments or evidence they wished to make. Prudential restated its case about the suitability of the advice. It said it didn't believe the advice had been unsuitable and said that Mr S had been made fully aware of every aspect of the AVC's – both in respect of additional retirement benefits and additional death benefits. It made the following points:

- The recommendation provided a tax efficient way of providing the required life cover.
- There was no evidence that Mr S did take out a £90,000 mortgage for 15 years.
- Mr S continued to work beyond age 55 – so his requirement for additional life cover ran beyond a 15-year term. The AVC had flexibility to cover such eventualities.
- It didn't seem fair for Prudential to have to compare the AVC premiums with a term assurance for 15 years, as that meant Mr S would have benefitted from seven years 'free' life cover.
- The AVC life cover provided a cheaper option for Mr S and its recommendation had been suitable. Therefore, his retirement planning hadn't been disrupted and it didn't believe the award of any compensation was merited.
- It carried out the loss calculation as requested, which did show Mr S suffered a loss of £276.93 when comparing the AVC against a term assurance policy. But as Mr S had recently received a refund of £4,450 from his AVC life cover premiums there didn't appear to be any financial loss.

Mr S didn't provide any further information although he did state that he hadn't received an answer to his data subject access request that he'd sent to Prudential.

### **my findings**

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

Prudential has maintained its position here that the recommendation for additional life cover within the AVC was suitable – and gave Mr S a more tax efficient life cover vehicle. It said the adviser completed a shortfall planner which indicated Mr S required an additional £64,780 of cover along with potentially a further £90,000 to cover a mortgage he was looking to obtain. So, it thought the additional £108,000 of life cover it recommended was suitable.

But I disagree. Of the additional cover recommended, £50,000 was for a capital sum while the remainder was in the form of a dependents pension which would pay £5,000 per annum. So while I think the additional dependent pension (family cover) was suitable I don't think the capital lump sum was appropriate to cover the outstanding mortgage that Mr S was seeking. In his recommendation report the adviser confirmed that one of Mr S's objectives was "*protecting a mortgage of £90,000 over a term of 15 years*", so I think it was reasonable to assume that a suitable recommendation for that part of Mr S's needs ought to have been a specific policy for that amount over that term.

As I said previously if Mr S had left his employment position then the life cover included with his occupational pension scheme and with his AVC's would no longer have been available in

the event of his death. So I think that, while the dependent pension that was increased in the event of Mr S's death, was suitable part of the recommendation I don't think the advice to provide a capital sum to help repay the mortgage was suitable.

I think that has led to Mr S suffering some disruption to his retirement planning and has caused him some degree of inconvenience in putting together his complaint and trying to establish what advice he ought to have been given. It's my view that Prudential should pay Mr S £100 for that disruption and inconvenience.

However, Prudential has carried out the calculation that I asked it to do in my provisional decision. I'm satisfied with the information that it has included in the calculation and there's no reason for me to doubt the loss that it identified when comparing the premiums of a 15-year term assurance policy to the premiums Mr S paid into AVC – in respect of providing the capital sum. But, and I did allude to this fact in my provisional decision, when a recent refund of AVC premiums of £4,450 is taken into account then it's clear that Mr S has paid less into the AVC than he would have done into the comparable 15-year term policy and he hasn't therefore suffered a financial loss.

So, while I think a part of Prudential's advice was unsuitable Mr S hasn't suffered any loss as a result of that advice and isn't due any redress.

In my provisional decision I said that I thought Prudential had made Mr S aware of the death benefits within the AVC contract and how the premiums would increase. I said the overall costs were a matter for Prudential and that it had applied them in line with how it said it would, so I didn't think Prudential had done anything wrong there. Mr S hasn't provided any further information around those complaint points, so I see no reason to change the conclusions I've already reached.

Mr S has said that he hasn't received the information he recently requested from Prudential. I understand that request is linked to the original advice he received to transfer his occupational scheme benefits. That isn't part of Mr S's complaint here, so I'll leave it for him to discuss that matter with Prudential in the first instance.

### **my final decision**

For the same reasons I've already given in my provisional decision, I think The Prudential Assurance Company Limited's advice to increase Mr S's death benefits through an AVC to cover his mortgage was unsuitable. But it has shown that Mr S hasn't suffered any loss from that advice compared with the recommendation I said it should have made. So, no compensation is due to Mr S.

But Prudential should pay £100 for the disruption its advice caused to Mr S's retirement planning.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S or reject my decision before 9 November 2020.

Keith Lawrence  
**ombudsman**

## copy of provisional decision

### complaint

Mr S complains about the advice he was given to improve the death benefits of his employers' occupational pension scheme through a Teachers Additional Voluntary Contribution (AVC) plan with The Prudential Assurance Company Limited (Prudential). He says this has had an impact on the level of pension benefits he expected. He also complains that the premiums required to improve the death benefits were "extortionately" high and exceeded the 15-year term he agreed initially.

### background

In February 1998 Mr S applied for an AVC plan with Prudential. The application form he completed noted that he wanted to pay 9% of his salary to "enhance my pension benefit and improve my death benefit". As this was the maximum contribution allowable each month the total cost required to provide a death benefit of £108,000 (£9.72 per month) was deducted from that contribution. The benefit was split between £58,000 to be paid as lump sum and £50,000 to be used to provide dependents benefits.

The cost of providing the death benefits increased in line with age related bands and in 2019 was due to increase to £456.96 per annum.

Mr S said he discovered discrepancies between his payments and the statements he'd received so he queried this with Prudential. Prudential provided evidence to confirm that Mr S had agreed to the life cover contributions and that the ongoing cost varied according to his age.

Mr S accepted that he'd agreed to pay for a life cover element in the beginning but didn't agree that he'd been provided with the various options around the contributions every three years – or that he'd agreed to pay beyond the initial 15-year term that he thought had been set. He complained because he couldn't understand the reason behind the fluctuations in the cost of providing the death benefits.

Prudential's final response of 17 January 2019 made the following points, whilst not upholding Mr S's complaint.

- When he joined the Teachers' Pension Scheme (TPS) he was made aware of the use of AVC's to increase retirement and death benefit provision.
- The financial review that was completed by the adviser in 1998 showed that Mr S's mortgage wasn't fully covered in the event of his death, so advice was given to increase the TPS benefits to ensure the mortgage was fully protected.
- A dependents pension could also be included as part of the overall death benefit package.
- The quotation that was issued at the time showed the cost of life cover would increase over time and that if the overall contributions weren't increased the final pension benefits would be less.
- The key features document showed that life cover costs depended on the level of cover and age – and would increase in three-year bands. The last change in 2016 increased the cost to £113.40 per month for the same level of cover.
- Mr S's annual statements would have confirmed the regular premium increases and shown a reduced projection of retirement benefits.

Mr S said he wanted a breakdown of all his monthly contributions so that he could see the split between contributions towards his pension and death benefits separately. As he didn't receive this information he brought his complaint to us, where one of our investigators looked into the matter. He said:

- It's not unreasonable for life cover premiums to increase with age but also to decrease with changes in mortality rates. He thought Prudential had made Mr S aware of all the changes in premiums so overall, he didn't think Prudential had done anything wrong– or that the premiums were excessive.
- Prudential had recommended the life cover for a term of 15 years, but it was still in force after 21 years. The investigator thought Prudential had caused Mr S some trouble and upset over this matter and recommended it paid him £300. However, he thought Mr S could have cancelled the life cover and mitigated his position at any time – and he'd had the benefit of the cover in the meantime.

But Mr S didn't agree. He said the proposed rise in the annual life cover premium wasn't the issue, he'd been paying £113.40 per month and he thought that was extortionate, especially as the new premium was only around 25% of what he had been paying. He also provided evidence of a letter from Prudential in which it offered a one-off refund of £4,450 against life cover premiums from 31 December 2014. He saw this as proof that the premiums had been excessive. He was also concerned that he couldn't access details of the premiums he'd paid before mid-2015, as he believed Prudential may have been taking incorrect premiums.

The investigator noted this and agreed it made the policy "expensive" but reiterated that there are many factors that can affect premiums and confirmed Mr S did have the option to cancel the policy.

Prudential also disagreed. It said that while the financial review did recommend life cover over a term of 15 years, Mr S was given an open ended, flexible plan with tax efficiency that was unavailable in other plans. So it thought he'd benefitted from being advised to use AVC life cover to cover his outstanding mortgage.

It also thought that Mr S had been advised through a number of documents and letters that the cover was open ended and could be stopped at any time, so it didn't think Mr S would have been surprised that the premiums continued and didn't think the award of £300 was therefore appropriate.

As he was furnished with new information the investigator reconsidered his view and decided that the life cover was suitable – and intended to last for 15 years. But he thought Mr S should have been aware that the plan wouldn't stop after 15 years and should have been aware of the premiums through all the information Prudential provided him with. He thought Mr S should have known he could have cancelled the life cover at any point and therefore didn't now believe Prudential should pay £300.

Prudential agreed with the revised findings but as Mr S didn't agree and no resolution could be found the complaint's been passed 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.

#### *Was Mr S made aware of the additional death benefits included in his AVC's and that the premiums would increase?*

I've looked at the brochure that was made available to explain how the AVC's worked. Under the section "*what happens if I die?*" it confirmed "*you can also use your AVC's to provide extra benefits for your dependents should you die while still making contributions.....the cost depends on how much cover you wish to provide and on your age. The cost increases in three-year age bands on 1 April as shown in table1 overleaf. The examples beneath the tables will help explain how we work out the cost*".

When he took out the AVC's Mr S was 39 years old which, from the table, shows the cost of life cover would have been 9 pence per £1,000 of cover.

That cost rose to £1.05 per £1,000 at the age of 58. I think the table within the brochure was clear that the cost of providing the life cover would increase every two years or so, and some of these later increases were quite significant – so I can't say Prudential didn't make Mr S aware of how the cost of providing life cover and dependents benefits would work.

And of course, Mr S opted to pay 9% of his salary into AVC's – which was the maximum permissible under pension legislation. So any additional death benefits would need to be taken from that maximum contribution, which meant the amount being invested to increase Mr S's retirement provision was also reduced over the term of the plan.

So I think Prudential made Mr D aware of how the cost of providing death benefits would be calculated and how it would continue to change depending on age. Mr S said that he hadn't been aware of the additional life cover element, but now accepts, following Prudential providing him the evidence, that he signed his application to include that element. And I note the application form stated that "*I have received the key features document.....and the members AVC booklet*", so Mr S in effect also signed to say he'd seen the table, included within the brochure, that set out the age bands which formed the basis of the life cover premiums.

The declaration within the application form also said "*I understand that the additional benefit cover will cease on retirement, leaving service or cessation of premiums*", while the brochure also confirmed "*what happens if I die? to pay for this valuable protection, a monthly premium is taken out of your AVC until your normal retirement date or the date you leave service (whichever is the sooner) , or until you decided that you no longer need the protection*".

So I can't agree with Mr S that he wasn't made aware that the premiums for the life cover would increase every few years or that they would continue until he drew his pension benefits unless he left the service earlier. I'm satisfied that Prudential made its position on these matters clear in a number of documents.

#### *The level of premiums and the impact on the AVC fund*

Mr S says the death benefit premiums were "*extortionately high*" and have impacted on his pension AVC contributions. And I can understand why Mr S would be disappointed with his final retirement provision if it didn't match with what he expected from the outset. But as I've said I'm satisfied Mr S agreed to the level of contributions required to improve his death benefits in addition to his retirement provision. And in most circumstances, there's no regulatory limit on the amount that a provider can take by way of premiums. So I can't safely say Prudential's premiums were "*extortionate*" and we wouldn't normally comment on the level of premiums that have been set, where they appear to have been set to take into account mortality rates and applied consistently – if the provider has laid them out previously – which I think Prudential has done here.

Looking at the amount of £113.40 that Mr S was paying, I'm satisfied that figure was correct according to the table in the brochure, for the amount of life cover chosen for Mr S and using his age at that point. Mr S says the letter he received in January 2019 – which explained that the life cover costs were being reduced to £321.84 per annum show that the previous amounts were excessive. But, for the reasons I've given, I think Prudential is entitled to change the costs if it has a justified commercial reason to do so. In this case it's explained that changes in mortality rates have led to reductions in the charges it makes for life cover – and it's decided to backdate those reductions which has led to Mr S receiving a refund. That doesn't seem an unreasonable action to me and Mr S has also seen the benefit of reduced life cover premiums.

I know Mr S would like us to tell Prudential to investigate the life cover premiums before 2014, and I can understand why he would think there might be a problem having received a refund of £4,450 for the fact that Prudential would like to have reduced its rates from 2015 onwards. But, as I've suggested already, the question of what level of premiums Prudential imposes is a matter for it to decide based on a number of different factors.

We don't generally interfere with such commercial decisions, if they are made fairly and applied consistently and as long Prudential has set them out accordingly and made Mr S aware— which I think it has, both through the table in the brochure, and through the regular statements and review letters.

*Was the term extended beyond the original agreement of 15 years without Mr S's agreement and was the recommendation suitable?*

Mr S says the plan he agreed to take out was set to provide life cover for a term of 15 years. I've looked carefully at the application form and there's no evidence to show that the plan was set up for 15 years.

But I have seen, from the financial review that Prudential completed in 1998, that the adviser identified a shortfall in life cover protection of £64,780 for Mr S over a term of 15 years. And I've carefully considered the "*financial review summary report*" that the adviser sent Mr S shortly afterwards. It said "*I have provided you with a quotation based on the normal retirement age of your scheme. I have also provided you with a quotation for the term requested, where this ends prior to your normal retirement date...I recommend an amount of £108,000 over a term of 15 years at regular premium of £9.72 per month. You decided to accept my recommendation*".

So I can certainly understand why Mr S might have thought the premiums would continue for that length of time. But that document was used by the adviser to gather information about Mr S and his partner, in order to make recommendations. So I think the adviser was simply stating that Mr S needed a certain amount of cover for a particular length of time as his *recommendation*. But those weren't the actual particulars of the plan that was taken out – which I've already said Prudential made clear was to run until Mr S stopped it, left the TPS or drew his AVC benefits.

Indeed, the adviser's recommendation was to take out life cover to the value of £64,780, which wasn't taken up as a recommendation. So, although I can understand why Mr S believed that was the term of the plan, I think the financial review simply contained the adviser's various recommendations, not the specific details of the final plan that was taken out, which were available from the key features document and accompanying brochure. I note the "*financial review summary report*" that was sent to Mr S confirmed his needs and included life assurance protection, critical illness cover and protecting a mortgage all for a term of 15 years. But the final recommendation was for an open-ended life cover plan.

So I've thought very carefully about whether the Prudential's advice was suitable because, although I think Prudential made Mr S aware of how the death benefits worked within the AVC's, it's important to consider whether this advice was suitable in the first place. And looking at the fact find the adviser completed for Mr and Mrs S it was noted that they had applied for a mortgage of £90,000 over a term of 15 years. The adviser advised Mr S to take out the AVC death benefits to cover the mortgage, but I don't think that was suitable advice. I say that for a number of reasons.

Firstly, Mr S needed to pay the premiums to cover the mortgage in the event of his death, regardless of his employment situation. In this case had Mr S left his job he would have stopped receiving both his death in service benefits from his employer and the additional TAVC death benefits immediately – which would have meant he wasn't covered in the event of death. He hadn't been with his employer for that long – six years, so it seems there was a reasonable chance he might change jobs in the future.

Secondly the AVC death benefit premiums were set up to increase every couple of years – resulting in quite significant premiums as Mr S got older. I think it's possible that a fixed cost level term plan over 15 years would have been cheaper for Mr S, regardless of the tax relief he received on his AVC's. In any case I think illustrations for both options should have been put before him.

Finally, the AVC death benefit didn't match Mr S's needs for either the cover or the term he needed. The cover was open ended and provided £58,000 of capital, whereas he required cover for his mortgage of £90,000 over 15 years.

So for those reasons I don't think the life cover within the AVC's was suitable for Mr S and I think Prudential ought to compare the cost of a level term policy over 15 years against the total amount of AVC life cover premiums he's paid to date, less the refund that's already been made.

However, I recognise that part of the AVC death benefit package was for a dependent's pension which I think was a suitable recommendation to make as it wasn't linked to the protection of the mortgage and provided Mr S with a valuable benefit for his family in the event of his death. So I think Prudential should exclude the cost of providing those benefits from its comparison. It's possible that, allowing for that exclusion and the earlier refund, Mr S may have benefited from lower overall premiums than what he should have paid, in which case there would be no compensation to be paid.

But if the comparison shows that Mr S has paid more than he would have done using a level term policy then the difference should be paid to him with the addition of 8% simple interest from the date of each payment to the date of the calculation.

The compensation should, if possible, be paid into Mr S'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 the payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. For example, if Mr D would have been yet to take a tax-free cash sum from the pension 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 future loss adequately reflects this. If either party can provide clear evidence that Mr S wouldn't be a basic rate tax payer when he draws his benefits it should provide that evidence following this provisional decision.

#### **my provisional decision**

I'm currently minded to uphold Mr S's complaint against The Prudential Assurance Company Limited in part.

Prudential should carry out the comparison of life cover premiums – as set out above – to see if Mr S has suffered a loss. In addition, I think Prudential should pay Mr S £100 for the disruption this matter has caused to his retirement planning.

Keith Lawrence  
**ombudsman**