

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme - Prudential AVC Facility
Respondent	Prudential Assurance Company Limited (Prudential)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Prudential
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that Prudential's sales representative improperly persuaded him to pay additional voluntary contributions (**AVCs**) to Prudential. He also alleges that the sales representative did not inform him that he could purchase past added years (**PAY**) in the Teachers' Pension Scheme.

Background information, including submissions from the parties

4. Prudential manages the AVC section of the Teachers' Pension Scheme. Until 2000 Prudential offered an advice service through local sales representatives. Prudential is appointed by the Department for Education (**DFE**) (formerly the Department for Children, Schools and Families) as sole AVC provider to the Teachers' Pension Scheme.
5. Prudential says that there was no regulatory requirement for its sales representative to tell Mr N about PAY. However, the company confirms that from the beginning of its contract with the DFE, it has undertaken to make clients aware of PAY. It considers that information about PAY is available in the Teachers' Pension Scheme booklet
6. Mr N was born on 15 August 1958. He joined the Teachers' Pension Scheme which has a Normal Retirement Age of 60 in 1983.
7. Having joined the teaching profession late, Mr N would not be expecting to be able to make sufficient contributions to retire on the maximum pension that can be gained by members of the Teachers' Pension Scheme. He therefore decided to examine the possibility of making additional pension provision for retirement.

8. Mr N met with a Prudential sales representative and agreed to pay monthly AVCs at the rate of 3.9% of his salary to Prudential by signing an application form completed by the representative on 26 July 1994. Section 2 of the form was headed "Pension Scheme Details" and asked for details of any other contributions or benefits by posing a number of questions. On the form signed by Mr N the question enquiring whether he was currently paying additional contributions for PAY in the Teachers' Pension Scheme was answered "No".
9. The form contained a declaration that:

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

Section 7, was headed "Important Notice" and read:

"In joining the Scheme, applicants should understand and accept:

(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."

10. A "Personal Financial Review" (fact find) form was completed by the representative as a record of their meeting. The form recorded the financial and employment situation of Mr N and was countersigned by him. The "Summary of Your Personal Financial Review" section of the form completed by the representative during the meeting stated that:

"Advised Mr N on Teachers AVC Facility and fact that Prudential are only official supplier of in house scheme. Premiums will be taken net of tax directly from salary and will be invested in With Profits Fund to provide additional pension to be taken at same time as superannuation. Have advised on charges and that future investment performances can fall and rise but once bonus is added cannot be taken away."

11. The signed fact find form also contained in the "Confirmation of Your Understanding Section", the following statement:

"I understand and agree with, the information in the Summary of Your Personal Financial Review.

I have been given the Buyer's Guide and a copy of the Summary of Your Personal Financial Review." (signed by Mr N).

12. Mr N met the same Prudential representative again on 12 January 1995, and agreed to increase his monthly AVCs to 5% of his salary by signing another AVC form. On this form signed by Mr N the question, enquiring on whether he was contributing to PAY to the Teachers' Pension Scheme, was again answered, "No". This form

contained similar “Declaration” and “Important Notice” sections to the ones which appeared on the first application form.

13. The representative completed another “Personal Financial Review” form during the meeting showing that Mr N wished to retire at 55 with a pension worth two thirds of his salary and Mr N countersigned this form. The “Summary of Your Personal Financial Review” section of this form stated that:

“Advised Mr N to contribute 5% of salary into Teachers AVC With Profit Fund. Have advised on charges being 1%. Bonus rates can fluctuate but once added are permanent.”

14. This form also contained the same “Confirmation of Your Understanding Section” shown on the first fact find form.

15. Mr N says that:

“...I believe greater weight should be placed on the fact-find. The application form was completed by the adviser and...what happens is an adviser just points out the critical bits...and then asks you to sign. It does not prove anything in my view or tell us whether PAY was mentioned and how it was explained. The fact find, however, tells us exactly what the adviser said. Basically that Prudential is the only supplier of the in-house AVC scheme. It is in black and white and cannot realistically and logically be interpreted any other way than its natural sense. It therefore follows that the adviser cannot have also said there was another in-house option – PAY – and what that was.

The second fact find refers to the Teachers AVC with profit fund. Clearly the adviser was only ever giving the impression there was one teacher in-house scheme and that was Prudential's.”

16. Prudential says that:

- Mr N has misunderstood what the representative had written on the fact find forms;
- it is clearly shown in its AVC literature that Prudential was selected by the Department for Education (at that time) to operate an in-house group AVC facility for the Teachers’ Superannuation Scheme (**TSS**) members and PAY was different to AVCs;
- PAY was not a Prudential AVC product; and
- it was therefore not incorrect for the representative to have said that Prudential was the only “official provider” of the in-house AVC scheme

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised briefly below:-

- The Prudential sales representative only had to ensure Mr N was aware of the PAY option. He was not trained or authorised to give advice regarding PAY or to compare PAY with paying AVCs. He was only authorised to advise on Prudential products and therefore could only refer Mr N to the Teachers' Pension Scheme booklet for further information about PAY.
- Although the representative may have completed some of the sections of the two AVC applications form for Mr N, it was improbable that he would have prevented Mr N from reading them carefully, and in particular, section 2 of the forms which included his response to the PAY question before signing them.
- By signing the forms, Mr N had therefore confirmed to the representative on two separate occasions that he was not purchasing PAY in the Teachers' Pensions Scheme. It was reasonable to conclude that Mr N had consequently been made aware of the existence of PAY when he signed them.
- It had therefore been open to him to research the PAY option in more detail, seeking independent financial advice, where appropriate, should he have wished to do so, and defer his decision to pay AVCs to Prudential until he was completely satisfied that it was the correct option for him. By deciding not to explore that possibility, Mr N chose not to make a more informed comparison.
- Mr N is adamant that the representative did not inform him that he could purchase PAY in the Teachers' Pension Scheme and also improperly persuaded to enter into the AVC arrangement but there was no concrete evidence to corroborate his assertion.
- Without casting any doubt on Mr N's integrity, these events were many years' ago and, on the balance of probabilities, it was unlikely that Mr N could recall the exact discussions which took place.
- Although Mr N might be right in saying that the representative did not discuss the PAY option with him, that was not the same as saying that he was not alerted to the possibility which was all Prudential needed to do.
- It might well be that with hindsight Mr N would have preferred to have gone down the PAY route rather than making AVCs to the Prudential but his decision could not to be attributed to any maladministration on the part of Prudential.

18. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

19. Prudential was only obliged to ensure that Mr N was aware of the PAY option. The AVC application forms signed by Mr N asked a question about PAY to which an answer was provided. In the face of that, I conclude that Mr N was made aware of the existence of that option.
20. Although Mr N says he was improperly persuaded by the representative to enter into the AVC arrangement I have seen no evidence of this. The fact find forms are detailed and indicate that the representative took some care in establishing Mr N's financial circumstances and aspirations. It was not inaccurate for the form to indicate that an AVC arrangement was a suitable way of meeting those aspirations.
21. I can only reach a view on the evidence available. Bearing all the evidence in mind leads me, on the balance of probabilities, to conclude that Mr N was made aware of the existence of the PAY option.
22. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
13 February 2018