

The complaint

Mrs D has complained to The Prudential Assurance Company Limited about advice she received to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan.

Mrs D also referred a complaint to this service about the sale of a personal pension plan but that has been dealt with separately to this complaint about the FSAVC sale.

What happened

Mrs D received advice from Prudential in 1999. The fact find document completed at the time of the sale recorded the following:

- Mrs D had started with her current employer in April 1999, earning £35,000 per year. She was a member its occupational pension scheme (OPS). Her retirement age was 65.
- Mrs D's employer didn't contribute to the 'in-house' Additional Voluntary Contribution (AVC) arrangement.
- Mrs D had been made aware of the 'in-house' AVC offered by her employer.

The suitability letter issued to Mrs D after the meeting confirmed the adviser's recommendation to take out an FSAVC and it said that Mrs D had been provided with a leaflet about AVCs.

Mrs D accepted the adviser's recommendation and her FSAVC plan started in 1999.

In 2022, Mrs D complained to Prudential about the sale of her FSAVC plan. Prudential reviewed the complaint but didn't think it had been mis-sold as it met Mrs D's desire to increase her retirement provision. It was also satisfied that the benefits between the FSAVC and the in-house AVC had been discussed with Mrs D and that she had been provided with a leaflet explaining the main features of both arrangements.

Mrs D didn't accept Prudential's conclusion so she referred the matter to this service for review.

Ombudsman's provisional decision

I issued a provisional decision on this matter on 13 September 2023, explaining why I didn't think the complaint should be upheld. I said that:

"In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs D and Prudential. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to have happened.

Having reviewed all the information on file, I've reached a different conclusion to our investigator; I don't intend to uphold the complaint as I don't think the FSAVC plan was mis-sold. I've set out my reasoning for this below.

I think it's helpful to say at the outset that the adviser wasn't able to actively recommend products offered by other providers, including those available within the employer's 'in house' pension scheme. That's because, as a 'tied adviser', employed by Prudential, he could only recommend Prudential's products.

That's not to say that Prudential didn't have other important obligations. The regulator set out a number of responsibilities for tied advisers.

Before May 1996 the regulator required company representatives to exercise due skill, care and diligence in dealing fairly with investors. In relation to FSAVC sales this meant knowing that in-house AVC options existed and explaining the generic benefits of these options as well as highlighting the benefits of their own FSAVC plan.

But in May 1996 the regulator issued a regulatory update called "RU20". This was an article which set out the procedures it expected product providers to follow. The update said that a tied adviser shouldn't recommend their own company's FSAVC until they had:

- drawn the client's attention to the in-house scheme alternative*
- discussed the differences between the two routes in generic terms (taking account, among other things, of the features described in this article)*
- directed the client to his employer, or to the scheme trustees, for more information on the in-scheme option.*

The 'article' included discussion of the tax treatment of contributions and benefits, employers being willing to match or top-up benefits, and the ability to provide additional life cover. It also referred to the lower charges under an in-house scheme in general terms noting that, "charges under the scheme will usually be lower than those under FSAVCs, reflecting economies of scale, rebated commission or a contribution to administration expenses by the employer. Of all the differences between the two routes, this is likely to exert the greatest impact on which route would offer the greater benefit to the client."

So the guidance – which wasn't new guidance as such, made it clear that of the factors which needed to be discussed about the differences between AVCs and FSAVCs, the lower charges of an in-house AVC was a very important difference.

I've therefore looked at whether Prudential met these requirements when it made its recommendation to Mrs D. Having done so, I think on balance it's likely that it did.

I've firstly considered the fact find document. The adviser noted that an in-house AVC was available and that he'd been in contact with the employer for further information. The notes confirmed the name of the person the adviser had spoken to at Mrs D's employer. And that Mrs D's employer wouldn't make additional contributions if she joined the in-house arrangement. The notes also suggest that Mrs D had been made aware of the AVC her employer offered.

Bearing in mind that a fact find document is generally a contemporaneous record of what happened at the time, it seems more likely than not that some form of discussion took place at the time of the advice. And Mrs D has signed the fact find document, so I think it's likely it's a good representation of what was discussed during the meeting.

Just over a week after the meeting, the adviser sent Mrs D a letter setting out his recommendation. This letter also confirmed that the adviser had given Mrs D a copy of the leaflet 'AVC – some important features' and that the content had been explained to her.

I've thought about what format the discussion around the leaflet is likely to have followed. As it happened at the same time that Mrs D was given a copy, I think it's reasonable to conclude that the discussion likely covered, in general terms, the differences between AVCs and FSAVCs, following a similar format to the leaflet.

So, as I'm satisfied that a discussion took place and that it's likely to have followed the format of the leaflet, I think Prudential would have made Mrs D aware that an 'in house' AVC scheme existed.

Mrs D met with the adviser not long after joining her new employer. So it seems likely she'd also have received information about making additional contributions upon joining her employer's scheme. Taking those things together, I think Mrs D would have been aware of the existence of an 'in house' option. And, given what the leaflet says, it seems likely to me that, during the discussion, Prudential would have told Mrs D she could obtain further information from her employer if she wanted it. So, I think it was open to her to seek further details if she thought it necessary. Based on what I've seen here, I think Prudential met at least two of the requirements set out in RU20.

The leaflet, a copy of which I'm satisfied Mrs D received, then goes on to say the following about charges:

"It is difficult to be specific with regard to the differences in costs between AVCs and FSAVCs 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 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 administrative costs whereas in the case of an FSAVC these costs are borne by the customer".

And

"Due to the close link between an 'in house' AVC facility and the main occupational pension scheme the benefits of both schemes have to be taken at the same time, which is usually the normal retirement date of your employer's scheme. In the case of an FSAVC you could on leaving the main company pension scheme draw your benefits at any time between 50 and 75, irrespective of when the main scheme benefits are paid".

As I'm satisfied Prudential discussed the leaflet, it seems likely it would have said it was difficult to explain the actual difference in charges due to the different product structures. But the leaflet does say quite clearly that "in many cases the employer bears some, or all of the administrative costs whereas in the case of an FSAVC these costs are borne by the customer". So, again, it seems likely that during the discussion, Prudential would have told Mrs D that unlike an 'in house' AVC, she'd be responsible for meeting the costs associated with an FSAVC. And, as the FSAVC attracted costs and the 'in house' AVC didn't, I think Mrs D ought to have been aware that the costs associated with the AVC were likely to be lower.

I think it is worth mentioning here that the documents I've seen suggest Mrs D was converting her existing Prudential Personal Pension into the FSAVC, and the suitability letter says this was being done at no extra charge. So it may well be the case that Mrs D saved on the additional set up charge of the FSAVC which is often a key reason the in-house AVC is cheaper.

I know Mrs D provided some additional comments in relation to the personal pension plan she was sold. However, these comments don't have any bearing on the complaint I'm considering about the sale of her FSAVC. So I don't intend to comment further on those here.

To conclude, although I'm not able to say with any certainty exactly what was discussed, I'm satisfied, on balance, that Prudential did enough to meet its regulatory responsibilities in giving Mrs D the information needed to help her to make an informed decision. Overall, given her circumstances and objectives at the time, I'm satisfied the advice Prudential gave wasn't unsuitable for her so I don't intend to uphold the complaint"

Mrs D responded to the provisional decision. She said she as the exact conversations cannot be proven, only exchanges of documentation she feels that a gesture of goodwill should be offered by Prudential.

Prudential didn't provide any additional comments.

What I've decided – and why

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

Having reconsidered matters, I'm satisfied that the position set out in my provision decision is fair. So I'm not upholding this complaint.

The sale of this plan happened more than 20 years ago so it's understandable if Mrs D can't recall exactly what was discussed during the sales meeting. And of course, with face to face meetings, it is often the case that there is no actual recording the discussion. But I consider the sales paperwork provides an accurate reflection of the discussion that would have taken place.

The suitability letter, which was sent to Mrs D, explained that she had been provided with a leaflet and that the differences between the FSAVC and the in-house options had been explained. If this was not the case, I would have expected Mrs D to have queried this with Prudential and to have requested the leaflet if she hadn't already been provided with one.

I do appreciate that Mrs D will be disappointed. And I note that she thinks Prudential should make a goodwill offer. But I won't be asking it to do this as I'm satisfied, for reasons set out in my provision decision, it fulfilled its obligations when the FSAVC plan was sold.

My final decision

For the reasons explained, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 19 October 2023.

Lorna Goulding

Ombudsman