

The complaint

Mr W complains Prudential Pensions Limited (Prudential) has refused to honour an annuity quotation it provided, and which was accepted within the accepted timeframe. He further complains Prudential paid the Lifetime Allowance excess charge out of his fund, reducing his annuity further. He asks the original accepted quotation to be honoured and adequate redress for the trouble and upset this matter has caused.

What happened

Mr W has held a pension plan with Prudential for several years. As he came to consider his retirement options, he requested a number of quotations. In August and September 2019, Prudential issued a number of different quotes, all of which were valid for 30 days.

On 17 September 2019, Mr W responded in writing to accept a quotation for a lump sum of £39,000 and an annuity of £11,585.52. This was on the basis of a 100% spouses' pension and a 10-year Guarantee. He also asked Prudential to confirm the value of the Lifetime Allowance excess charge.

On 23 September 2019, Prudential wrote requesting Mr W contact its customer services to confirm the choice he had made. It also sent an additional form, under separate cover, requesting Mr W complete the details of his Fixed Protection and the position regarding the Lifetime Allowance. Mr W duly carried out all the requests made by Prudential.

On 1 October 2019, Prudential wrote to Mr W again to say there was a problem with the form and it needed to be completed again. Unsure of the problem Mr W attempted to contact Prudential throughout October in an attempt to complete the form correctly. He was met with great difficulty but eventually managed to complete it, it was return on 21 October 2019.

On 20 November Prudential confirmed the annuity had been set up in accordance with Mr W's instructions, but he noticed it was for an amount of £9,690.24 rather than £11,582.52 he accepted. Mr W queried this and was told the reduction was due to the deduction of Lifetime Allowance excess charge of £12,340.81. This had been deducted from the fund prior to the annuity calculation. Mr W did not feel this information was correct and so he complained.

Mr W said he had received particularly poor customer service; an annuity had been set up for a lower value than he had accepted without explanation or confirmation and he had not been given the option to pay the Lifetime Allowance excess charge separately to HMRC.

In its final response dated 30 December 2019, Prudential agreed with the points Mr W raised and upheld his complaint. After investigation, it said it provided Mr W with an incorrect quotation, explaining that the annuity had reduced not just because of the application of the excess charge but because the wrong figure had been quoted initially. It accepted it had failed to provide Mr W with the level of service he should have expected. It offered to rewind the annuity, to allow Mr W to consider his options again (subject to the return of the tax-free cash) and offered £1,000 by way of an apology for the trouble and upset this matter had caused.

Mr W remained dissatisfied and brought his complaint to this service.

An investigator looked into things for Mr W. He could understand Mr W's frustration as it was evident, he had gone to great lengths to ensure he had considered all his options prior to making such an important decision. He appreciated Mr W wanted the original quote to be honoured but explained this service couldn't enforce this option as Prudential had already explained it had made an error. He considered Prudential actions in offering to rewind the annuity and put him back in the position he would have been in had the error not occurred to be fair and reasonable. He also felt £1000 was in line with the redress this service would expect for the acknowledged errors and so he didn't ask Prudential to do anything further.

Mr W disagreed. He feels Prudential has reneged on contract both parties agreed to without any substantiation. He remains of the view the original quote should be honoured, and he asks for an ombudsman review.

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.

Having done so, I've reached the same conclusion as our investigator. I appreciate this will come as a disappointment to Mr W, I'll explain why.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr W and by Prudential.

Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been in if the problem hadn't occurred.

There is no dispute here that something has gone wrong. Prudential has provided incorrect information and poor customer service. It had acknowledged the errors and apologised for them. The issue is now how to put things right.

Mr W has raised two main concerns. The way the Lifetime Allowance excess charge was paid, specifically from his fund without his knowledge or the option for him to pay it directly to HMRC and Prudential's failure to honour the quotation he accepted and, in his view, the limited evidence for how the lower value it said was the correct quotation.

Was Prudential correct to pay the Lifetime Allowance excess charge directly from Mr W's fund to HMRC?

Prudential are right to say that they are responsible for paying this charge. Although there is joint liability, it is under HMRC instruction that the scheme administrator (in this case,

Prudential) is responsible for making payment from the fund. I note the investigator has provide links to the necessary regulations and so I don't intend to repeat them.

Due to the rules set by HMRC, this is not a charge Mr W would have been able to pay directly. This charge must be applied to the pension, before it's paid. The lifetime allowance charge is applied to any excess over the allowance at 55% for lump sums and 25% for income. I understand both Mr W and his financial adviser were aware there would be a charge, so this isn't in dispute.

I would have expected Prudential to have made Mr W aware of this charge and also reflected this in the annuity calculation and I haven't seen any evidence it did this. So, whilst, it was required to make the deduction under HMRC regulations, it could and should have made Mr W aware of the impact that would have on his fund and his annuity payments.

Should Prudential honour the original quotation it provided, and Mr W accepted?

I can understand why Mr W wants the preferable quote honoured but this service can't ask a business to honour what it has already acknowledged was an error. I appreciate Mr W's concerns regarding what evidence Prudential has provided to show it was incorrect and that in failing to do, he feels a decision he took in good faith has been undermined. I have some sympathy with his sentiments, and I agree there isn't any reasoning beyond "it was an error". But miscalculations do occur. The error should have been spotted and Mr W informed before the annuity was set up, the failure to do so is a further example of the poor customer service Mr W has received.

As I explained earlier, in circumstances such as these this service seeks to put the consumer back in the position, they would have been in had the error not have happened. In offering to rewind the annuity, this would put Mr W back in the position he was in before he accepted the annuity and this, in my view, is a fair and reasonable way to resolve the matter should Mr W choose to do so.

Whether Mr W chooses to rewind the annuity or not, it remains the position that Prudential has acknowledged he has received very poor customer service and incorrect information.

I understand Mr W doesn't feel the compensation offered is adequate for the trouble and upset this matter has caused him. I appreciate from his submissions that he has gone to great lengths to try and explain his position and to gain an explanation from Prudential for its actions. So, I've got to decide if I think Prudential has offered enough. When I'm looking at this, I think about what Mr W tells us about his wider circumstances and why Prudential's actions caused him so much trouble. I have to take on board that Prudential acknowledges he didn't get the level of customer service it would have liked to have given. But I also have to think about the size of awards that this service typically gives for trouble and upset, and they do tend to be modest.

I empathise with the sheer frustration this matter has caused Mr W and I acknowledge the number of errors Prudential made have caused him a great deal of distress and inconvenience. But, in my view, I think £1000 is fair and reasonable compensation and so I'm unable to ask Prudential to increase it further.

My final decision

For the reasons I have given I direct Prudential Pensions Limited to:

- Allow Mr W the option to rewind the annuity (subject to the return of the tax-free cash

element)

- Pay Mr W £1000 compensation for the trouble and upset this matter has caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 August 2021.

Wendy Steele
Ombudsman