

complaint

Mrs A's complaint is that the advice she was given by The Prudential Assurance Company Limited to contribute to a free standing additional voluntary contribution scheme (FSAVC) was unsuitable when there was an 'in-house' additional voluntary contribution scheme (AVC) available through her employer.

background

The complaint was considered by one of our adjudicators, who did not consider that the complaint should be upheld. In summary, he said:

- In 1998 Mrs A took advice on retirement planning; the fact finding document recorded that she was employed in the public sector and was a member of her employer's occupational pension scheme. Mrs A wanted to retire at age 60 and the Prudential adviser recommended that she contribute to an FSAVC scheme. In 1999 Mrs A took further advice and increased her contributions to the FSAVC scheme.
- The documentation available from 1998 was incomplete, however the fact find recorded that the leaflet "*Additional Voluntary Contributions – some important features*" had been given to Mrs A and that the contents had been explained. The documentation from 1999 was available and the suitability letter confirmed the leaflet "*Additional Voluntary Contributions – some important features*" had again been provided, and also said that Mrs A had been advised of the differences between 'in-house' AVCs and FSAVCs and that she understood this. The letter said that Mrs A was prepared to accept a small amount of risk with her retirement savings. The FSAVC was invested in the 'with-profit' fund in line with her 'very cautious' attitude to risk.
- The adjudicator felt it was reasonable for Mrs A to want to ensure her retirement plans were sufficient to meet her needs as she would not qualify for a full occupational pension through her employer's scheme.
- The adjudicator's understanding of the adviser's requirements at the time was that they should point out that 'in-house' AVCs were available, explain that AVCs were likely to be better value due to charges and recommend that the consumer should investigate any 'in-house' arrangements.
- Whilst there was a lack of full documentation from the initial sale in 1998 all of the relevant documents were available from 1999. The fact find was available from 1998 and this recorded that the leaflet comparing 'in-house' AVCs with FSAVCs was given and the contents were explained. The documents from 1999 were all available and they confirmed that the leaflet was given (again), and that the contents were explained.
- The adjudicator felt that on the balance of probabilities, the adviser would likely have explained the differences between in-house AVCs and FSAVCs, confirmed the availability of the in-house scheme and recommended that Mrs A should investigate the details of it.
- His opinion was that, having seen a copy of the leaflet and the statement therein "*some employers offer to match a scheme member's contribution to an 'in-house' AVC with extra contributions to the occupational scheme. If this is the case it is*

unlikely that you would be better off with an FSAVC” that this would prompt a consumer to find out the details of their ‘in-house’ scheme for what was offered.

- The original complaint to the business raised by Mrs A’s representatives said that her attitude to risk had not been properly assessed and also made several points regarding a lack of detailed comparisons between the available ‘in-house’ AVC and the FSAVC advised to Mrs A. The adjudicator’s view was that the adviser was not required to make such detailed comparisons and that the attitude to risk had been documented in both 1998 and 1999.

Mrs A’s representatives did not agree with the adjudicator’s findings. It said its understanding of the requirements were that there should be clear evidence in the ‘reasons why’ letter that the differences between the ‘in-house’ AVC scheme and the FSAVC were discussed, a clear reason for not recommending the ‘in-house’ option, and that the client should be made aware of the cost implications between the ‘in-house’ AVC scheme and the FSAVC.

Mrs A’s representatives did not believe that without full documentation for the initial sale it was possible to say with any certainty what discussions took place. It considered that a positive reason for not recommending the ‘in-house’ scheme was required and this was clearly not done. It considered that Mrs A was not given all the relevant information and therefore could not make an informed choice.

The representatives accepted that the documentation was available from the sale in 1999, however it felt that with the ‘top up’ being so close to the initial advice, Mrs A would still be reliant on the conversations or documents provided previously and would not have questioned so much in 1999 as she felt that the adviser had sold the correct product in 1998.

my findings

I have considered all of the evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. Having done so, I have come to the same conclusions as the adjudicator, and for largely the same reasons.

I am satisfied, on the balance of the available evidence, that Prudential in 1998 made Mrs A aware of the possibility of paying AVC’s via her employer’s pension scheme. Her attention was drawn to this option in the firm’s leaflet which was recorded as being given to her in 1998 and 1999 - this has not been disputed. This explained some of the different features of the two schemes and said, amongst other things, that:

Since 1989, any employer who offers an ‘in-house’ occupational pension scheme also has to offer to provide an AVC facility, so, if you are a member of your employer’s pension scheme, you will also be eligible to make contributions to the ‘in-house’ AVC facility. Information on any ‘in house’ scheme will be available from your employer or pension scheme trustees.’

And

In many cases the employer bears some, or all of the administration costs whereas in the case of an FSAVC these costs are borne by the customer.

Although the suitability letter from 1998 is not available the letter from 1999 sent to Mrs A following the ‘top up’ states *“Whilst discussing your retirement provisions I provided you with a leaflet entitled Additional Voluntary Contributions – some important features. I advised you of the differences between ‘in-house’ AVCs and Freestanding AVCs, which you understood.*

I also informed you that your employer will provide an additional voluntary contribution scheme and that the charges on 'in-house' AVC schemes will usually be lower than those under FSAVCs.

I accept that the letter made no specific reference to the actual charges in the schemes, but the letter did explain that the charges on in-house schemes were usually lower.

I note that Mrs A's representatives have said that the adviser failed to assess Mrs A's attitude to risk. However this was clearly recorded in the documentation provided. It has also said that it was not possible to say with any certainty what discussions there were surrounding the in-house AVC. Whilst I accept that it is not possible to say with certainty what was discussed, I am bound to make a decision on the balance of probabilities – that is what I consider was most likely to have happened given the evidence that is available. For the reasons outlined above, I consider it more likely than not that Mrs A was alerted to the in-house AVC and the generic difference between the two schemes – including charges.

Overall, I have not been persuaded that the FSAVC was inappropriate for Mrs A in the particular circumstances, or that the firm failed to meet its regulatory obligations.

my final decision

My final decision is that I do not uphold this complaint.

David Ashley
ombudsman