

complaint

Mr C complains that The Prudential Assurance Company Limited (“the firm”) gave unsuitable advice to take out a Free Standing Additional Voluntary Contribution plan (“FSAVC”). If suitably advised he would have bought added years in his employers scheme.

background

The complaint was investigated by an adjudicator. He upheld the complaint.

He said that under the LAUTRO code of conduct the firm should have explained the in house AVC was likely to give better value for money than a FSAVC. But this was not made clear to Mr C. Had this been done he would have paid into the in house AVC.

But he did not agree that Mr C would have bought added years. This would have been a long term commitment, with payments increasing in line with salary and no employer subsidy. There was also no evidence at the time Mr C had asked about added years.

He recommended redress in line with the FSAVC review. And £150 should be paid to Mr C for the trouble and upset caused by the unsuitable advice.

The firm disagreed. It said:

- The LAUTRO code of conduct did not say firms had to highlight that AVC's were likely to be better value for money than FSAVC's. To say that it did was inconsistent with our previous decision on a similar case.
- The advice was suitable. The firm told Mr C of the in-house options. The fact find said *“the full benefits of paying AVC's into his own company scheme were explained....”* A discussion of the merits of each scheme did take place.
- Mr C did not want all his investments in one basket. He wanted to continue paying into his FSAVC.
- Mr C joined his company scheme six months before meeting the adviser. He would have been made aware of the in-house AVC in the scheme booklet.

The adjudicator did not change his opinion. He said that we consider each case on its own merits. The prior decision to which the firm referred was not inconsistent with his findings.

He added that whilst the LAUTRO code of conduct did not *specifically* say that the firm had to explain that an in house AVC was likely to be better value, to meet the requirements of the code this information should have been given to Mr C.

He noted that the firm had referred to explaining the benefits of the in house AVC but there was no record of Mr C being *specifically* told of the likely cost advantage of the AVC. So on balance he said that this information was not given. It should have been.

He noted the firm's comments about the suitability of the advice and that Mr C was already a member of his employer's final salary scheme. The firm say Mr C did want to have all his pension in one basket by paying AVC's.

The adjudicator and the firm disagreed. The complaint has been referred to me for decision.

my findings

I have considered all the available evidence to decide a fair and reasonable outcome.

I have come to the same conclusions as the adjudicator and for the same reasons.

I agree that the LAUTRO rules about FSAVC's and AVC's applied when advice was given.

These required the firm to:

- have regard to the consumer's financial position generally and to any rights they may have under an occupational pension scheme
- give the consumer all information relevant to their dealings with the representative in question

As the adjudicator said these meant the firm should have:

- pointed out that AVCs were available
- explained that AVCs were likely to provide better value for money and
- recommended considering the AVC

I appreciate that the firm say they discussed with Mr C the full benefits of paying AVCs into his company scheme. But there is no documentation to show the firm *specifically* explained the likely cost benefits of the AVC. So I agree with the adjudicator that on balance, this information was not explained to Mr C.

I also agree with the adjudicator that had this information been given it is more likely than not that Mr C would have paid AVC's. Added years would have cost rather more than Mr C was paying into his FSAVC. I have not seen evidence to show that Mr C was making further additional provision for retirement. I am not persuaded he would have bought added years.

Finally, I do not agree that to pay into an in house AVC *and* a final salary scheme could reasonably be seen as putting all pension benefits in one basket. In house AVC's are typically managed elsewhere to the final salary scheme.

my final decision

I uphold this complaint.

The Prudential Assurance Company Limited must carry out a loss calculation with the guidance set down by the regulator for the industry wide review of FSAVC plans.

If this shows a loss, it should pay the sum to Mr C's plan less any applicable tax relief.

If this cannot be paid into his plan, it should be paid directly to him less a deduction for any tax relief he would get if he invested it into a pension.

It should pay Mr C £150 for the trouble and upset caused by its unsuitable advice.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before .

Terry Connor
ombudsman