

The complaint

Mr C's complaint is about his attempt to make a contribution into his personal pension with The Prudential Assurance Company Limited ('the Pru') in 2016. He says the Pru prevented him from doing so, failed to inform him about an alternative contribution he could have made annually from 2016 and therefore caused him a lost investment opportunity.

What happened

Mr C refers to having sold a property in 2016 and having, as a result, around £276,000 at his disposal. He says he wished to use part of this as a contribution into his pension at the time – he has referred to using around £150,000 in this respect and/or to purchase an annuity.

Mr C says the Pru did not allow him to contribute the £150,000 (plus) lump sum into his pension, when he tried to do so in 2016. The Pru says it accepted new pension investments only through a policyholder's financial adviser but Mr C approached it directly, so his request was considered by a financial planning partner ('the partner') in this context.

The Pru referred to the partner Mr C spoke to in 2016 and to her notes of the contact (at the time). It also obtained comments from her in terms of what she recalls about the contact. Her notes – and her recollection – say Mr C was told that he could not make the lump sum contribution he wished to make because he had no earnings/income at the time. Her notes (and her recollection) also say he was being advised by an Independent Financial Adviser ('IFA') at the time. She recalls offering Mr C a meeting and that he declined because he chose to consult his IFA.

Mr C says he learnt through the Pru, in 2019, that an alternative was available to him at the time, to contribute a maximum amount of £3,600 per year (from 2016) into the pension. He claims the Pru did not advise him of this in 2016 and that it gave him the impression nothing could be done about his wish to contribute into the pension. He says this misguidance or lack of advice has cost him the lost opportunity to use these maximum annual contributions, from 2016, to build his pension further.

The partner recalls that she mentioned the maximum contribution amount – in the absence of earnings – when she spoke to Mr C and she claims that she conveyed this to him as information, not advice. The Pru says it did not advise Mr C and was not his advisor – especially as it was/is its policy not to duplicate the role of advisor where a policyholder already has an IFA. It says the partner's reference to the maximum contribution amount (in the absence of earnings) was accurate information and that it was then Mr C's responsibility to take advice from his IFA on how to proceed. It notes that Mr C took no further action at the time.

Mr C raised another complaint issue with the Pru, directly related to the service he received from it during his enquiries in 2019. The matter appears to have been settled with compensation to Mr C, but the 2016 related complaint remains in dispute.

One of our investigators looked into the complaint, concluded that it should not be upheld and broadly agreed with the Pru's position in the matter. Overall, he took the view that Mr C appears to have been given information by the partner about the alternative contribution option; that it amounted to the provision of information, not regulated advice, so the Pru is not responsible in the context of advice; and that the information he was given was accurate.

Mr C disagrees with this outcome and maintains his position (and arguments) in the complaint. In particular, he vehemently disputes the partner's claim that she informed him about the alternative contribution option and he says he would have acted upon that alternative if he was told about it. The matter was referred to an ombudsman.

What I've decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have not seen evidence that the Pru gave Mr C regulated advice or that it was obliged to give him such advice in relation to his pension. I consider this to be an important finding in the complaint, as it addresses his core issue about not being aware of the alternative contribution option.

I acknowledge that his request to make a lump sum contribution – of around £150,000 – in 2016 is also a complaint issue. I do not consider it to be the *core* issue and Mr C has made comments to us which support this view. The Pru made a fair decision to decline this request. In the context of the tax relief benefit associated with Mr C's pension, the relevant rules did not permit such a contribution. If he had earnings, the size of the contribution would have been significantly beyond his annual contribution allowance of £40,000. It appears that he did not have earnings in 2016, if so the alternative of a maximum contribution of £3,600 per year applied and that is substantially less than £150,000.

In terms of the alternative contribution option, I understand Mr C's strength of feeling in maintaining that the partner did not inform him about it – and I understand his reasons. However, I also understand the investigator's assessment of available evidence and his finding, on balance, that she did. Irrespective of this debate, the primary question appears to be whether (or not) the Pru held a position in which it was obliged to inform Mr C about the alternative in the course of either providing information or providing advice.

As I said above, the notion of the Pru *providing advice* to Mr C is not supported by evidence. I have not seen a basis upon which to conclude that it provided an advisory service to him. The same applies to grounds on which to conclude he was advised by the Pru. The regulator's definition of investment advice, in summary, involves a firm conveying the merits of a particular investment action/inaction to a client. I have not seen evidence of the Pru informing Mr C about the merits of taking or not taking a particular action with his pension.

Both parties appear to agree that information was provided to Mr C; but whilst the Pru says it included reference to the alternative maximum contribution, he says it did not; and his underlying argument is that an obligation was breached by the Pru because it did not inform him about the alternative.

In terms of the Pru having an obligation to provide information to Mr C about his pension, this would likely have first existed at the outset of the pension – whereby the Pru would have been expected to provide information relevant to its pension product. Thereafter, it is not beyond good reasoning to say information provided would more likely (than not) be defined by the nature of any enquiry/enquiries from Mr C – especially in the non-advisory context that existed in his case.

Given that Mr C was looking into making contributions into his pension – and given the absence of a telephone recording of the contact in 2016 – it is reasonable to consider that, in response, the Pru would have limited itself to answering his specific questions; or it would have given him general information related to his enquiry; or it would have done something in between. Its primary duty would arguably have been to ensure it gave accurate (and clear) information and I have not seen evidence that it breached this duty.

I do not have enough evidence to determine whether (or not) Mr C was told about the alternative contribution option. As I said above, I understand the investigator's finding that he was but I also understand Mr C's objection to that finding. Equally – or perhaps more – important is that I do not have enough evidence to determine whether (or not) the Pru was obliged to give Mr C this information during his telephone contact in 2016.

There are two disputing accounts on this and there is no telephone recording evidence to tip the balance – because the contact happened through the partner's mobile telephone. If, for example, Mr C made a direct request to contribute £150,000 into the pension, was told by the Pru (in its non-advisory role) that he could not and he soon thereafter terminated the call, I would not consider that the Pru should have informed him about options. If, on the other hand, he made his enquiry, was told he could not make the lump sum contribution and then he enquired further into the sort of contribution(s) permitted in his pension, I would consider that the Pru should have informed him about options.

Available evidence is not as clear as I would need to conclude whether (or not) the nature of the contact was such that the Pru was obliged to give Mr C information about the alternative contribution option. It says it did and Mr C says it did not, but it is Mr C's complaint and there is not enough evidence to support his position, so I do not have a basis to uphold it. His best argument includes reference to the Pru not mentioning the partner's claim earlier in 2019 and not until after submission of his complaint, but that does not automatically mean the partner's claim is untrue.

Overall, on balance and for the above reasons I am not persuaded to uphold Mr C's complaint.

My final decision

For the reasons given above, I do not uphold Mr C's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 July 2020.

Roy Kuku
Ombudsman