

## The complaint

Mr E says when he took out his personal pension it didn't provide for a Market Value Reduction (MVR) when he took his benefits. So, he says The Prudential Assurance Company Limited (Prudential) is acting improperly by seeking to apply one to his plan.

## What happened

Mr E took out a personal pension with Scottish Amicable in 1988. Prudential has since become the provider of this plan. His fund is invested through a With-Profits investment scheme.

Mr E's scheme retirement date (SRD) was 10 September 2022, his sixty-fifth birthday. However, he decided not to take his pension at that point because he was still working. His intention was to take his benefits this year.

However, on reviewing a pension illustration provided by Prudential he noticed it had applied an MVR. He challenged this because he says he'd never been made aware of, nor agreed to, the possibility of such an adjustment. Mr E complained to Prudential.

Prudential responded to Mr E on 14 November 2022. Firstly it acknowledged that it hadn't handled his enquiries effectively and it offered him £50 in recognition of this. But it didn't accept his point about the MVR. It said:

*"I understand you are unhappy as you believe you did not opt into having an MVR (Market Value Reduction) with your policy. However I have identified when you set up your policy this would have been explained to you and would be in your terms and conditions. As you are invested within our with profits pension fund then an MVR does apply. MVRs are our way of protecting the interests of all of our With-Profits customers. MVRs ensure that every investor gets a fair return based on the earnings of the With-Profits Fund over the period their payments have been invested. We believe that MVRs should be used to balance the interests of continuing investors with those who want to cash-in their investment. It's not our practice to apply MVRs which reduce values below an amount fairly reflecting the value of the assets underlying the plan. We believe our approach is fair and in the interests of all our continuing With-Profits customers..."*

Mr E didn't accept what Prudential had said and he brought his case to this Service. He said:

*"...I was not aware of such a reduction and asked them to prove it and when I had signed up agreeing to such an unpleasant surprise / reduction, I felt like I was being conned - over £3k! The Pru's final response letter dated 14. Nov 2022 says they have provided me with this information which is not correct...Consequently, I would like to receive the full pension I am due from the Pru in about 9 months' time and wish to sort this out once & for all before I take it... The Pru has upheld my complaint and tried to pay me off with £50.00 which I have not agreed to as resolving this issue. I need to see a legal document signed by me agreeing to MVR - have not got one and the Pru has not sent me one, therefore it will not be applicable when I take my Pension..."*

An Investigator considered Mr E's case but didn't uphold it. He thought Prudential had provided him with sufficient information to make him aware that if he didn't take his pension on his SRD it was possible that an MVR would apply. He also found that it was able to apply such a reduction.

Mr E was unhappy with the Investigator's findings and conclusions. He considered Prudential's actions as amounting to fraud. And he didn't think the outcome of his complaint was fair.

As both parties couldn't agree to the Investigator's findings and conclusions, Mr E's complaint has been passed to me to review afresh and to provide a final decision.

### **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 E's complaint. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Prudential for Mr E. 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 6 - which requires a firm to pay due regard to the interests of its customers.
- 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. As such, I need to have regard to them in deciding Mr E's complaint.

Firstly, I'd observe with-profits funds have attracted criticism for a lack of transparency. I understand Mr E's suspicions about the imposition of an MVR. It can be difficult for policyholders to satisfy themselves they are receiving what they are entitled to under the terms of their plan. But that doesn't necessarily mean a firm has got something wrong.

Prudential is accountable to the industry regulator (the Financial Conduct Authority) for the way in which it operates its with-profits fund. The regulator monitors this. Firms are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties.

Prudential also has an independent 'With-Profits Committee' whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly.

Mr E provided copies of various documents in support of his case. One of these contains the terms and conditions of his personal pension plan at inception. I would draw his attention to section R.2.6 about with profits funds. It says:

*"The Bid and Offer Prices shall be subject to the following –*

- (i) The Offer Price shall not fall*
- (ii) The Bid Price applicable in the event of survival of the Investor to the Selected Retirement Date or on his previous death shall be not less than 95% of the Offer Price, rounded to the next lower 0.1 p.*
- (iii) Subject to the above, the Offer and Bid Prices of units shall be determined by the Actuary having regard to prevailing financial conditions."*

An MVR isn't mentioned. I don't find this surprising because when Mr E's policy was sold the term MVR or MVA (market value adjustment) wasn't commonly used. It's now widely understood to represent an adjustment made where the current value of a plan is considered to be greater than the plan's fair share of the underlying investments.

The exact wording of a policy will differ from provider to provider. Some may have made the possibility of MVR (which as mentioned wouldn't have been referred to as such at the time) and when it might apply clearer. But I think it was commonplace within the industry to include some provision to allow with-profits fund values to be adjusted to better reflect the current market value of the underlying assets.

I think the reference, in sub clause (iii) above, to the actuary determining prices, having regard to prevailing financial conditions, gave Scottish Amicable and its successor, Prudential, the power to adjust offer and bid prices of units on advice from its actuaries. That covers imposing an MVR.

Firms like Prudential will take into account many factors in deciding whether or not to apply an MVR and at what level. It will take into account actual and known factors affecting the with-profits funds. But it will also make assumptions about a variety of factors, including future economic conditions and expected fund performance, expenses and liabilities as well as other variables, for example, mortality rates.

Where a commercial decision has been made by a business, relating to policyholders generally, this goes much wider than an individual complaint and concerns the way the business operates. Matters of this nature may be reported to the FCA. We wouldn't normally interfere with the legitimate exercise of a business' commercial judgment. I think any decision to impose an MVR and if so how much is a commercial decision for the business and its actuaries.

Further, I'd observe that Prudential's decision making around applying MVRs to many of its customers pension plans in previous years will have been to Mr E's advantage. Had it not done so, presumably there would have been less assets in his fund available for distribution at this point from which he will draw his share.

Mr E says he wasn't aware an MVR would apply to his policy. I can't see Prudential sent him a specific notification of such. So I understand the point he makes. But in reviewing the annual pension statements it sent him, I can see there was information about the circumstances when an MVR may apply to his plan.

For example, in his annual statement for 2016 (dated 21 July 2016), Prudential said if he withdrew his fund:

*“...any time except on death or your chosen pension date, the amount paid out may be reduced to reflect the current market value of underlying assets. This is known as Market Value Reduction (MVR).”*

This is repeated in Mr E’s annual statements for 2017 (dated 20 July 2017), 2018 (dated 26 July 2018) and 2019 (dated 25 July 2019).

Within the annual statements, reference was made to further information available about MVRs on Prudential’s website. This included an MVR leaflet and a Principles and Practices of Financial Management (PPFM) document which explained an MVR may apply if a fund wasn’t withdrawn on the retirement date.

In the lead up to Mr E’s SRD, Prudential provided him with a Retirement Options Pack (dated 18 March 2022) which advised an MVR may be applied (bolding is my emphasis):

*“Market Value Reduction: An MVR is an amount we might deduct from certain withdrawals you take, or certain switches you make, from the With-Profits Fund. It’s our way of being fair to all of our with-profits customers. MVRs help make sure that everyone gets a return based on the earnings of the With-Profits Fund over the time their payments have been invested in it. **An MVR would not apply if you take benefits at your selected retirement date or due to any payments as a result of your death. MVRs can change from day to day.***

*We haven’t applied an MVR when calculating this value.*

*See the ‘MVR - A clear explanation’ leaflet for more information.”*

Similar messages were included in the ‘Time to decide’ letter Prudential sent Mr E on 4 July 2022 and his annual statement for 2022 (dated 26 July 2022).

A policyholder has some responsibility to read the correspondence sent to them by a pension provider and if necessary seek clarification or advice if they don’t understand what’s been provided.

I think Prudential is able to apply an MVR to Mr E’s personal pension benefits in the circumstances he finds himself. I think it can do so fairly, consistent with the terms and conditions of his original policy. Further, I think Prudential has made him aware for several years about the potential for such a reduction and the circumstances in which one might apply.

### **My final decision**

For the reasons I’ve set out, I’m not upholding Mr E’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 25 July 2023.

Kevin Williamson

**Ombudsman**