

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr G'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 G 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 G about PAY. However, it 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 G was born on 26 February 1939. He joined the Teachers' Pension Scheme in 1984 which has a Normal Retirement Age of 60.
7. Having joined the teaching profession late, Mr G 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 G met with a Prudential sales representative in April 1992 and agreed to pay monthly AVCs at the rate of 4% of his salary to Prudential (i.e. £83.96 per month) for a term of seven years.
9. Prudential are unable to find a copy of Mr G's completed AVC application form.
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 G and was countersigned by him. The form showed that: (a) Mr G was planning to retire at age 65 and (b) the representative had advised Mr G to contribute £83.96 per month for seven years. By signing the fact find form, Mr G confirmed to Prudential he understood that the advice given was based on the information given in the Personal Financial Review.
11. Mr G met with another Prudential representative in July 1995 and agreed to increase his monthly AVCs from 4% to 6% of his salary by signing an AVC amendment form. 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 G the question enquiring whether he was currently paying additional contributions for PAY in the Teachers' Pension Scheme was answered "No".
12. The representative completed another "Personal Financial Review" form during the meeting showing that Mr G's attitude to risk was medium and that he considered himself to have a reasonable level of financial awareness. The "Reasons Why" section of this form stated that:

"David (Mr G) has a severe shortfall on pension through TSS and is already contributing 4% to TAVC. It is recommended that David top-up to the maximum accordingly to affordability."
13. 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 G)
14. The representative recommended Mr G to increase his monthly AVCs by 5% of his salary over a term of eight years but Mr G decided to only increase it by 2%, i.e. by £46.85 per month over the same term.
15. Mr G subsequently increased his monthly AVCs from 6% to the maximum of 9% of his pay in May 1997 by completing and signing another AVC amendment form.
16. Mr G stopped paying AVCs to Prudential in September 2004 and received the retirement benefits available to him from them in March 2005.
17. Mr G says that:

- Prudential was careless in failing to retain a copy of his completed AVC application form;
- the representative's failure to state on the fact find form that he had mentioned PAY to him during the meeting demonstrates that there were clear "short cuts" in the sales process;
- he is adamant that the representative did not at any time inform him that he could purchase PAY in the Teachers' Pension Scheme;
- in any case, the representative should have done more than simply make him aware of the PAY option; and
- he should have "expressly advised" him to seek further information about PAY and consider seeking independent financial advice, if appropriate

Adjudicator's Opinion

18. Mr G'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 G 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 G to the Teachers' Pension Scheme booklet for further information about PAY.
 - It was most unfortunate that Prudential cannot find Mr G's completed AVC application form which would have included a question about PAY. In the absence of such documentation, there was no means of knowing how that question was answered. Furthermore, the representative did not state on the fact find form that he had mentioned the PAY option to Mr G during the meeting. Apart from Mr G's recollections of the event, there was consequently scant evidence to confirm or deny his allegations.
 - Without casting any doubt on Mr G's integrity, these events were many years' ago and, on the balance of probabilities, it was unlikely that Mr G could recall the exact discussions which took place back in April 1992.
 - In July 1995, Mr G agreed to increase his monthly AVCs to 6% of his salary by signing an AVC amendment form. Although the representative might have completed some of the sections of the AVC amendment form for Mr G, it was improbable that he would have prevented Mr G from reading it through carefully and in particular section 2 which included his response to the PAY question before signing it.
 - By signing the AVC amendment form, Mr G had confirmed to the representative that he was not purchasing PAY in the Teachers' Pensions Scheme. It was reasonable to assume that he had therefore by then been made aware of the existence of PAY.

- It had therefore been open to Mr G to research the PAY option in more detail, seeking independent financial advice, where appropriate, should he have wished to do so at that time, and defer his decision to continue paying AVCs to Prudential until he was satisfied that it was the correct option for him. By deciding not to explore that possibility, Mr G chose not to make a more informed comparison.
 - Mr G cannot maintain that he was unaware of the PAY option by July 1995 and his subsequent action also cast doubt on his statement that he would have chosen PAY had the option been brought to his attention at the outset.
 - It might well be that with hindsight Mr G would have preferred to have gone down the PAY route rather than making AVCs to the Prudential but his decision not to do so could not be attributed to any maladministration on the part of Prudential.
19. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G 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 G for completeness.

Ombudsman's decision

20. I should clarify at the outset that I have no jurisdiction over the suitability of financial advice given during a sales process. I can only consider whether Prudential was responsible for maladministration in relation to the Scheme.
21. The Scheme was obliged to ensure that Mr G was aware of the PAY option when he joined. I agree that provision of information via a scheme booklet is sufficient to discharge that duty.

Although Mr G says the representative did not bring the PAY option to his attention when he took out AVCs, by then he had been a member of the scheme for many years. There is no evidence that the Scheme failed to tell him about the PAY option when he first joined. I also have regard to the fact that the AVC amendment form signed by Mr G asked a question about PAY to which an answer was provided. Without expressing any opinion on the suitability or otherwise of the advice given at that point, I conclude that Mr G was, on the balance of probabilities, aware of the existence of the PAY option in July 1995.

22. I do not therefore uphold Mr G's complaint.
23. To the extent that Mr G is complaining about the suitability of financial advice given to him as part of the sales process when he took out or topped up his AVCs that complaint may be brought to the Financial Ombudsman's service.

Karen Johnston

Pensions Ombudsman
3 May 2018