

The complaint

Mr B's complaint against The Prudential Assurance Company Limited, made through his representative, is that he should not have been committed to an annuity paying a level income when he took his pension in 2007. He says he only wanted to take tax-free cash and wasn't informed of the alternative options available. He also says he wasn't properly warned about the effects of inflation on the annuity that he bought.

What happened

I issued my provisional decision on this complaint on 28 January 2022. The background and circumstances to the complaint, and the reasons why I wasn't minded to uphold the complaint were set out in that decision. I have copied the relevant parts of the decision here, and it forms part of this final decision.

"Mr B's complaint was considered by one of our investigators. She sent her assessment of the complaint to both parties on 3 December 2020. The investigator set out the background and circumstances to the complaint, and the reasons why she didn't think the complaint should be upheld in that assessment.

In brief, Mr B contacted Prudential in October 2007 and requested quotes to take his pension. The pension had two parts to it – protected and non-protected rights. Quotations were sent setting out various income options, with and without taking a cash sum. Mr B chose to take tax-free cash with a fixed income payable in advance, guaranteed for 10 years.

The investigator noted that in making his complaint Mr B had said he only wanted to take the tax-free cash at the time and leave the remaining pension fund invested. She said Mr B's representative hadn't explained his motivation for wanting to take his benefits early - he was in his early fifties at the time. However she said it seemed that Mr B wanted his benefits promptly as evidenced by his chaser calls and letter following the delay in its payment.

The investigator said she'd thought about what Mr B had said he wanted to do instead of buying the level annuity. She'd thought about whether Prudential could have provided him with more information than it did; about where to get advice or about the open market option for example. But she said she didn't think it would have made any difference to Mr B's decision.

The investigator said that Mr B wasn't eligible to take the whole of his pension as a lump sum at the time as he didn't qualify for trivial commutation given his age. She said that in order to take the tax-free cash Mr B would have had to do something with the remainder of the pension funds. She said the total fund value was approximately £15,587, so it was unlikely he would have qualified for a drawdown option as it was likely most providers would have required a higher pension value. So she thought that as Mr B wanted to take the benefits early, he would most likely have had to buy an annuity with Prudential, or with another annuity provider in any event.

The investigator said she had looked at the Key Features document for the annuity which had said:

It's aims – to let you choose a guaranteed income that: stays the same throughout your life, or goes up each year by a fixed amount, or matches yearly changes in inflation.

Risk Factors – Inflation will reduce the spending power of your income in the future, especially if you choose a level income.

Questions and Answers -You can buy a pension [...] from any company. This is known as your 'open market option'.

Any questions? - - Please talk to your financial adviser.

She said this document explained in fuller detail how each income option worked, and included factors for consideration. The investigator concluded that Prudential had provided Mr B with enough information to know the benefits or otherwise of the options he chose.

She thought that if Mr B wanted to explore alternatives, he had the opportunity to do so. The investigator thought that Prudential had been obliged to carry out Mr B's instructions to buy the level annuity which it did.

Mr B's representative said that he didn't accept the investigator's findings. It said that he didn't need additional income in 2007 and he didn't, as suggested, have to buy an annuity in order to take the tax-free cash he wanted. It said Mr B could, for example, have transferred to another provider, taken the tax-free cash and left the remainder invested. It said a level annuity starting at such an early age would almost certainly see an enormous reduction in its purchasing power over time, and Mr B should have been properly warned of this.

The investigator responded saying she had considered the points the representative had made but it hadn't changed her view of the complaint. She said she thought Prudential had provided Mr B with sufficient information regarding the risk of inflation. And although Mr B could have transferred the pension elsewhere in order to just take tax-free cash and invest the residual value, she thought it was unlikely he would have been able to do so in any event given the modest value of the pension fund.

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.

The evidence suggests Mr B approached Prudential for retirement quotations and they were sent to Mr B. I've seen no persuasive evidence that Prudential provided advice about the suitability of the options available; I'm satisfied the annuities were arranged on a non- advised basis.

I also consider that Mr B was given sufficient warnings about the effects of inflation on the type of annuity that he selected. In the Key Features document; under "Risk Factors" it specifically referred to inflation and "...especially if you choose a level income." The Key Features document went onto say:

"FLEXIBILITY AFTER YOU HAVE BOUGHT

There is no flexibility once you have bought a Guaranteed Pension Annuity. So, before you buy it is very important to consider your possible future needs, as well as your present ones. Once your income starts you cannot:

- *Cash in your annuity investment*
- *Move to another annuity provider*
- *Change your annuity options*
- *Mortgage or change your annuity.”*

So I think this ought to have alerted Mr B to think carefully before making a decision. And the Key Features document went onto outline the different annuity options that were available, including an annuity providing a level income. It said:

“This option will pay you the highest income at the start – but you won’t get any increases in the future. So your income will stay the same throughout your retirement.

Effect on your income: *Although you’ll start off on a higher income its buying power will go down as the cost of living goes up. Even at low rates of inflation, such as 3% a year, the spending power of your income could be reduced by a quarter in just 11 years.”*

The Key Features document also explained there was an option to select an inflation proofed income, and how the starting amount would be lower. Illustrations for both a level annuity and increasing annuity were shown in the quotations provided to Mr B. So I think Mr B was reasonably alerted to the different annuity options available, and the potential effects of inflation on the type of annuity that he selected.

Mr B’s representative has also said that Mr B didn’t need additional income in 2007; it said he could have taken the tax-free cash and left the remainder invested. Whilst I accept this was a possibility through a drawdown arrangement, as explained by the investigator, this wasn’t possible with the Prudential plan, and Mr B would have needed to transfer to another provider. I agree with the investigator that this would likely have been problematic given the size of the pension fund. This wouldn’t usually be suitable given the costs involved. No persuasive evidence has been provided to suggest it would have been suitable for Mr B in his particular circumstances, including the risks associated with pension drawdown. Or that he would more likely than not have opted to seek financial advice and go into drawdown if he’d been alerted there were other retirement options available.”

Taking all the above into account, I said my provisional decision was not to uphold Mr B’s complaint.

I invited both parties to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr B, through his representative, said that he accepted my provisional decision. Prudential said that it had nothing further to add.

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’ve seen no reason to depart from my provisional decision outlined above which was not to uphold Mr B’s complaint.

My final decision

Accordingly, my final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 March 2022.

David Ashley
Ombudsman