

The complaint

Ms B has complained that The Prudential Assurance Company Limited has made several errors in the administration of her pension plan held with it and in its dealings with her, to the extent that she lost faith in the company and decided to transfer her pension funds elsewhere.

Specifically, Ms B has said that Prudential made an error with her normal retirement age (NRA) in the first place, and that this should have been five years earlier (May 2016 as opposed to May 2021).

Ms B has further said that Prudential didn't send her retirement documents prior to the (incorrect) later NRA, and that it didn't provide satisfactory or consistent answers to the questions she asked of it relating to her pension plan and the manner in which she could take her pension benefits.

What happened

Ms B's pension plan was a product of a previous transfer from an occupational pension defined benefits scheme, and this had been subject to a "pension review" for mis-selling and redress provided accordingly.

It contained a guaranteed minimum pension (GMP), and Ms B had been informed that her NRA, at which point she could receive unreduced pension benefits, was 11 May 2021. This was reconfirmed to Ms B in June 2018, when Prudential informed her in response to a query on this point that she could take her pension benefits before that date, but if the plan value was insufficient to meet the cost of providing the GMP, her overall benefits could be reduced.

Ms B therefore decided to wait until the NRA which had been confirmed as being May 2021 and draw on a smaller pension fund in a separate policy in the meantime.

Having received no pre-retirement documents relating to the manner in which she could take her pension benefits by February 2021, Ms B tried to contact Prudential about this. But she received nothing from Prudential until two letters dated 12 April 2021, in which it said that she would receive a "revised" annual GMP of £4,902 and a minimum pension based upon the "Prudential guarantee" of £3,459.

Ms B sought to clarify the ambiguity by email on 27 April 2021, and also enquired as to the manner in which she could take her pension benefits, including the redress sum, and a potential transfer to another pension provider.

Prudential responded on 21 May 2021, this being her annual statement date, which showed her age as being 64 and her NRA as 11 May 2021 (her 65th birthday). But she was already 65 and Prudential didn't answer her previous queries.

However, Prudential did then write to Ms B further on 10 June 2021, advising her that her NRA had now passed and that, as she hadn't informed it of the date at which she wished to

begin taking pension benefits, it had reset her NRA to May 2031.

Ms B tried to resolve the matter by referring it to a Prudential financial adviser, but they were unable to help. And so she then wrote to the adviser in August 2021 expressing her frustration with the matter, and that her previous enquiries about the quoted sums and the manner in which she could take her benefits still remained unanswered. Ms B also queried the changing value of her pension funds, as quoted on three separate occasions between April and June 2021.

Ms B followed this with a formal complaint to Prudential on 13 August 2021. Prudential responded on 20 September 2021, supporting her complaint and awarding payment of £400. It also confirmed that the GMP income of £4,902 didn't include the use of the redress sum, and that, as she had passed her NRA, she could use the latter to top up the GMP or take it separately under her chosen option.

It further explained the fluctuation in the quoted value of her pension plan as being due to variations in the value of the With Profits fund in which she was invested.

Disappointed and frustrated with Prudential's handling of her pension affairs, Ms B then took steps towards transferring her pension funds to another provider. She also expressed dissatisfaction with Prudential's response and the amount it had offered as compensation.

Prudential wrote to Ms B again on 6 October 2021, offering a further £200, and also said that, as it may have delayed the transfer of Ms B's pension funds, it would consider whether this had financially disadvantaged Ms B and, if so, would rectify this.

But this was followed by further communication from Prudential on 27 October 2021, in which it said that, not only had it been mistaken with regard to her NRA, which should have been five years sooner, but that the GMP was £3,474 pa. It said that the arrears lump sum payment it would make would be subject to income tax. But Ms B considered that she wouldn't have been subject to income tax given her overall level of income in that five year period.

Ms B then transferred her pension plan to another provider with the assistance of a financial adviser and referred the matter to this service, where it was assessed by one of our investigators, and who said the following in summary:

- Before Ms B transferred her pension funds, Prudential offered to pay her £600 in compensation and to backdate her pension payments to May 2016. It also offered to consider any tax liability which might have arisen from the lump sum payment of the arrears. But this was no longer applicable as Ms B hadn't taken the GMP annuity from Prudential.
- She noted that Prudential had acknowledged the errors in administering her pension and the communication with Ms B.
- With regard to the pension that Ms B had needed to access instead of taking her benefits from her Prudential plan over the previous five years, although that plan may have grown in value, the Prudential plan would also have grown in value. The plan transfer value was also based upon the fund as at February 2022.
- She therefore considered that the £600 offered by Prudential was fair and in line with what this service would award under similar circumstances.

Ms B disagreed, however, saying the following in summary:

- It was the poor and incorrect information relating to her GMP which had led her to losing faith in Prudential and to transfer her pension funds elsewhere.
- Prudential was aware that she had appointed a financial adviser to explore other pension providers and didn't advise her that they wouldn't honour the back payments – nor did it offer a figure for the amount owed.
- Ms B didn't feel that the loss of the income she would have received from the GMP would have been compensated for by the fund growth within the other pension plan.
- The fact remained that Prudential had failed to pay her the pension she was due from age 60. And even at age 65, it failed to provide accurate information relating to the amount payable.
- Due to the range of figures given for the GMP, and with no explanation as to why it had dropped from £4,054 in 2018 to £3,474 in 2021, she and her adviser were unsure as to what the proper figures were.
- But had she received an income of around £4,000 pa since age 60, her quality of life would have been much improved and she wouldn't have needed to draw upon her other modest pension plan.

The investigator wasn't persuaded to change her view, however, saying that it was agreed by all parties that an error had been made in her NRA, but that the Prudential pension plan had grown in value since her 60th birthday.

She further noted Ms B's comments around the GMP and the offers made by Prudential, but as Ms B had since transferred her pension funds to another provider, it wouldn't now be possible to ask Prudential to honour those offers.

She acknowledged that Prudential had made errors in its handling of matters, but said that her view on the outcome remained the same.

Ms B remained dissatisfied, however, saying the following in summary:

- The £600 paid to her was in respect of the errors Prudential had made before the incorrect NRA came to light – and so she felt that she'd received no compensation in respect of that.
- It would be a significant consolation to her if it could be demonstrated that the pension she had today was so significantly greater than the one which she could have had in 2016, sufficient to mitigate the loss of what her financial adviser had calculated to be over £27,000.
- Ms B said that she remained aggrieved that the choice to start taking or defer her pension in 2016 had been denied to her, and that it had taken until October 2021, some five months after her 65th birthday, to inform her of this.
- If the deferral of the Prudential plan benefits had resulted in investment growth, then taking those from her other plan had resulted in the loss of investment growth in that plan.
- Ms B noted the investigator's comments about the transfer of her pension, but whilst she acknowledged that she couldn't expect Prudential to retrospectively honour the very late offer to make the back payments and to (post transfer) assist with the tax

liability, she nevertheless considered it had been culpable of maladministration and that she should receive some compensation. Ms B set out key dates and communication which she considered evidenced this.

Ms B then submitted a further letter which she said demonstrated that the offer to help with the tax liability was issued after the process of transferring had begun.

Ms B also commented that Prudential was swifter in processing the transfer than it had ever been in paying her the pension due to her. The transfer forms were sent to her in June 2021, but it wasn't until October 2021 that she received anything close to an options pack or clear guidance on the two components of her pension and what she might do with them.

Further, Ms B said, although the prior implication had been that she would have a range of options with the redress amount within her plan value, she was told after the letter dated 27 October 2021 that she would need to use it on a Prudential pension product.

The investigator responded to say that, as agreement hadn't been reached on the matter, it would be referred to an ombudsman for review. She asked both parties to submit any further comments they wished to make in advance of this.

Ms B submitted a further summary of her complaint points and asked for clarification of whether the different GMP amounts quoted to her represented a change in circumstances and a clear explanation as to what those changes were.

Ms B also requested an explanation for the change in Prudential's position regarding her options for the redress part of her pension plan value.

Further, Ms B explained that, feeling tied to Prudential, she'd invited it to provide a quote for the non-GMP element of her plan, but this was then based on a purchase price of £116,765, which bore no resemblance to any figure which had previously been quoted.

The quote also said that, based on Ms B's key information, the quote was the highest available to her. But this was demonstrably false, Ms B said, as a more competitive quote could be found on a reliable comparison site.

Ms B also commented that the start date for the five year guarantee period on the GMP would have been backdated to 2016, and so she would have lost out on that guarantee.

Ms B remained of the view that she'd been very poorly served by Prudential, and speculated that this was a deliberate strategy to encourage her to transfer her plan elsewhere.

Further, notwithstanding the probable growth in the value of the Prudential plan since 2016 (the evidence of which she requested), she considered that she'd been financially disadvantaged by the failure to notify her of her right to start taking her GMP in 2016. Had she been so informed, it was unlikely that she would have drawn on her other pension plan and wouldn't have lost the benefit of growth in that product.

A further investigator reviewed the complaint, and to summarise his findings, said that he agreed with the initial investigator's view. But Ms B remained dissatisfied with the findings.

The investigator put Ms B's comments in response to the assessments issued by our service to Prudential and asked for its own comments.

Prudential responded as follows:

- It had initially set up the wrong start date for the GMP due to confusion between the deferred benefit date and the compulsory retirement date. But the GMP which would have been payable to Ms B at age 60 was £3,474, and this was the starting amount which it used to offer the back payment to Ms B in October 2021.
- It had looked at the call notes regarding what Ms B had said she was told about not being able to shop around or transfer the non GMP redress element of her policy, but could find no record of her being told this. It nevertheless confirmed that it was possible to do so, but that this would need to happen at the same time as taking the GMP benefits.
- It hadn't been able to locate the figure quoted by Ms B as being in the pack issued to her on 19 November 2021. The value of £115,698 was quoted as the cost of providing the GMP. It also thought that Ms B may be confusing its annuity quote with the regulatory annuity comparator which it needed to issue in the pack. It said that it was able offer the highest quote as it needed to make up the shortfall (of £43,108) to cover the GMP – and no other annuity provider would do that.
- In respect of the five year guarantee, although this may seem to have been “lost”, this may only have been an issue if she'd died within that five year period. And as Prudential was covering the cost of the shortfall in the GMP, it hasn't cost Ms B anything by including it.

As confirmed by the investigator, the complaint was then referred to me for review.

I issued a provisional decision on the matter on 12 June 2023, in which I set out my reasons for partially upholding the complaint. The following is an extract from that decision.

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

And having done so, I’m broadly in agreement with the investigator’s assessment of the matter, and for similar reasons – albeit with one difference, which I’ll set out below.

I’d firstly say that I don’t think it’s disputed by either party that significant mistakes have been made in the administration of Ms B’s pension plan, not least the incorrect record of Ms B’s NRA.

Ms B has noted that the £600 compensation was in respect of the administration errors before the issue with the NRA came to light, and I agree with her on that point. And as with the investigator, I think the amount is probably about right, given the frustration I think Ms B would quite justifiably have felt about the situation.

And so I’ve then thought carefully about the incorrect NRA and the steps which Prudential proposed to put in place to correct this. And my observations on this are as follows.

To pay the GMP, Prudential needed to make a “cash injection” into her policy of £43,108. This was because the total policy value, as at November 2021, was £155,686, of which £83,096 represented the redress amount from the pension review. That redress amount wouldn’t have been used to meet the cost of paying the GMP. The cost of paying the GMP was £115,698, but the remaining policy value available to meet this was £72,590. There was therefore a shortfall of £43,108 which Prudential needed to meet to ensure payment of the GMP.

Prudential explained this to Ms B by letter, and even if the content was unclear to her, her

financial adviser would, or should, have understood it. In essence, the pension value represented by the original transfer from the occupational pension scheme was insufficient to provide the income which needed to be paid under the requirements of Prudential accepting the GMP liability in the first place.

And so Prudential would effectively be paying £43,108 into Ms B's pension to be able to pay the GMP. And as compensation for the incorrect NRA, it would then be making the back payments as a lump sum, and on which it also offered to resolve the tax situation (after the transfer process had begun, but before it had completed) so that she wasn't out of pocket in that regard, would be paying the GMP going forward, and Ms B would still have been able to take the redress amount (over and above the GMP) in whatever fashion she wished.

But as Ms B has transferred the value of the amount which would be used to pay both the arrears in the GMP and the future payments, it wouldn't be fair or reasonable to require Prudential to now make those back payments without having the benefit of the funds to do so.

I've also noted what Ms B has said about her frustrations and lack of confidence in Prudential. And it may be the case that the financial consequences of transferring her pension funds, and the value of the GMP, to another provider, were known and she accepted these for the sake of the greater confidence she felt in another provider. And in that regard, I've noted her comment that she was aware of this in her latest submission to this service.

But as the funds were transferred, which effectively denied Prudential the opportunity to put things right, I can't now fairly or reasonably require it to make the back payments Ms B would otherwise have been entitled to – as it doesn't now hold the funds from which at least part of those back payments would have been made.

I think it would also be difficult, again from a fair and reasonable perspective, to require Prudential to calculate whether any income she is now receiving would compare favourably to that she could have received since 2016 from her Prudential plan. It simply wouldn't be comparing like for like as, post-transfer, Ms B wouldn't have benefitted from the £43,108 cash injection which would have been required by Prudential to pay the GMP.

But in the absence of that cash injection, I think it's very unlikely to be the case that any income she would now be receiving would be higher than that she would have received from the back payments and future payments from the GMP, along with the additional benefit of income from the redress amount, from the Prudential plan.

Ms B has said that it was the poor quality of the information she was receiving relating to the GMP and her options with her pension plan, along with the delays incurred in providing that information, which eventually prompted her to transfer. I do understand that perspective, but it was nevertheless Ms B's decision to transfer, and I don't think the evidence supports the position that there was any suggestion that, once the transfer had been made, Prudential would still make the back payments of the GMP. And if there was uncertainty in that regard, clarity could have been sought on this.

Ms B also had the benefit of a financial adviser, who would, or at least should, have been in a position to assess the benefit of taking the benefits offered by Prudential (or another provider for the non GMP aspect) and then pursuing any additional redress through this service if necessary, compared to any perceived benefits in transferring. And this should have included the £43,108 cash augmentation which Prudential would need to make to pay the GMP, which would be lost upon transfer.

I've then further considered the disparity between the GMP amounts quoted to Ms B over time, but I think Prudential's explanation of the figure it agreed to pay on a backdated basis is reasonable – that figure would naturally be lower in 2016 (due to later statutory increases) than the amounts then quoted in subsequent years.

And I also agree that it would have been very likely that the annuity quote for Ms B's plan couldn't be bettered, given the shortfall which Prudential would need to make up for the GMP element, and which no other provider would be obliged to do. So I don't think that the wording in the quotation was misleading.

I've also considered the matter of the five year guarantee – but again, as Ms B fortunately survived the five years from 2016 and has decided to not capitalise on the GMP, I don't think this is an aspect which could fairly or reasonably be upheld. However, I in any case think that the proposed backdating of the missing GMP payments would also reasonably mean that the guarantee should start from 2016 as well. To back date the payments to 2016, but then also extend the five year guarantee from 2021 would, in my view, be an unfair "double" benefit.

But I do think that Ms B has a point relating to the comparative performance between the plan which she had to draw upon and the Prudential plan between May 2016 and May 2021. I think, on balance, that had Ms B been properly informed of her right to start taking her GMP benefits in 2016, she would have done so and left the other policy as it was. And this is supported by her taking the benefits from her other plan, along with her comments relating to her financially straitened circumstances during that period.

I also don't think that this aspect of Ms B's complaint is affected by the transfer of the Prudential policy. My view is that this is a potential loss which is separate from any backdating of GMP payments as it reflects a reliance on another source of income which shouldn't have been needed, had Ms B been aware of the NRA of 60.

And so I currently think that Prudential ought to compare the notional performance of the amount/s which Ms B withdrew from her other policy on the basis that they'd remained invested in that other policy up to one month following the quotation provided on 19 November 2021 (to provide time for the annuity to be established) – so 19 December 2021 - with the notional performance in the Prudential With Profits fund. If the withdrawn amounts would have fared better in Ms B's other policy, then there is a loss to Ms B by needing to have accessed that other policy.

If my final decision remains along these lines, that difference should then be brought up to the date of my final decision in line with the actual performance within Ms B's other plan. If Ms B has at any point since accessed the remainder of her pension funds in that plan, then that should change at that point to simple interest at the rate of 8% pa up to the date of settlement."

Ms B responded as follows:

- Whilst generally in agreement with the characterisation of her complaint, she thought that the phrases "lost faith" and "decided to transfer" understated the circumstances, which involved a high level of anxiety about the situation caused by Prudential.
- Ms B said that she hadn't taken any steps to transfer her Prudential pension, but after she became frustrated with the poor service she received, and notably Prudential's letter of 19 November 2021, she decided to do so.
- Ms B reiterated her position that Prudential was encouraging her to transfer her

pension, but had sought to create the impression with this service that she'd long intended to do so.

- Ms B clarified that she hadn't been confident that the growth in the Prudential pension fund was sufficient to compensate for the loss of income over the intervening years. She was also unsure as to what had been meant by the reference to the "other pension plan".
- Whilst she didn't dispute the GMP figure provided by Prudential, she's been disappointed and surprised to have never received a definitive figure for the retrospective income which would be paid by Prudential. She simply wanted transparency, but her financial adviser had said that Prudential had refused to provide her with the amount of arrears due.
- The matter of any tax liability remained unresolved until 7 February 2022, which was some time after she'd transferred her policy.
- It was no surprise to her that Prudential couldn't locate the call note of her being advised that, if she took the GMP element of the policy, she'd need to use the redress sum on a Prudential product. She'd been referred to a section in Prudential's letter of 27 October 2021 which said that it wasn't possible to make a partial claim on the policy. This was evidenced by an annuity quote she then sought regarding the redress sum.
- This demonstrated that she could have received a total income of £6,201 pa from the £3,474 pa GMP and the £2,727 which could be provided (elsewhere) by the redress sum. But Prudential quoted a total income of £4,985 pa in its letter of 19 November 2021, which it said was the highest available to her based upon her key information. And it reaffirmed that the policy components couldn't be separated.
- Had she been properly advised by Prudential, then it was demonstrably clear that she would have been best served by taking the GMP and then using the redress sum to secure an income with another provider.
- It was the stated requirement that she needed to use the redress sum on a Prudential product, together with the low quote received from Prudential for the combination of the two, which finally caused her to instruct her financial adviser to research alternative options and initiate the transfer in December 2021.
- The required cash injection into the policy was a direct result of Prudential having mis-sold the pension policy to her in the first place.
- The total policy value of £155,686 was found to be sufficient to buy an annuity which was higher – and offering a 20 year guarantee – compared to Prudential's highest available annuity. But she'd still missed out on payments since 2016.
- Ms B noted the comments with regard to the need to draw upon her other pension plan and the recommendation that Prudential compare the notional performance of the amount she withdrew, on the basis that it had remained invested. Ms B said that it would be helpful to know how this would be achieved and why I had suggested the Prudential with profits fund as the performance comparator.

Prudential also commented as follows:

- It was broadly in agreement with the provisional decision, but it sought clarity on the

redress proposal, and said that it had no details relating to Ms B's other policy. It asked whether there would be an alternative means of resolution if it was unable to do what had been proposed.

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.

And having reviewed the comments made, I remain of the view as set out in the provisional decision, and for broadly the same reasons.

I think I should firstly say that I do understand the frustration Ms B would have felt with the lack of clarity of some of the information provided to her by Prudential, and the confusion which may have been caused. But by transferring out, there were certain irreversible, and what I consider ought to have been foreseeable, consequences, one of which – the most notable – was the loss of the £43,108 cash injection which would have been required by Prudential to pay the GMP.

The other was that Prudential would no longer have the funds with which to make the back payment to Ms B.

I take the point about the amount which could have been obtained by separating the GMP part of the policy and the redress sum, but it ought to have been clear, at least to a financial professional advising Ms B, that by transferring the policy, there would be an immediate effective loss to her of the cash injection of £43,108 needed to pay that GMP. And it couldn't reasonably or realistically have been the case that any uplift of income which could be bought by the redress sum with an alternative provider would compensate for this immediate loss upon transferring. And so there would have been no realistically conceivable advantage, in income terms, from transferring the policy.

And the amount which Ms B might have been able to secure with an alternative provider was more likely than not higher than the total amount quoted by Prudential because the receiving provider didn't also need to make back payments from the policy. Prudential needed to take that into account when assessing what would be available from the policy in the future. When the GMP (which required the £43,108 cash injection to pay it), excess annuity and back payments are taken into account, I think it's likely to have been the case, and ought reasonably to have been ostensibly so at the time of the transfer, that Ms B would have received higher overall pension benefits from the Prudential policy.

I acknowledge Ms B's sentiment that Prudential was encouraging her to transfer so that it wouldn't need to make the cash injection, but as I said in the provisional decision, any additional clarity which was required could, if necessary, have been sought by referring the matter to this service. And even if Ms B was unaware of this option, her financial adviser would have been.

But moreover, I maintain that the steps which were being proposed by Prudential were appropriate, albeit if there was a lack of clarity around some of the figures or how the tax liability would be addressed. Again, I think this is something which could reasonably have been pursued further, if necessary through this service, before the irreversible consequences of the transfer were incurred.

And so I remain of the view that, now the policy has been transferred, it wouldn't be fair or reasonable to require Prudential to still make up any income shortfall or pay the back payments.

But I do still consider that it should assess any loss derived from Ms B needing to access her other pension policy instead of receiving the income from the Prudential plan.

I've noted the comments from both parties relating clarity on the proposal to determine whether there's been a financial loss in that regard.

Ms B ought to have been receiving income from the Prudential plan since 2016, but as she wasn't, she needed to draw upon her other pension plan instead. And so a calculation needs to be undertaken to see whether, had she left her pension untouched in the other plan, the performance of those untouched benefits would have outstripped the performance of the same amount of pension benefits which remained within the Prudential plan – as those pension benefits remained in place and were accruing growth.

In essence, the process is notionally being reversed. The objective is to compare the performance of the two pension plans to see whether Ms B has been disadvantaged by having to draw upon one, instead of receiving the income (which she should have received) from the other.

Putting things right

My aim is to place Ms B as closely as possible in the position she would otherwise have been, but for Prudential's errors.

And so, as set out in the provisional decision, Prudential ought to compare the notional performance of the amount/s which Ms B withdrew from her other policy on the basis that they'd remained invested in that other policy up to one month following the quotation provided on 19 November 2021 (to provide time for the annuity to be established) – so 19 December 2021 - with the notional performance in the Prudential With Profits fund. If the withdrawn amounts would have fared better in Ms B's other policy, then there is a loss to Ms B by needing to have accessed that other policy.

That difference should then be brought up to the date of this decision in line with the actual performance within Ms B's other plan. If there was a loss, Prudential should in the first instance pay this to Ms B's new pension plan, taking into account any unused tax relief, annual allowance issues and protections which might be in place.

But if this isn't possible, the amount should be paid directly to Ms B. Ms B would have paid income tax on 75% of the redress amount (allowing for tax free cash if applicable) and taking into account the state pension and her overall pension assets, I've assumed that she will be a basic rate taxpayer in retirement. And so a notional income tax deduction of 20% should be applied to 75% (again, allowing for tax free cash if applicable) of any redress sum paid directly to Ms B (an overall deduction of 15%).

I appreciate that there may be complexities in undertaking the calculation, and so any redress due to Ms B should be paid within 60 days of Prudential being notified of Ms B's acceptance of this decision. If it isn't, 8% simple interest should be applied to the loss amount from the date of this decision to the date of settlement.

If Ms B has at any point since accessed the remainder of her pension funds in that plan, then the "growth" applied within the calculation should in any case change at that point to simple interest at the rate of 8% pa up to the date of settlement.

I've noted Prudential's comments about an alternative proposal if the other plan provider is unable to provide performance figures for its plan over the period in question. I'm confident that this wouldn't be the case – I can see no reason as to why it wouldn't be able to provide

such information, although this may inevitably come at some cost to Prudential. And if Prudential's unable to undertake the comparison calculation "in house", I'm confident that it would be able to commission an external actuarial service to do so on its behalf.

My final decision

My final decision is that I partially uphold the complaint and direct The Prudential Assurance Company Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 September 2023.

Philip Miller
Ombudsman