

The complaint

Mr T complains about pension information provided by The Prudential Assurance Company Limited (Prudential).

What happened

Mr T said he was advised not to join an employer's pension scheme in the 1980s. Following a review by Prudential he was given pension mis-selling redress in the form of a guarantee in respect of his two pension policies. He said that a letter sent in November 2021 quoted a figure of around £165,000 for this. More recently he had been provided with much lower figures. He didn't think the original letter was well explained and had taken some time to get.

He now realised he could have taken the around £165,000 as cash. But the value was now much lower and reduced his options taking into account his current financial needs and circumstances. He had no idea that the figure would be affected by changes in interest rates and wasn't told this nor to get financial advice. The letter wasn't clear and he had missed out. He wanted Prudential to honour the figure of around £165,000.

Prudential said it couldn't support his complaint. It sent a valuation of his pension review guarantee (VOG) in November 2021 worth a round £165,000. A subsequent valuation sent in March 2023 was around £100,000. The mis-selling guarantee was to be calculated when he reached retirement to ensure the value of his personal pension was equal in value to the benefits he lost from his employer's pension scheme due to their advice. One of his two pension policies had a retirement date of April 2021 and he was sent retirement options. The valuations didn't include the VOG. Mr T chased in September 2021 as he was told he needed the VOG and policy values. In November a VOG valuation was sent.

Prudential spoke on the phone after the VOG was received. The call confirmed that the value of the VOG could go up or down in future and the basis of calculation was reviewed by the regulator quarterly. At the time it didn't say he should take financial advice as this was a VOG not an offer. Further Mr T indicated he had discussed it with an adviser and requested the VOG value to enable him to get advice. The adviser would have been aware of the low interest and annuity rates at the time. Given these warnings it didn't support the complaint or the request to honour the higher figure. It also told him he could take the redress as cash, as an addition to his pension or a combination of the two.

My provisional decision

I issued a provisional decision in this case. I said the following.

This complaint focused on a guarantee given to Mr T to settle his claim against Prudential for mis-selling of two pension policies.

I could see that in 2000 Mr T entered into an agreement with Prudential about this. Under this agreement Prudential agreed to ensure that the value of benefits would be at least equal to the value he lost from his employers scheme. It noted that if he transferred his pension to another provider the guarantee would be valued at that time.

The guarantee was relevant at retirement, if Mr T died or if he wished to transfer his pensions away from Prudential. On the assumption that Mr T had still not transferred or claimed his retirement benefits that guarantee remained in place. As the value reflected the assumptions set out by the regulator and the underlying investment performance of his pension policies it would inevitably vary until the date it became crystallised because of one of those events.

I thought it was important to note that the guarantee remained in place even though its value may change from time to time. The redress agreement guaranteed an outcome at death/retirement or transfer. That outcome can only be valued when one of those events occurred.

Regulator principles

In considering this complaint I considered the obligations the Prudential had to Mr T under the regulator principles that apply to its business. These included that the Prudential:

- *must pay due regard to the interests of its customers and treat them fairly (principle 6) and*
- *must 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 (principle 7).*

The guarantee was clearly an important part of the policy but I wouldn't expect Prudential to include a valuation for it each time it issued a valuation for the policies. I said that because its value was linked to the events at the time (death/transfer/retirement) and required a manual calculation. However I thought it was reasonable to expect the existence of the guarantee to be highlighted in any statements and valuations. From what I could see this was done and Mr T was signposted to the mechanism for gaining a valuation, which he then used.

However it did seem that Mr T felt he was in a catch 22. He said he could not decide what to do with the policy without the VOG valuation but Prudential wouldn't give him one until he said what he wanted to do with it. I could understand his frustration. It seemed there was some miscommunication here. I said that because the provision of a VOG to consider a transfer didn't bind Mr T to make that transfer so it should not have created a catch 22 in the way it did. It seemed to me that he was hesitant as he thought he might be committing to a transfer that he might not wish to make if the value didn't support that decision. If I was wrong in that I invited Mr T and Prudential to comment on that before I issued my final decision. For those reasons I thought Prudential's communication in that regard could have been better and didn't comply with principle 7 (above).

But I didn't think that miscommunication caused any financial loss. I said that because the guarantee wasn't lost and Mr T didn't elect to transfer in the light of the VOG. I did note that it caused some delay but that was a matter considered in Mr T's complaint in 2021 and was not part of this complaint. It was likely I could not now consider that complaint due to the time that has passed since it was made and settled. So I had not considered it here.

Provision of information and recommendation to take financial advice on the VOG.

It seemed Mr T was complaining that he had missed an opportunity to capture what, with hindsight, seems to have been a good opportunity. In 2021 while interest rates were lower the cost of securing this guarantee was greater and meant that the value in late 2021 was higher than it is now.

Mr T said that:-

- the Prudential should have recommended he take financial advice about the value of the VOG at that point and that had he done so he felt certain he would have been advised to transfer out. He felt that because of this he missed out and should therefore be entitled to claim the higher VOG value that applied in late 2021.
- he didn't understand the link to interest rates and this should have been explained.

I didn't agree for the reasons already given and because:-

- I could see that he took some financial advice during 2021 and because of this wrote to ask for a valuation of the VOG. I noted that Mr T subsequently said it wasn't a current IFA, but that isn't the fault of Prudential and it had no way of knowing that.
- What is clear is that he understood the benefit of taking financial advice on pensions and because of that asked for a VOG valuation to assess the complete picture. So even though the VOG valuation didn't include a recommendation to take financial advice I didn't think it needed to. I said that as there were enough recommendations in the other papers and it was clear from his email that he wanted the VOG to enable him to review the full picture. The fact Mr T didn't then review the valuation with a financial adviser wasn't Prudential's fault.
- But even if I was wrong in that, I didn't think it would have made a difference. I said that because he expressly asked for the VOG to enable a review but then did not seem to have reviewed it. That suggests that even if the papers had suggested taking financial advice it would not have made a difference to whether or not he then did so.
- I didn't think Prudential was required to set out details of what would affect the value of the VOG (such as the impact of interest rates and/or the value of the underlying investments). He was provided with the information he requested at the time to enable him to form a view about his choices at that point in time. The agreement in 2000 entitled him to a guarantee and that was unaffected by any changes in interest rates etc so I didn't think the Prudential needed to explain that.
- But even if I was wrong in that I could see that he had a call with Prudential shortly after the 2021 VOG valuation was issued. During that call Mr T was reminded that the valuation for the VOG could increase and decrease. But that didn't seem to have made him decide to review it.

Finally the guarantee remained in place irrespective of any increases or decreases in the underlying value of the VOG. To give him the value in 2021 would be to give him more than he is entitled to at the moment.

Further I couldn't see that Prudential had done anything that prevented him from taking that value in 2021, had he wished to do so. So it didn't cause him to miss the opportunity that was available in 2021.

Events in 2023

I could see that there was further confusion in 2023 when it was implied to Mr T that he had to take financial advice. There was also a delay while Prudential checked whether new guidance from the financial regulator meant that it had to offer Mr T the opportunity to augment his pension.

This issue was clarified after some delay. Prudential apologised for this, clarified that wasn't the case and paid £200 for that error. Given that Prudential clarified this quickly and apologised I thought the payment of £200 was fair and reasonable in the circumstances.

For all those reasons I didn't propose to uphold this complaint as I thought Prudential had acted in a fair and reasonable manner.

Prudential replied and said :-

The value of the guarantee could only accurately be calculated once the member was claiming the pension plan benefits and crystallising the guarantee (at the guaranteed scheme retirement age). The FCA provided it with new assumptions every quarter and the FCA guidance stated (from April 2023) that until the member wished to take the benefits and confirmed it is needed to support them in retirement it could not provide an actual calculation and that any actual offer calculation had to be returned within 3 months or it would have to be recalculated based on new assumptions provided by the regulator.

It could provide an estimate of what the value of the guarantee could be worth at the date of calculation only using the current assumptions provided by the regulator. The value of the guarantee crystallises once the member has reached the guaranteed scheme retirement age therefore if the member is under that age, in this case 65, it requests they seek financial advice and send confirmation that the advice has been received, where the member does not wish to seek advice it required them to sign a waiver. The reason for this was that :

1. The value of the guarantee was designed to run until the member reaches the guaranteed scheme retirement age and therefore if taken prior to that age the member can be disadvantaged and any payment made early by Prudential is in full and final settlement and it needs to ensure that the member understands that they cannot come back to it at a later date if they believe the loss would have been higher.
2. The value of the guarantee is paid as cash and therefore can have an impact on any means tested benefits a member may be receiving now or in the future and it needs to ensure the member is fully aware of this and that Prudential are not liable for any refusal, reduction or removal of said benefits.

It had provided Mr T with estimates of the guarantee using the assumptions provided by the regulator at the time of calculation but they were subject to change and were just an estimate not an actual offer. Until the member reached the guaranteed scheme retirement age and wished to draw the pension plan benefits or if he wished to take the benefits prior to the guaranteed scheme retirement age of 65 and had received financial advice or signed the waiver it couldn't provide an actual offer.

Mr T said:-

- He still didn't know how to crystallise his redress and move his pension into drawdown due to confusing information.
- In particular there was confusion as to whether he had to take financial advice that had to be confirmed in writing before he could crystallise the redress and plans.
- In 2023 he was told on 31 March 2023 he needed to take financial advice and that he needed a signed letter from the financial adviser stating that this had been done. He was then told on 13 April 2023 that he didn't need an IFA to advise before he could accept the redress.

- He was also told on 1 April 2023 that there were new guidelines that Prudential was assessing to see if they affected the method of calculation of any redress. The fact they didn't make a difference was not clarified until October 2023. So he didn't think Prudential had clarified the position quickly.
- He referred to two letters from the Prudential In mid-October and late November 2023. He quoted from the October letter which said

"You had previously requested to take the pension plan benefits of the above plans and crystallise the guarantee. We advised that you would need to seek financial advice to do this". Furthermore paragraph 3 states "If you still wish to take the benefits of your pension plans prior to the guarantee scheme retirement age and crystallise the guarantee we still require that you seek financial advice and that we receive written confirmation from you and the financial adviser, as previously advised before we can complete an actual loss calculation and send you an actual offer and transfer paperwork for your pension plans". Paragraph 4 states "If you are still looking to do this then please send us the written confirmation from you and your financial adviser stating that you have been advised and that the financial adviser has included within any advice given, that by taking the benefits prior to the guarantee scheme retirement age you may be disadvantaged and that any payment made early will be in full and final settlement and you cannot come back to us at a later date if the loss would have been higher and that the financial adviser has fully explained the impact of receiving as a cash payment on any means tested benefits you may be receiving or wish to receive in the future"

- He felt this clearly said they expected him to take financial advice before he could access his money. He felt this was more than an implication that he should take *financial advice*.
- This was reconfirmed in a telephone call in early November.
- Further his financial adviser had confirmed they could not give financial advice without the redress offer and up to date illustrations of his two pensions plans.
- The letter sent in late November 2023 said
 - *"I have read our letter of 17th October 2023 and it does say "we advised that you would need to seek financial advice to do this as you are under a guarantee scheme retirement age of 65". This is incorrect, we strongly recommend you seek financial advice but it is not mandatory"*
 - The Prudential referred to only one sentence in the letter and made no comment on the other paragraphs which said it was mandatory. This caused further confusion because it didn't deal with all of the paragraphs in the earlier letter.
- For those reasons he didn't think £200 was fair and reasonable for the delays, confusion and misinformation Prudential had admitted and that his lost was many thousands of pounds. He also wanted to have a clear and unequivocal explanation from Prudential about how to crystallise his redress and pension without financial advice being mandatory.
- He clarified that the catch 22 referred to the requirement to take financial advice but

the inability to take it without the guarantee offer and plan values.

- He also said that he was not able to give the November 2021 illustration attention due to external work commitments that continued to date. He also said his wife was very unwell of a prolonged period from 2020 onwards. His wife had to retire early due to health and their income dropped significantly while the mortgage costs increased. He still had children that he was supporting. He was relying on the pension redress to pay off as much of the mortgage as possible and then restructure and reduce the stress on the family. He also wanted to take the balance of his pension via drawdown. He was concerned that my conclusion allowed the Prudential to continue to leave him in a catch 22 and he would not be able to access his pension until he was 66.
- He didn't think that a reference in a telephone call to the value of investments going up or down was a suitable form of communication for a situation where the value being considered related to previous mis-selling. He felt most people would think this referred to the performance of the stock market and very few would understand it was also linked to interest rates. The "*Summary of Guarantee Calculation*" said that "*The redress has been calculated in accordance with the FCA's rules and guidance using an approach which has been approved by an actuary. It takes account of the market conditions at the valuation date and this could mean that the redress could be different if it was calculated on a different date*". In his view Market conditions would suggest to a lay man "stock market" and nothing connected to interest rates. Had he been told there was a direct link to interest rates and that they were at a historic low with probability of going even lower almost nil against the probability of them rising being pretty high he would have acted. By the time the Prudential admitted it had given bad information and bad service the damage was done and it was in the interests of Prudential to delay.

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.

In the light of what Mr T said I have reconsidered my proposed conclusions and also raised further questions of Prudential. Prudential have responded and further information has been sent to Mr T.

I note Mr T's comments with respect to the catch 22. I put this to Prudential who clarified the position on financial advice and this information was passed to Mr T. It confirmed that it could issue an estimate of the value of Mr T's VOG to assist him in considering his choices. Mr T was understandably frustrated by some of the replies from Prudential and felt that had the answers been available at the outset the complaint would not have been needed. He felt that the confusion benefited Prudential by preventing him making a decision whilst interest rates went up which was to his detriment. He also commented on typographical errors and poor grammar in the reply from Prudential which he felt highlighted their unprofessional approach. Prudential also confirmed he could provide a waiver instead of confirmation re advice but this had not been mentioned clearly in the past.

He was also frustrated that the Prudential had information about his old employers pension scheme and were best placed to confirm if he would be disadvantaged by accepting the redress. While I appreciate his comments Prudential is responsible for providing information and not advice. It is responsible for ensuring it correctly calculates the VOG in accordance with the guidance from the financial regulator and the settlement it entered into with Mr T. It cannot provide him with financial advice as to whether or not to accept the VOG and whether

he would be disadvantaged by accepting it.

I am sorry to hear about Mr T's personal circumstances at the time of the events in November 2021 and the impact these are having on him and his family. I can understand that these could have meant he didn't give his full attention to the information provided to him. But that isn't Prudential's fault. It provided him with information and spoke to him over the phone at the time. So I can't reasonably hold it responsible for his decision not to proceed and accept the value issued at that time.

I can however understand that his personal circumstances would affect how he responded to the confusing information provided by Prudential and that the impact on him might be greater due to his situation. I have therefore taken that into account in reviewing the award for distress and inconvenience.

I note Mr T's comments about his understanding of market conditions. But as I explained the guarantee remained in place so it didn't matter that he may not have understood what market conditions meant. For that reason and for the reasons set out in my provisional decision I have not changed my mind on that issue.

I agree that the issue of the need for financial advice was not clarified quickly and there was confusion. I have therefore reconsidered my award for distress and inconvenience taking this, his other comments and personal circumstances into account. Having done so I have increased it to £350.

I note that Mr T feels that the proposed award of £200 was not fair and reasonable due to the confusion and because of the size of his loss. I note Mr T's comments but as I explained in my provisional decision the award is to reflect the distress and inconvenience caused to him not to compensate for the loss he believes he has suffered by missing out on a higher VOG.

Putting things right

In order to put things right I think that Prudential should pay a total of £350 for distress and inconvenience.

My final decision

I uphold this complaint in part. I direct that The Prudential Assurance Company Limited should within 30 days of this service notifying it that Mr T has accepted this decision pay him a total of £350 for distress and inconvenience.

For the avoidance of doubt, if and to the extent that Prudential has already made a payment to Mr T it need only pay such further amount as is required to increase the total payment to £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 April 2024.

Colette Bewley
Ombudsman