

## **The complaint**

Mrs J complains that The Prudential Assurance Company Ltd failed to provide suitable advice when recommending she take out a Teachers Additional Voluntary Contribution (AVC) Plan in 1998.

## **What happened**

Mrs J began working as a teacher in 1981 and started contributing to her Teachers Occupational Pension Scheme (OPS) at that time.

In 1998, she attended a presentation in her school about increasing pension provisions. The presentation was given by a representative from Prudential, who were engaged at the time by the Department of Education (DofE) to provide AVC policies to the teaching profession.

Following this presentation, Mrs J met with the representative at her home in May 1998, following which she purchased an AVC policy, contributing 5.8% (gross) of her salary per month from July 1998 until 2011. Mrs J took early retirement in 2015.

Mrs J became aware in May 2021 that she may have been mis-sold the policy, following prominent TV reporting of the issue at that time. She believed the Prudential representative didn't draw her attention to one of the other options available to her – purchasing 'Added Years' from her Teachers OPS. So, she complained to Prudential about this.

Prudential didn't uphold Mrs J's complaint. They explained they were engaged by the DofE to provide AVC plans for teachers. Their contract with the DofE required them to make teachers aware of other 'top up' options. Their representatives had to explain the AVC option in detail, but only make a general reference to the other options. But the agents weren't allowed to advise on the Added Years option – they just had to make the applicant aware of it, leaving it up to the applicant to make their own enquiries with the Teachers OPS.

Prudential also referred to the literature they'd have provided at the time, which mentioned the option of purchasing Added Years. And they listed some reasons why Added Years may not have been a viable option for Mrs J at the time. They also explained they hadn't retained a copy of Mrs J's original application form, although commented that it wouldn't have been possible for her to start an AVC plan without one having been completed.

Prudential concluded they'd made Mrs J aware of the Added Years option and weren't under any obligation to give any advice on the merits of this option. But they did pay Mrs J £250 by way of apology for the distress she'd experienced as a result of the delays in their handling of her complaint.

Unhappy with their response, Mrs J brought her complaint to this Service. In summary, her complaint points were as follows:

- Prudential didn't make her aware the option of purchasing Added Years was available or explain the differences between this option and the AVC she took out.
- None of the documentation received at the time discussed the Added Years option.

- There is no evidence that Mrs J signed the required AVC application form – which contains reference to Added Years and a requirement to sign to say she was aware this was an option at the time.
- She wasn't given sufficient information to make an informed decision.

One of our Investigators first considered whether this complaint had been brought to our Service too late for us to consider under the Financial Conduct Authority's Rules (the DISP Rules) which govern what complaints we can and can't consider. He concluded it had been brought in time and asked that Prudential comment if they thought otherwise. No such comment has since been provided.

Our Investigator then considered the merits of Mrs J's complaint. He acknowledged we had little by way of documentation/evidence from the time of the sale but concluded that, on the balance of probabilities, Prudential hadn't done anything wrong at the time of the sale, and their AVC recommendation was suitable.

Mrs J disagreed with our Investigator and asked that her complaint be reconsidered by an Ombudsman. She made some further points, which I again summarise as follows:

- Had she been made aware of Added Years, she now realises it's an option she would have been able to afford.
- Paying for Added Years would have meant not paying AVC fees.
- Added Years provided guaranteed spousal benefits, which the AVC didn't.
- And that if Prudential had provided her with clear information about the other options available, she would definitely have purchased Added Years instead of an AVC.

The case has now been passed to me, an Ombudsman, to consider afresh, and issue a Decision accordingly.

### **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.

In deciding this complaint, I've taken account of the law and any relevant regulatory rules, guidance and good industry practice at the time. In addition, I've also carefully thought about the submissions made by Mrs J and Prudential. Where the evidence is unclear – which is the case here given the lack of any specific sales documents from the time – I've made my decision based on the balance of probabilities. Or put another way, based on what evidence I do have, together with the surrounding circumstances, I've thought about what I think is most likely to (or should) have happened.

Prudential were appointed in 1989 by the DofE (or it's predecessor to be exact) to provide an AVC scheme to run alongside the Teachers OPS. As part of their contract with the DofE, Prudential were required to make all applicants aware of the existence of other pension top-up options – essentially the Added Years option, or what's known as a Free Standing AVC.

The advisor was employed by Prudential and was known as a 'tied' agent. This means he was only able to recommend/sell products marketed by Prudential, which here was the AVC plan. It's important to make clear they weren't able to actively recommend any other products from any other pension provider, or recommend OPS Added Years.

At the time of Mrs J's advice, tied advisors were required to follow certain rules and requirements. These varied over time, but essentially required that advisors should maintain

high standards of integrity and fair dealing, and exercise due skill, care and diligence in providing services. What this means is that a tied advisor would have been expected to know that other options (than the AVC) were likely available to Mrs J at the time. Further, the tied advisor would have been expected to mention the generic features of the other options, including the generic features of Added Years.

So, the question for me is, did Prudential do enough to make Mrs J aware of the existence of, and the generic benefits of, the Added Years option. To answer this, I'll begin by looking at the limited information Prudential have been able to supply, which is Mrs J's personal AVC quotation. This sets out that Mrs J's plan was expected to run for just under 22 years (until her expected retirement at age 60). It sets out how much Mrs J *could* get, depending on how much her income grew over time, and how well the AVC investment grew in that time. And it sets out what her AVC pension could look like, based on those differing factors. It doesn't make any mention of an Added Years comparison, but I wouldn't expect it to – it was designed purely to set out what the AVC could be worth. So, in the context of this complaint, in isolation I don't think this is a particularly useful document, and I won't be commenting on it any further.

But I do need to look at the documents Prudential *would have provided* to Mrs J during the sales and application process. Prudential have provided examples of the documents that would have been provided to Mrs J at this time.

The booklet entitled "How well does your pension add up" (designed to answer questions about an AVC with Prudential) contains the following text at page three:

*"In addition to the AVC facility with Prudential, there are other ways to enhance your pension benefits. You can buy extra years of service through your occupational scheme's Added Years facility...further details [of which] are available from Teachers Pensions at the address at the back of this booklet".*

I've also looked at what the Teacher's AVC new member application form says. On page one (section 2 (A) – Pension Scheme Details), it asks that the applicant confirms if, under the Teacher Pension Scheme, they are paying additional contributions for (amongst other things) past Added Years. And on page 4, the Declaration specifically asks the applicant to confirm they have "*been made aware of the booklet entitled "A guide to the Teachers' Pensions Scheme" with regard to the "Added Years" option*". I note that the applicant's signature should be entered immediately below that statement.

I think it's possible, or even probable given a meeting took place in Mrs J's home, that the advisor likely completed the application form. That said, I would expect – and think it more likely than not – that Mrs J would have read the document before signing it. And, whilst there is no way of being sure what exactly was discussed during the meeting – it was 25 years ago, and memories understandably fade over that time – I think it's more likely than not that the representative would have mentioned the Added Years option. It was, after all, referenced on the application form, and as mentioned above sits immediately above the space where Mrs J would have been required to sign it.

So, taken together, I think it's clear that Prudential's sales documentation made multiple mention of the existence of Added Years as an alternative pension top-up option. And these documents would have pointed Mrs J in the direction of the Teachers OPS if this was an option that she wished to explore.

I appreciate Mrs J says she still has a copy of her personal quotation booklet, which she didn't sign. And further that, in the absence of her actual signed application form, there is no

proof that she signed to say she was made aware of the Added Years option. However, I think a point Prudential has made in response to this is more persuasive. They've said that an AVC policy wouldn't have been set up for Mrs J unless they had a signed application from her. They'd have had no legal authority to take money from her salary without such express written permission at the time. Accordingly, I'm persuaded that Mrs J is highly likely to have signed the AVC application form at the time, and it follows signed to agree that she 'd been made aware of the Added Years option.

I appreciate too that Mrs J says she wouldn't have chosen Added Years if she'd been given sufficient information that would have allowed her to make an informed decision. However, Prudential were under no obligation to provide Mrs J with the level of detail, or more precisely the costs and likely financial benefits of paying for Added Years, that she is suggesting she didn't have. Prudential were under no obligation to approach her OPS to get details of how much money she'd need to pay into her OPS to purchase additional years' service in the OPS scheme. They weren't under any obligation to provide a financial comparison of the two options at that time. And they weren't under any obligation to wait until Mrs J had made any further enquiries before continuing with their advice. All they needed to do was alert Mrs J to the existence of, and very generic elements of, the other options available to her – which I think it's more likely than not that they did.

### *Conclusion*

I do appreciate the strength of Mrs J's feelings here, and I can understand this Decision is not the outcome she'd have been hoping for when she brought her complaint to our Service.

But in addressing it, I must take account of what Prudential's regulatory obligations were (and contractual with the DofE too) in terms of what they needed to do when advising Mrs J. And in very simple terms, as explained above, they didn't need to do anything beyond alerting Mrs J to the nature and existence of the Added Years option. And for the reasons I've set out above, I think Prudential met those obligations. Accordingly, I won't be asking them to do anything further.

### **My final decision**

I don't uphold Mrs J's complaint against The Prudential Assurance Company Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 29 March 2024.

Mark Evans  
**Ombudsman**