

The complaint

Mr E complains The Prudential Assurance Company Limited (Prudential) wrongly informed him he held a personal pension, by way of issuing annual statements for around 10 years. He says his retirement planning has been badly affected when it came to light this was not in fact his pension. He asks to be compensated.

What happened

I set out the background to this complaint in my provisional decision.

In September 2012, Prudential contacted Mr E, as they were trying to trace a customer, they had lost contact with. His address had been provided by the Department of Works and Pensions as a possible match. On 13 September 2012, Mr E returned a questionnaire to Prudential providing information such as his address, date of birth and national insurance number.

Prudential queried Mr E's national insurance number, as it was different from the one held on to their records. They asked for evidence such as a payslip or tax record to confirm the number. There is no evidence to show Mr E provide this evidence, but Prudential updated the details on the plan to show Mr E as the policy holder. They then began to send annual statements.

Between 2012 and 2021, Prudential provided information about the plan, its bonuses, transfer value etc to Mr E's appointed financial adviser. Mr E says he discussed the policy and his options at retirement with Prudential advisers on a number of occasions. They also sent retirement option packs and reminders about adding a nominated beneficiary to the policy. In August 2021, Prudential responded to an information request from Mr E confirming the policy transfer value was £34,718.47.

On 21 January 2022 Mr E contacted Prudential again. Although Mr E wasn't informed the representative noticed there had been a change of name and address on the policy and it had been encashed in September 2021. The matter was referred to the fraud department for investigation.

On 15 February 2022, Mr E wrote to Prudential to ask for their help in finding his policy. He said he had spoken with a number of representatives but wasn't getting anywhere. Mr E was in Spain, and he asked them to contact him there. Mr E was not aware that Prudential had written to the address they held on file, which was his mother's address, to say the policy did not belong to him.

Prudential treated Mr E's letter as a complaint and on 16 March 2022, they issued a final response. They explained they should have realised when he returned the questionnaire in 2012 that the policy did not belong to him, but unfortunately this didn't happen. When the actual policy holder contacted Prudential, they had to update the plan details, which was what led to Mr E being unable to access the plan any longer. They recognised their letter confirming the policy didn't belong to Mr E didn't address the importance of the matter and should have elaborated on what was said.

Prudential apologised that there was no due diligence carried out when they updated the details in 2012 and allowed Mr E to believe, for around 10 years, that the policy was his. In recognition of the distress and inconvenience caused, they sent Mr E a cheque for £2,000.

Dissatisfied, Mr E brought his complaint to this service. He said he had not made any further pension provision precisely because he had this policy, and he didn't feel the offer made by Prudential was fair or reasonable.

An investigator looked into matters for Mr E. She issued a view in which she said she could understand the disappointment expressed by Mr E and thought this could have impacted his wider retirement planning. She couldn't find any evidence that would have led Mr E to think Prudential had made a mistake and this pension wasn't his.

Prudential confirmed this pension was opened in 1987 and so Mr E assumed this was something to do with a former employer he was working for at the time. He was 51 years of age when the Prudential first contacted him and 61 years of age when he discovered this pension plan wasn't his, so she felt he had limited time to address the situation in terms of his retirement provision.

She felt Prudential had a number of opportunities to limit the distress to Mr E. The first being when it realised the national insurance number was incorrect and Mr E wasn't able to provide the correct information and it had additional information from HMRC in 2017. On balance our investigator felt the redress should be increased to £3,500 for the trouble and upset this matter had caused.

Mr E didn't agree. He felt this still wasn't a fair reflection of the upset and loss of expectation he has suffered.

Prudential also didn't agree. It said notwithstanding its error, which it acknowledged would have caused Mr E significant distress, it had provided advice previously to Mr E. This was in 1999, and Mr E had only wanted to discuss savings and investments, he had no desire to discuss pensions at that time. The fact find confirms he had no pension provision at that time. The pension plan in question was also a protected rights only plan. In other words, no actual contributions were made to the plan other than those made by Department of Work and Pensions. It said therefore, there was no actual financial loss to Mr E.

Because both parties disagreed the complaint was passed to me for review.

In my provisional decision I explained I had reached a similar view to that of our investigator, but because my reasoning differed slightly, and I issued a provisional decision to allow both parties to provide any further submissions they wish me to consider before issuing my final decision.

I explained I'd taken into account the law, any relevant regulatory rules and good industry practice at the time. I also carefully considered the submissions made by Mr E and Prudential.

I explained this service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I said there is no dispute that Prudential failed to update its records and sent Mr E annual statements for a plan that wasn't his for over 10 years. It is further acknowledged that Mr E

has suffered considerable trouble and upset and a loss of expectation after assuming he had an additional pension. I explained what is in dispute, and what I must consider, is how to put things right.

Mr E has told us he stopped paying into his existing pension with another provider, because he thought he had an additional fund with the Prudential. But he has also told us he stopped paying into his existing pension without taking any financial advice and because he was self-employed with limited earnings, he had decided to move to Spain and had a limited budget – so he felt the £100 could be better used elsewhere. So, there were a number of reasons why Mr E stopped contributing to his pension provisions rather than solely because he thought he had this plan with the Prudential, but I accept, the fact that he thought he had this plan did form part of his decision making.

He did have an independent financial adviser at some point, but he told this service he had looked at his pensions with a view to transferring them and Mr E found him very pushy and eventually didn't want to proceed with any recommendations. So, I can't be sure what the adviser discussed with him in regard to this pension.

This is important because the Prudential Pension was a pension fund entirely in respect of contracted out benefits (protected rights). So, Mr E made no contributions at all to this pension, the contributions received into the fund were made by the Department for Work and Pensions (DWP). This is important because Mr E will still have these benefits available to him either with another provider (if contracted out) or through his second state pension (as long as he was eligible). In other words, Mr E hasn't suffered a financial loss, but he has suffered a loss of expectation.

I said I'd thought about how this loss of expectation may have impacted on Mr E's retirement planning. Mr E has said he had tried to withdraw the funds on one occasion but was advised there would be fee of £1000 which he didn't want to pay, and he has given a number of reasons as to why he chose not to continue making pension contributions, so I'm not persuaded that the existence of this fund was the sole reason he chose not to take advice about his retirement planning.

Having said this, I said I don't wish in any way to underplay the disappointment Mr E must have felt after 10 years when he discovered this fund was not his. I said I can appreciate that must have come as a shock.

I explained I'd then gone on to look at the scale of the error and what steps Prudential made to minimise the impact on Mr E. In this case, it would seem there was a very serious error that was perpetuated over a ten-year period. I also considered that when Prudential were aware there was an incorrect National Insurance Number it could and should have taken steps to check the information. I said in failing to do so and just attributing Mr E's name and address to this plan was in my view negligent. So, there are a number of opportunities here where Prudential could have acted to clarify the details of this pension and it failed to do so. These missed opportunities were also failings in minimising the impact on Mr E.

I also took into consideration how old Mr E was when he finally discovered the fact that this was not his pension, at age 61 he has limited opportunity to make any corrections. I appreciate Prudential has pointed to other cases where the redress was as it has offered in this case or lower, but each case brought to this service is considered on its own individual merits.

I explained the awards this service makes for trouble and upset are relatively modest, again reflecting the fact this is a free service and alternative to the courts. However, in this case Prudential's failure to carry out due diligence has led to Mr E thinking he had a pension plan in place for more than 10 years, as a result he now has limited time to address his retirement

planning. I accept that the plan itself was contracted out pension plan, but I don't think Mr E would have known what that meant, nor at any time that this wasn't his plan.

I said, in my view the error itself could have been avoided on a number of occasions and the impact of this error on Mr E, according to his testimony has impacted his mental health and wellbeing. For these reasons, I said I was persuaded that the offer of £2,000 by Prudential should be increased to reflect the impact this has had on Mr E to £3,500.

I allowed both parties time to make any further submissions they may wish me to consider before issuing my final decision.

Mr E accepted the findings of my provisional decision.

Prudential did not. It said my provisional decision did not acknowledge the fact find from 1999, when Prudential gave Mr E advice. It questions why Mr E didn't mention a pension in 1999 but thought he had one in 2012. It went on to say it did query the national insurance number in 2017, but had no response from Mr E. It argues that its offer of £2,000 is fair and reasonable and in line with other similar decisions from this service and doesn't agree the award for the trouble and upset should be increased.

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 have seen no evidence to persuade me to alter my earlier decision, however, for clarity I will address the comments raised by Prudential.

Firstly, the matter of other "similar" decisions and the awards made is not relevant to my decision making in the circumstances of this complaint. Each complaint is considered on its own individual merits. Whilst there may be similarities or even, as Prudential argues, cases where it feels the circumstances where more deserving of a higher award, it isn't possible to compare one with another as the background and circumstances will be different.

I've listened to the calls between Mr E and our investigator, and I'm persuaded by his testimony that he didn't really know anything about pensions, he assumed this had something to do with a previous employment. It was Prudential who contacted him regarding the pension, and it went on to update its records to show Mr E was the policyholder. It then sent statements for the next ten years. Between 2012 and 2021, Prudential provided information about the plan, its bonuses, transfer value etc to Mr E's appointed financial adviser. Mr E told this service he discussed the policy and his options at retirement with Prudential advisers on a number of occasions. They also sent retirement option packs and reminders about adding a nominated beneficiary to the policy. In August 2021, Prudential responded to an information request from Mr E confirming the policy transfer value was £34,718.47. So, on balance, I'm persuaded the basis of Mr E's belief that this pension was his was because Prudential told him it was for a sustained period of ten years and interacted with him on a number of occasions, without ever raising any concern this pension did not belong to him.

With regard to the check on the National Insurance number, although Mr E didn't respond to Prudential's enquiry, the responsibility to pursue the matter lay with Prudential rather than Mr E and I Haven't seen anything to show that it did follow up its concern. That would seem to be a matter of due diligence that Prudential should have pursued.

When considering redress, I have considered both the impact the mistake has had on Mr E and what steps Prudential took to minimise the impact its mistake had on Mr E.

In its final response, Prudential make it clear in the first paragraph that when Mr E returned the questionnaire in 2012, "it should have been able to identify Mr E was not the correct customer" but it failed in its due diligence. It seems to me that there were a number of occasions since 2012, when Prudential should have identified this wasn't Mr E's policy. By its own admission it contacted Mr E again in 2017 to query his national insurance number but didn't follow this up. When it did recognise its error, it withdrew the online access to Mr E and sent him a letter which essentially caused Mr E to think someone had stolen his pension or he had been defrauded. All of this caused him great anxiety and worry and non-more so that actually finding out this pension had never belonged to him.

So, in my view this was a huge error, that impacted hugely on Mr E's wellbeing and he although he suffered no financial loss, he suffered a huge loss of expectation. This coupled with Prudential's failure to carry out due diligence on more than one occasion or to minimise the impact of its mistake is the reason I was persuaded and remain of the view that the redress for the trouble and upset caused should be increased to £3,500.

My final decision

For the reasons I have given I direct The Prudential Assurance Company Limited to pay Mr E £3,500 for the trouble and upset this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 24 May 2023.

Wendy Steele
Ombudsman