

## **complaint**

EMC Advisory Services Limited (“EMCAS”), on behalf of the estate of Mr N, complain that advice by The Prudential Assurance Company Limited (“the firm”) to start a Free Standing Additional Voluntary Contribution (“FSAVC”) scheme was unsuitable for Mr N.

## **background**

A fact find in October 1995 confirms the firm advised Mr N to start an FSAVC. It also says the firm told him he could start an AVC with his employer. But the FSAVC was more appropriate as it was portable.

Mr N increased payments into the FSAVC in October 1997. The fact find completed then shows that he was given a copy of the “AVC – *some important features*” leaflet. Its content was explained to him.

EMC Advisory Services Limited complained on Mr N’s behalf in 2013, saying that the FSAVC was not suitable for him. Sadly, Mr N died before his complaint could be resolved.

The firm rejected the complaint. It said that the FSAVC was appropriate. It suited Mr N’s requirements including portability.

One of our adjudicators considered the complaint. She said it should be partially upheld because:

- The firm did not tell Mr N of the differences between an AVC and FSAVC in 1995.
- A charges comparison should have been done. This would have shown that the in-house AVC was probably cheaper.
- The firm should have recommended further investigation into AVC’s.
- But Mr N was told in 1997 that his employer’s AVC scheme might have been cheaper than the FSAVC.

The firm did not agree. It said:

- It was not required to highlight the cost differences between the FSAVC and AVC.
- It did not have to refer Mr N to his employer for further information.
- Mr N was happy with the arrangement in place because he continued to increase contributions after getting the leaflet.

EMCAS did not agree. It said that there was insufficient evidence that AVC’s were thoroughly explored.

At the time, the relevant rules were those of the Life Assurance and Unit Trust Regulatory Organisation (“LAUTRO”) rulebook. It said advisers should:

- have regard to the investor’s general financial position and to any rights that may be given under the employer’s pension scheme
- give investors all the information relevant to his dealings

## **my findings**

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

The firm knew in 1995 that an in-house AVC arrangement was available to Mr N through his employer's pension scheme. The firm had to have regard to any rights Mr N may have had within this scheme. It had to give Mr N all information relevant to his dealings. This should have included explaining to Mr N that charges on the AVC may well have been lower than on the FSAVC.

There is no specific evidence that Mr N was thinking of leaving his then employer. Or that his job would likely mean frequent moves in future. Rather, Mr N had some concern about his job security. But that is a different matter. So I do not agree that portability alone of the FSAVC made it more attractive than Mr N's in house AVC scheme.

So given this and that the AVC was cheaper, on the balance of probability I conclude that he would have joined the in-house AVC instead of taking out the FSAVC.

But the firm *did* later make Mr N aware (in 1997) that the AVC might have lower charges than the FSAVC. So I agree that its liability should be capped at that point.

**my final decision**

I uphold this complaint.

The Prudential Assurance Company Limited must carry out a loss assessment on a charges only basis. But the liability should be capped in October 1997. This was when the late Mr N was properly told of the comparative charges of the AVC and FSAVC.

If the late Mr N had a financial loss, redress should be paid in line with the review guidance.

Under the rules of the Financial Ombudsman Service, I am required to ask EMC Advisory Services Limited on behalf of the estate of Mr N to accept or reject my decision before 14 September 2015.

Terry Connor  
**ombudsman**