

The complaint

Mr B complains that Prudential Assurance Company Limited advised him to transfer his deferred benefits in a defined benefit (DB) occupational pension scheme to a section 32 pension. Prudential upheld Mr B's complaint but Mr B disagrees with its calculation of the loss he suffered.

What happened

Mr B had a deferred DB pension with rights accrued from May 1980 until May 1986. He was advised to transfer his deferred benefits in this scheme to a Prudential section 32 buy-out bond in 1987.

Mr B contacted Prudential in September 2019 to complain about the advice it gave him to transfer his deferred DB scheme benefits in 1987. Mr B's complaint was brought by a claims management company (CMC) acting on his behalf. The complaint was referred to our service in November 2019.

Prudential responded to Mr B on 16 January 2020 upholding his complaint. But explained that the loss assessment they carried out showed that Mr B hadn't suffered any financial loss as a result of the transfer.

Mr B's CMC didn't agree and challenged Prudential's loss calculations. They said Prudential underestimated Mr B's final salary at leaving the scheme, that the revaluation rate chosen for the excess over the Guaranteed Minimum Pension (GMP) was wrong, and that it failed to properly allow for increases in income past retirement age.

Prudential revisited the loss calculations in March 2020 based on the concerns Mr B highlighted. Its loss calculations then showed a loss in the value of Mr B's pension benefits of £39,699.76. It made Mr B an offer of compensation for the amount of the loss plus £250 for the trouble and upset that he'd been caused. Mr B accepted that offer but reserved the right to still have his complaint considered by our service, which Prudential agreed to.

Mr B's CMC still didn't agree that the figure that Prudential had reached was fair. And asked Prudential to agree to an independent provider carrying out the loss calculation based on assumptions to be agreed with Prudential. Prudential declined so it's fallen to our service to consider a fair and reasonable outcome.

Our investigator looked into what happened. He thought that Prudential's most recent loss assessment approached the matter in a fair way. He recognised that little evidence existed to explain the benefits that the DB scheme offered. And thought that the model that Prudential applied was appropriate. He was also satisfied that Prudential had followed the appropriate Financial Conduct Authority (FCA) guidance in performing the loss assessment.

Mr B's CMC didn't agree with our investigators view. They said that the assumption, that the benefits accrued prior to 1985 wouldn't have been revalued, wasn't fair. Whilst there was no evidence of the way that Mr B's DB scheme was revalued, Mr B's CMC said that there was a good chance that Mr B's scheme would have offered more than the statutory requirement.

They think that the assumption used in the calculation should reflect that. So this case has been referred for an ombudsman's decision.

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.

In considering a fair and reasonable outcome in this case, I'll start by acknowledging that Prudential have considered the merits of this case and upheld it. So there's no argument raised by either side regarding the original suitability of Mr B's pension transfer in 1987. As the actual merits of Mr B's complaint are agreed, I don't need to make any further determination on that point.

The question I must consider is whether the way Prudential offered to put things right was fair. For this, there's guidance from the FCA that tells businesses how to calculate redress for unsuitable DB pension transfers. That guidance is published in FG17/9 and both parties have referred to this. As FG17/9 is relevant regulatory guidance intended to apply to the situation Mr B now finds himself in, I've taken it into account when deciding what's fair and reasonable in this case. And from what I've seen Prudential followed the guidance correctly.

Neither Prudential nor Mr B have been able to provide details of the actual deferred benefits in the DB scheme. The advice for this transfer was provided before the requirement to undertake transfer analysis. So Prudential didn't produce any comparison of the benefits given up, and this information is no longer available. So this lack of specific scheme details has meant that Prudential had to use assumptions to estimate any loss. Which is in line with the guidance in these circumstances. I don't think this was unreasonable.

Unfortunately Prudential's first loss calculation was flawed. I've seen it was challenged by Mr B's CMC on the basis that an incorrect figure for the salary on leaving the scheme was used. Prudential estimated a salary figure of £12,273 a year when evidence suggested Mr B's salary was £30,000. They also challenged the assumption of statutory minimum revaluation on the excess over the GMP, and the assumption of zero increases in payment.

Prudential did a second redress calculation taking into consideration Mr B's actual leaving salary. And this produced the loss figure of £39,699.76. I think that both sets of calculations allowed for increases in the pension once in payment. I acknowledge the significant part that Mr B's CMC played in checking Prudential's first calculation in order to pick up these issues.

Prudential have shown us the way that these calculations have been carried out and I'm satisfied they've adjusted the calculation to allow for Mr B's leaving salary. But they haven't amended the assumption regarding the revaluation of the excess over the GMP. And I don't think it's reasonable to expect that they should for the reasons I'll explain.

Benefits in a DB pension scheme tend to be represented by the different components that make up the income. This enables the different parts to be treated according to the rules in place when those benefits were accrued. In the case of Mr B's benefits, the value of his annual pension at the date of leaving the scheme was made up of the following:

Pre 1988 GMP - £669.24
Excess (1) - £1,647.13
Excess (2) - £476.44

These different elements are treated differently when it comes to the way that they're revalued – increased each year up to retirement age. Mr B's pension had a GMP element

which needed to be revalued in a certain way. The pension above that (excess) is treated differently depending on when the benefits were accrued. Prior to 1985 occupational pensions didn't have to revalue preserved benefits in excess of the GMP. The Social Security Act 1985 changed this. It meant that preserved benefits in excess of the GMP had to be revalued after 1 January 1985. So Excess (1) is that part of the pension accrued prior to 1 January 1985. Prudential revalued Mr B's deferred benefits to pension age as follows:

Pre 1988 GMP - £1325.05
Excess (1) - £1,647.13
Excess (2) – £847.97

Because most of Mr B's pension accrual was before 1 January 1985, excess (1) was the largest component of his annual pension. So I can see the impact on his pension's potential value at retirement would be significant if it were to be revalued. But there was no statutory requirement that it should have been. And I've seen no evidence that Mr B's DB scheme included revaluation prior to 1 January 1985. In cases like this – where the evidence doesn't exist to say how things should have worked – I need to decide what was most likely to have been the case. And given the statutory requirements, I can't say that it's more likely than not, that Mr B's pension included revaluation on the excess over GMP prior to 1 January 1985. So I think that the assumption Prudential used was fair.

Mr B's CMC has suggested that a further loss calculation should be done by an independent provider. But Prudential have provided the calculations. And I can see that these were carried out by an independent actuary firm. And given that I don't think that Prudential need to change the assumptions used, I don't think it would be fair or reasonable to ask for this to be done again.

I understand Mr B's disappointment in the way the initial loss calculations showed no loss. And the frustration in the need to argue to get to a fair outcome. But for the reasons I've given I think that the offer of redress that has eventually been reached is fair. It's been paid to Mr B, so he's already received fair compensation.

My final decision

For the reason I've explained above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 May 2021.

Gary Lane
Ombudsman