complaint

Ms A says that she was badly advised by The Prudential Assurance Company Limited. It recommended that she set up Free Standing Additional Voluntary Contributions (FSAVC) in 1993. She says that she should have been advised to make higher contributions to her occupational pension scheme and buy “added years” instead.

Ms A is represented by a claims management company.

background

The background to this complaint is set out in my provisional decision which is attached below. I explained why I didn’t think the complaint should be upheld. I felt Prudential’s offer was fair.

Ms A responded and said that she had no way of proving that she was not made aware of the possibility of buying added years by her employer when she started work. She restated that only a single form to accept or opt out of the pension scheme was all that was provided. So she said that she had no alternative but to accept the offer.

my findings

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

I see no reason to change the conclusions I reached in my provisional decision. It may be the case that Ms A was not made aware of the option of buying added years at the outset. But even if that is right I don’t think she would have chosen the added years option anyway.

As I have said, the cost of added years of service in Ms A’s occupational scheme was determined by the Government Actuary using conservative assumptions of likely future investment experience. This made them more expensive than if a less conservative (or more optimistic) set of assumptions had been used. That option would not have looked as attractive at the time as it does now with the benefit of hindsight.

So I remain of the view that the offer that has been made is a fair one in all the circumstances.

my final decision

For these reasons and the reasons set out in my provisional decision I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms A to accept or reject my decision before 18 January 2018.

Keith Taylor
ombudsman

extract from provisional decision

complaint

Ms A says that she was badly advised by The Prudential Assurance Company Limited. It recommended that she set up Free Standing Additional Voluntary Contributions (FSAVC) in 1993. She says that she should have been advised to make higher contributions to her occupational pension scheme and buy "added years" instead.

Ms A is represented by a claims management company.

background

In 1993 Ms A set up an FSAVC on the recommendation of Prudential. She made contributions up to 2003. The contributions were initially made on the basis of an annual increase but this was stopped in 1998 due to the risk of overfunding.

Ms A made a complaint about the advice she was given by Prudential. It investigated the complaint and upheld it in part. It didn't agree that she should have been advised to buy "added years" but accepted that she should have been advised to pay into her employer's "money-purchase" AVC. This would have been cheaper for her as the charges were less. It ran a loss calculation and made an offer to Ms A.

Ms A's representative was unhappy with this and thought that Prudential should have assessed the loss on an "added years" basis. So Ms A rejected the offer and referred her complaint to this service.

One of our investigators' looked at the case. She thought that a loss assessment should be carried out using an added years calculation. She said that Ms A was young and likely to have remained in that job for the long term making the added years option most attractive.

Prudential disagreed with that view. It made the following points:

- Buying back added years would have cost Ms A a percentage of her earnings and not a flat contribution. This would have made it more expensive for Ms A to have purchased added years.

- It employed tied advisers at the time of sale. They were only qualified to advise consumers on products offered by Prudential and so could only have informed Ms A of alternative options. Whilst a copy of the advice given was not available it was most likely that Ms A would have been aware of the added years option. She had only recently joined the occupational scheme and full information would have been provided to her.

The investigator didn't change her view and so Prudential requested that the case be referred to an ombudsman.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've summarised what both parties have said but I have read everything.

I don't think the complaint should be upheld. I think the offer Prudential has made is fair and I don't intend to make any further award. I'll explain why.

Prudential has agreed that Ms A shouldn't have been advised to take out the FSAVC policy. So the issue I must consider is the appropriate way to put this right. I have to consider what she should have been advised to do and what she probably would have done if the adviser had done what was required at the time. I have to do this by considering the circumstances at the time of the advice without the benefit of hindsight.

Prudential's adviser should have made Ms A aware of the option of making additional contributions to the occupational scheme and it's not clear that it did. However, I think it's likely that Ms A was aware (or ought to have been aware) of that option as she had joined the scheme only a few years before and would no doubt have been provided with information about it. But even if she was not aware of it I don't think she would have chosen the added years option anyway.

The cost of added years of service in Ms A's occupational scheme was determined by the Government Actuary using conservative assumptions of likely future investment experience. This made them more expensive than if a less conservative (or more optimistic) set of assumptions had been used. The aim was to make sure as far as possible that the cost of added years would be met by the members. The intention was that this would mean there would be no shortfall that would have to be picked up by the employer.

On realistic assumptions of future investment experience at the time of the advice it would probably have been shown that the projected benefits from the money purchase approach would be greater than the projected "added years" benefits. This is why, in my opinion, the money purchase approach would not have been unsuitable for Ms A. There is no evidence from the time that she was unwilling to take *any* investment risks and her general circumstances suggest that she would have been able to take some risk.

If Ms A had paid for added years she would have had to give up a set percentage of her salary. So the amount she paid would have increased as her pay increased over the years.

Now, with the benefit of hindsight, we know that Ms A would have been better off with the added years. And a major factor in this is that the investment returns achieved have been much lower than expected. But that was not anticipated at the time and as I've said, I can't use hindsight when making my decision.

But it's also true that at the time of the advice the money purchase AVC arrangement offered by Ms A's employer cost less than the FSAVC arrangement that she was sold. And I do think that Prudential should have made her aware of that option and potentially contacted the OPS. She could then have made her own choice. It does agree with this and has offered to pay Ms A compensation in line with the requirements of the FSAVC review set down by the regulator. This is what I would award in these circumstances and so I don't intend to make any further award.

my provisional decision

My provisional view is that the offer Prudential has made is fair in all the circumstances.
So I don't intend to make any additional award. But I will reconsider my decision in the light of any responses I receive.