

## The complaint

Mr T complains that The Prudential Assurance Company Limited (Prudential) misinformed him about the amount of tax-free cash (TFC) he was entitled to take. He says this led to him making an important financial decision based on the wrong information, which has caused him a lot of stress.

## What happened

Mr T held a pension with Prudential, which was due to mature in 2018.

In January 2018, Prudential wrote to Mr T to explain his options as he was approaching his retirement date. It said the value of the fund, including a final bonus, was £165,773.85. That amount included the guaranteed minimum pension (GMP) and a separate fund (made up of redress and additional voluntary contributions) that was worth £71,654.03 at that time.

Prudential told Mr T that the *additional* fund could be used in several ways:

- To buy an annuity which would provide a regular pension income for life.
- To provide a cash lump sum. It said that up to 25% of the fund available after the GMP could be taken as tax-free cash (TFC) - the rest would be taxable as earned income. The TFC available at that time was £17,913.51.
- Shop around to potentially secure a higher income elsewhere.
- Move into a drawdown – allowing Mr T to maintain control of his investment and have access to his money, taking as much or as little as he wanted at any time.
- Transfer the fund available after the GMP to another provider.

Alternatively, Mr T could choose to do nothing at that time.

On 12 April 2018 Prudential wrote to Mr T to remind him that he could access his pension fund whenever he was ready. The fund value, including final bonus, at that time was £173,551.33.

In July 2020 Mr T asked Prudential to send him information about his options for taking his pension.

According to a pension summary dated 17 July 2020, Mr T's fund value had increased to £198,184.48 (as at 16 July 2020).

Mr T sent an email to Prudential on 21 July 2020 confirming he'd received the information pack it had sent. He said the only thing he needed to know was what his GMP would be if he took 25% TFC.

Prudential called Mr T on 6 August 2020 to discuss his options. He again said the crux of what he wanted to find out was what would happen to the GMP if he took 25% TFC. Prudential's agent explained that once Mr T took his GMP, he could take TFC from the additional fund left over – the agent referred to this as the "*on tops amount*". At another point during the call Mr T specifically asked the agent whether he was allowed to take 25% TFC from the full amount of his fund. The agent confirmed that he'd be allowed to take the

maximum TFC *after* the GMP had been costed. She then explained that TFC comes from the additional fund as there was no option to take it from the GMP.

In a letter dated 13 August 2020, Prudential confirmed as per a previous conversation it had with Mr T, that it no longer offered annuities from which he could access the GMP part of his pension fund. However, it said another provider, L, would arrange this on Prudential's behalf if Mr T wanted to take an annuity. It reminded him about shopping around to secure the best options for him.

Mr T also spoke to one of Prudential's agents in April 2021. She asked him if he recalled receiving the information sent in August 2020. He said he did but didn't "*understand it whatsoever*". During the call, the agent also sent, by email, a copy of a letter initially sent to Mr T in 2018. She referred him to a specific page, which included options *after* the GMP had been paid. These included taking a cash lump sum. Following some further discussion, Mr T said, "*basically 25% is of what's left, not the original amount*". The agent said that was right and explained that Mr T could take 25% of the additional fund. She asked Mr T if he knew what he wanted to do with the additional fund, and he said he'd likely take the cash as a lump sum and pay the taxes on it. He suggested he also wanted to take an annuity with the GMP, so Prudential told him he'd have to contact L directly to set this up. Once he'd done that, he could contact Prudential again about accessing the additional fund. Prudential agreed to call Mr T back on 20 May 2021.

That call never materialised, so Mr T called Prudential again on 24 May 2021. According to Prudential's call note (there is no recording available), Mr T still wanted to take a cash lump sum using the additional part of his pension.

Prudential wrote to Mr T on 25 May 2021 and asked him to sign a form to confirm that he wanted to take the additional fund as a lump sum. He did that shortly after.

On 8 June 2021, Prudential told Mr T that it had paid a sum directly to provider L. It said that the total additional fund value was £91,446.79. Of that amount, TFC of £22,861.70 was payable. After making a deduction for tax, Prudential said it had paid a total of £62,308.93 into Mr T's bank account.

Mr T called Prudential on 21 June 2021 to say that the amount paid to him was wrong as it had used a lower TFC amount than he was expecting. He thought Prudential had wrongly advised him during a previous call, so he wanted it to listen to that call. He added that the amount of tax deducted wasn't right.

Mr T raised concerns about aspects of Prudential's service. In a response sent in July 2021 it recognised its service had been below par in some respects - largely due to the migration of its systems and the global pandemic. It offered £200 compensation to Mr T in recognition of the impact those things had.

Mr T complained to Prudential in September 2021 about the misinformation he'd been given.

In a response sent in late October 2021 Prudential said:

- It didn't accept it told Mr T during a call in August 2020 that he'd receive TFC amounting to 25% of the overall fund value. It was satisfied, having listened to the call, that it told him the lump sum would be based on the fund available *once* the GMP had been paid.
- Whilst it didn't have access to a call recording from April 2021 at that point (although, it has since found it and provided it to our Service) it was satisfied from its notes that

Mr T was intending to contact another provider, L, for a GMP costing, and was considering taking the *additional* fund as a lump sum.

- It accepted there had been some service issues such as it failing to call Mr T back on 20 May 2021 and there had been a delay in sending him an options pack. However, it didn't accept, as per Mr T's assertion, that it held the pension up for two years.
- Prudential offered Mr T £300 for the additional service issues it had identified.

Mr T complained to our Service and one of our Investigators looked into the complaint. However, he didn't uphold it for the following reasons:

- He hadn't seen anything to indicate that Prudential referred to Mr T being entitled to £49,657.31 in TFC, neither had it indicated that it would pay 25% of the full fund value as TFC.
- The investigator acknowledged the stress caused to Mr T and accepted that Prudential's service had fallen short of the standard expected. However, he felt that the total compensation offered of £500 was reasonable in the circumstances.

Mr T didn't agree and felt the Investigator had been biased in favour of Prudential. He also challenged the basis for some of his findings and said he found it suspicious that Prudential had lost key call recordings.

The Investigator sent a follow up assessment having received two call recordings from Prudential in the meantime. He noted that:

- During a call in August 2020, Prudential told Mr T that the TFC was *only* available after funding the cost of the GMP. There was no TFC available from the GMP figure. So, he didn't think anything Prudential said would have led Mr T to believe he'd be receiving £49,657.31 in TFC.
- During another call in April 2021, Prudential explained that the 25% TFC could *only* be paid after the cost of the GMP was met. The investigator was satisfied that Prudential was clear on that point. He said he couldn't safely conclude that it told Mr T he might receive £49,657.31 in TFC.
- Again, he felt that Prudential had done enough to recognise the impact of its service issues by offering Mr T compensation totalling £500.

Mr T responded and said he hadn't cashed Prudential's compensation payments as the matter remained unresolved. He also questioned the basis upon which the Investigator said he'd found Prudential's account more persuasive – bearing in mind that he [Mr T] hadn't "*lost evidence and conveniently found it*". He maintained he'd written down the quoted TFC figure based on what Prudential told him.

As Mr T didn't agree, the matter's been passed to me to decide.

### **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 that, I fully appreciate why Mr T feels very strongly about the matters leading to this complaint.

There's a clear conflict though between Prudential and Mr T about whether it did or didn't say that he could expect to receive a TFC figure of £49,657.31. Prudential insists it didn't. But Mr T's suggested he wrote that figure down having spoken to a Prudential agent. He

can't recall exactly when he was given that information. But he thinks it was probably during one of the April or May 2021 calls.

I've listened to the April 2021 call and I'm satisfied Prudential didn't tell Mr T that he'd receive £49,657.31 in TFC. I think it made it clear that he could only take TFC from the additional part of the fund which was of a much lower value. This also accords with information he was given in August 2020 and before. Importantly, I think Mr T understood that, as he said "*basically 25% is of what's left, not the original amount*". And the agent confirmed that was correct. When asked which option Mr T was likely to take regarding the additional amount, Mr T indicated he'd probably take the cash as a lump sum and pay any taxes that became due.

I don't have the recording from the May 2021 call. That naturally makes it more difficult to say with any certainty exactly what was discussed. So, in a situation like this, I have to decide, on balance, how likely it is that Prudential would have given Mr T entirely different information between the April and May 2021 calls. I say entirely different information because if it mentioned that Mr T was entitled to TFC of £49,657.31 I think that could realistically only happen if he was entitled to take TFC based on the *whole* fund value as opposed to just part of it. I've thought very carefully about this, especially given Mr T's recollection.

Prudential's position and the explanations it gave Mr T were fairly consistent across various written communications and during phone calls. That position was that he could only take TFC from the additional part of the pension - that is the part that wasn't used to make up the GMP.

The May 2021 call was only a matter of weeks after Prudential had given Mr T a fairly unambiguous explanation about how and from where he could take his TFC. And, as I understand things, the purpose of the May 2021 call wasn't to discuss options again. It was so Mr T could confirm that he'd been in touch with L about setting up the annuity and so Prudential could sort out matters to do with the additional fund - assuming Mr T wanted to proceed as previously discussed. That's not to say that options definitely weren't discussed again. But the note made following the May 2021 call suggests that it proceeded in pretty much the way I expected - with Mr T confirming that he did want to go ahead as per the discussion in April.

I think it's fair to say that if Prudential had told Mr T during a call in May 2021 that his TFC entitlement was significantly more than the proportion it had told him to expect previously, I think he'd have queried it. As I imagine, given the consistent explanations he'd been given up to that point, he'd want to establish why it had increased by so much. And, importantly, to make sure it was right. It also seems likely there would be some record of that - even if it was a brief note to that effect. But there's no evidence of that kind.

Taking account of all of these factors, on balance, I'm not persuaded that Prudential quoted an incorrect figure as far as the TFC that Mr T was entitled to receive was concerned. It follows therefore that I can't fairly say Prudential caused Mr T a financial loss. I appreciate though that Mr T will likely be disappointed to hear that.

I think it's also important to say that even if Prudential had mentioned a higher TFC during the May 2021 call, I don't agree that Mr T based his decision to take the additional fund as cash on that. Explanations about the amount of TFC that could be taken were given from as far back as 2018 - *before* Mr T apparently made important decisions about his pension. And from the evidence I've seen, I think he made those decisions *in spite* of the fact he knew he could only take TFC from the additional fund. It's worth saying again that by the end of the

April 2021 call, I think Mr T had pretty much decided what he wanted to do. And, having again told Mr T during that call that he could *only* take the 25% TFC from the additional fund (as opposed to the whole fund) and Mr T confirming his understanding of that, I think he went ahead in that knowledge.

Also, even if I was persuaded that Prudential inadvertently told Mr T to expect a much higher TFC sum (I've already said why I'm not), I still wouldn't be directing it to honour a mistaken TFC figure in the way that Mr T might expect. I say that because my role is to try to put Mr T back in the position he would have been in – or as close to that position as possible – had it not been for any errors or miscommunication. And the position that Mr T would have been in appears to be exactly the one he is in – once he'd decided to take a cash lump sum, he was only entitled to 25% TFC of the additional fund once the GMP was paid. I understand that's the amount he eventually received. There's no evidence to suggest Mr T was entitled to the kind of sum he's mentioned. So, if I were to direct that Prudential pays that amount, I'd essentially be putting Mr T into a better position. And that wouldn't be fair.

Prudential accepts that its service was at times below standard – particularly during 2020/21 when it was migrating its systems and due to the global pandemic. So, as that's not in dispute, I see no reason to go into that matter in any great detail. But I can appreciate Mr T's position that it caused him great stress trying to contact Prudential. Especially when trying to sort out a matter as important as a pension.

However, I think Prudential's offer of £500 compensation in total is reasonable in the circumstances. I'm satisfied it recognises the impact of its handling of things on Mr T and the communication issues he faced in particular.

### **My final decision**

The Prudential Assurance Company Limited has already made an offer to pay £500 to settle the complaint. I think this is a fair offer in the circumstances. I understand that Mr T hasn't yet cashed the cheques that Prudential sent him and it's possible the payment may now need to be reissued. My decision is that The Prudential Assurance Company Limited should arrange for the payment to be reissued if that's necessary.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 April 2023.

Amanda Scott  
**Ombudsman**