Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the **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 says he was advised by Prudential's sales representative to pay additional voluntary contributions (**AVCs**) to the Teachers' AVC facility (**TAVC**).

4. Mr N maintains that he was not made aware of the Scheme's past added years (**PAY**) option, which he now considers would have provided him with more generous benefits, when compared to the TAVC, without any investment risk.

Background information, including submissions from the parties

5. Prudential was appointed by the Department for Education (**DFE**), formerly the Department for Children, Schools and Families, as the Scheme's AVC provider.

6. The generic application form in use in February 1994, asks members to indicate whether they are currently paying AVCs for "Past Added Years". It recommends that they consider their individual circumstances carefully, and seek independent financial advice where appropriate, before they start paying into the Scheme's AVC facility.

7. Prudential is unable to locate a copy of the application form Mr N completed in 1994, when he took out his TAVC contract.

8. The leaflet produced by Prudential for the Scheme lists three options: “Past Added Years”, AVCs with Prudential; or freestanding AVCs (the **Leaflet**). It says that there is a facility to buy extra years of service to increase both pension and lump sum under the “Past Added Years Arrangement”.

9. The Leaflet says, “when you join the teachers’ scheme you should be given a leaflet about the scheme AVCs by your employer…” It signposts members to Teachers’ Pensions Agency (**TPA**) for further details on the Scheme or the benefits.

10. The Leaflet explains that under the Prudential AVC option, AVC savings are invested by Prudential in company shares, Government stocks and property. In relation to PAY, it says:

> “This is a facility offered by the scheme which allows you to buy in at full cost extra years of pensionable service which could not otherwise count for benefits…”

11. The AVC amendment form Mr N and the Prudential sales representative signed on 21 February 1996, states that Mr N has been made aware of the TPA’s booklet titled “A guide to Teachers’ Superannuation” in connection with the “Added Years” option (the **Guide**). The AVC amendment form Mr N signed on 12 July 1996, indicates the same.

12. In the pension scheme details section of a completed AVC amendment form Prudential received on 19 July 1996, Mr N had been asked to confirm whether he was paying additional contributions for “Past added years?”

13. Mr N’s completed amendment form, in respect of a change to his TAVC on 7 January 1997, also states that he has been made aware of the Guide regarding the “Added Years” option.

14. Mr N’s AVCs were initially invested in Prudential’s with profits fund. The personal quotation provided to Mr N in November 1997, included the following warning:

> “**Market Value Reduction** [original emphasis] If the money invested in the With-Profits Fund is taken out at any time, except on death or your Normal Retirement Date, the amount paid out may be reduced to reflect the current market value of the underlying assets. This is known as Market Value Reduction [**MVR**].” (**the Personal Quotation**)

15. In the AVC “Amendment Application Form” completed at that time, Mr N was asked to indicate, by ticking the appropriate box, if he was paying AVCs for “Past Added Years?”

16. During the intervening period, Mr N made further changes to his TAVC contract. On 3 May 2005, in response to his request to cease paying AVCs, Prudential informed Mr N that he could transfer his AVC fund to “another in-house AVC”, or an alternative

pension arrangement. However, his AVCs could not be used to "purchase past added years" or be transferred to a Free standing AVC (**FAVC**).

17. Mr N subsequently moved his monies out of the with profits fund investing 25% in Prudential's UK Equity Fund. The declaration in the AVC amendment form he signed on 11 June 2012, indicates that he was aware of alternative ways of increasing his pension, including such options as "Additional Pension benefit". And that he was aware of the Guide regarding the "Additional Pension benefit" option.

18. In 2018, Mr N contacted EMCAS Advisory Services Limited (**EMCAS**), specialists in mis-sold financial products. He then complained to Prudential via his Representative at EMCAS that Prudential's sales representative failed to make it sufficiently clear to him the "downsides" and the loss of employee related benefits by taking out the recommended FSAVC policy. Mr N said he was not given enough time to investigate the in house alternatives to the FSAVC policy. He stated that if the advantages had been made clear to him, he would have selected his employer's in-house AVC scheme or added years option.

19. Mr N has explained that he attended a presentation with a representative from Prudential. It was suggested at the time that the TAVC policy was the best option available. He does not recall the representative discussing the benefits of PAY, or being given any time to research them. As he is not a pension expert, he relied solely on the advice of the sales representative, who he considers had an obligation to take PAY into account. There is no evidence to support that the sales representative considered it.

20. Comments from Mr N's Representative are set out below.

    - The evidence indicates Prudential's "primary objective" was to promote TAVC over PAY. This is demonstrated in the "decision tree sales" process, which clearly states that AVCs as the only option to make up lost ground.

    - Prudential cannot provide Mr N's original application form, yet it has almost every other correspondence on record. It is therefore not safe to assume that it was correctly completed, or that Mr N completed it.

    - He has recently noticed that, when Mr N subsequently switched his funds, approximately £600 was deducted because of a market value adjustment. He cannot see anything that warned that an MVR might apply in future or indeed explains what an MVR is.

21. Prudential comments are set out below.

    - Under Prudential's contact with the DFE, Prudential had a duty to make teachers aware that there were other top up options available to them. The literature used by Prudential was agreed with DFE.

- Prudential's contract with the DFE was regularly revised and renewed in recognition of its compliance agreement. Consequently, Prudential strongly believes that Mr N was made aware of the added years option.

- Prudential's sales representatives were acting in line with Prudential's internal policy, and within the terms of its contract with the DFE when they provided advice about the TAVC but not the added years option.

- The presentations Prudential provided in respect of the Scheme were set around an approved process, slides and literature, to ensure that all the attendees received a fair and consistent message.

- While Prudential's standard presentation included highlighting the added years option, teachers would have been signposted to the Scheme, or their employers, for further details about added years.

22. To put matter right, Mr N would like Prudential to carry out a loss assessment and make good any financial loss he has suffered because of its alleged failure to disclose full information about the AVC options that were available to him.

Adjudicator's Opinion

23. 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 below:-

- Sufficient information was available to Mr N that confirmed the position. Although his original application has not been provided by Prudential, this does not materially change the outcome in the circumstances.

- The AVC amendment forms Mr N signed indicates that he had been made aware of the Guide.

- At the time of him signing his AVC amendment form, on 11 June 2012, Mr N was confirming that he "was aware of alternative ways of increasing [his] pension including such options as Additional Pension benefits…" And that the Guide was available to him.

- It would not have been Prudential's responsibility to provide him with advice on the suitability of the other options available to him.

- It would have been open to Mr N to seek regulated financial advice from an independent financial adviser concerning his pension, including the suitability, or otherwise, of the various options available to him via the Scheme. An IFA would have provided advice specific to his personal circumstances.

- The issue the Representative has since raised about the MVR, does not form part of the complaint we agreed to look at. Notwithstanding this, the information that would likely have been provided to Mr N in November 1997, confirmed the position.

24. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N's Representative (the **Representative**) has provided his further comments but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by the Representative for completeness.

Ombudsman's decision

25. The Representative says he accepts that some of Prudential advisers could not have advised on the merits of added years or products from other providers. However, in his view, Prudential should have provided information on the alternative options available, and allowed Mr N sufficient time to research them. The teachers' union promoted the idea of schools allowing group presentations from Prudential on the benefits of TAVC. As the advisers were paid and targeted on results, it is unsafe to assume that they offered a "balanced presentation".

26. The Representative says that the sales process adopted by Prudential, particularly the documentation used and completed by its representatives, was viewed as flawed in other cases considered by this office. Also, other Applicants were found not to have been adequately informed of the option of purchasing added years.

27. The only aspect of Mr N's complaint that I can consider is Prudential's alleged failure to provide him with information about the PAY option. Any issue relating to Prudential's sales process, or mis-selling of the TAVC, falls outside my jurisdiction and I do not comment on this or make any findings in relation to that aspect of Mr N's complaint.

28. Each complaint is considered on its own merits. However, the material facts of this case are not dissimilar to that in complaint reference PO-20571, which the Deputy Pensions Ombudsman determined in May 2018 but did not uphold.

29. I am not persuaded from the evidence that Mr N and his Representative have presented to this office that his complaint supports a different conclusion. While I do not question Mr N's credibility, the various forms he signed suggests that he was made aware of the past added years option.

30. I am satisfied that the information Prudential provided to Mr N was sufficient to alert him to the availability of purchasing added years. It was open to Mr N to make enquiries to the TPA for further information if he was interested in exploring this. Prudential, in its capacity as the Scheme's AVC provider, was not responsible for giving Mr N independent financial advice about the suitability of the Scheme's other AVC options.

31. I do not therefore uphold Mr N’s complaint.

Anthony Arter

Pensions Ombudsman
28 February 2019