

The complaint

Ms W complains that The Prudential Assurance Company Limited (Prudential) will not allow her to cash in her annuity with it. She's also complained that her annuity(s) were mis-sold in 2010.

What happened

I set out the background to this complaint and my provisional findings in a provisional decision. This is included below and forms part of this decision:

'Ms W contacted Prudential in January 2010 saying she was approaching her 50th birthday and she'd like information on accessing her tax-free cash. Prudential gave her that information and she decided to take her benefits with the maximum tax-free cash sum allowed and the rest paid as an annuity.

Later in 2010 Prudential received additional funds linked to this policy from Ms W's time contracted out of the State Second Pension. It wrote to her to say it had received this additional money and it would be paying it in the same format as her earlier pension. Although the annuity would be paid yearly (as due to its small size approx. £33.00 per annum it couldn't pay it monthly – it didn't tell Ms W this).

More recently, Ms W was contacted by Prudential about the regulator's annuity review (which doesn't form part of this complaint). Ms W then complained about the annuity sale in 2010 and asked that Prudential allow her to cash in her annuities. Ms W said it was mis-sold as she wasn't told what she was getting and it wasn't explained properly. She said others had been given the cashing in option.

Prudential responded about the mis-sale and explained she had been given all the information required at the time. As she was only aged 50, none of the cashing in options were available to her at that point. However, it said the additional money it received, it should have told her why it was being paid yearly and offered Ms W £150 for the distress and inconvenience this may have caused – this figure also included the time taken to respond to the complaint.

With regards to cashing in her annuities, Prudential said legislation did allow annuities valued under £10,000 to be cashed in but this was at providers' discretion and it had chosen not to offer this. Ms W was unhappy with this as she's explained the £33.00 was of no use to her.

What I've provisionally 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.

Mis-sale of annuity in 2010

Ms W has complained that her annuities were mis-sold. She says she wasn't given enough information and Prudential paid her one of the annuities without telling her. It appears she is also unhappy that she couldn't take a lump sum instead at the time.

Due to the legislation at the time Ms W couldn't take her benefits as a lump sum. The rules were restrictive in that Ms W would've needed to be aged 60 and her pension benefits under a certain

size. I understand that Ms W's pension benefits were over these limits in any event. And I can see that Prudential explained that at the time and Ms W still chose to take her benefits at age 50.

Ms W wrote to Prudential asking to take her benefits and she completed its form to select to take the maximum tax-free cash available and the remainder as an annuity. I don't think Prudential did anything wrong here, this was Ms W's choice and I can see that she requested the money and had a need for it.

I think Ms W's main concern here is about the second annuity paid in 2010 and she says she wasn't informed by Prudential about it. I've seen that Prudential did send Ms W a letter on 19 July 2010 explaining it would be paying her additional money that it had received from her contracted out payments. It also told her how much it was and how it would be paid.

However, it has apologised as part of this complaint and paid compensation for not giving more information about why this was paid yearly. We asked Prudential about why this annuity amount was paid separately and without Ms W requesting it specifically. It explained that this money was part of the same fund built up that Ms W had requested to take benefits from. However, this money was sent to it late (presumably by the Department for Work and Pensions) and so it couldn't be paid at the same time but it wasn't a separate policy. And had the funds been received by Prudential at the same time, when Ms W had asked to take her benefits it would've been included then. As Ms W had already taken her benefits – its only option was to pay this to Ms W, as this is what ought to have happened had the money always been with it.

Given this explanation, and the fact that Ms W did request to take her benefits in 2010, I don't think Prudential did anything wrong here. This was not a separate policy and as Ms W had taken her benefits from it, I think it was fair and reasonable to add this money to Ms W's benefits she was already in receipt of. However, as it has admitted it could've communicated this more clearly to Ms W – and explained why the payment was yearly instead of monthly.

So I don't think the annuities were mis-sold in 2010 and Ms W couldn't cash them in then. So my findings will concentrate on whether Ms W ought to be able to cash in her annuity(s) now. I understand that Ms W's complaint focuses on the smaller annuity (£33p.a) but she has also referred to both annuities that are in payment.

Relevant considerations

DISP 3.6.4 R says that in considering what is fair and reasonable in all the circumstances of the case, I will take into account the relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

What are the regulations about cashing-in or 'commutation'?

Various bits of legislation have helped form the current legislation that allow annuities to be cashed in. These include:

- The Finance Act 2004 Section 164
- The Finance Act 2004 Section 273B
- Registered Pension Schemes (Authorised Payments) Regulations 2009/1171
- reg. 11 De minimis rule for pension schemes
- Registered Pension Schemes (Authorised Payments) Regulations 2009/1171
reg. 11A (inserted on 6/4/12)
- Finance Act 2014 Section 42 Pension flexibility: taking low-value pension rights as lump sum

As a result of the above, the legislation in regard to commutation payments now reads:

Registered Pension Schemes (Authorised Payments) Regulations 2009/1171

PART 2 COMMUTATION PAYMENTS

reg. 11A

'(1) A payment to a member by a pension scheme which is not a public service pension scheme or an occupational pension scheme in respect of an arrangement under that scheme if—

- (a) the member has reached normal minimum pension age or the ill-health condition is met (see paragraph 1 of Schedule 28);*
- (b) the payment does not exceed £10,000;*
- (c) the payment extinguishes the member's entitlement to benefits under the arrangement;...'*

The Finance Act which allowed providers/schemes to over-ride the rules of the scheme and make payments that otherwise previously wouldn't have been allowed (which now includes cashing-in of annuities) – was a permissive over-ride. What this means is the schemes are allowed to make these payments if they wish to do so – it isn't mandatory legislation.

So in essence what the legislation says is a person in Ms W's position doesn't have a right to commute their pension pot to a cash lump sum. However, if a provider wants to offer this it can, but only up to a limit of £10,000.

What are the relevant regulatory rules and guidance?

COBS 2.1 Acting honestly, fairly and professionally

'The client's best interests rule'

COBS 2.1.1R (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).'

Principles for Businesses

'PRIN 2.1.1R The Principles...

6 Customers' interests – 'A firm must pay due regard to the interests of its customers and treat them fairly.'

Guidance to firms:

FCA Alert to firms: Fair Treatment of Customers 12/05/2015

'All firms must be able to show consistently that fair treatment of customers is at the heart of their business model.'

Taken together, all of this means in essence that firms must take the best interests of their customers into account in the actions they take. However, this doesn't mean that it should act in the interest of a single (or a small group of) customer(s) which would be at the expense of other customers. Nor to act in a particular customer's interest without consideration of other factors or wider implications.

I'm aware of no other codes of practice that would apply here, other than the legislation and regulatory rules I've referred to above. However I've also considered:

- What would have been good industry practice at the relevant time? I'm aware some providers have allowed commutation of small annuities in the past.*
- Contractual and other legal matters. I'm aware that in some annuity contracts, there may be ownership issues (it may be subject to a separate contractual/legal arrangement with another party) or other lives attached to the annuity that could cause issues with commutation.*

- *Practical matters. For example, an annuity is a life-long insurance contract that is not designed to be cashed in. For that reason, it is often backed by long-term less liquid investments that may be more difficult to value or sell; and doing so might negatively affect the pricing of annuities for other customers.*

The key questions that I need to consider in deciding what is fair and reasonable in this case

1. *Does Prudential have discretion to commute Ms W's annuity as requested? For example:*
 - *Is the 'value' under £10,000?*
 - *Is Ms W the legal owner of the annuity?*
 - *Is Prudential the other contracting party or has it been re-insured?*
2. *If Prudential is free to commute the annuity, would it have been in Ms W's best interests to allow commutation? For example:*
 - *Would it expose her to the risk of financial difficulty in the future?*
 - *Would it affect other income that she relies on - such as state benefits being reduced due to the commutation payment?*
3. *If Prudential was free to grant Ms W's request to commute the annuity and doing so would have been in her best interest, was it fair and reasonable for Prudential to refuse? In other words, did it exercise its discretion in a fair and reasonable way?*

My findings in light of the above considerations

Prudential hasn't made any specific arguments in relation to this case as to why it isn't free to allow Ms W to cash-in the annuity. So I am proceeding on the basis that it does have discretion to commute her annuity.

It's also not provided any information specific to Ms W to show that she would be worse off if she were to commute the annuity to a cash lump sum. Having considered what Ms W's told us and the value of her annuity, which is paying her just £33 a per annum, I'm satisfied the annuity is so small it doesn't provide any meaningful income on which she relies. I accept her position that she'd benefit more from a cash lump sum, even if small. For these reasons, and subject to the lump sum value (which hasn't been determined), I've proceeded also on the basis that it would be in Ms W's personal interest to encash this annuity.

Ms W also appears to have suggested she should also be allowed to cash in the larger annuity – as she's asked whether it would be over £10,000 and she's said that £10,000 would be very useful for her. However, this annuity looks to me to provide a level of income that she would gain some benefit from. So I'm not satisfied that it would necessarily be in Ms W's personal interest to cash in the annuity. So my findings from here only relate to the smaller annuity.

This case therefore comes down to whether Prudential fairly took into account Ms W's interests when it chose not to exercise its discretion to allow her to cash-in her annuity. I think it did.

Prudential has told us it is unwilling at this point in time to offer a cash in value to Ms W, essentially because the annuity product wasn't designed to be cashed in, so it would be difficult to offer that option now without incurring significant cost and inconvenience – and possibly to the detriment of other customers. It made a number of points about this, for example:

- *Offering commutation to Ms W simply because the annuity is small means it would have to offer the same option to all customers with small annuities. Otherwise, it wouldn't be treating its customers consistently (and therefore fairly). It doesn't have the systems and*

processes in place to facilitate significant numbers of commutations.

- *Without appropriate processes and checks, customers could be exposed to the risk of poor outcomes.*
- *Designing an appropriate framework to allow a commutation option would require significant time, planning and regulator engagement (and presumably cost).*
- *Annuities are long-term commitments, backed by long-term and illiquid assets, so cash values aren't easily realised.*

Having thought about this very carefully, I think Prudential's points are fair ones. I don't think Prudential simply disregarded Ms W's interests in this case. Its position is based on its considerations of what allowing commutation could mean for its customers and business model more widely.

It seems to me that Prudential could avoid many of the challenges it has raised if it were to treat Ms W's case as exceptional. The cost and impact in this one case would be small for a business the size of Prudential. However, I acknowledge Prudential's difficulty here. I'm not persuaded there is reason in Ms W's case to treat her differently to other customers with small annuities. (It's my understanding that is a significant portion of customers.)

I've kept in mind that Ms W would probably be better off with a cash lump sum and the annuity isn't useful to her. I've balanced this against the fact that commutation wasn't something Ms W had a right to. And while Prudential was free to allow her request, I'm satisfied it did have other legitimate interests to weigh up, including the way the annuity product was designed, the impact on Prudential's existing systems and processes, the interests of its customers more widely and the potential cost.

On balance, I don't think it was unfair or unreasonable for Prudential to decline Ms W's request. It acted in line with the contract and the rules and treated Ms W in line with other customers.

We have seen that some providers are looking into their stance on cashing-in annuities and I'm aware that some businesses have previously offered cash values to customers. If in the future Prudential changes its position on cashing in annuities or legislation changes, it's possible Ms W may benefit from such a change. But in the present circumstances I don't think she's been treated unfairly.

I appreciate Ms W will be disappointed with this but for the reasons explained I am not intending to uphold her complaint.'

Ms W hasn't added anything new or substantive following the provisional 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.

Having done so, I see no reason to depart from the findings reached in my provisional decision. And so my final decision remains the same and as set out above.

In summary, I don't think it was unfair or unreasonable for Prudential to decline Ms W's request. It acted in line with the contract and the rules and treated Ms W in line with other customers.

My final decision

For the reasons explained above and in my provisional decision, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or

reject my decision before 18 January 2022.

Simon Hollingshead
Ombudsman