

## The complaint

Mr B complains that The Prudential Assurance Company Limited (“Prudential”) has failed to commence payment of an annuity he purchased, on the correct date.

## What happened

Mr B held a personal pension with Prudential. In June 2018 Mr B advised Prudential of his intention to retire on 1 August when he reached 61 years of age and requested quotations to show the pension benefits that were available to him. The receipt of those quotations was not a straightforward process for Mr B. Prudential appears to have initially overlooked his request. And then the quotations sent to Mr B used an incorrect retirement age. So it took some considerable time before Mr B’s pension was put into payment. But I have seen that Prudential has paid Mr B considerable compensation for those delays and Mr B no longer considers this part of his initial complaint to the business to require further resolution.

The pension plan that Mr B held with Prudential offered a valuable guarantee in the form of a guaranteed annuity rate. The terms of that plan provided for pension income to be paid annually in arrears. The first payment would be due of the anniversary of the benefits being put into payment. But Prudential offered alternative payment terms to Mr B. The quotation that he accepted meant that his pension benefits would be paid monthly, in advance.

Although there were problems, as I’ve noted above, with the setting up of Mr B’s pension benefits, Prudential agreed to honour the start date that Mr B had originally requested. So Mr B’s pension benefits commenced on 1 August 2018. But because of the delay in setting up the annuity, Mr B didn’t receive his first payment until January 2019. That payment included the backdated income that Prudential calculated was due to Mr B.

Prudential’s calculations indicated that the first monthly payment that was due to Mr B should have been paid on 1 September 2018. Mr B considers that the first payment due to him should have been paid on 1 August 2018. So he complained to Prudential that his backdated payments were short of one month’s income. Prudential didn’t agree with Mr B’s complaint so he brought it to this Service.

I issued a provisional decision on this complaint in July 2020. In that decision I said;

The original terms of Mr B’s pension plan were clear. His pension benefits would be paid annually in arrears. So here I think the first payment to Mr B would have been due on 1 August 2019 and would cover the period from 1 August 2018 to 31 July 2019. A second annual payment period would commence on 1 August 2019.

But Prudential offered Mr B an alternative payment frequency. Instead it offered to pay his benefits to him monthly, in advance. So that suggests to me that by the end of July 2019 Mr B should have received his entire first year’s payment. And since each monthly payment was made on the first day of the month, that would suggest to me that the payment he received on 1 July 2019 should have been his twelfth instalment,

paid in advance of, and covering, the month to the end of his first year of payment on 31 July 2019. And so following on from that the first payment due to Mr B should have been made on 1 August 2018.

It makes little sense to me, as Prudential suggests, that a pension commencing on 1 August 2018 with payments being made in advance wouldn't have the first payment due until 1 September 2018. That would leave a period of a month where no income was payable – or would suggest that the payments were being made monthly in arrears. That is not the payment frequency that Prudential offered to Mr B.

For completeness I should note that before agreeing to accept Prudential's benefit quotation Mr B asked for a number of matters to be clarified. In particular he asked whether the first payment would cover the months of August, September and October. Prudential answered that question by replying that "*the first payment will include all payments due from the annuity's start date*".

I have to say that I don't find Prudential's reply to Mr B particularly helpful. He asked a specific question, listing the months for which he thought payment should be made. And Prudential's reply is, to my mind, rather vague. I doubt Mr B would have expected that the first payment wouldn't include those payments that were due to him.

But I only include this detail for completeness. I don't think it particularly matters, given the vague nature of Prudential's response, whether or not Mr B could have reasonably taken that response to mean that the first payment was due on 1 August 2018. My finding above is that it is logically correct that the first payment should have been made on 1 August 2018 and so the inference Mr B drew from Prudential's reply, whether or not that was what it intended, is supported by the facts of the matter. I think, if Prudential had given him a clearer response, that it thought the payments should only start on 1 September 2018, Mr B's complaint would still stand, and would have been answered by me in the same manner.

Mr B has said that he agrees with my provisional decision. He has confirmed that he expected the initial payment to include backdated income to the start of the policy. And that he saw no inconsistency with the first payment being made later than the policy start date, as long as that payment included the relevant back pay. That would mean that any future payments were "in advance" as had been agreed. He did however ask that I consider whether an additional payment should be made by Prudential to cover the costs and disbursements he has incurred in making his complaint.

Prudential doesn't agree with my provisional decision. It maintains that in line with the terms and conditions of the policy the annuity has been set up correctly. Those show that the first payment would be due on 1 September, being the first of the month following the retirement date. And it has directed me towards a decision issued by another ombudsman in 2012 that it thinks supports that conclusion.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The additional comments that Prudential have made in response to my provisional decision have not made me change my mind. Mr B's pension commenced on 1 August. So he should expect to receive income from that date. If the first payment was due on 1 September then

that would suggest, incorrectly, that he had agreed to receive his payments in arrears. But the quotation that Prudential provided was for payments to be made in advance. I don't see any contradiction between a payment being owed in advance to cover the month of August and the first payment actually being made on 1 September to cover two months' worth of income.

As Prudential was paying Mr B in advance it needed to have completed its payments for the first year before the end of that period. That end date was 31 July 2019. So a payment made on 1 August 2019 cannot be seen to form part of that year's income if it was being paid in advance.

I have considered the historic decision that Prudential has directed me towards. As Prudential knows we consider each complaint on its own merits. That is important since in the majority of cases the circumstances behind each complaint differ greatly. And I think that is the case here – this isn't simply a matter of a payment being made on an agreed date. Prudential offered to vary the terms of its agreement with Mr B, changing his payment frequency from annually in arrears to monthly in advance. And it is that agreement that sets when the first payment is due.

As I said in my provisional decision Prudential has already paid Mr B some compensation in respect of the inconvenience he was caused by the delays to his pension payments. And it has compensated him for the financial losses those delays caused too. I don't underestimate the time that Mr B has spent in dealing with this complaint. But I'm sorry that I cannot agree Prudential should pay additional compensation for that over and above what it has already paid.

But I do agree that Prudential has failed to pay the first month's income that was due to Mr B and so it needs to put things right.

### **Putting things right**

I direct Prudential to pay Mr B an additional month's income to cover the period 1 to 31 August 2018. I additionally direct Prudential to add simple interest at a rate of 8% per annum to this amount from 1 August 2018 to the date of settlement.

HM Revenue & Customs requires Prudential to take off tax from this interest. Prudential must give Mr B a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

My final decision is that I uphold Mr B's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 August 2020.

Paul Reilly  
**Ombudsman**