

The complaint

Mr D complains that The Prudential Assurance Company Limited (Prudential) will not allow him to take his pension benefits in the manner he wants contrary to the flexibility offered by his plan. He wants Prudential to either facilitate this or meet the costs of transferring to a new plan.

What happened

Mr D's plan was originally taken out in 1990 with Scottish Amicable which was subsequently taken over by Prudential. Mr D is a retired financial adviser and familiar with pension arrangements and the retirement options available. The policy with Scottish Amicable was arranged with ten sub policies, sometimes referred to as segments or clusters across the wider pensions market. Prudential has argued there is only one policy. Mr D says that the Scottish Amicable policy documents don't refer to segments but to "*a series of 10 identical contracts.*"

Mr D wanted to access some of his benefits under the plan by fully encashing two of these sub policies through the Uncrystallised funds pension lump sum (UFPLS) option, which was introduced by the pension freedom legislation in 2015. Under UFPLS 25% of the fund can be taken as tax free cash with the balance being paid as a one-off amount subject to income tax. By taking just two of the sub policies Mr D says he wouldn't incur a liability to higher rate tax.

Initially Prudential said Mr D would be able to do this. It then said this wasn't possible with his existing plan as it could only provide the UFPLS option if fully encashed. Prudential said its newer pension plans could facilitate UFPLS in stages, but that Mr D would need to take financial advice about arranging this. It did say that he could transfer any number of the individual arrangements, referring to these as "*segments*".

Mr D complained to Prudential. He quoted the original terms and conditions (T&C's) of the plan which referred to him making ten applications for ten identical contracts. He said that if Prudential could facilitate UFPLS across the entire plan it should also offer this for the individual arrangements. Particularly as it had confirmed it was possible to transfer the individual arrangements separately to new pension plans.

Prudential accepted Mr D had been provided with incorrect information about what it offered under his plan. It apologised and paid £300 in compensation for the inconvenience caused. But on the main points it disputed there were ten individual arrangements saying there was only one plan. It said UFPLS was not an option when Mr D took the policy out and a business decision was made to only facilitate it on the overall plan to "*protect not only our business but our customers*" which had been made in good faith. Consequently, it couldn't cover costs incurred in transferring the plan to a new arrangement which could provide UFPLS in the way Mr D required.

Mr D responded with further arguments about the contractual basis of his plan, but Prudential didn't agree, so Mr D referred his complaint to our service.

Our investigator looked into the complaint, but he didn't uphold it.

He said he was satisfied Prudential's legacy policy didn't have a drawdown option. He agreed that it wasn't a requirement that Mr D take advice about either transferring the plan or taking benefits. But said that newer plans that could do what Mr D wanted, were only available from Prudential on an advised basis and that it was entitled to decide how it wanted to do business. He said there was only one policy that was segmented. The T&C's confirmed that this allowed each segment to be either transferred or to provide retirement benefits via the purchase of an annuity after the payment of a tax-free cash sum. He said Prudential wasn't obliged to update the T&C's to reflect the new retirement options that became available in 2015 and the business decision to allow UFPLS across the whole plan was a reasonable business decision.

Mr D disagreed and provided some further documents about the structure of the Scottish Amicable plan being ten individual policies. He said the original basis of the policy was to offer flexibility and Prudential's subsequent business decision had undermined that. He said if Prudential wouldn't allow UFPLS across the individual arrangements it should have advised him this was the case at the earliest opportunity rather than providing only generic documents where this wasn't made clear.

Our investigator put Mr D's points to Prudential. It said that legacy plans like Mr D's don't provide the flexibility for partial withdrawals. It disagreed that there were ten separate policies. Our investigator didn't change his view and said there was only one policy made up of ten arrangements which could only be transferred to a new plan or used to provide tax free cash and annuity benefits.

As Mr D doesn't agree it has come to me to decide.

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 am not upholding the complaint.

I know this will disappoint Mr D, so I'll explain why I've come to this decision. I've sympathy with Mr D's arguments that there are ten individual policies under his plan and calling them segments or clusters doesn't change that. However, in this case the T&C's haven't been updated to facilitate to reflect the pension freedom legislation, and as Mr D's accepts Prudential doesn't have to do this. And I think that's relevant here.

Strictly, this means that the flexibility offered by the individual policies is limited to that set out in the T&C's. These, unsurprisingly, provide only for the options available under the relevant tax legislation at the time the plan was taken out. These were: transfer to another pension plan, or annuity purchase with or without a tax-free lump sum. Whilst Prudential itself no longer offers annuities the plan is still facilitating these options, as I'd expect it to.

I understand Mr D's point that in offering UFPLS across the whole plan Prudential seems to be contradicting itself with what it says it can and can't facilitate, and that this isn't treating customers fairly. But I think it's likely that allowing the entire plan to be accessed through the UFPLS option will meet the needs of most policyholders still holding a plan of this age. And, I think significantly, it ends the administrative relationship (for that plan) between the customer and Prudential, whereas a more complex phased strategy would not. So, I don't think there's any requirement for Prudential to facilitate staged UFPLS for this contract and the business decision it has made about this is reasonable.

Mr D also doesn't think it's fair that Prudential won't accept applications for its current pension plan unless the customer has taken financial advice. He says it told him it would charge around £4,000 to advise on transferring his existing plan to a new arrangement, which he doesn't think is reasonable as he's an existing customer.

I don't think Prudential has acted unfairly here. It hasn't misinformed Mr D that he must take advice about UFPLS and he's aware other pension providers wouldn't require him to. It is entitled to set out the basis on which it will do business and what it would like to charge for the advisory services it offers. And Mr D is free to shop around if he does want to take advice.

Mr D also says Prudential should have advised him at an early stage that it doesn't facilitate staged UFPLS rather than sending out generic information. I wouldn't expect a pension provider to give notice of potential limitations in existing contracts following legislative change until further prompted to do so by the customer contacting it about the arrangement.

Prudential does accept that it initially incorrectly told Mr D it could do what he wanted, and it has apologised for this. This error has caused Mr D inconvenience and frustration. Prudential has apologised and paid £300 in compensation for what happened. I think that's fair in the circumstances of this complaint and Prudential needn't do any more than it has.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 September 2022.

Nigel Bracken
Ombudsman