

summary of complaint

Mr K's complaint concerns the sale of a Teachers' Additional Voluntary Contributions ("TAVC") policy by a representative of The Prudential Assurance Company Limited ("Prudential"). Mr K says he thought he'd instead signed up to increase his contributions to his main 'final salary' occupational pension in the Teachers' Pension Scheme ("TPS").

Mr K is also unhappy that Prudential made changes to its annuity rates in late 2012 ahead of the legal deadline for moving to gender neutral pricing. He feels this was unfair. He has also complained about Prudential's decision not to tell all policyholders in advance about the changes to its annuity rates, to give male policyholders such as himself the chance to take their TAVC benefits on more beneficial rates.

background

I issued a provisional decision setting out my views on Mr K's complaint on 22 July 2015. A copy of my provisional decision is attached, and it forms part of my final decision now. Both parties were invited to comment on my provisional findings.

Prudential said it had no further information or points to make at this time.

Mr K sent in detailed submissions, explaining why he didn't agree with my conclusions. I don't intend to attempt to summarise the full contents of his letter, but I confirm I've read and very carefully considered all the points that he made. However, his main points regarding the first aspect of his complaint (about the sale of his TAVC policy) were:

- He thought he was making contributions to buy extra TPS pension, and what he was buying should've been clearly explained to him, without him having to decipher the jargon of finance.
- He'd been misled into buying something completely different to what he'd been led to believe, and something he didn't want.
- As evidence that he would've bought Past Added Years if properly informed of his options, he noted that this was what he thought he was buying at the time, albeit he didn't know the term 'Past Added Years' at the time.
- He would definitely have bought Past Added Years, in spite of the potential of 'better growth' from the TAVC policy.
- He continues to believe the wording used by Prudential was misleading, as it indicated he was making additional contributions to 'top up' his TPS pension, not taking out a separate contract.
- He doesn't agree that a free-standing AVC policy is a *third* option; he considers it to be the same as the TAVC facility, just with higher administration charges.
- Having said on page 2 of my provisional decision that I would return to the issue of what Prudential representatives were meant to tell teachers about the potential availability of Past Added Years, he couldn't see that I'd done so.
- He didn't receive an explanatory booklet from Prudential about the TAVCs product he was buying – and Prudential should've provided its own booklet.
- He continues to disagree that there is any link between the TAVC facility and TPS.
- He understood that all his extra payments were going to the TPS and regardless of their investment growth they would end up in his TPS pension pot which once it starts paying out is guaranteed and is index-linked. So, where the Application Form said that the Teachers Pension Agency didn't guarantee a particular level of benefit,

this didn't concern him, as he understood that it would be added to his TPS pension and guaranteed once retirement began.

- He considers that in the face of inconclusive evidence about what (if anything) he was told at the time of the sale about the Past Added Years option – and whether he was given *misleading* information - he should be given the benefit of the doubt.
- He doesn't agree that he should've questioned the references to making 'any other contributions', including to Past Added Years, as he had been led to believe that the official, main TPS enhancing option was the TAVC facility.
- He wouldn't have been interested in other options, because he'd been led to believe that he was getting the best official option. Even if he had been made aware of the differences, he was led to believe that the TAVC policy was the best thing to do to build-up his TPS pension.
- He believes I agreed with him that it wouldn't be clear to a policyholder from the generic language used by Prudential that he/she wasn't buying additional final salary pension in the TPS. And, as this was the basis of his complaint, I should therefore be upholding his complaint.
- If the differences had been explained to him, even if I didn't believe that he would've bought Past Added Years, his case is that he may not have put any more money into a pension and instead may have put money into a savings account or property.
- He maintains that, now he understands the difference, he would've opted for Past Added Years – that is after all what he thought he was buying.
- Even if he hadn't bought the full 17 years of Past Added Years, he would've bought what was affordable to him.
- He has suffered a financial loss, as he would've had a higher pension through buying Past Added Years. Or, if he hadn't invested in a pension, he would've put his money elsewhere which could have been available to him now as a lump sum, with interest.
- He disagrees with my description of his salary increases remaining "*fairly modest*" over the years he was employed as a teacher, and disputes that he would've contemplated at the time that his salary increases might remain fairly modest.
- If things had been properly explained to him, he disputes that he would've opted for investing in other, unguaranteed options, when he would still have considered the TPS pension to be better.
- He expected to marry at the time, so wouldn't have been swayed by part of his contributions being used to fund a spouse's benefit which might not to be needed.
- He doesn't consider that it is for me to draw conclusions about what he would most likely have done if he'd understood the different options – he considers that he is best placed to say what he would've done.
- He wouldn't have had a reason to complain in 2012, if he'd known what the real situation with his pension was at the time he started his TAVC policy. Therefore I was incorrect to say that I thought he was attracted to investment growth, and that the lack of guarantee didn't put him off paying 9% of his salary.

Regarding the second aspect of his complaint, Mr K said, in summary:

- He doesn't agree that Prudential's decision to change to gender neutral annuity rates early was a matter for its 'commercial judgement'.
- It was irrelevant that the open market option was available, as the legal change affected all annuity providers.
- He considers that Prudential ought to have informed all policyholders over minimum pension age of the forthcoming change to gender neutral annuity rates, and in very good time. Also, that Prudential should've known he'd wish to retire in 2012, because

he'd already taken early retirement from the TPS, so it should've known he might be planning to take his TAVC policy benefits.

- If he had been warned by Prudential in good time, he could have found a better male annuity rate before the change in the law, and before other providers changed their rates to be gender neutral.

my findings

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

Having done so, I've not been persuaded to change my mind from my provisional findings. I know this will be very disappointing for Mr K. But while I appreciate that he strongly disagrees with the conclusions I've reached, I'm still not satisfied it would be fair or reasonable for me to uphold either part of his complaint against Prudential.

Some of the points Mr K made have already been covered in my provisional decision, so I don't intend to repeat the conclusions I previously reached on such matters. But I will now address some aspects Mr K raised which need clarification or are new points.

I'll start by explaining why I described the TAVC policy as the second option available to Mr K, with a free-standing AVC policy as the third option. Mr K believes them to be one and the same (except that free-standing policies typically have higher charges), because he feels that the TAVC facility is also an entirely separate arrangement unconnected with the TPS. As I explained in my provisional decision, the TAVC facility is connected with TPS – it is the in-house AVC option which the Teachers Pension Agency put in place. To be eligible to take out a TAVC policy, the investor must also be building up a pension in the TPS.

By contrast, a free-standing AVC policy isn't linked to any particular occupational pension scheme. This allows a person to move between different, unconnected employers. Provided each employer offers an occupational pension scheme, the employee can continue to make additional pension contributions into their free-standing AVC policy, without having to set up a new policy each time they move employment.

Mr K has said he couldn't see that I'd returned to the issue of what Prudential representatives were meant to tell teachers about the potential availability of Past Added Years, having raised it at the end of page 2 of my provisional decision. To clarify, I returned to this issue on page 4 of my provisional decision. I noted that I couldn't know now what Mr K had been told by the Prudential representative back in 1996, and again in 1998. I set out the two possibilities (either that correct information was given, or it wasn't), and noted there was no conclusive evidence from the time. I went on to conclude that, on balance, based on the limited evidence available, I didn't think I had sufficient grounds to safely conclude that Mr K had been misled or misinformed by Prudential.

Mr K has said that on page 3 of my provisional decision, I accepted that he may not have received any explanatory booklet *from Prudential*, and confirms that he didn't. To clarify, where I referred on page 3 to an explanatory booklet, I was referring to the booklet that Mr K should've received from either his employer or the Teachers Pension Agency/TPS administrators when he joined the TPS in 1991 (and potentially revised copies in later years). This booklet contained information on buying Past Added Years. I wasn't referring to the booklet he should've received from Prudential when joining the TAVC facility in 1996.

Mr K says that Prudential ought to have provided its own booklet to him at the time of sale, explaining exactly what he was getting into with the TAVC policy. I'm aware that Mr K was sent a copy of Prudential's TAVC policy booklet by our adjudicator in June 2014, and he provided comments on it in a letter dated 1 July 2014. The booklet explains that within the TPS there are two ways to make AVCs: the 'added years' facility which allows a member to 'buy' extra years of service, and the 'Prudential AVC facility'. The booklet then explains how the TAVC facility works.

Mr K says he never received this booklet from Prudential. Prudential says Mr K would've been given a copy at the time of sale. Again, there are two possibilities – either Mr K was given the booklet in 1996 but can no longer recall this, or he wasn't. Without conclusive evidence either way, I don't think I've got sufficient grounds to reach the view that it's *most likely* Mr K *didn't* receive the booklet.

Mr K has also said that he wouldn't have been interested in other options even if he'd been made aware of them, because he was led to believe the TAVC facility was "*the best official option*". This suggests to me that receiving Prudential's booklet wouldn't necessarily have led Mr K to a different outcome, because he already believed that taking out a TAVC policy was the best option available to him.

Mr K has said he understood that all his AVCs were going to the TPS and regardless of their investment growth they would end up part of his TPS pension. He explained that where the Application Form said that the Teachers Pension Agency *didn't guarantee* a particular level of benefit, this didn't concern him, as he understood that it would be added to his TPS pension and guaranteed *once retirement began*.

What Mr K has said about the way he expected his TAVC policy contributions to be treated, suggests he understood that they were being *invested*, and that his 'fund' could go up or down. Specifically, he said: "... *I believed all my extra payments would be within the TPS and regardless and however they grow they would end up in my TPS pension pot which once it starts paying out is guaranteed and is index linked.*" (my emphasis)

Given what Mr K has said about what he understood to be the *guaranteed* and *non-guaranteed* features of his pension arrangements, I don't think the TAVC policy has actually performed that differently to what he says he expected. He seems to have understood that his TAVC policy investment growth wasn't guaranteed, and that the guarantee element only kicked in when he came to take his pension benefits.

Mr K used the TAVC pension 'pot' to buy an annuity in late 2012. At that point, the income from the annuity became *guaranteed for life*, in just the same way as his final salary TPS pension has been guaranteed for life since his retirement began. So, based on his understanding of how the guaranteed aspects worked, he ended up with largely the same outcome – two pension incomes, both for guaranteed amounts once in payment.

The TPS pension includes index-linking as a standard benefit (in other words, it increases each year it's in payment). I accept that the TAVC policy doesn't guarantee an index-linked pension at retirement in the same way. But when Mr K bought an annuity with his TAVC pension 'pot', he had a choice whether to buy an index-linked annuity, or a 'level' annuity (meaning it wouldn't increase each year).

I've assumed Mr K chose a level annuity, which provides a higher pension income at the start (whereas the index-linked option will generally be lower for a number of years before it

reaches the same value as the level annuity). However, if Mr K wanted guaranteed index-linked pension income (ie on the same basis as his TPS pension), it was open to him to choose an index-linked annuity when he converted his TAVC policy into pension benefits.

Mr K believes I agreed with him that it wouldn't be clear to a policyholder from the 'generic language' used by Prudential that he/she wasn't buying additional final salary pension in the TPS. He thought that as this was the crux of his complaint, I should uphold it on this basis. But what I actually said was: "*It wouldn't be clear to a policyholder from this information alone that they weren't buying additional 'final salary' pension in the TPS.*" (my emphasis)

I then said that I didn't think I could say that Prudential misled Mr K by using generic pensions language. I said this language also had to be read together with the other information given to him about how his TAVCs would be invested; also that the benefits available weren't guaranteed, and would depend on investment growth and interest rates at retirement. I explained that, bearing this in mind, I didn't think Mr K ought reasonably to have concluded that his TAVCs were going towards topping up his 'final salary' pension in the TPS, on a risk-free, guaranteed basis. So, I don't agree with Mr K that my view on the generic pensions language used by Prudential means that I should uphold his complaint.

Mr K says that if Prudential had given him a proper explanation of his options, he would've chosen Past Added Years. But, he's also said that if I don't accept this, his case is that he still wouldn't have gone ahead with the TAVC policy. Instead, he might have put money into a savings account or into property. So, he says he's suffered a financial loss because of this.

I understand that Mr K may now feel that he would've preferred one of these other options. It is difficult to say what someone might've done differently many years previously, and whether Mr K would still feel this way if his TAVC policy investments had grown as projected in 1996 and 1998.

But I could only uphold his complaint, and therefore make Prudential pay him financial compensation, if I found that Prudential was at fault, by misleading him about the product he was buying. Where the evidence is inconclusive about what an individual was told at the time, I have to base my decision on what I think, on the balance of probabilities, is most likely. So I'd need to consider it *more likely than not* that Prudential gave Mr K incomplete or misleading information, leading him to believe that he was contributing to increase his guaranteed, index-linked pension from the TPS. I don't believe that the case for this has been proved.

In reaching my view, I have to take into consideration that there was, in my opinion, clear language on the documentation Mr K signed which would, or should, have contradicted his belief about what he was contributing to. The information and risk warnings from his 1996 TAVCs Application Form and the 1998 Personal Quotation (quoted in my provisional decision) set out that Mr K's pension income from the TAVC policy wasn't guaranteed, and would depend on investment growth and interest rates at the time he retired. I don't think any financial expertise is required to understand that this wasn't the guaranteed, risk-free 'top up' to his TPS 'final salary' pension Mr K says he thought he was buying.

And, as I explained in my provisional decision, even if I thought Mr K had been misled, I would also need to be satisfied that he would've done something differently. For the reasons I set out in my provisional decision, I'm not necessarily convinced that he would've done.

Mr K has made the reasonable point that, even if the full 17 years of potentially available Past Added Years had been unaffordable to him, he would still have bought as much additional service as he could afford. I accept this is possible.

But I also take into consideration that when Mr K started his TAVC policy, he wanted to contribute 3% of his salary. If he'd explored the option of buying Past Added Years at this time, the TPS administrators would've told him how much additional service he could buy for a 3% contribution. He would've then had to match that up against the projected benefits from investing his 3% contribution through the TAVC facility. I'm not sufficiently persuaded that the Past Added Years would've looked obviously more attractive in that scenario (or indeed when he later increased his contribution to 9% in 1998).

Turning now to the second aspect of Mr K's complaint, Mr K appears to have misunderstood what I said about the change to gender neutral annuity rates being a matter of Prudential's 'commercial judgement'. There's no question that there was a legal requirement to make the change. But what I said was that Prudential's decision to make the change *earlier* than the legal deadline was a matter for its commercial judgement. Mr K appears to acknowledge this was a commercial decision, because he also noted that Prudential "*obviously wanted to save itself money by giving less annuity payouts to me, ahead of the EU set implementation date*".

I agree that it might have been good customer service for Prudential to write to all policyholders over minimum pension age to inform them of the forthcoming change of law and its planned early move to gender neutral annuity rates. Instead, Prudential decided to write only to policyholders who were approaching their retirement date under their policy, or to those policyholders who contacted Prudential about taking their benefits.

I do understand Mr K's frustration with Prudential's decision not to write to all its policyholders over minimum pension age. But this doesn't change my view. While Prudential could've done something different – notifying all policyholders over minimum pension age – I don't think the policy it adopted was *unreasonable*. It is always free to amend its annuity rates, and isn't required to notify all policyholders before doing so. So I don't think Mr K should be compensated for the fact that he might have been offered a better rate *from Prudential*, if he'd been aware that Prudential intended to change its rates ahead of the legal deadline.

In any case, Mr K still had the opportunity to buy an annuity based on a male-specific rate, prior to the deadline, using the open market option. I say this because Mr K became aware of the forthcoming change of law by no later than 5 December 2012 (when he wrote to this Service to complain about Prudential's actions). This was 16 days prior to the change in law, so would've been sufficient time to arrange an open market option (having already been sent the forms required to arrange the open market transfer within Prudential's retirement pack issued to him on 21 November 2012).

my final decision

For the reasons explained above, and in my attached provisional decision, I'm unable to uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 February 2016.

Venetia Trayhurn
ombudsman

COPY PROVISIONAL DECISION

summary of complaint

Mr K's complaint concerns the sale of a Teachers' Additional Voluntary Contributions ("TAVC") policy by a representative of The Prudential Assurance Company Limited ("Prudential"). Mr K says he thought he'd instead signed up to increase his contributions to his main 'final salary' occupational pension in the Teachers' Pension Scheme ("TPS").

Mr K is also unhappy that Prudential made changes to its annuity rates in late 2012 ahead of the legal deadline for moving to gender neutral pricing. He feels this was unfair. He has also complained about Prudential's decision not to tell all policyholders in advance about the changes to its annuity rates, to give male policyholders such as himself the chance to take their TAVC benefits on more beneficial rates.

background to the complaint

Mr K joined TPS in 1991. In 1996, he met with a representative of Prudential who recommended he set up a TAVC policy and contribute 3% of his salary. In 1998, he met with the Prudential representative again, and increased his contribution to 9% of his salary. Mr K retired on ill-health grounds in 2009. In late 2012, he decided to take his TAVC benefits. He bought an annuity on the open market, with a third party provider.

Mr K complained to Prudential about the two issues set out above, and then referred his complaints to our service. Regarding his main complaint about his TAVC policy, Mr K felt that he'd been misled about the pension he'd been contributing to. He said the language Prudential used suggested he was contributing to buy extra TPS pension, and not a completely separate annuity unconnected with his guaranteed TPS benefits. He asked to have his contributions to the TAVC policy (and investment growth) refunded to him, as he would never have contributed to the TAVC arrangement if it had been properly explained to him.

my provisional findings

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

complaint about the sale of Mr K's TAVC policy

I'll start with Mr K's main complaint, about his TAVC policy. In order to find in Mr K's favour (and make Prudential pay him the financial compensation he seeks), I would need to be satisfied that:

- Prudential mis-sold him the TAVC policy, by giving him incorrect, incomplete or misleading information which led to him taking out the policy; *and*
- If Prudential hadn't given him incorrect, incomplete or misleading information, Mr K would've done something differently – namely, buy Past Added Years within the TPS.

Before addressing whether I think Prudential mis-sold Mr K the TAVC arrangement, it may be helpful to give some relevant background information about the interaction between the TAVC facility and the TPS.

background on the options for paying AVCs

The pensions of public sector teachers are provided by the TPS, which is an occupational 'final salary' pension arrangement. During Mr K's employment, the TPS gave members 1/80th of their final salary at retirement (based on the average over the last three years of service), for each year of service, up to a maximum of 40 years. Employees contributed a fixed amount of 6% towards their pensions, and the employers made up the balance of the cost.

By the time Mr K joined the TPS, if an employee wanted to increase their pension provision, there were three options available. The first was to buy Past Added Years. This allowed the employee to pay contributions to make up any shortfall in the number of years they could've been a member of the TPS – based on being eligible from age 20. So in Mr K's case, because he was 37 when he joined the TPS in 1991, it's my understanding that he might have been eligible to buy up to 17 years of Past Added Years - depending on the TPS accepting his application, and the contribution required being affordable to him.

As an alternative, employees could make additional contributions to build up 'money purchase' benefits, used to buy a 'top-up' pension at retirement – usually through buying an annuity with a pension provider. Since 1989, legislation had required all occupational pension schemes to offer access to 'AVCs' arrangements for employees. The Department for Education and Skills chose Prudential to provide its AVC facility. According to the TPS booklet produced by the Teachers Pensions Agency, Prudential was chosen because it offered low administration costs to members of the TPS, and because of its competitive investment performance.

The third option was for members to take out a free-standing AVCs policy totally separate from their occupational pension scheme. These tended to have higher charges, so were usually less attractive than in-house AVCs arrangements, although they were otherwise structured on a similar basis.

Prudential says that the terms agreed with the Department of Education and Skills required that its representatives explain the TAVCs facility in detail, and made general reference to the other options available. Prudential doesn't dispute that its representatives were meant to tell teachers that Past Added Years might be available from the TPS, and that they'd need to contact the Teachers Pensions Agency for details of this. I will come back to this issue in relation to Mr K shortly.

When Mr K became a member of the TPS in 1991, he should've received a booklet giving him information about the TPS. This would've included information on paying additional contributions to buy Past Added Years, and paying additional contributions into the TAVCs arrangement run by Prudential. If for any reason, Mr K didn't receive this booklet, this is obviously unfortunate, but I can't say that this would be Prudential's fault. It was the responsibility of the administrators of the TPS (and, arguably, Mr K's employer) to make sure Mr K received the TPS booklet. I understand Mr K's position to be that he never received a copy of the booklet, as he says nobody told him about the option to buy Past Added Years.

Mr K's complaints about TAVCs

Part of Mr K's unhappiness with the TAVCs arrangement is that he believes he was misled into thinking it was connected with the TPS, when he feels that it isn't, and shouldn't have been represented as such. I can understand his perspective, because the benefits built up in the TPS aren't directly linked to the benefits built up in the TAVCs arrangement. Nonetheless, there is a connection, in that the TAVC facility was set up by the Department of Education and Skills, and the Teachers Pensions Agency, to fulfil its legal obligation to offer a low cost in-house AVCs option. Prudential runs this facility on behalf of the TPS, but a person is only eligible to join the TAVC arrangement if they are employed as a teacher and are a member of the TPS. Therefore, I don't consider that Prudential misled Mr K by describing the TAVC facility as connected with the TPS.

Mr K has focussed on the guaranteed nature of benefits from buying Past Added Years, and says, for example, "*I would not have entered an AVC with no guarantees*" and "*I wanted a guaranteed cast iron RISK FREE pension*" (his letter to this Service of 1 July 2014). I have no doubt this is an accurate reflection of how Mr K feels about it now, having learnt of the Past Added Years option. But I do also need to take into account the information on the documents Mr K signed up to in 1996, and 1998. Bearing in mind his occupation, I would expect Mr K to read and be able to understand the majority of the information on the documents, and ask for an explanation of any aspects that he didn't understand. These include the information on the 1996 TAVCs Application Form:

“Your Additional Voluntary Contributions detailed above will be invested in the With Profits Fund. Details of alternative investment options are available on request from Prudential.”

“6. IMPORTANT NOTICE

In applying to join the facility, you should understand and accept that:...

(c) because the facility is a way of investing money in order to provide pension benefits, those benefits will depend on the contributions paid, the performance of the investments and on interest rates at retirement; and that therefore the Teachers Pension Agency... cannot guarantee that any particular level of benefit will be available at retirement;”

Similar wording also appeared on the 1998 TAVCs Amendment Application Form.

The Personal Quotation produced for Mr K in 1998 also included the following wording, when estimating the projected value of Mr K’s TAVCs fund at retirement, and the annual pension he might receive:

- *“The figures are only examples and are not guaranteed – they are not minimum or maximum amounts. What you will get back depends on how your investments grow.*
- *You could get back more or less than this.*
- ...
- *Your pension income will depend on how your investments grow and interest rates at the time you retire.”*

Having read these statements, I have to conclude that at the timing of signing the relevant application forms, Mr K had been informed, at least to some extent, about the nature of the TAVC contract. It wouldn’t have made any sense to him to receive information and risk warnings about investment of his additional contributions, if Mr K had been told he was making additional contributions to buy extra ‘guaranteed’, ‘risk-free’ TPS pension.

Of course, I can’t know now what Mr K was told by the Prudential representative back in 1996, and again in 1998 – and in particular, whether he had the Past Added Years option explained to him. He may have been given correct information by the Prudential representative, and with passage of time his recollections have faded. Or, he may have been given incomplete or misleading information, and perhaps no information was volunteered on the Past Added Years option. There is no conclusive evidence from the time.

One of the questions on the application forms asks if Mr K has been contributing towards Past Added Years. He might reasonably have asked for an explanation of what this meant, if he read the question and was unsure. In another place on the forms, it also says:

“Due to restrictions imposed by the Inland Revenue, you must not pay more than 15% of salary in any tax year as contributions. This includes the 6% (and any other contributions) you already pay as a member of the [TPS]... and any contributions to a free-standing AVC policy.” (my emphasis)

I consider that this information also highlighted that, in addition to contributing to the TAVC facility, there were other ways to make additional contributions – either to the TPS or to a free-standing AVC. This could’ve alerted Mr K to the fact that there were other options available.

On balance, based on the limited evidence available, I don’t think that I’ve got sufficient grounds to safely conclude that Mr K *was misled or misinformed* by Prudential into thinking that the TAVC policy was his only option. Even if the information about Past Added Years wasn’t volunteered to Mr K, there was other information available highlighting that there were other options.

Mr K has commented on the language used by Prudential – for instance referring to TAVCs as ‘increasing pension benefits’ rather than ‘buying a separate annuity’. I can see how the use of this

generic language could have caused some confusion for someone who is a pensions layman, such as Mr K. It wouldn't be clear to a policyholder from this information alone that they weren't buying additional 'final salary' pension in the TPS.

But I don't think I could say that Prudential misled Mr K by using this generic language. As a matter of law, AVCs facilities had to be offered by all occupational pension schemes in order to give employees a low-cost option to increase their total pension benefits, above and beyond the pension income they'd receive from the 'final salary' part of their employer's pension scheme (and pension from all other sources e.g. State pension, private pensions etc). AVCs arrangements do increase an individual's pension benefits, but just not through providing identical benefits as are available from the 'final salary' part of the scheme.

And this language also has to be read together with the other information given to Mr K about how his TAVCs would be invested, and that the pension benefits available at retirement were not guaranteed, and would depend on investment growth and interest rates at retirement (which affect annuity rates). Bearing this in mind, I don't think Mr K ought reasonably to have concluded that his TAVCs was going towards topping up his 'final salary' pension in the TPS, on a risk-free, guaranteed basis – as he now says. And I've not seen anything to suggest that the Prudential representative deliberately misled Mr K, by indicating that the TAVCs facility would specifically increase his 'final salary' pension from the TPS (as opposed to increasing his pension provision more generally).

Returning to the particular issue of Past Added Years, importantly, even if I were to conclude that Mr K may not have been specifically told about this option, I also have to consider whether any financial loss actually occurred as a result. For me to decide financial loss had occurred, I'd need to be satisfied that Mr K would have been most likely to opt for buying Past Added Years *at the time*, if he'd been given information about this option. In considering this matter, I need to take into account all the circumstances as they stood *at the time*, without applying the benefit of hindsight.

There were of course significant benefits to buying Past Added Years, as these increased the member's 'guaranteed' TPS pension. However, there are also a number of reasons why Mr K might not have opted for buying Past Added Years. In particular:

- They were at the time considered to be a relatively expensive option. For someone such as Mr K who was effectively 17 years behind on his maximum retirement provision within the TPS, it's difficult to say now that he would definitely have considered it the cost effective option, when compared with the projected benefits available from investing in the TAVCs With Profits Fund.
- The extra pension benefits from buying Past Added Years were fixed from the outset, whereas TAVCs had no cap on the benefits that could be achieved, depending on investment performance and annuity rates available at retirement.
- The contributions required to buy the required number of Past Added Years had to be agreed upfront, whereas TAVCs allowed the flexibility to adjust the contribution rate from year to year, as financial circumstances allowed (subject to the Inland Revenue cap on total pension contributions).
- The true value of buying Past Added Years depended, to some extent, on Mr K's final salary in the three years prior to him leaving 'pensionable service' in the TPS. If Mr K didn't have significant uplifts in his salary over the period until he retired or otherwise left service, there could have been more perceived value in contributing to an arrangement that didn't depend on salary growth but on investment returns to increase the pension income Mr K would receive. Mr K has mentioned the promotion plans he had when he first got advice from Prudential in 1996, including his intention to continue working until age 65 and potentially going on to teach in secondary school and become department head. Whilst I don't doubt that this was Mr K's preferred career path in 1996, he would also have been aware of the

possibility that his salary increases on which his final salary pension would ultimately be based might remain fairly modest (as proved to be the case).

- Expectations of investment growth were higher back in 1996 than they are today, so the expected return from investing in the With Profits Fund was then anticipated to be potentially more beneficial than buying Past Added Years (unless significant increases in salary were experienced close to retirement). Annuity rates were also much better then than they are today. This can be seen from the illustration of potential pension income at age 60 prepared for Mr K in 1998, which estimated an annual pension from his TAVCs arrangement ranging between £5,120 and £17,200 (based on assumed investment growth of 6% to 12% a year). Mr K would've had to compare those estimates of pension from the TAVC policy against the prospect of extra pension from the TPS, the amount of which would've been unknown.
- For an unmarried employee, there was also a higher potential for benefit from the TAVCs arrangement, because included in the cost of buying Past Added Years within the TPS is an allowance for a spouse or dependant's pension, which might never be required. By comparison, the AVCs arrangement allowed the employee to choose *at retirement* whether to buy a 'single life' annuity (one just for himself), or a 'joint life' annuity, if he had by that time married and wanted his spouse to also benefit from an increased pension income after he died. And if the individual remained unmarried at retirement, they benefited 100% from the funds they had built up in the TAVCs arrangement.

I appreciate that investment growth has not proved to be as high as anticipated in 1996, and that annuity rates have fallen significantly. These two factors combined have meant that Mr K might well have been better off to make additional contributions to buy Past Added Years rather than building up a second pension through the TAVCs arrangement. But when I consider Mr K's complaint against Prudential now, I must take into consideration how things would've most likely appeared to Mr K back in 1996, and again in 1998, when he was making the decision to contribute to the TAVCs arrangement.

For all these reasons, I'm not currently satisfied that I could reasonably conclude, based on the information available to Mr K at the time of his decision, that he would've been most likely to choose Past Added Years over TAVCs. It seems to me that it's just as likely that Mr K would've chosen the arrangement which, at the time, is likely to have appeared to offer him the highest pension income at retirement.

Naturally Mr K feels now that he would definitely have chosen to buy Past Added Years, given the guaranteed nature of those benefits, and that it would lead to an automatically index-linked pension (without him needing to make a choice about this aspect). But I have to question whether the 'guaranteed' aspect of the benefits would've been so important to Mr K back in 1996, when he was only 41 years old and expected to be many years off retirement.

I say this because, as I mentioned earlier, the documents Mr K signed did make a number of references to his pension from the TAVCs arrangement not being guaranteed, and depending on investment growth. That he was happy to go ahead with the TAVCs policy despite these warnings that the benefits weren't guaranteed suggests to me that this feature wasn't of critical importance to him at the time.

Mr K may say that this is only because he wasn't aware that there was an alternative involving guaranteed benefits, and if he'd known of that option, he'd never have gone ahead with the TAVCs. I accept of course that this is a possibility, but I make the point because it does show that Mr K knew, or at least ought to have known, that he was signing up for a method of increasing his pension that made no promises about the pension increase he'd receive. That he went ahead anyway suggests to me that he was attracted to the potential investment growth, and that the lack of guarantee about what his eventual pension would be didn't put him off paying 3%, rising to 9%, of his salary.

complaint about changing annuity rates ahead of legal deadline

Mr K has complained about Prudential's decision to make changes to its annuity rates in advance of the legal deadline for changing to gender neutral pricing. He's also unhappy that they didn't write out to him and other TAVC policyholders to tell him of the changes being made to annuity rates.

Prudential said that it told policyholders of the changes if they were known to be coming up to their planned retirement date, or otherwise when customers contacted them about taking their retirement benefits. It said that it wasn't obliged to inform *all* policyholders of the change in advance. It also didn't consider that it had done anything wrong by implementing the changes before the legal deadline.

In my view, the annuity rate Prudential offers its customers is a matter for its commercial judgement. Policyholders such as Mr K have the option whether to accept the rate offered, or to take the 'open market option' and buy an annuity with another company offering better rates. This is in fact what Mr K did. Annuity providers always have the option to change their annuity rates at any time, and therefore I can't say that Prudential wasn't entitled to make the change to gender neutral pricing ahead of the legal deadline – it was free to make the business decision to make this change at any time.

It's obviously unfortunate timing that Mr K decided to take his TAVCs benefits at around the same time as the law was changing. He'd been ill-health retired for over three years by this time. He was 58 years old, and his anticipated retirement age under the TAVCs arrangement was 60. So I don't think there's any reason why Prudential should've known that Mr K planned to take his TAVCs benefits in late 2012, before he made contact with them. I don't agree that Prudential ought to have written to all policyholders over minimum retirement age, just in case they were planning to take their TAVCs imminently. As I say, Prudential is entitled to make the commercial decision to change its annuity rates at any time – and gender neutral pricing was just another change – albeit a significant one. If customers felt that Prudential's annuity rates were no longer competitive, they were free to buy an annuity elsewhere when the time came. For these reasons, I don't uphold this part of Mr K's complaint.

I note that Mr K says Prudential didn't send him a leaflet about gender neutral pricing when he contacted them on 8 November 2012, despite later saying that it did send policyholders a leaflet once informed of a member's intended retirement. It's not clear to me whether Prudential meant that it continued to send the leaflets, *after* the change had been made with effect from 12 November 2012. If Prudential intended but failed to send this leaflet to Mr K, that is obviously disappointing customer service. But, as Mr K himself pointed out, sending him a leaflet after he got in contact on 8 November is unlikely to have made any difference to him, as it would in any case have been too late for him to arrange to take a Prudential annuity before it implemented its change in annuity rates from 12 November 2012.

I appreciate my provisional decision on both aspects of Mr K's complaint will be very disappointing for Mr K. He's also had to wait a considerable time to receive this provisional outcome, in part due to the jurisdiction issues his complaint about TAVCs raised, and also as a result of the high volume of complaints this service has been receiving over the period. This situation is far from ideal, and I'm sorry Mr K has had to wait such a long time. However, I can't let that influence my decision on the appropriate outcome for his complaint.

my provisional decision

I'm currently minded to reject Mr K's complaint against Prudential and make no award.

Venetia Trayhurn
ombudsman