

The complaint

Mr W complains about poor communication by The Prudential Assurance Company Limited (Prudential) in relation to his pension policy

What happened

Mr W said he took out a pension policy with Prudential in 1980 and paid £10 per month. He said he was visited by a Prudential IFA in 1982 and decided to stop paying the premiums. He thought he had lost all that had been paid in so didn't keep address details up to date. Had they communicated with him he would have kept them up to date.

He had sent letters asking the Prudential to deal with his daughter and not him but they denied receipt. Instead they tried to call him which he found distressing. When he tried to put his daughter on the phone they wouldn't speak to her. He wanted full details and for them to take responsibility for not contacting him until he was nearly 75. His daughter asked for details of the investment funds but none was provided.

He had not had any communication in the last 40 years despite the plan being active. He was told it was up to him to keep his address up to date. He said that was difficult if he never received any papers after it was paid up.

He said had he known, he would and could have made more contributions. While he joined an occupational scheme the law changed in 1997 and he could have paid more then. He thought that but for the advice he would have continued to make contributions until 1983 when he joined the occupational scheme and then again after 1997. Had he done this it would have been worth around £250,000 not just £7,800.

Prudential couldn't provide him with any details. He thought the plan was a good one which would not now be offered so it would have been good to re-join in 1997. He had never had any letters from them until now. If they could find him now why didn't they try sooner? He kept all papers even wage slips going back to the 1980s. He also complained he received a lot of letters from the Prudential but they did not receive his.

Prudential said the policy stopped in 1982 and it had no records to show why, as it was so long ago. It assured him that it would not have used contributions to prop up another company and there was nothing to suggest it had anything to do with this other company. It noted Mr W had a personal finance review in 1999 which showed he joined a company pension scheme in 1984 but Mr W clarified this was March 1983. He would not have been able to contribute to this type of scheme if he was a member of an occupational scheme. Mr W had not kept his address up to date so it had to trace him. The terms of the policy were clear that it was not responsible if he didn't keep his address up to date. It started a trace in 2021 as the policy had to be taken before he was 75.

It said Mr W had written to give authority for his daughter to act on the policy but the letter didn't quote a policy number and didn't have enough information to be matched to his policy. Prudential said it could not deal with his daughter until it had authority. Mr W was upset by its call to him to get authority but it did ask if it was convenient to speak. It didn't support his

complaints.

My Provisional decision.

I issued a provisional decision in this complaint. I said that in order to make an award for financial loss or distress and inconvenience I need to decide that Prudential did something wrong. There are a number of issues to consider.

Advice to stop contributing

I could understand Mr W's frustration about stopping contributions to the policy in 1982. Unfortunately due to the lapse of time there wasn't sufficient evidence to be clear what was said at the time if anything.

However in any event when Mr W joined an occupational scheme in 1983 he would have had to cease contributions to the policy. While he says he could later have restarted contributions that wasn't certain. At that time it would be common that paid up policies could not be reopened. Further he could have opened another pension policy to save for his retirement had he wished to do so and the law allowed. So stopping contributions to this policy didn't stop him saving for his retirement in other ways.

But even if I am wrong it does not seem that when the law changed he did opt to contribute to another scheme and I noted he had a financial review in 1999. That fact suggests that he would not have re-joined this scheme even when he was able.

I noted that Mr W feels this is a good policy. I cannot comment on that but would note that the pension it paid did not carry any increases in payment or guarantees and I have no details of the charging structure which may not be as favourable as those available in later years.

Dealing with Mr W's daughter

I had seen the letter Mr W sent in early May 2022 to give authority for the Prudential to deal with his daughter. I noted it did not quote a policy number only an address. While the letter was signed there was no printed name nor indication of title such as Mr, Mrs or Ms. I can understand that Prudential were not able to match this up with his policy at that time. So I didn't think it did anything wrong in that respect.

Address contact details

I agreed that it was up to Mr W to keep his address details up to date. I could see that Prudential did make efforts via a call credit search to find him after his correspondence was returned as gone away. I understood that Mr W said he didn't know the policy remained in existence so didn't update the Prudential. That is unfortunate but I don't think it is the Prudential's fault that it didn't have a current address for him as it was up to Mr W to keep his records up to date.

Failure to trace Mr W at his normal retirement date.

I asked the Prudential to send copies of the pre-retirement packs and illustrations that it was obliged to send to Mr C before his NRD. It said no retirement pack was produced in 2012 as it had removed Mr W's address from its records following the return of its bonus statement letter dated August 2011 (which confirmed he had gone away). It said it did a call credit search on 12 October 2011 but received a negative result. It provided a copy of its search.

It said, it had no process of initiating a Department for Work and Pensions (DWP) trace during 2011 when it received the gone away notification. It followed its then current process on receiving a gone away notification at that time.

It said it updated its gone away process in 2017 and this included a DWP trace. But as, it had not received any further gone away notifications for Mr W post 2017 this didn't trigger the DWP trace. Mr W was traced after it initiated searches in April 2021 approximately a year before he was due to reach 75 years of age. This was part of its standard tracing procedures.

It wasn't for me to tell the Prudential how to run its business. But based on what it has said, because its previous search showed Mr W as gone away in 2011 it seems it made no further efforts to trace him from 2011 until 2021, when it needed to pay out the policy proceeds. This didn't seem fair or reasonable. I said that for the following reasons.

There was no regulatory obligation on the Prudential to try to find Mr W in advance of the plan's maturity but I thought it would have been a reasonable course of action. I said that not least due to its obligation to 'treat customers fairly' – a requirement set out in the regulators handbook. This said that the Prudential must 'pay due regard to the interests of its customers and treat them fairly. I thought it was clearly in Mr W's interest to get access to the pension he was entitled to from 2012. I thought this meant that the Prudential should have done more to contact Mr W at his retirement age and to give him the option to take his benefits sooner.

I thought this would have meant making extra effort to try to locate Mr W and make contact with him before his normal retirement date in 2012 in order to enable Mr W to access benefits he was entitled to receive.

The use of the DWP tracing service has been available for many years and is very effective as it uses a National Insurance number for trace rather than relying on credit or other records. While this might not have been part of the Prudential's standard process until 2017 I thought the obligation to pay a benefit should have meant it made more effort at Mr W's retirement date.

I had no evidence it made any attempts to trace him after 2011 (and before 2021) at all by any means. In the light of its regulatory obligations to Mr W I didn't think that was fair or reasonable. I thought that had it used the DWP service I saw no reason why it would not have succeeded in tracing him in 2012 not least because it did find him in 2022. The fact it then did not use the DWP to find Mr W in 2017 because he had returned 'gone away' in 2011 seems self-defeating. It would seem that cases where there was a return marked gone away would be the most obvious cases to try using a DWP search especially where the benefits were now payable.

As I had concluded that the Prudential did not act in a fair and reasonable manner I could consider an award for financial loss and distress and inconvenience.

What loss has Mr W suffered as a result of the failure to find him in 2012.

The purpose of an award for financial loss was to put Mr W back as closely as possible to the position he would have been in had this error not happened. In effect that would have meant that he could have taken payment of his pension in 2012.

The Prudential said that as of 1 May 2012 the transfer value for the policy would have been £3,222.37. Further the value of the plan on 5 February 2023 was £7,806.20 so he has received an additional over £4,000 as the money remained invested in the with profits fund

during this time.

The Prudential said this was a deferred annuity contract and as such did not have an annuity rate in the same way that its fund based personal pensions did. The benefits at retirement were not calculated by applying standard or guaranteed rates to a fund value. Instead the final pension was dependent on a combination of the guaranteed (basic annuity and attaching annual bonuses) and any further non-guaranteed benefits payable at the time.

It said the original premium of £10.00 per month secured an amount of basic annuity of £544.16. This was calculated based on a number of factors. These included the initial premium payment date of 1st May 1980, the specified retirement date of 1st May 2012 (which is always the policy anniversary date before age 65) and also the age and sex of the customer. When premium payments ceased on 1st July 1982 the amount of basic annuity decreased to £39.28 to reflect the less than expected amount of premiums paid. Annual bonuses had also been allocated as a percentage of the basic annuity and any annual bonuses already accrued. The total basic annuity together with the annual bonuses were guaranteed to be paid as a pension payable yearly in arrears, from the specified retirement date. The total basic annuity and annual bonuses as at the specified retirement date of 1st May 2012 was £113.46.

The guaranteed pension within the policy only applied at the specified date and was represented in the form of a specific annuity option; being a single life annuity, with no cash sum, no guaranteed payment period, level (non-escalating) payments and payable yearly in arrears. As of 1st May 2012 the amount payable for this annuity option would have been £215.02. Other standard annuity options were available from this policy were calculated by applying a factor to the guaranteed pension option. Therefore, the guarantee was not lost, even if an alternative standard annuity was selected.

Mr W said that had he been offered the option to take his pension at age 65 he would have considered taking the annuity payment. As he was now 75 he had instead opted to take the pension as a lump sum even though this might mean he had to pay more income tax than would have been the case had he taken a pension income as set out above.

I think Mr W was deprived of the use of his money from 2012 to the date he actually received payment in February 2023. In such circumstances I would make an award for loss of use of the money at the rate of 8% per annum simple from the 1 May 2012 to the date of actual payment in 2023. However I note that the cash value of the policy in 2012 was around £3,200. Applying simple interest at 8% from May 2012 to February 2023 (to the full value as if he had taken a lump sum) would add an additional around £2,700 approximately which would increase the total to around £6,000. However I note the actual value paid out is about £7,800. So it seems that the amount Mr W has been paid is greater than I would have awarded, as he has benefited from the investment growth in the with profits fund over the period since 2012. So on a lump sum basis it does not seem that he has lost out.

I note that Mr W says he might have taken an annuity income but I am unclear whether and how much income tax he pays now and whether he has had to pay more tax due to taking this as a lump sum. I would invite Mr W to provide details of his personal tax position before I issue my final decision.

For those reasons I am not proposing to make an award for financial loss as there does not seem to be one.

Delayed Payment of the lump sum from November 2022 to February 2023

Prudential said Mr W had applied to take payment as a cash lump sum and it had sent him a

letter on 5 January 2023.

The claim has now been paid. The cheque was authorized on 27 February 2023 and Mr W should have received this within 5 working days. The plan value was around £7,800 it had paid 25% tax free with the remainder as a lump sum subject to tax of around £1,000. (Mr W may be eligible to reclaim any overpaid tax but will need to contact HMRC to do this). Mr W confirmed receipt but said it had taken 4 months to get this payment which seemed excessive.

Mr W applied to take it as a lump sum in November 2022 and signed the forms on 8 January 2023. This does seem to have taken several weeks to process and this is something I have taken into account in my award for distress and inconvenience below.

Distress and inconvenience

I considered an award for distress and inconvenience. Such an award is intended to reflect the impact of the events on Mr W and not to punish the Prudential.

I considered that for over 10 years, Mr W wasn't aware he was entitled to a pension as he wasn't contacted from 2012 until 2021. However since he had become aware it was clear he is angry and frustrated by being denied access to his pension when he was entitled to it and could have made good use of it. He was also frustrated that it had taken 4 months to arrange payment to him. I thought the level of trouble and upset was considerable. I said that because of the number of years involved and the frustration that he could have had the money either as a lump sum or as an annuity earlier. I thought an award of £750 would be fair and reasonable in the circumstances.

Before I issued my final decision I invited both the prudential and Mr W to make any further comments. I also asked:-

1. Mr W to confirm whether he is a non-taxpayer or basic or higher rate taxpayer.
2. I would ask the Prudential to confirm how much interest would have been payable on the policy value from the date Mr W was entitled to payment in 2012 to the date of actual payment to him in 2023 at the rate of 8% per annum simple.

I proposed to uphold this complaint in part and direct that Prudential should pay Mr W £750 for distress and inconvenience.

Mr W said he had no further points to add and confirmed he was a basic rate taxpayer.

The Prudential said interest at 8% per annum simple from the relevant dates in 2012 to 2023 was around £2,200 pounds so the amount paid to Mr W of around £7,800 was greater and Mr W was better off due to the investment growth during that period. It said it would pay the £750 as directed.

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 read the comments from Mr W and the Prudential I have not changed my mind. I note that Mr W says he is a basic rate taxpayer rather than a non-taxpayer. It seems he would therefore most likely have paid tax on any annuity he had opted to take in 2012.

I note also that the Prudential will most likely have applied emergency tax to the amount of the lump sum that was paid in excess of the tax-free cash amount. Mr W may therefore need to reclaim any overpaid tax from HMRC.

Putting things right

In order to put things right, The Prudential must pay Mr W £750 for distress and inconvenience.

My final decision

I uphold this complaint in part.

I direct that The Prudential Assurance Company Limited should within 30 days of this service notifying it that Mr W has accepted this decision, pay him £750 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 April 2023.

Colette Bewley
Ombudsman