

The complaint

Mr J complains he suffered a financial loss because Prudential Assurance Company Limited said he'd be better off if he delayed taking his benefits from his retirement annuity pension.

What happened

Mr J had a deferred annuity contract pension plan with Prudential which he'd started in 1978. It was written to a specific date, the plan anniversary in the year he'd be 64. Mr J stopped contributing to the policy in 1987 when it became "paid up". It was invested in the "With- Profits" fund.

Mr J had taken early retirement from his work on health grounds so in January 2019 he emailed Prudential to say he knew the plan matured on 1 July 2019 and requested a valuation and what his options would be. He asked: *"My question is will there be much difference in the amount of payout if I take it now?"* and requested a response via secure message or a call on his mobile.

On 23 January 2019 Prudential sent Mr J a letter showing the transfer value of his pension was around £72,536 and provided an illustration to show if he retired immediately he could expect an annual annuity payment of just under £3,014 based on Prudential's guarantee. It sent a further illustration dated 18 February 2019 for retirement at the plan date of 1 July 2019 showing the annual annuity would be £3,460. The letters did explain values are not guaranteed and can change. Mr J says as it looked like the annuity would be slightly higher if he waited until the maturity date, he'd delay taking his benefits until then. As the value was over £30,000 the letter prompted Mr J to take financial advice or consult Pensionwise. But it said he didn't need to do that if he chose to take an annuity, which Mr J had already decided to do after taking the maximum 25% tax free cash.

However in May 2019 when Mr J checked his policy value using Prudential's online tool he was shocked to see the value had fallen to £60,824. So he asked Prudential for an explanation. Prudential said the fall in value was due to a reduction in the terminal bonus, which could be removed altered or reduced at any time. But it agreed its communication could have been better, so it paid him £50 for this. Mr J complained as he thought he'd been misled about whether he'd be better off waiting until the plan maturity date.

I issued a provisional decision on this case in March 2021 in which I said I was thinking of upholding it. In summary I acknowledged Mr J had been told the valuations weren't guaranteed, but he'd asked Prudential a specific question. And in response it had sent him two retirement quotes which gave the impression he'd be better off if he waited to his plan's maturity date.

Extract from the provisional decision

In my provisional decision I looked at the letters Prudential had sent Mr J. This is what I said:

The first letter dated 23 January 2019 thanks Mr J for contacting Prudential about accessing his pension savings. It says the current value was about £72,536 and “*this value is not guaranteed and can change on a daily basis*”. It recommended he take financial advice or consult “Pensionwise” but he didn’t need to do that if he took an annuity, which is what Mr J had already decided to do. And Mr J would no doubt have been aware he’d have to pay for financial advice. It also told Mr J what an important decision he was about to make so invited him to call with any questions and provided a number. In the “*plan details*” section it did say that values can rise and fall which is why quotes are guaranteed for 30 days. And it lets Mr J know that “*traditionally our rates are updated on 1 January and 1 April each year*”. So Mr J would be aware the valuations he’d been given were based on the January rate and if he delayed until July the rate updated in April would apply. But I don’t think he’d have reason to think the updated rate could have such a detrimental impact on the valuation.

It includes a section headed “*Your Pension Guarantee Risk Warning*” which explained that Mr J’s policy provides a guaranteed income which would be lost if he transferred elsewhere. It said Mr J could expect an annual annuity payment with Prudential of £3,450 from July 2019, compared to £2,920 if he went elsewhere. In the section explaining the guarantee the last bullet point reads “*an annual bonus is added to your minimum income amount before you start to take your pension income on 1 July 2019. **Any final bonus that is added will also increase your pension income***”. (my emphasis). There was nothing to let Mr J know that the application of the terminal bonus could mean he would be worse not better off if he delayed taking his benefits by a few months.

The 18 February 2019 letter is headed “*Your pension – it’s time to think about your future*” and gives an approximate value of Mr J’s pension of £72,505 with a “^” sign referring to a note right at the end of the letter under the signature “*approximate figure ... this figure can change*”. This letter also included the pension guarantee risk warning but this time the figures were an annuity of £3,460 with Prudential compared to £2,920 if he went elsewhere. So in a month the figure had risen £10, adding to the impression Mr J would receive more the longer he delayed.

The same letter did include the sentence “*The pension income you receive may be **different** from the amounts mentioned above as we have used standard assumptions which may not match your circumstances*”. One of those assumptions is that Mr J’s investments will grow 2.5% every year allowing for inflation. Which would leave Mr J with the impression his investments would rise the longer he leaves them invested. As the earlier information refers to a “guaranteed income” and says the final bonus “**will**” (not might or could) increase his pension income, I think it’s reasonable to say Mr J was given the impression that although the figure could change, Prudential had answered his question about whether he’d be better off waiting, in the affirmative.

So I thought it was more likely than not based on his health and financial circumstances, if Mr J had been warned there was any possibility the final bonus calculation could mean he’d receive less than the figures he’d been given, he would’ve taken his benefits straight away. So I said Prudential should put him as close as possible to that position and set out how it should do that.

Responses to the provisional decision

I asked both parties for their comments. Mr J didn’t have anything to add. Prudential responded disagreeing with the outcome I’d reached. It reiterated that all the literature Mr J had received over the years had made clear the final bonus is not guaranteed. It explained a deferred retirement annuity plan has no actual fund value. The valuations quoted are transfer values based on the cost of providing the benefits due under the policy, and as such are sensitive to changing market conditions. The factors involved in the

calculation (such as the interest rates and mortality factors) are regularly reviewed to ensure all With-Profits customers receive their fair share of the underlying assets. The 23 January 2019 quote included a transfer value (not fund value) based on taking benefits immediately whereas the 18 February 2019 illustration was a different type of quote for taking benefits in the future. It was based on a range of assumptions so the two quotes should not be compared. So if Mr J had compared the two and decided to delay taking his benefits that was his decision alone. Prudential recommended he should take financial advice or consult "Pensionwise" before making a decision, but Mr J hadn't done that, neither had he called Prudential. And when Mr J checked his plan online in May 2019 Prudential reiterated he was seeing a current transfer value or cash equivalent lump sum available at that point.

Prudential repeated they don't know the bonuses in advance so can't say if the calculation will have a positive or negative impact. It would be unethical and in conflict with "treating customers fairly" to forewarn one customer like Mr J of any drop in the bonus declaration before announcing it to the market. It acknowledged it hadn't answered Mr J's specific question but explained firstly that to do so would be giving advice which they aren't permitted to do, and secondly they didn't know the answer. Prudential believes it provided Mr J with all the relevant information available at the time and complied with the regulatory requirements. So it shouldn't be held responsible for the decision Mr J made of his own accord.

So the case has been passed back to me to issue a final 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.

I've carefully considered Prudential's submissions but having done so I still think the complaint should be upheld. There's no dispute Mr J made the decision to delay taking his benefits to the plan maturity date of his own accord. And he didn't follow the recommendation to take independent financial advice. But he'd already decided to take the maximum tax-free cash and an annuity, and the letter said he wouldn't need to take advice in those circumstances. Clearly Mr J is unlikely to choose to pay for financial advice if it wasn't necessary, and I don't think he'd have considered he needed help from Pensionwise as he'd already made up his mind what he intended to do. The only thing he wasn't clear on is how much he'd get when he took his benefits, and I don't think Pensionwise could tell him that.

So while Mr J already knew he wanted to take tax-free cash and purchase an annuity, the question he asked Prudential was around the timing of taking his benefits, and he asked them to contact him by phone or secure message. But Prudential responded to that question by sending him two illustrations, with no covering letter or additional information to ensure he fully understood what they meant.

Prudential says the two quotes provided to Mr J were calculated on a different basis so should not be compared. But I don't see how Mr J was supposed to realise that. Prudential provided Mr J with those two valuations without complying with his request for a phone call or email response to provide some context. It didn't even tell him that it couldn't know whether he'd be better off or not. Mr J might have understood the "retire immediately" option was a firm quote but the "retire at the plan maturity date" was subject to change as the letter did make this clear. But I'm not sure he'd have understood the significance of the bonus rate recalculation taking place prior to the plan maturity date in July 2019.

I accept Prudential is not authorised to provide financial advice and can't tell someone what they should do. And Prudential staff wouldn't know in advance what the new bonus rate

would be or whether it's likely to be better or worse than the current rate. And of course it wouldn't be appropriate to give Mr J (or any customer) additional information which is not in the public domain. I acknowledge the February 2019 illustration did warn that the income Mr J would receive could be "*different*" and that the standard assumptions it had used may not match Mr J's actual circumstances. But it didn't draw attention to the impact the recalculated bonus rate might have. Both quotes were calculated using the actual current bonus figure, but that wouldn't apply if Mr J decided to delay until July 2019, as the new bonus rate would be calculated in April, and that could have a positive or negative impact. While the relevance of the imminent recalculation of the final bonus rate might have been obvious to Prudential I don't think Mr J would have appreciated that a recalculated bonus rate could revise his quote downwards. The explanations and information Prudential provided make sense to me as I'm familiar with pension products, but I don't think we can assume the same applies to Mr J. I think Prudential should've been aware that while it might be simplistic, a layman like Mr J is most likely to assume that he'd be better off the longer he waits before accessing his pension. And this assumption was reinforced by the two illustrations he received.

If Prudential can't contact its customers by phone or message as Mr J had requested, I think it should have at least replied to his message explaining that and encouraging him to call in before making a final decision. Mr J asked the question as he was concerned about his financial future given he'd had to retire on health grounds. He made this clear in his admittedly brief message, so I think Prudential should have done more than simply send the two quotes in isolation. I think if Mr J been given any indication the application of the revised terminal bonus might mean the amount he'd receive could be less than the quotes he'd been given, he'd have taken his benefits immediately. I see no reason he'd delay for a few more months for modest growth which exposed him to considerable risk of a lower income.

So having thought about everything again I see no reason to depart from the conclusions in my provisional decision and I uphold this complaint.

Putting things right

To put things right Prudential should put Mr J as far as possible in the position he'd be in if he'd taken his benefits prior to the recalculation of the annual bonus in April 2019 based on the options he actually chose (my understanding is he took the maximum tax-free cash and has opted for quarterly payments). The January 2019 quote was valid for 30 days so I'm assuming the annuity would start in February 2019.

Pass losses

To compensate Mr J for his past loss Prudential should:

- Pay Mr J the amount of tax-free cash he should have received had he taken his benefits in February 2019, deducting the amount he actually received adding interest at 8% simple per year to the date of my final decision;
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- Pay Mr J the backdated additional income he should have received from his annuity payments since February 2019 to date, net of his marginal rate of tax (presumed to be 20%) as a lump sum, adding interest to each payment at 8% simple per annum from the date each payment was due to the date of my final decision;

Future losses

To compensate Mr J for future losses Prudential should either:

- top up Mr J's existing annuity to reflect the payments as they should be

or, if that's not possible:

- work out the cost of buying an annuity to provide the higher amount Mr J should have had, with the same features as his existing annuity.
- pay Mr J a lump sum equivalent to the cost of buying the annuity above, after making a notional reduction to allow for the income tax that would otherwise be paid at his likely rate (presumed to be 20%).

Trouble and upset

- Prudential should pay Mr J a total of £150 in recognition of the inconvenience and worry this situation has caused him, deducting any money previously paid. (Prudential says it paid Mr J £50, but Mr J says he didn't accept or cash the cheque).

My final decision

My final decision is I uphold this complaint. Prudential Assurance Company Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 May 2021.

Sarah Milne
Ombudsman