DRN-4729623

Financial Ombudsman Service

The complaint

Mr L complained that The Prudential Assurance Company Limited (Prudential) is not allowing him to take his pension benefits as a lump sum. This decision will cause him significant financial hardship.

He would like to be allowed to take his pension benefits as a lump sum.

Mr L has been assisted by Mrs L in bringing his complaint. For reasons of simplicity and clarity I will refer to all correspondence as if it had come from Mr L.

What happened

In March 1995 Mr L transferred the deferred pension benefits he had accrued from an employers' pension scheme to a Section 32 Buy Out plan with Scottish Amicable. This plan was subsequently transferred to Prudential, which took over management of his pension.

In 2018, Mr L contacted Prudential to ask about taking his pension benefits. Prudential explained to him that his employers' pension had been 'contracted out' of the State Earning Related Pension Scheme (SERPS). This meant that it had to pay him a Guaranteed Minimum Pension (GMP) which would be at least as much as he would have received from SERPS if he had remained within it. Although Mr L was turning 60 in 2018, the GMP pension he held with Prudential could not be taken until his normal state retirement age, unless the pension benefits had grown to the extent that it could afford to pay the amount he was due. Prudential confirmed to Mr L that this was not the case in 2018 and that to be able to pay his benefits to him as a lump sum or transfer the policy to a new company, the cost of providing the GMP would need to be met from his funds.

In February 2023 Mr L contacted Prudential again to find out how much his policy was worth, as he wanted to take his pension benefits after he turned 65 later in the year.

Prudential and Mr L spoke on many occasions in June 2023, as he explained that he wanted to take his pension benefits as a cash lump sum. Prudential explained to Mr L that this was not possible and his options for taking his benefits were:

- Take a GMP annuity which would provide him an income
- Transfer his benefits to another provider. As the value of his benefits were over £30,000, he would need to take advice from a financial adviser (FA) registered with the Financial Conduct Authority (FCA). This was a legal requirement because by transferring his benefits he would lose his GMP rights.

He was not able to take his benefits as a cash lump sum from Prudential, as this would also result in him losing his GMP benefits. During a call on 26 June 2023, Prudential raised a complaint on Mr L's behalf.

Mr L's complaint points were stated by Prudential as being:

- *You do not accept you only have two options for claiming your policy.*

- *You took this plan out with Scottish Amicable and didn't sign anything to allow Prudential to take over.*

- *You feel it is your right to do as you want with the policy*

- *You are unhappy that as the Guaranteed Minimum Pension (GMP) is underfunded then you have to take an annuity via Legal & General (L&G) or transfer using a financial Advisor (FA) in addition to being advised that you cannot take the policy as a lump sum.*

- *You are unhappy as the plan was never GMP until it was transferred to us*

- *You were led to believe that the plan would be paid as a lump sum*

- *You are going through financial difficulties and urgently need this paid as a lump sum*

- *You were unable to speak to a manager when you asked to.*

Prudential responded to Mr L's complaint on 29 August 2023. It did not uphold the majority of his complaint points but did uphold his complaint that he was unable to speak to a manager when he asked to do so and also that Prudential had failed to provide him with the value of his benefits in a reasonable time. It offered him £150 in respect of the points upheld.

Prudential also said that it sympathised with Mr L's wish to take his benefits as a lump sum, but explained that as his policy contained GMP benefits, this limited the options he had for taking his benefits. It explained to Mr L how he could transfer his benefits to a different provider, but that he would need to take financial advice before Prudential could approve the transfer.

Unhappy with this response, Mr L brought his complaint to this service.

Conversations continued between Mr L and Prudential, leading Mr L to raise another complaint on 14 December 2023, saying that he remained unable to claim his pension benefits and that Prudential had provided him with incorrect information. Prudential replied to this complaint on 21 December, rejecting his complaint about his inability to claim his pension benefits, but offering another £125 in respect of the distress and inconvenience it had caused him by giving him some incorrect information.

Our investigator reviewed the evidence and formed the view that the complaint should not be upheld. Mr L was unhappy with this view, so this case has been passed to me to review the evidence again and make 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.

Having done so, I agree with our investigator and do not uphold this complaint.

I can appreciate that this will be very disappointing to Mr L, so I will explain how I have reached my decision.

Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly.

In this case, the key issue is that Mr L, for very valid and understandable reasons, is looking to take all his pension benefits as a lump sum. I've read the evidence that he's provided and can appreciate why this is so important to him.

As I've mentioned above, I can only uphold his complaint if I find that Prudential is incorrectly preventing him from doing this, and unfortunately for him, I can't see that it is.

It's clear to me that Mr L was in a workplace pension for a number of years that had contributions that were contracted out of SERPS. After he left his employer, he transferred his pension funds to what is called a Section 32 pension with Scottish Amicable in 1995. This section 32 pension had an obligation to pay at least as much as the additional pension Mr L would have received on retirement had he remained within SERPS. This was known as a GMP. Some time later, Prudential took responsibility for his pension funds, but kept the obligation to pay his GMP.

I can see from the documents Mr L received in 1995 that the GMP liability was included within Mr L's policy with Scottish Amicable and this obligation transferred to Prudential when it took over responsibility for Mr L's policy. This means that Prudential have to make sure that the legal rules are followed now Mr L wants to take his pension.

However, GMP considerations place some restrictions about when the pension can be taken. These restrictions are put in place to protect the policyholder from losing valuable protections and guarantees like annual increases or making sure that the fund will pay a higher level of income than it would otherwise provide.

To make sure that policyholders understand what they may be giving up, it is a legal requirement that if they want to transfer their pension benefits to another provider, losing these guarantees in the process, that they MUST receive regulated financial advice if the value of the fund is over £30,000.

This is the approach that Prudential is taking with Mr L's policy, and I can't see it's doing anything wrong by doing this. If it were to allow Mr L to simply take his benefits as a lump sum without getting financial advice, it would be breaking the law.

I can also see that Mr L has said that he has not been able to find a financial adviser to give him the advice he needs. Although I can appreciate this is very frustrating and distressing for him, I can't see that this is Prudential's fault.

In summary, I can't uphold Mr L's complaint as I can't see that Prudential has done anything wrong or treated him unfairly.

Having said that, I can well appreciate the difficulties this situation is causing for Mr L. I can see that our investigator has provided some information on where he could go to try and seek help and I think that this is good advice.

My final decision

For the reasons explained above, I do not uphold Mr L's complaint.

The Prudential Assurance Company Limited does not need to do any more than it has already offered to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 20 June 2024.

Bill Catchpole
Ombudsman