

The complaint

Mr S complains that The Prudential Insurance Company Limited (Prudential)) will not allow him to take income drawdown from his pension plan without him using a financial advisor. And that Prudential did not tell him about this requirement before he wished to take benefits.

What happened

Mr S had several pension plans with Prudential. One was already an income drawdown plan (IDP) set up several years ago. His other plans had yet to provide benefits. Mr S had used an independent financial adviser (IFA) but removed it from his arrangements in September 2022, as he felt he no longer needed it. In June 2023 Mr S wanted to take some tax-free cash from the plans not yet in drawdown. Prudential said a new plan would need to be set up, but this could only be done through a financial adviser. Mr S felt this was unnecessary as he was aware of his options and the risks involved.

Mr S complained to Prudential. It didn't uphold his complaint. It said given the importance of the decision and the *"multiple factors"* to be considered to ensure this *"was suitable to your individual needs and circumstances"*, its internal policy was that *"the involvement of a financial adviser was mandatory"*. Mr S said Prudential should have told him he needed to use a financial adviser to move to an IDP when he was discussing removing the adviser from his plans. He said he'd contacted an adviser, whose fees would be over £6,000 to advise on his arrangements. The adviser had also recommended he switch investment funds to reduce charges. But that this would crystallise negative adjustments in the smoothed investment funds he currently held of around £30,000, which he felt was unnecessary. And the combined costs made withdrawing the £10,000 he wanted unviable.

Mr S referred his complaint to our service and our investigator looked into it, but he didn't uphold it.

Our investigator said it wasn't a regulatory requirement that Mr S took financial advice over commencing drawdown. But as doing so with Prudential required a new contract, it was entitled to set the conditions on what basis this could be arranged. He said there was no evidence Prudential had misled Mr S about this requirement. But he said it could have better explained the reasons why a financial adviser needed to be involved. He said Mr S was aware that he could transfer to a drawdown plan with other providers without needing to take financial advice. And that Prudential had offered an alternative mechanism for Mr S to access the funds he wanted from the plan currently in drawdown.

Our investigator said he understood the point about the potential capital loss that would be incurred if the plan was transferred. But that didn't mean Prudential was at fault, as there was no evidence this was caused by anything other than market movements which were an inherent part of investment products. He said Prudential hadn't done anything wrong.

Mr S disagreed. He accepted that Prudential had the right to make commercial decisions. But he said part of his complaint had been that the requirement to use a financial adviser wasn't mentioned previously or anywhere in Prudential's literature, which only suggested

advice be taken. And it should have mentioned this when he discussed removing the adviser in September 2022 and he would have reconsidered.

As Mr S doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 27 October 2023; I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint in part.

I understand Mr S's frustration here as Prudential are happy to deal with him directly in respect of his existing IDP, but not facilitate the arrangement of a new one without him taking advice. As he's aware this isn't a regulatory requirement, and many providers will facilitate a transfer into income drawdown without an adviser being involved. But our service doesn't regulate financial businesses and it isn't my role to tell Prudential to change its procedures, but I can consider whether these have resulted in an unfair outcome.

In this case Prudential has presumably decided that the business risk is too great to accept unadvised drawdown applications. Mr S's existing plans don't facilitate drawdown. It isn't unreasonable that it sets conditions on the basis it is prepared to arrange the new contract required. That means I can't tell Prudential to set up an IDP for Mr S without him taking advice. And I don't think it has treated him unfairly by having these requirements, despite the inconvenience it has caused him. However, I think he would have been caused less inconvenience had it made this requirement clear at an early stage. Because from its literature it wasn't clear that this feature wasn't directly available.

Mr S has provided various annual statements and other documents, including those issued when he requested payment of benefits. These set out the options available and repeatedly recommend that advice be taken. But they don't say advice must be taken or that certain options, like drawdown won't be facilitated. Indeed, one section of Prudential's brochure "Your Pension, your choice" discusses using a financial adviser and says;

"If you don't take advice and end up in a product that's unsuitable for you, it's unlikely you'll be able to make a complaint."

And in Prudential's letter of 9 June 2023, setting out what options were available, including drawdown, the first page says:

"After you consider your options, and get any guidance or advice you need, please give us a call to let us know what decision you've made."

On page 4 it says:

"We strongly recommend that you get financial advice."

The annual statement dated June 2023 sent to Mr S also sets out what options are available when benefits are taken. This includes a description of drawdown. It says;

"To do this, you may need to transfer to a drawdown plan, and you might need financial advice."

And;

“How you take your benefits is one of the most important decisions you'll make. We suggest you get information and advice on it”

It recommends that the Pension Wise service is consulted and, relevantly, it points out that Prudential doesn't offer some options like enhanced annuities. These documents were specifically about the plan Mr S held. And, whilst there is clearly some generic content in them, I think it's reasonable that these should have identified the specific requirement that advice had to be taken if the drawdown option was wanted through Prudential. Rather than only suggesting it “might” be needed.

I haven't seen evidence that Mr S was in urgent need of the funds that he wanted. But he certainly seems to have had to make multiple calls to Prudential over many weeks, to clarify that he couldn't access his benefits with it in the way he wanted without taking advice. And had he been made aware of the restriction earlier he would have been able to better plan taking his benefits, particularly if there were considerations over investment valuations. So, I think he has been caused some distress and inconvenience over what has happened, and it is fair that he be compensated for that.

Putting things right

I think it's reasonable that Prudential should have made Mr S aware of its requirements in this area sooner. Not doing so increased the level of inconvenience and frustration as well as delaying matters. So, I think it is fair that Prudential should pay him £100 compensation.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr S said he accepted my decision but remained disappointed by Prudential's requirement that he take advice. He said he was considering transferring one of his plans to another provider who didn't have this requirement.

Prudential said it had nothing to add and agreed with the £100 compensation I'd suggested.

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've decided to uphold the complaint in part.

I don't think it is unreasonable for Prudential to choose the basis on which it will offer new contracts. But I think it could have made any requirements here clearer as Mr S was an existing customer. Had it, he would have suffered less inconvenience and would have been better able to manage his financial affairs.

Hopefully Mr S will be able to sort out what he wants without further difficulties. And I think it fair that Prudential should compensate him for the inconvenience he's been caused.

Putting things right

Mr S has been inconvenienced and I think it is fair that Prudential pay him £100 in compensation for this.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part against The Prudential Insurance Company Limited.

I direct The Prudential Insurance Company Limited to pay Mr S £100 in compensation for the distress and inconvenience he has been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 December 2023.

Nigel Bracken
Ombudsman