

Ombudsman's Determination

Applicant	Mr Timothy Moynihan
Scheme	Teachers' Pension Scheme – Prudential AVC Facility
Respondent(s)	Prudential Assurance Company Limited (Prudential)

Complaint Summary

Mr Moynihan 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.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Prudential because I cannot find that Mr Moynihan could not have known, and was not told, about PAY and that if he had been told he would have bought PAY rather than Prudential AVCs.

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 is appointed by the Department for Children, Schools and Families (**DCSF**), (formerly the Department for Education and Skills) as sole AVC provider to the Teachers' Pension Scheme.
2. Mr Moynihan was born on 21 January 1957. He is a member of the Teachers' Pension Scheme which has a Normal Retirement Age of 60.
3. Mr Moynihan joined the teaching profession late and was also considering early retirement. He would therefore not have been expecting to be able to retire on the maximum pension that can be gained by members of the Teachers' Pension Scheme.
4. In 1993, he and his wife met with a Prudential sales representative. Mr Moynihan asserts that the representative did not mention the PAY option and led him to believe that paying AVCs would be suitable for his requirements during this meeting. He contends that, if he had been informed about PAY, he would not have opted to pay AVCs.
5. Mr Moynihan agreed to pay AVCs to Prudential at the monthly rate of 7.3% of his salary by signing an application form, which, he says, was completed by the representative, on 2 December 1993. This amount included the cost of providing an additional death benefit of £75,900, that is, £6.83 per month.
6. 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 Moynihan, no answer was given to a question as to whether he was contributing to PAY. Another question in this section concerning his free-standing AVCs (**FSAVCs**) was also left unanswered.
7. 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.”

8. A “Personal Financial Review” (fact find) form was completed by the Prudential representative as a record of their meeting. The form recorded the financial and employment situation of Mr Moynihan and was countersigned by him. The “Summary of your Personal Financial Review” section of the form completed by the representative during the meeting states that:

“I advised Tim to contribute 7.3% of his gross income into an AVC. I advised using the ready reckoner provided by Prudential in conjunction with government actuaries. I explained the low charges of only 1% and the fact the money will come from Tim’s payroll and tax relief is at source.

I have previously advised Liz to join the superannuation scheme and will investigate this for her.

I also explained the benefits of the life allowance of the TAVC. Tim was very keen to add cover for his wife as he is insured for only £30,000. He decided to take out this facility offered by the AVC and cancel his policy with another company. He believes this to be more cost effective in the short term. Liz and Tim also wanted an increase to Liz’ life of £70,000...”

9. The signed fact find form also contained in the “Confirmation of Your Understanding Section”, the following statements:

“Prudential’s advice is based on the information I have given. And that if I have given incorrect or incomplete information Prudential may not be able to give me the best advice.

Prudential representatives are not qualified to give advice about any other company or its products.

I understand and agree with the information on 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.”

10. Mr Moynihan says that he cancelled his life policy with Scottish Provident because arranging life cover through the TAVC was marginally cheaper. In his view, this was possibly the only benefit of joining the TAVC.
11. On 6 April 1998, Mr Moynihan signed an AVC amendment form in order to increase his monthly AVC rate from 7.3% to 9% of his gross pay. The amendment form contained similar statements to those shown in paragraph 7 above.
12. In a letter dated 28 January 2003, Mr Moynihan asked Prudential to reduce his monthly AVC rate from 9% of his salary to £100. He also wrote that:

“...I was concerned to learn that deduction of £75,000 death in service benefit has continued to be deducted from my salary since my last birthday when I turned 45...You wrote to me stating that premiums were going up and after discussion with my financial adviser I cancelled this element of cover. I believe I did tell you to stop this as from my 45th birthday onwards the premiums made it uneconomic to continue this cover.

I would be grateful if you could therefore reimburse me for the £20.49 a month that has been deducted each month since February 2002...”

13. Prudential replied that his life cover would cease on 1 March 2003 and his AVC rate would also change in March.
14. The PAY facility was closed as from 31 December 2006.

Summary of Mr Moynihan’s position

15. He has seen a University and College Union briefing sheet which says that:
 - prior to 1995, Prudential did not require individuals to acknowledge that their attention had been brought to the PAY option; and
 - it was possible occasionally that a Prudential representative failed to do this.
16. There is no evidence that he was made aware of the PAY option. The financial review should have made clear that PAY was an alternative rather than merely pointing the advantages of AVCs over FSAVCs. Moreover, the review was misleading in that having “taken into account” his personal and professional circumstances, AVCs was deemed suitable for his circumstances. The “Summary of

your Personal Financial Review” shows that there had been a “hard sell” of AVCs and life insurance by the Prudential representative.

17. He did not sign any document to indicate that PAY had been brought to his attention. The AVC application form which he signed included a question designed to establish whether he was purchasing PAY in the Teachers’ Pensions Scheme but this question was unanswered.

18. He says that:

“I contest all of the Prudential’s case...the life cover was merely a minor saving over my current arrangements at the time and showed the need for additional protection given my family situation with children.”

Summary of Prudential’s position

19. Prudential considers that there was no regulatory requirement for its sales representative to tell Mr Moynihan about PAY. However, the company confirms that, from the beginning of its contract with the DCSF, it has undertaken to make clients aware of PAY. Prudential considers that information about PAY is available in the Teachers’ Pension Scheme booklet.

20. It is reasonable to assume Mr Moynihan would have recalled the PAY information contained in the main Teachers’ Pension Scheme booklet when he decided to pay AVCs. Mr Moynihan asserts that he never received this booklet.

21. There is no evidence to suggest that PAY would have been Mr Moynihan’s preferred method of making additional pension provision in retirement. The additional death benefit cover which Mr Moynihan required was only available from the AVC and not the PAY option. The fact find suggests that life cover was a priority for Mr Moynihan.

22. AVC and PAY would have been mentioned in any presentation which Mr Moynihan attended prior to his meeting with the representative. Mr Moynihan says that he did not attend such a meeting.

23. It is inconceivable that a member could pass over the questions in Section 2 of the application form without a discussion of the alternative PAY option.

24. The TAVC policy is a flexible means for individuals considering early retirement.
25. It is with the benefit of hindsight and articles in the media that Mr Moynihan now feels that PAY would have been a better course of action.

Conclusions

26. In order for Prudential to meet the obligations under the terms of its agreement with the DCSF it was sufficient for its sales representative to draw to Mr Moynihan's attention either orally or in writing the existence of PAY.
27. Mr Moynihan alleges that the Prudential representative did not do this. Apart from his recollection of events which took place some twenty two years ago, there is little written evidence of what happened. I accept, of course, that it is possible that a Prudential representative would not have taken the steps they should have taken. I also accept that the Prudential representative would have been inclined towards, and would have been likely to try to sell, TAVC.
28. However, I would have to find on the balance of probabilities that Mr Moynihan was not told about PAY. Equally, if not more importantly, if I were to decide that, I would then have to reach a conclusion that Mr Moynihan would have taken the PAY option in preference to Prudential AVCs. There are a number of reasons he might not have done that, for example, the additional death in service lump sum benefits which, according to the fact find, he considered very important were only available through AVCs. Indeed he seems to have made his own decision to cancel the alternative life cover, which suggests that he was not blindly following the representative's advice.
29. I do not in any way question Mr Moynihan's integrity. However, looked at objectively, it would not be right to uphold a complaint based one party's recollection of a single meeting 22 years ago, and no other material evidence.
30. Having carefully considered the matter, my conclusion is that the evidence falls short of establishing with sufficient certainty that Mr Moynihan could not have known and was not told about PAY and that if he had been told he would have bought PAY rather than Prudential AVCs.

31. I am unable to uphold Mr Moynihan's complaint.

Tony King

Pensions Ombudsman

11 February 2015