

The complaint

Miss D complains that The Prudential Assurance Company Limited (Prudential) will not allow her to cash in her annuity 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:

'Miss D had an Additional Voluntary Contributions (AVC) plan through an employer. In 2013 Miss D enquired about taking her benefits. She had previously enquired about taking her benefits as a cash-lump sum (or getting a return of fund) but due to the value of her policy and the value of her other pensions she was unable to do this and Prudential explained this at the time.

It was explained that to take her benefits at the time, Miss D would need to take out an annuity. Miss D decided to do this, after taking her benefits she receives an annuity of just under £40 a year.

More recently, Miss D approached Prudential again to ask if she could cash in her pension. 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.

Miss D was unable to take her AVC as a cash lump sum in 2013. I can see that Prudential and Miss D discussed this at the time and she also raised a complaint with the Pensions Ombudsman about her AVC. The Pensions Advisory Service also looked into Miss D's wish to have her AVC paid as a lump sum. But it said unless her policy dropped in value, her options were likely to be restricted and she wouldn't be able to take it as a lump sum. It also appears that Prudential looked into her options and to see whether she could have her fund returned to her at the time but due to the values involved she was unable to have this option. So Miss D wasn't entitled under legislation to have a lump sum paid when she took her benefits. Therefore I've looked into whether she ought to be allowed now to have her annuity cashed in and a lump sum paid instead.

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 Miss D'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 Miss D's annuity as requested? For example:
 - Is the 'value' under £10,000?
 - Is Miss D 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 Miss D'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 Miss D'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 Miss D 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 Miss D to show that she would be worse off if she were to commute the annuity to a cash lump sum. Having considered what Miss D's told us and the value of her annuity, which is paying her just £40 a year, I agree the annuity is so small that it doesn't appear to provide any meaningful income on which she relies. And a cash lump sum in place, even if relatively small, would most likely benefit her more than the annuity. I also note this is what Miss D has said she preferred to do at the outset (i.e. take her whole pension as a cash lump sum) had that been possible at the time. 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 Miss D's personal interest to encash the annuity.

This case therefore comes down to whether Prudential fairly took into account Miss D's interests (and that of its wider customer base) when it chose not to exercise its discretion to allow Miss D to

cash-in her annuity.

Prudential has told us it is unwilling at this point in time to offer a cash in value to Miss D, 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 Miss D 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 Miss D'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 Miss D'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 Miss D'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 Miss D 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 Miss D 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 Miss D's request. It acted in line with the contract and the rules and treated Miss D in line with other customers.

I can understand Miss D's strength of feeling that she would be better off with the cash lump sum than the annuity. And I'm sorry to hear of the difficulties she is facing with her health and finances. But we are an impartial service and we have to take into account the relevant legislation, rules, good industry practice and the fairness of our decisions to both sides of the dispute.

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

Miss D responded and made a number of points relating to the original sale of the AVC's. But this isn't something I can consider in this decision – the complaint brought to the service by Miss D and answered by Prudential's was its refusal to allow Miss D to cash in her pension and the sale of the annuity. If Miss D is unhappy with the sale of her AVC and she holds Prudential responsible, she will need to complain to it first

about that.

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

Simon Hollingshead
Ombudsman