

The complaint

Mr H complains that The Prudential Assurance Company Limited (Prudential) gave him unsuitable advice when it advised him to transfer his deferred defined benefit pension to a personal pension plan.

Mr H also complains the redress calculation carried out by Prudential, as part of the industry-wide pensions review, used incorrect assumptions to calculate his loss.

To put matters right Mr H wants Prudential to recalculate the redress he is due in line with the regulatory guidance set out in FG17/9.

Mr H is represented in this matter by a third party.

What happened

I understand that in 1993, Prudential advised Mr H to transfer deferred benefits from a defined benefit occupational pension scheme to a personal pension plan.

In 2000, this advice was reviewed by Prudential as part of the industry-wide pensions review, which firms were required to carry out on personal pension plans sold between 29 April 1988 and 30 June 1994. Mr H was offered redress as part of this review and accepted the redress offered of £13,125 (paid into his personal pension plan) on 29 May 2002 in 'full and final settlement'.

At the time Prudential explained that the offer had been calculated in-line with the regulator's pensions review guidance. It provided Mr H with a 'Summary of Loss Assessment' so he could understand the calculations the redress was based on. And it also gave Mr H a Key Facts and Assumptions document setting out the information about Mr H's circumstances Prudential had used in the review.

In late 2020, Mr H's representative complained to Prudential on Mr H's behalf. It said that Prudential had '*failed to use plausible assumptions*' in the redress calculation it had carried out. In particular, it said Prudential had '*...used a policy charge assumption of zero and a fund management charge assumption of zero.*' It said that as Prudential had not calculated the redress due '*...in accordance with the regulatory standards or requirements applicable for the review of the transaction at the time, the FCA FG17/9 guidance states that it is that guidance that should be used to determine appropriate redress.*'

Prudential did not uphold Mr H's complaint. It said, in summary, that the redress Mr H had accepted in 2002 was calculated in-line with guidance set out by the Personal Investment Authority (PIA), the industry regulator at that time. It confirmed that the redress calculations it carried out followed the PIA guidance. In view of this it said it did not think it was required to retrospectively revisit cases using FCA FG17/9 guidance for previously settled pension review cases. It noted that the new guidance Mr H's representative had referred to is for complaints recorded after 3 August 2016.

Mr H's representative did not accept Prudential's decision and referred the matter to this service.

Our investigator said that, having carefully considered Mr H's complaint, she didn't think Prudential had acted incorrectly in this matter. She noted that it was not in dispute that the advice Mr H had received to transfer his deferred defined benefit pension to a personal pension was unsuitable. As this was the case, she said she hadn't considered this aspect of Mr H's complaint.

With regard to Mr H's complaint that the redress calculation had not been carried out in accordance with the regulator's guidelines, she explained that the pension review was designed to be a one-off exercise in order to provide finality to both consumers and businesses. It was intended to rectify widespread pension mis-selling and to put consumers as close as possible to the position they would be in if they hadn't received unsuitable advice.

She explained that the methodology for redress calculations was set by the regulator. The assumptions used in the calculations were based on what the regulator thought was fair at the time and the assumptions businesses were required to use were regularly reviewed.

She noted that the FG17/9 guidance, that Mr H's representative had referred to was intended to be used for redress calculations in complaints about occupational pension scheme transfers received after 3 August 2016 or for complaints received before that date but which hadn't been settled in full and final settlement. It could also be used for complaints about advice that had been reviewed during the pensions review period, if the business hadn't followed the regulatory guidelines or the particular circumstances of the case weren't addressed by those standards.

Having reviewed the redress calculations carried out by Prudential for Mr H's personal pension, she said she couldn't see any errors in the assumptions or data used. She also noted the pensions review was monitored by the industry regulator at that time. In view of this, and in the absence of anything to show that incorrect assumptions were used, she said she was satisfied that the redress calculation for Mr H was carried out in accordance with the regulator's guidelines. As this was the case, she said she didn't think Prudential needed to re-work its redress calculations for Mr H in-line with FG17/9.

Mr H's representative did not accept our investigator's view. It reiterated that it felt Prudential had not carried out the pensions review calculations in-line with the regulatory requirements, '*...as they failed to use adequate assumptions for the costs of the personal pension.*' In particular it referred to the 'investor event calculation report' Prudential had provided setting out its redress calculations. It said this showed that:

While the fund management charge has been applied to both Protected Rights units and Single Premium Accumulation Units, the Annual Policy Charge has only been applied to the Single Premium Accumulation Units.

Furthermore, 0.985% p.a. is not an adequate assumption of the fund management charge, as it only accounts for the annual management charge of the fund, which was of course not the only fund management charge to Mr H. Funds have an annual management charge and substantial additional charges, which is why the "Ongoing Charges Figure" (which includes the annual management charge plus these additional costs) which must be disclosed to the investor.'

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 don't think Mr H's complaint should be upheld. I'll explain why.

suitability of advice

When the review of Mr H's personal pension plan was carried out as part of the pensions review, a calculation was carried out to establish whether Mr H had been financially disadvantaged as a result of transferring his deferred benefits to a personal pension plan.

Redress calculations were only carried out if the sale of the personal pension plan was found not to be compliant, or the business had conceded compliance (usually because it was not able to demonstrate from its records that the sale was compliant).

If the sale had been found to be compliant by Prudential it wouldn't have carried out a redress calculation.

As this is the case, although I appreciate the points Mr H's representative has made about the advice he received to transfer his deferred benefits, I don't think it is necessary to re-consider the suitability of the advice.

redress calculation

Mr H's representative says that the redress calculations carried out by Prudential in 2000 was flawed as the annual policy charge was only taken into account in the calculations for the single premium accumulation units and not for the protected rights units. It also says '*...0.985% p.a. is not an adequate assumption of the fund management charge, as it only accounts for the annual management charge of the fund...*'

As our investigator explained, the pensions review was designed to be a 'once and for all' process, based on what the regulator at the time considered to be a fair methodology, using reasonable assumptions for future growth rates of both the pension policy, and where appropriate, augmentation of policy funds.

The review was designed to provide finality to both parties, so that a business such as Prudential was able to provide redress, for instances of mis-selling if the customer had suffered a loss, but also so that it knew that it wouldn't have additional unknown liabilities in the future.

This was important for the stability of the industry and consumer confidence in financial services more generally. But it was also designed to reassure consumers such as Mr H that the error had been recognised and, if necessary, addressed at that point in time – as I've said above, using what were considered to be reasonable assumptions - without the need to revisit the matter many years later.

(Some businesses did offer a guarantee to match the benefits at retirement rather than undertake a redress calculation, but the more common – and still acceptable – method of resolving the matter was either by reinstatement or paying an augmentation sum if the calculations showed a financial loss.)

The methodology businesses were required to use contained a number of assumptions. The most notable of which was the expected growth rate of the pension funds to produce the

required benefits at retirement. Unfortunately, these projected growth rates haven't been borne out by reality. Likewise, the low interest rate environment from 2008/09 onwards has resulted in the cost of annuities rising significantly. This means that, for many people, their pension funds at retirement aren't sufficient to reproduce the lost scheme benefits.

Mr H's representative says that the fund management charge used in the redress calculations for Mr H was not an adequate assumption, as it only accounts for the annual management charge of the fund and does not reflect '*substantial additional charges*'.

As Mr H's representative will be aware, the methodology and assumptions Prudential used when it carried out the redress calculations were in-line with the regulatory guidance at that time. As this is the case, I cannot reasonably find that Prudential acted incorrectly by applying the regulatory guidance in place for pensions review redress calculations. I therefore cannot fairly require it to re-work the redress calculations using an 'on going charges figure' rather than the annual management charge as I am satisfied that Prudential carried out the calculations correctly in 2000.

Mr H's representative also says the redress calculations carried out by Prudential in 2000 were flawed as the annual policy charge was only taken into account in the calculations for the single premium accumulation units and not for the protected rights units.

I think there may be a misunderstanding on this point. Only one pension policy held by Mr H with Prudential was included in the pensions review (as Mr H's representative set out in his complaint to Prudential). Prudential has confirmed that this policy held both Mr H's protected rights and non-protected rights benefits. Therefore, only one policy charge was applied. As this is the case, I cannot reasonably agree with Mr H's representative's view that the annual policy charge reflected in the redress calculation is incorrect.

In the absence of anything to show or suggest that Prudential made an error, or used incorrect assumptions when carrying out the redress calculations in 2000 for Mr H, I can't reasonably find that the calculations were incorrect.

However, if Mr H or his representative still thinks that incorrect assumptions were used, or the basis of the calculation was faulty for some other reason, it's open to him to demonstrate why and, if he deems it necessary, commission a rerun of the calculation.

But I do also need to explain that, even if errors were proved, this wouldn't necessarily result in the outcome sought by Mr H –to require Prudential to re-work the calculation using the FG17/9 guidance.

If we were satisfied that Prudential had undertaken the calculation in good faith, but that minor errors had been made, it's likely that we would simply require it to rerun the calculation using the correct information, but also the same methodology and key assumptions (including growth) which existed when the redress calculation was carried out in 2000.

My final decision

My final decision is that, for the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 July 2022.

Suzannah Stuart
Ombudsman