

The complaint

Mr R says The Prudential Assurance Company Limited (Prudential) has made a number of errors in calculating and informing him about his pension benefits.

What happened

Mr R took out a Scottish Amicable personal pension (Flexipension) in November 1986. Prudential are now responsible for the policy. His pension was a with-profits plan and it included a valuable guaranteed annuity rate (GAR). His plan was initially established with a retirement age of 60.

Mr R didn't take his benefits when he reached 60, so a default retirement age of 75 was set, although he could of course now take his benefits at any time he wishes.

In March 2022 Mr R contacted Prudential with concerns about information it had sent him about his projected pension benefits. These were captured by Prudential in the following terms:

"I understand from your recent call that you believe you have been financially disadvantaged because bonus rates have decreased over the last ten years, but charges had remained the same."

"You also said you believe the GAR had decreased from what was promised at [the] outset of your policy."

Prudential responded to Mr R on 22 March 2022. It described the sort of policy Mr R had and how bonuses were added to his funds representing his share of fund profits. It noted the effect of historically low interest rates and inflation on investment returns and more recent challenges such as the Covid pandemic. It rejected his complaint and summarised matters in the following terms:

"The value of your policy was never guaranteed, only the way it is calculated, and it is dependent on the performance of the financial markets and the With-Profits fund. It is normal for the value of your policy to fluctuate in line with the performance of the With-Profits fund and bonuses declared."

"...The GARs you were promised when you started your investment have not changed and will be honoured between the ages of 60-75. Although the GARs used to calculate your final pension have not changed, the amount of pension you eventually receive will be determined by the value of your policy."

Mr R wasn't satisfied with Prudential's response so he brought his complaint to this Service. Either his concerns evolved or it didn't grasp everything that he was trying to get to the bottom of. In summary he told us that Prudential had:

- Provided an incorrect value for his guaranteed minimum retirement fund.
- Provided an incorrect value for his total pension pot.
- Used an incorrect GAR in its calculations.

Mr R provided various illustrations and statements he'd received to evidence his case.

An Investigator looked into Mr R's complaint, including seeking information from Prudential about matters it hadn't addressed in its final response letter to him. Ultimately he concluded that its explanation for the discrepancies Mr R had highlighted had been properly explained. He concluded Prudential hadn't done anything wrong.

Mr R disagreed with the Investigator's view, but he didn't bring any new evidence or arguments to consider. As both parties couldn't agree to the Investigator's findings and conclusions, Mr R's complaint has been passed to me to review afresh and to provide a decision.

I issued my first provisional decision in March 2023. I said I expected to uphold one element of Mr R's case related to the GAR applied to his pension based on the evidence I had at the time. But that I needed to manage his expectations because Prudential might provide further evidence to show it was right.

After engaging with my findings, Prudential did indeed find information it hadn't provided previously to support its position, and so in April 2023 I issued a further provisional decision setting out why I no longer expected to uphold Mr R's case. I invited both parties to provide any final new evidence or arguments they wanted me to consider.

As neither party has provided further submissions, I see no reason to depart from the conclusions set out in my last correspondence.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr R's complaint. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Prudential for Mr R. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the

relevant time. They must always be complied with by regulated firms like Prudential. As such, I need to have regard to them in deciding Mr R's complaint.

I'll now consider Mr R's main concerns in turn.

Prudential provided an incorrect value for Mr R's guaranteed minimum retirement fund

Mr R said:

"Please find enclosed an extract of my annual statement, covering 22 November 2019 to 21 November 2020. The guaranteed minimum retirement fund on 21 November 2020 was £36,028.10. Also enclosed is an extract of my annual statement, covering 22 November 2020 to 21 November 2021, where the guaranteed minimum retirement fund on 21 November 2020 was £35,969.18, £58.92 less than what was guaranteed a year earlier, not including any additional bonus."

In responding to this query Prudential said:

"...the guaranteed minimum retirement fund value of £36,028.10 quoted on the annual benefit statement dated 21 November 2020 is incorrect. The correct value should have been the total of the sum assured and all the regular bonuses added up to the statement date 21/11/2020 i.e. £35,969.18 (£20,667.60 + £1125.08 + £14117.74 + £58.76). However, the annual benefit statement incorrectly included the bonuses that were not due to be added until 10 December 2020 quoting the value as £36,028.10."

"This was an isolated error that affected the November 2020 bonus statement only and led to the guaranteed minimum retirement fund being overstated by £58.92. We confirm that the guaranteed minimum retirement fund value of £35,969.18 quoted on the annual benefit statement dated 21 November 2021 is correct and the values quoted in the February 2022 options letter were also correct."

I understand why the changing value of Mr R's retirement fund for November 2020 undermined his confidence in what he was being told by Prudential. And to compound matters, he was the one who had to identify the issue. But Prudential has told this Service it referred the issue to its technical team which then checked his policy and the application of bonuses to it. This enabled it to confirm it had been an isolated error.

Without evidence to show otherwise and given the work undertaken by Prudential to check Mr R's policy, I'm satisfied with its response.

Prudential provided an incorrect value for Mr R's total pension pot

Mr R said:

"...the extract of my annual statement, covering 22 November 2020 to 21 November 2021 states guaranteed minimum retirement fund on 21 November 2021 was £36,087.17...On the retirement options letters, dated 2 February 2022, the Pension pot Value (excluding Final Bonus) [-] £24,037.28, £12,108.81 less than what the minimum should be as notified 3 months earlier. Therefore the Total pension pot value (including Final Bonus) should be £49,366.59, assuming the Final Bonus payment doesn't refer to the value of the Pension Pot Value."

In responding to this query Prudential said:

"The Total Pension Pot Value on 2 February 2022 was £24,037.28 (excluding Final Bonus) and £37,257.78 (including Final Bonus). The total pension pot value of £37,257.78 is the

amount we'd have paid if policy holder had chosen to take his benefits with us or transferred to another provider on 2 February 2022. Whereas the guaranteed minimum retirement fund value of £36,087.17 which doesn't include a Final Bonus is how much Mr R's fund will be worth when he reaches his Selected Retirement age of 75 (16 May 2032). The guaranteed minimum retirement fund value includes the sum assured and all the regular bonuses already added to the plan except the final bonus."

Having reviewed the available documentation, I think Prudential has explained the differences in the values for Mr R's pension pot, provided to him in different documentation, for different purposes. I also note that in the documents it sent to him on 2 February 2022 there is a projected fund value for 16 May 2032 of £51,300 (accepting all the usual caveats), which appears to be more consistent with Mr R's expectations.

Prudential used an incorrect guaranteed annuity rate in its calculations

Mr R said:

"...see the enclosed document titled guaranteed annuity rate. Using the retirement age of 60, as a male, the GAR is 93, expanded to £93 per £1,000 in the Pension Fund. Also enclosed is the extract of the initial letter enrolling me in the pension scheme...dated 7 November 1986, which states the GAR at 60 of 121.50, or £121.50 per £1000 Fund. This evidences the decrease in GAR for the age of 60, 30.6% lower. The current retirement age I'm considering is 64, which...is 105, however, this should be closer to 137 using the [original letter]."

In responding to this element of his complaint, Prudential said:

"The pension illustration from November 1986 was a pre-sale illustration and the amounts quoted were in no way guaranteed. The 1986 illustration:

- Was using an assumed pension rate for the purpose of the illustration.*
- Was not using a guaranteed annuity rate, and the guaranteed annuity rates have remained static since the purchase of the policy."*

"The pre-sales illustration was based on current annuity rates at the time, which weren't guaranteed, and were higher than the guaranteed annuity rate detailed in the T&Cs that were provided to Mr R when the policy started. I would also mention the illustration does not reflect the plan that was set up as the illustration shows a gross monthly premium of £25 and the plan was set up with a gross premium of £20."

"The GAR rates applicable to the policy are those set out in the T&Cs provided and these rates have not changed and will be honoured between the ages of 60 and 75."

The Investigator asked Prudential whether it had any other documentation from the point of sale or any other communications sent to Mr R since, to show the GAR applicable to his pension plan. It responded in the following terms:

"We are unable to provide any further documentation from the POS and are unable to locate anything in our records where in the GAR rates have been issued to the policy holder in other communications."

I said that I found it troubling Prudential didn't appear to have a proper record of the GARs that applied to Mr R's policy at the time he took it out. While I accepted the passage of time means some information from the sale isn't available, presumably his wasn't the only policy which transferred from Scottish Amicable. And retaining information about what GARs applied to what policies at what times was important for the organisation to know.

Aside from the conflicting testimony of both parties, I had two pieces of evidence to weigh.

The first was the terms and conditions document provided by Prudential. It says this would've been issued to Mr R and it showed the GARs that should be applied to his policy. The main problem for Prudential was the document it provided had no contemporaneous date on it. I don't know what period it applied to or when it was issued.

The other piece of information I had was the illustration Mr R received on 7 November 1986. It set out an assumed pension rate at age 60 of £121.50 per £1,000 in the fund. He thought this was from a set of GAR's that should apply to his policy.

While I thought there were weaknesses in relying on illustrations, there was also a reasonable argument that it would've been odd if Prudential's predecessor had knowingly used a GAR that wasn't applicable at the time. While investment projections are necessarily moving feasts, GARs applicable to policies should've been firm.

On the basis of the available evidence as of March this year, I was tending towards upholding this element of Mr R's complaint. However, I went on to manage Mr R's expectations. Obviously, he would only be entitled to the GARs that were applicable to his policy. If Prudential could evidence, after a more thorough investigation of its archives that its assertions were correct, then I'd be likely to change my mind. It has been able to do this.

My initial conclusions about this matter were a finely balanced judgement based on the initial evidence submitted by both parties. For example, I note the illustration from 1986 was ambiguous, referring to an applicable pension rate, not a GAR or a current pension rate. In any event, Prudential has now provided me with additional documents to review. I'm grateful for the digging it has done which I hope will now provide Mr R with the reassurance he's wanted from the outset.

Information provided by Prudential include system screen shots which it says show no changes have been made to Mr R's policy since it was set-up. It points to information about the early retirement options available through his policy and how these were recorded correctly.

However, the most significant evidence Prudential had submitted is contained in a company circular titled 'Introduction of Flexipension (First Series) Withdrawal of Personal Pension Policy'. This is dated 18 November 1976 and belonged to the Scottish Amicable Life Assurance Society. It's a 33-page document that sets out the background to its new pension product and how it would work. On page 13 of the circular it provides the following table of guaranteed and current annuity rates:

FLEXIPENSION PENSION RATES PAYABLE YEARLY IN
ARREAR AND UNPROTECTED PER £1,000 PURCHASE PRICE

AGE ATTAINED	MALES		FEMALES	
	GUARANTEED	CURRENT	GUARANTEED	CURRENT
	£	£	£	£
60	93	165.65	82	156.90
61	96	167.90	84	158.35
62	99	170.35	86	160.05
63	102	173.00	88	161.85
64	105	175.90	90	163.80
65	109	179.00	93	165.95
66	113	182.40	96	168.30
67	117	186.05	99	170.85
68	122	190.05	102	173.60
69	127	194.30	105	176.65
70	132	199.00	109	179.95
71	138	204.05	113	183.50
72	144	209.50	117	187.40
73	151	215.40	122	191.65
74	158	221.80	127	196.30
75	166	228.75	132	201.30

I think this clearly shows Mr R's pension had a GAR which for the age of 60 was £93 for each £1,000 of his fund. And so on.

Further, Prudential also re-sent the terms and conditions booklet it had previously sent to this Service. My main reservation about this document was that it had no contemporaneous date incorporated. I've examined this booklet again. I note on page 9 of 10, in the bottom left hand corner there is the following reference R269/11/83. I think it's more likely than not this document was published in 1983. Although not definitive, it's strong corroboration of the circular, which itself is sufficient to give me confidence Prudential has offered Mr R the correct GAR.

In accepting my initial provisional decision, and understanding the basis for it, Mr R asked if Prudential were able to evidence that the GAR he took out was different from the illustration he received, would he be able to take action against Scottish Amicable.

I'd made the following observations. Prudential is responsible for his policy, and that means paying him the right benefits, as contracted to in 1986. The Scottish Amicable documents now produced by Prudential from 1976, confirms the correct GAR applicable, as it has offered. And Scottish Amicable Life Assurance Society is a dormant company.

Although I'm not upholding Mr R's complaint, I hope the investigation into his concerns now gives him reassurance on this important matter.

My final decision

For the reasons I've already set out, I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 May 2023.

Kevin Williamson
Ombudsman