

## The complaint

Ms C complains that The Prudential Assurance Company Limited (Prudential) will not allow her to cash in her annuities with it.

## 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:

*'In 2005 Ms C took benefits from a personal pension she held with Prudential. This pays her an annuity of £80.52 a year in half year instalments and tax-free cash was paid at the time. Then in 2006, she took out another annuity from another policy with tax-free cash paid. The annuity pays £142.08 in monthly instalments of £11.84.*

*Ms C says she has contacted Prudential a number of times to ask whether her annuity paying £11.84 a month can be cashed in or stopped altogether or paid to charity. She's explained this annuity means she isn't entitled to pension credit. And this is very important to her as she would then be entitled to free health care options which she needs for her health conditions.*

*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.*

## 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.*

*I need to decide whether Prudential has been fair and reasonable in its stance that it will not offer Ms C a cash value for her annuity.*

*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:*

## **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 C'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 C's annuity as requested? For example:*
  - *Is the 'value' under £10,000?*
  - *Is Ms C 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 C'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 C'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 C 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 C to show that she would be worse off if she were to commute the annuity to a cash lump sum. Considering the size of her annuities, it does appear that a cash lump sum would be more beneficial for Ms C in place of an annuity. So 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 C's personal interest to encash this annuity.*

*This case therefore comes down to whether Prudential fairly took into account Ms C's interests when it chose not to exercise its discretion to allow Ms C 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 C, 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 C 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 C'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 C'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 C'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 C 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 C 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 C's request. It acted in line with the contract and the rules and treated Ms C in line with other customers.*

*Ms C's has asked for the annuity to be stopped altogether or paid to charity so that she can access pension credit and the benefits that come with that. But this is a state benefit with eligibility criteria and whilst I appreciate it would be very useful for Ms C – I don't think it would be fair to ask Prudential to help Ms C get around this. Furthermore, there is no guarantee that purposely reducing an income would equal eligibility for state benefits – as this is against the intention of the legislation.*

*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 C may benefit from such a change. But I cannot fairly say Prudential must change its position at present, in the circumstances I've considered in this decision.*

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

Ms C 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 C's request. It acted in line with the contract and the rules and treated Ms C 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 C to accept or reject my decision before 18 January 2022.

Simon Hollingshead  
**Ombudsman**