

complaint

Mr C has complained, through a representative, about The Prudential Assurance Company Limited (Prudential). He believes it gave him unsuitable advice to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan without advising him on the benefits he could get from his employer's Additional Voluntary Contribution (AVC) scheme.

background

In 1997 Mr C met with a representative of Prudential for a review of his personal and financial situation and took out an FSAVC. At the time he was 30 years old and a member of his employer's occupational pension scheme. Contributions were paid to the FSAVC until 1999 and in 2012 the benefits were transferred to a Self Invested Personal Pension.

Mr C's representatives say that Prudential didn't give Mr C all the relevant information to make an informed choice and that the FSAVC was unsuitable for him.

They say there's no evidence that the advisor compared the benefits of the FSAVC with an Additional Voluntary Contribution (AVC) to Mr C's occupational scheme.

They say that if Prudential had advised Mr C correctly, he wouldn't have taken out the FSAVC, but instead would've chosen to make further contributions to his company's AVC scheme.

Prudential says it gave Mr C all the necessary information about the FSAVC and recommended it based on Mr C's requirements. It says it was suitable for his circumstances and it complied with the relevant regulations at the time.

Mr C remained unhappy and brought his complaint to this service. One of our investigators looked into things and was of the opinion that Prudential hadn't done anything wrong. Mr C didn't agree with our investigators outcome, his representative said:

- there was nothing to suggest Mr C was made aware of the likelihood of lower charges for an AVC
- there was no evidence of a positive reason for a FSAVC, rather than the in-house route that was available to Mr C.

As Mr C disagreed with our investigators opinion that matter has been passed to me for a decision.

my findings

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

Having done so I've decided not to uphold this complaint and I'll explain why.

The original advice to establish the FSAVC was given in September 1997. The requirements in force at the time which governed this type of advice were contained within the LAUTRO Code of Conduct. This stated that life assurance company representatives should:

- have regard to the consumer's financial position generally and to any rights they may have under an occupational pension scheme; *and*

- give the consumer all information relevant to their dealings with the representative in question.

In Mr C's case, he was required to draw his attention to the AVC, inform him of the differences between FSAVCs and AVCs and direct him to his employer (or the AVC scheme trustees) for any further information he wanted.

In the fact find document, the adviser noted that an AVC information leaflet was discussed and given to Mr C at the time. I've looked at this leaflet which is titled 'Additional Voluntary Contributions – some important features' and it says:

'Since 1989, any employer who offers an 'in-house' occupational pension scheme also has 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.'

'It is difficult to be specific with regard to the differences in costs between AVC and FSAVC as product structures vary considerably. The cost of running your AVC or FSAVC is important as it will affect your final benefits, however you should also take into account other factors such as the funds you are investing in and the financial strength of your provider to be able to select the appropriate investments that make up these funds in the case of 'with-profits' plans.

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.'

Having considered the leaflet I'm satisfied it gave enough information for Mr C to know that the option of an AVC existed and to know the relevant differences between his options. The declaration, signed by Mr C, also gives notice that the Prudential representative was not qualified to advise on products that did not belong to the business.

Whilst Prudential have told us that only one fund was available with this plan (a with-profits fund), I think this fund was broadly suitable for Mr C who was described as a low to medium risk investor.

Overall, on the basis of the evidence provided, I do not consider that it would be fair or reasonable to conclude that the advice to establish the FSAVC was unsuitable.

Finally, I note Mr C's representative has referred to another decision that this service has made. But I can only consider the facts and the merits of this individual case in reaching my decision. That said, the representative seems to be mistaken in thinking that the two cases are materially the same; they are not. The case they referred to is one where a different business to Prudential *failed* to explain that the in-house AVC charges were likely to be lower. As I explain above, that's precisely what Prudential did do in this case by way of the wording in its factsheet.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 April 2018.

Stephen Wise
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