

The complaint

Mr I complains that The Prudential Assurance Company Limited (Prudential) won't allow him to cash in his annuity.

What happened

Mr I previously brought a complaint to this service about the sale of his Pension in 1988. Mr I believes his application policy was altered so that Prudential could sell him the policy and contract him out of State Earnings Related Pension Scheme (SERPS).

As part of that complaint, Prudential offered to do a loss calculation to put Mr I back in the position as close as possible as if he'd not contacted out of SERPS. It did not agree that anything fraudulent had occurred. And I, the deciding ombudsman, considered that offer fair. I cannot now consider this matter again in this decision.

Mr I's current complaint is that Prudential should agree to pay him the remaining cash value of his pension. One of his reasons for this is he thinks the pension has come about due to alleged fraudulent activity and so Mr I believes the money should never have been Prudential's in the first place.

Our investigator looked into matters but didn't agree that Prudential had done anything wrong in not allowing Mr I to cash in his pension. The investigator explained that he'd thought about whether it would be fair and reasonable to say that Prudential should do this but he'd considered the applicable rules and the circumstances of the case and he felt there was no obligation on Prudential to do so. And that it had acted fairly in declining Mr I's request.

Mr I in response repeated his arguments about the original sale of the policy and his belief that fraudulent activity had occurred and so any contract was now void. Mr I's argument is that the money should be returned to him as it was taken from him fraudulently.

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.

I need to make it clear at this point I cannot consider anything that was already considered as part of the other complaint and resulting decision referred to in the above section. We were only able to consider this complaint as it relates to Mr I's request to cash in his pension which hadn't previously been considered.

Mr I has provided us with some detailed submissions, but I've only summarised the points that I think are key to the relevant complaint issues. I don't mean this as a disservice – I have taken into account everything he has told us. The level of detail I've included in my decision is merely a reflection of the informal nature of this service. And it is part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome – this means I might not mention everything Mr I has said, but I will comment on

everything that makes a difference to the outcome of the complaint.

When Mr I took his annuity out in 2010, he was only aged 50 and his options were limited to taking an annuity with or without a cash lump sum. Mr I chose to take out an annuity with a lump sum. I've looked at the information provided by Prudential at the time and it explained Mr I's options clearly and it also explained that after he'd chosen how he'd like his income to be paid, he'd be unable to change his mind. So I don't think Prudential did anything wrong in relation to the sale of the annuity.

Mr I claims the annuity was mis-sold as it came from money fraudulently held by Prudential from the initial sale of the policy which contracted him out of SERPS. However, Mr I has already received redress (and a final decision) which put him in as close a position as if he'd remained in SERPS. So this matter has already been considered.

So my findings have concentrated on whether he should be allowed to cash in his annuity now. Mr I's reasoning for wanting the annuity cashed are again largely based around his belief that Prudential shouldn't hold his pension funds and he'd favour a cash lump sum in place of the small annuity payments.

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 Mr I'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.

- 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 Mr I's annuity as requested? For example:

- Is the 'value' under £10,000?
- Is Mr I 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 Mr I's best interests to allow commutation? For example:

- Would it expose him to the risk of financial difficulty in the future?
- Would it affect other income that he relies on - such as state benefits being reduced due to the commutation payment?

3. If Prudential was free to grant Mr I's request to commute the annuity and doing so would have been in his 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 Mr I to cash-in the annuity. So I am proceeding on the basis that it does have discretion to commute his annuity.

It's also not provided any information specific to Mr I to show that he would be worse off if he were to commute the annuity to a cash lump sum. For these reasons, and subject to the lump sum value (which hasn't been determined), I've proceeded also on the basis that it wouldn't be against Mr I's personal interest to cash in the annuity.

Prudential has told us it is unwilling at this point in time to offer a cash in value to Mr I, 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 Mr I simply because the annuity is under the limit 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 Mr I'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 Mr I'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 Mr I's case to treat him differently to other customers with small annuities. (It's my understanding that is a significant portion of customers.)

I've kept in mind that Mr I wishes to have a lump sum and I've balanced this against the fact that commutation wasn't something Mr I had a right to. And while Prudential was free to allow his 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 Mr I's request. It acted in line with the contract and the rules and treated Mr I in line with other customers.

Mr I believes that the money should be returned to him as it is his right due to the allegation of fraud that he has made. However, Mr I received compensation to match what he lost out by being contracted out of SERPS – which was the result of his Prudential policy being set up – and so he cannot be compensated for this again. And it should be noted as he has been told before, that had the Prudential policy not existed, the money he refers to now would have formed part of his State Pension and wouldn't all be in his possession now to spend. Which is what he is contesting Prudential should do now. He'd still be receiving it in small regular payments just from a different source. And Mr I wouldn't have had a 25% tax free lump sum at age 50 (or at all) if the money had remained in SERPS. So Mr I's argument that he should receive a refund of the remaining pension into his pocket would not be putting him back in the position he would've been in had the annuity not existed. So I don't find this a compelling reason to say Prudential should allow him to cash in his annuity.

Mr I has also said in response to a service complaint when we repeated the reasoning our investigator had replied upon that we shouldn't just be taking Prudential's reasons as valid and should be challenging them. And that other firms are able to offer cash in values and given the circumstances his annuity came about in, this should be an open and shut case.

We have seen that some providers are looking into their stance on cashing-in annuities and I'm aware that some businesses are offering cash values to customers. But for the reasons explained above, this does not mean Prudential has treated Mr I unfairly in not offering him a cash value. Our role is to be impartial and weigh up all the evidence, legislation and what is fair and reasonable in the circumstances. Having done so I do not think Prudential is required to offer Mr I a cash in value for all the reasons I've explained in this decision.

If in the future Prudential changes its position on cashing in annuities or legislation changes, it's possible Mr I may benefit from such a change. But in the present circumstances I don't think he's been treated unfairly.

I appreciate Mr I will be disappointed with this but for the reasons explained I am not upholding his complaint.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 July 2023.

Simon Hollingshead

Ombudsman