PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Daniel Blacker
Scheme	Teachers' Pension Scheme (Scotland) - Prudential AVC Facility
Respondent(s)	Prudential Assurance Company Limited (**Prudential**)

Subject

Mr Blacker complains that Prudential's sales representative improperly persuaded him to pay additional voluntary contributions (**AVCs**) to Prudential. He alleges that the sales representative's advice was heavily weighted in favour of AVCs rather than Past Added Years (**PAY**).

The Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against Prudential because there is no evidence that injustice was caused to Mr Blacker as a result of any maladministration on the part of Prudential.

DETAILED DETERMINATION

Material Facts

1. Prudential manages the AVC section of the Teachers' Pension Scheme. Until 2000 Prudential offered an advice service through local sales representatives. Prudential was sole AVC provider to the Teachers' Pension Scheme.

2. Mr Blacker was born on 19 May 1956. He is a member of the Teachers' Pension Scheme (under the Scottish regulations) and has a normal retirement age of 60.

3. Having joined the teaching profession at the age of 26 Mr Blacker was not able to complete the maximum of 40 years pensionable service before age 60.

4. In December 1993, Mr Blacker and his wife met with a Prudential sales representative who completed a "Personal Financial Review" (or "fact find") form as a record of their meeting. The form recorded the financial and employment situation of Mr and Mrs Blacker and was countersigned by both Mr and Mrs Blacker. It showed that Mr Blacker's preferred retirement age was 55 and that he had been a member of the Teachers' Pension Scheme for 12 years. Under the headings "Your priorities", "Providing for retirement" the representative wrote "Shortfall". Under additional information the sales representative wrote "Mr and Mrs Blacker wish to be able to retire as soon as possible and wanted the maximum contributions they could pay." The recommendations section completed by the representative during the meeting said:

   > "Advised clients as they wish to retire early that they…contribute at least 9% of salary. Clients were also advised to add life cover to give family protection. Shortfall on contents cover was discussed and clients will look into this. Advised transfer values in early years could be less than contributions paid. Clients were only interested in minimum cover."

5. The fact find form also contained the following statement:

   > "I understand that Prudential's advice is based on the information I have given..."

6. Mr Blacker agreed to pay AVCs to Prudential at the rate of 9% of salary. He also agreed to added life cover of £20,000 at £1.80 per month. He signed an application form on 10 December 1993 which included the following :

   > "2. Pension Scheme Details
   >
   > Please indicate any other contributions or benefits by ticking the appropriate box(es).

No questions were answered in this section including the question "Past Added Years?"

7. The form contained the following declaration:

> "I understand that the AVC arrangements are governed by the provisions of the Teachers' Superannuation Scheme. I also accept the provisions in section 7.

Under Section 7, "Important Notice",

> "(b) that because individual circumstances vary, they should, before starting to contribute to the Teachers' AVC Facility, consider their position carefully seeking independent financial advice where appropriate, about whether contributing to the Facility is in their best interests."

8. Prudential's records show a single premium investment of £496.08 into Mr Blacker's AVC in March 2000. Prudential believe this was a top up and say that he would have been given a guide which mentioned PAY at that time. Mr Blacker says it was a correction of amounts that ought to have been deducted from pay, but were not.

9. In 2010 Mr Blacker raised a complaint with Prudential that their advice had been weighted in favour of AVCs.

10. He says that the representative had disregarded PAY as a viable option during the meeting and recalls that the representative said:

> "…Buying added years would have been highly expensive. An AVC as well as being affordable, would bring far higher returns; this was because the funds were invested and would grow. This was a more efficient investment than buying added years which only produced a limited fixed amount. He stated that the returns from an AVC would be so much better that they would be able to fund early retirement, at around fifty-five, if this was an option for me at that time, and that added years would not do this…I asked him whether this purchase of AVC's would definitely produce sufficient funds not only to address the shortfall in my pension but also allow the possibility of early retirement and said that my main concern was to be sure that my full pension was safe…"

Summary of Mr Blacker's position

11. There is no mention of PAY in the Personal Financial Review document.

12. He did not contact Prudential because he wanted to retire early. His concern was to address the shortfall in his pension which would arise from entering teaching at the age of 26. He was concerned that retiring at the normal age of 60 would result in his pension being just over 33/80ths of his final pay.

13. It was the Prudential representative who raised the issue of early retirement. He stated that the AVC would address the shortfall much more effectively than PAY. He had not even thought about early retirement as a possibility until the representative suggested it. His response was that he had no objection to having this as a possibility but that his actual concern remained to make the most effective arrangement to address the shortfall. Reference to the shortfall is made under the heading "Your priorities" whereas the reference to early retirement is under "Additional information". Greater weight should be given to the entry under "Your priorities".

14. The AVC was irrelevant to early retirement because he could not retire at his own request. Regulation E5(1) states that if it suited the employer's interests to offer early retirement they would offer a compensatory amount of pension benefits as an inducement. Thus AVC's were irrelevant for the purpose of early retirement.

15. Prudential say that their representative was not authorised to give advice however the representative did give advice on PAY. He had heard of PAY but knew nothing about it. He asked the representative about PAY but he dismissed it advising that it was prohibitively expensive, inefficient and consequently superseded by AVCs.

16. He does not recall ever receiving the Teachers' Pension Scheme booklet but in any event Prudential cannot absolve themselves of misleading him about PAY by claiming that a third party would have provided information about it. The Prudential representative gave him no information about where to find out more about PAY.

17. He purchased his AVC in April 1993. Prudential have previously made statements showing that information about PAY was not provided to members at that time. In a previous Ombudsman determination (PO1222) Prudential stated "Inclusion of the information about PAY in the their AVC booklet and a declaration confirming that PAY had been brought to the applicant's attention on the application form were introduced in January 1995 and January 1996 respectively. He could not therefore have already been in receipt of information about PAY when he made the decision to pay AVC's as stated by Prudential.

18. Enhancing his death benefit was not relevant to him. He accepted the representative's advice to pay for additional death benefits because the costs were minimal.

19. His complaint has not been made with the benefits of hindsight:

- The cost of PAY would have been available at the time and it would have been much less than AVCs. Yet the representative dismissed PAY as being prohibitively expensive.
- Information about the value and benefits of PAY would have existed at the time. Yet the representative dismissed PAY as being of little value and not worthy of consideration.
- The advice that the AVC would fund early retirement was invalid given the Regulations.

20. He has never attended a presentation at work at which AVCs and PAY were mentioned. The sequence leading to the visit was because he was concerned that his late entry into teaching would result in a shortfall in pension. He phoned his union for advice and they referred him to Prudential.

21. Mr Blacker has provided a signed statement from Mrs Blacker setting out her recollection of the events that took place at the meeting with the Prudential sales representative on 10 December 1993:

> "…Dan asked the Prudential representative which was better – past added years or AVCs because he had started his career late and wanted to compensate for this. The Prudential representative, on listening to us and understanding these circumstances convinced us that AVCs were going to achieve the outcome Dan sought, which was to make up the difference. Dan's first thoughts had been to buy back years – but the Prudential representative put us off that completely and assured us that AVCs were undoubtedly the much better option."

Summary of Prudential's position

22. There was no regulatory requirement for its sales representative to tell Mr Blacker about PAY. However, from the beginning of its contract with the DFE (I think in fact the contract may have been with a Scottish body, but nothing turns on that), it has undertaken to make clients aware of PAY. Prudential considers that information about PAY is available in the Teachers' Pension Scheme booklet.

23. Prudential's sales representative would have explained the terms and conditions of the contract and it would have been Mr Blacker's choice to proceed.

24. Mr Blacker would have received a main scheme pensionable employment booklet when he joined the Teachers' Pension Scheme. This would have explained the option of PAY.

25. Mr Blacker's complaint about the information he received has been made with the benefit of hindsight. Mr Blacker feels that PAY from the outset would have been a better choice. From the evidence available it is not considered that PAY would have been his natural choice.

26. About the time the AVC policy was taken out it was usual for individuals to request a home visit from a representative, following a presentation they received at work. AVCs and PAY would have been mentioned in any presentation Mr Blacker attended.

27. The AVC policy is a flexible means of providing additional benefits for individuals considering early retirement. Mr Blacker would have accrued 35 years at age 60, but was looking to take early retirement at age 55.

28. Mr Blacker was also contributing to a death in service benefits attached to the AVC which would not have been provided through PAY. The fact find document suggests that life cover was a priority to Mr Blacker.

Conclusions

29. Mr Blacker says that Prudential's sales representative improperly persuaded him to pay AVCs to Prudential. Prudential's obligation was no more than to inform Mr Blacker of the existence of the option of PAY. To meet the obligation imposed on Prudential it was sufficient for its representative to draw to his attention either orally or in writing the existence of PAY. Mr Blacker contends that the sales representative's advice went much further than that and says his advice was heavily weighted in favour of AVCs rather than PAY.

30. Mr Blacker does not however dispute that he was already aware of the existence of PAY. He has said that he asked Prudential's sales representative about PAY but that he dismissed the option. Mr Blacker says that the representative "dismissed PAY as being of little value and not worthy of consideration" and said it was "prohibitively expensive". The representative was not permitted to advise on PAY or to compare PAY with AVCs, being only authorised to advise on Prudential products. But if something of the sort was said it can only have been a general statement which is unsupported by evidence in Mr Blacker's case. And it is very possible that had a comparison been done on the (with hindsight) over optimistic assumption that would have been permissible in 1993, that PAY would have looked expensive.

31. I cannot find at this distance of time that the representative was so dismissive of PAY as to leave Mr Blacker with no reason to obtain a comparative estimate of the PAY benefits resulting from an equivalent contribution, particularly as PAY was an option Mr Blacker had already considered. But even if he had done so, he could reasonably have chosen Prudential AVCs anyway.

32. Given that Mr Blacker clearly knew about PAY, even if he did not have an in depth understanding of the option, in relation to this matter, it is irrelevant whether he was in possession of a copy of the Teachers' Pension Scheme booklet at the time he took out the AVC policy or, for that matter, that information about PAY was only included in the Teachers' Pension Scheme booklet some years later. Nor was the Prudential sales representative under any obligation to provide Mr Blacker with information about where to find out more about PAY. As I have said above, the representative was not permitted to advise on PAY or to compare PAY with AVCs, being only authorised to advise on Prudential products.

33. Mr Blacker's says that he told Prudential's sales representative that he wanted to make up a shortfall in his final pension resulting from late entry into the teaching profession. He accepts that there is reference to early retirement on the fact find form but says that he had "no objection to having this as a possibility but that his actual concern remained to make the most effective arrangement to address the shortfall" at retirement age.

34. Prudential however maintain that Mr Blacker had expressed a desire to retire early and would have chosen the AVC option in any event because "the AVC policy is a flexible means of providing additional benefits for individuals considering early retirement". Unfortunately, apart from Mr Blacker's recollections of events which took place some twenty one years ago, there is little evidence of what was said during the meeting.

35. Mr Blacker has set out in considerable detail what he says happened that meeting. His wife has set out her recollections as evidence. I have given consideration to whether a hearing would be helpful in this case. But I do not think that, given the lapse of time, it would. Had Prudential wished it could have argued that I should not consider this case at all on the basis that the courts could not. (It would almost certainly fall foul of a defence based on 15 year long-stop in the Limitation Act 1980. The long-stop is designed to give finality and to prevent stale claims in which time may have made evidence unreliable.) But even though the complaint is within my

jurisdiction in the absence of such an argument, I still have to decide how much weight to accord to Mr and Mrs Blacker's evidence. I cannot, given the passage of time, give it the weight that they would wish. And it would not make any significant difference if I heard the evidence orally.

36. The fact find form says that Mr Blacker wished to retire at age 55 and his wife at age 50 and also that their priority was to make up a shortfall. The additional information says "Mr and Mrs Blacker wish to be able to retire as soon as possible and wanted the maximum contributions they could pay."

37. On the one hand I have Mr and Mrs Blacker's recollections: on the other I have somewhat limited documentary evidence. As I have intimated, I can only give Mr and Mrs Blacker's evidence very modest weight. That is not to say that I doubt their integrity or honesty, merely that objectively I should not treat recollections of an event over twenty years ago as altogether reliable.

38. Balancing the evidence once it is given appropriate weight I have to find it more likely than not that Mr Blacker did, at that time, convey a desire to retire early, or at least concur with Prudential's suggestion that it would be attractive if he could. If he had not done so, the probability is that the representative would not have completed the fact find form in a way that was not supported by the facts. A general wish of that sort would not have been inconsistent with also wanting to make up any shortfall at age 60. And, critically, Mr Blacker would have had an opportunity to check that the information on the fact find form was correct before signing it, which would have been a disincentive to give an inaccurate explanation. He did not at the time quibble with the aspiration credited to him.

39. Mr Blacker contends that in any event Prudential's sales representative should have known that AVC's were irrelevant for the purpose of early retirement because he did not have an automatic right to retire early from the Teachers' Pension Scheme. He points out that the Regulations that governed the Teachers' Pension Scheme in April 1993 provided that employer consent was required in order to retire before normal retirement age.

40. That is of course true. But teachers retiring early (with their employer's consent) would not have been an unusual occurrence. The lack of an automatic right would not have made early retirement an unachievable aspiration.

41. Mr Blacker points out that Regulation E5(1) stated that if it suited the employer's interests to offer early retirement they would offer a compensatory amount of pension benefits as an inducement. In fact Regulation E5(1) of the 1992 Regulations refers to circumstances where the individual's employment has been "terminated by reason of his redundancy or in the interests of the efficient exercise of the employer's functions" and therefore, in my view, is not particularly helpful to Mr Blacker's argument.

42. For Mr Blacker's complaint to succeed, I would have to find that the representative overstepped the mark and, in effect, so misinformed Mr Blacker that it became reasonable for him not to investigate PAY, and that PAY would at the time have been the better option for his objectives. The evidence falls short of establishing that.

43. I am unable to uphold Mr Blacker's complaint.

Tony King
Pensions Ombudsman

21 January 2015