

The complaint

Mr S' complaint against The Prudential Assurance Company Limited is about a section 32 pension policy. Mr S is unhappy that Prudential won't pay him the underlying cash value of the Guaranteed Minimum Pension (GMP) that the policy provides.

What happened

Mr S' complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties in July 2022. The background and circumstances to the complaint and the reasons why he didn't recommend that it should be upheld were set out in that assessment. However in summary, Mr S had a section 32 policy following a transfer to it in 1990. He transferred £3,491 from his previous employer's pension scheme.

When Mr S came to take the benefits from the policy on his 65th birthday, he was informed that he couldn't transfer the value of the GMP to another provider because its value wasn't high enough to cover its cost. Prudential said it would make up the shortfall to pay Mr S the GMP itself, £1,135 per annum at the time. But he couldn't transfer its cash equivalent value to another provider.

Mr S didn't think this was fair as Prudential had guaranteed to meet any shortfall in the GMP. It was going to pay the cash equivalent value of the GMP to another pension provider to pay the GMP to Mr S. But it wouldn't pay it direct to him. He said he couldn't see how it made any difference to Prudential who it paid the same value to – Mr S or the other provider. He said he was legally entitled to the full value under the pension freedoms legislation introduced in 2015. Mr S also didn't think the GMP of £1,135 pr annum offered good value compared with its cost at that time – approximately £30,000.

Our investigator didn't recommend that the complaint should be upheld. He said, in summary, that following the transfer to the section 32 policy Prudential was required to provide Mr S with the GMP at his retirement date, regardless of the underlying value of the fund. He said the policy booklet outlined how the section 32 policy worked, and it made clear that the GMP must remain with the policy if the GMP entitlement couldn't be secured. He said the policy could therefore only be transferred if the GMP was fully funded from the relevant part of the pension. As the GMP was underfunded on Mr S' policy, the investigator didn't think Prudential was obliged to allow a transfer – it was carrying out its responsibilities under the section 32 agreement.

The investigator said although Prudential was going to pay another provider the value of the GMP which would then pay it to Mr S, there was nothing in the policy's terms, regulations or legislation that meant Prudential had to offer Mr S the cash equivalent value – it was only obliged to guarantee payment of the GMP.

The investigator explained that at retirement date the value of the section 32 policy was £30,634, split across two funds. Prudential had to pay the GMP out of the value of the With-Profit II fund, which had a shortfall of around £23,000 to cover it at the time. Mr S also had £23,280 in the With-profit I fund, which Mr S could use to provide additional benefits.

The investigator said that Mr S was correct in saying that pension freedom legislation allowed pensions to be accessed flexibly. But he said the legislation didn't require Prudential to either allow Mr S access to the GMP shortfall as cash or a transfer value. He said it was Prudential's choice to pay another provider to provide the GMP and it was entitled to make that business decision as long as it complied with the relevant regulations and legislation.

The investigator said he thought Prudential had provided Mr S with the correct information about his benefits over time. He said he thought Prudential was operating the policy in accordance with the policy's rules, and he said he didn't think Prudential was treating Mr S unfairly as it was offering him what he was entitled to.

Mr S didn't agree with the investigator's findings, and the complaint was passed to me to consider.

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.

Mr S transferred £3,491 into the 32 policy in 1990. He entered into a contractual arrangement with Prudential. The transfer value was invested in risk-based funds, and the ultimate value of the section 32 policy at Mr S' retirement date wasn't known in 1990. However, the policy guaranteed to provide at least the value of the GMP when Mr S reached aged 65, irrespective of its actual value.

In my experience of section 32 policies, the majority are structured in such a way that the total value of the policy can be used to secure the GMP. However, in this particular policy the transfer value was split and invested into two separate funds. These were effectively ringfenced, and only the money invested in the With-profits II fund was to be used to provide the GMP at age 65 – irrespective of its actual value at that date. Prudential therefore accepted the risk that if this part of the fund wasn't sufficient to pay Mr S the GMP at age 65 it had to make up any shortfall to provide it. This is what happened here.

I understand the total value of the section 32, including both funds, was higher than the cost of providing the GMP. It's not entirely clear to me, but it appears Prudential would have allowed Mr S to transfer his plan and take advantage of the flexibility offered by the legislation introduced in 2015. But by doing so Mr S would have lost the underlying value of the GMP – he'd only get the actual value of the With-profits II fund which was significantly less than the actual value needed to provide the GMP.

Mr S thinks Prudential should pay the actual cost of providing the GMP – rather than just the value of the With-profits II fund. He's said as Prudential is going to pay the full value of the GMP to another provider, it's unfair that it doesn't just pay it to him.

However as the investigator explained, all the section 32 plan obliged Prudential to provide was the GMP at retirement date. Ordinarily it would pay that to Mr S itself when it became payable. But as it no longer provides annuities, it's paying the value to another provider to pay that GMP to Mr S. I'm not aware of any legal, regulatory, or contractual obligation that requires Prudential to pay Mr S the underlying cash value either directly or as a transfer value; its only required to pay him the GMP which it has offered to do. Prudential **is** guaranteeing the shortfall – it's offering benefits to Mr S as it agreed to do when Mr S took out the plan in 1990. So I'm not persuaded it can be said to be treating Mr S unfairly. Prudential guaranteed to pay him the GMP which is what is has offered to do.

Mr S has said the annual GMP payable provides poor value relative to its cost. I appreciate

that on the face of it this might appear the case. However the cost of the GMP is dependent on annuity rates and will change over time. Annuity rates are calculated using a number of variables, including average life expectancy. The market cost to provide the GMP reflects in part the probability, on average, of how long the annuity is likely to be paid for. So whilst I understand why Mr S would prefer Prudential to pay him its underlying value, in reality, it's the cost of buying that stream of future income.

Mr S has said Prudential's actions aren't in accordance with the changes in pension legislation introduced in 2015. However I don't agree Prudential's stance is inconsistent with that legislation. That legislation was enabling, in that it allowed for flexibility in the way that pension holders could take their pensions.

Pension freedoms legislation allowed pension providers to provide certain flexible benefit options. But Prudential, like other pension providers, wasn't obligated to provide flexible features allowed for by the legislation, whether relating to a section 32 policy or other personal pension arrangements. For example if existing pension products didn't provide for flexible access, firms weren't required to change their products to provide such flexibility. And the existing legislation in force wasn't overridden by the pension freedoms legislation; some providers decided not to offer all flexible options on all of their products.

I understand why Mr S would prefer his GMP (or its value) to be paid to him in a different way than Prudential is offering. However given that Prudential has offered benefits to Mr S in line with what it agreed to provide when Mr S took out the policy, I'm not persuaded it has acted incorrectly or can be said to be treating Mr S unfairly. It guaranteed to pay Mr S the GMP, which is what it has offered to do. And for the reasons I've explained above, I don't agree with what Mr S has said about the legislation in 2015 – in my view Prudential's actions aren't inconsistent with that legislation – it doesn't oblige Prudential to pay Mr S the underlying value of the GMP direct, or as part of a transfer value.

I realise that Mr S feels strongly that what Prudential is doing is unfair. But having carefully considered the matter, I've come to the same conclusion as the investigator that his complaint shouldn't be upheld, and for largely the same reasons as I've explained above.

For completeness, I note that in Mr S' response to the investigator he referred to his concerns about the original sale of the plan by another firm and that the sale wasn't reviewed as part of the regulator's industry wide pension review. This decision only relates to the complaint as set out under "The complaint" heading above, and doesn't consider these other issues.

My final decision

My final decision is that I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 February 2023.

David Ashley
Ombudsman