DRN-4845320

The complaint

Mr R complains that The Prudential Assurance Company Limited failed to pay him pension benefits he was due following a request he made in early 2023.

What happened

Mr R has been assisted in his dealings with Prudential and in making this complaint, for reasons that I will expand on later, by a family member. But in this decision, for ease, I will generally refer to all communication as if it has been with, and from, Mr R himself.

Mr R held pension savings with Prudential. Those pension savings benefitted from a valuable guaranteed annuity rate, meaning that the annuity Mr R might receive from his pension plan was likely to be greater than that available to him on the open market. In total Mr R's pension savings were valued at approximately £33,000.

By way of background, Mr R has lived abroad for many years. And he also suffered an episode of severe ill health that means it is now very difficult for him to deal with matters by telephone. So a family member, who is based in the UK, assisted Mr R in his discussions with Prudential about taking the pension benefits, and in dealing with his complaint.

Mr R complained to Prudential, in May 2023 about delays taking his pension benefits. And those delays continued until February 2024 when a pension commencement lump sum ("PCLS" – generally known as tax free cash) was paid to Mr R and his annuity commenced. During that time Prudential paid Mr R a total of £750 (in three payments of £350, £250 and £150 respectively) as compensation for the inconvenience he'd been caused. And it said that it would later consider whether the delays had caused Mr R any financial loss.

Mr R brought his complaint to us in December 2023 – before his pension benefits had been put into payment. The complaint was assessed by one of our investigators following the pension benefits commencing. The investigator thought that, had nothing gone wrong, Mr R's pension benefits should have started in March 2023. So he asked Prudential to pay some additional compensation to Mr R – reflecting both the delay in the payment of the PCLS and the annuity payments that would have been missed by the later start. But the investigator thought the payments Prudential had already made for Mr R's inconvenience were sufficient.

Prudential accepted the investigator's findings and has paid the additional compensation to Mr R. It paid him interest to reflect the delays to the PCLS payment being made. And it paid compensation equal to two annuity payments (since the annuity was set up to be paid at six monthly intervals) to Mr R.

Mr R didn't think the compensation that Prudential had paid was sufficient. He said that he had needed to travel to the UK in order for his family member to assist him in discussing the payment of his pension benefits with Prudential. He said that whilst awaiting the PCLS payment he had needed to use, and pay interest on, a credit card for some of his day to day spending. And he said that the extended delays had a serious impact on both his health, and that of the family member.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr R and by Prudential. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Our investigator provided a detailed timeline as part of his assessment. That timeline appears to have been accepted by both parties so I don't intend to revisit in any detail what happened when Mr R asked to take his pension benefits. Instead, in this decision I will consider the impact of those delays on Mr R, and whether Prudential has now done enough to put things right.

I think it would first be helpful for me to provide some background to how Mr R's pension benefits have come about, and the relevant legislation that affects how those pension benefits are paid.

Mr R's pension savings included a valuable defined benefit, called a guaranteed annuity rate. That meant that, under certain conditions, the annuity that Mr R might be able to receive from his pension savings would be greater than if an annuity had been purchased on the open market. But, some years ago, Prudential stopped offering annuities itself. So it arranged for another firm to provide annuities to its customers, on the same terms as provided by the guaranteed annuity rates. So, when Mr R wanted to take his pension benefits as an annuity, Prudential directed him to the other firm to provide the necessary quotations.

But in 2015, the way in which pension benefits could be taken were greatly expanded. So, as Mr R is aware, it is now possible to take pension benefits through a method known as drawdown. In that case the pension savings remain invested, and income can be taken whenever it is required by the consumer. But, in Mr R's case, the movement of his pension savings to a drawdown account is more complicated.

As I said earlier, Mr R's pension savings benefitted from the guaranteed annuity rate. So in terms of the pensions legislation they are what is known as defined benefits. To move them into a drawdown arrangement they would need to be changed into what are called defined contribution benefits. And a transfer of that nature is covered by additional legislation.

Section 48 of the 2015 Pension Schemes Act requires the trustees or managers of a pension scheme to ensure that a member takes independent financial advice when converting safeguarded or defined benefits (such as those held by Mr R) into flexible benefits, when the value of the benefits is greater than a certain amount. Currently that limit is set at £30,000. So if Mr R had wanted to put his pension savings into a drawdown arrangement, one of the options he was discussing with Prudential, the firm was entirely correct to insist Mr R took independent financial advice before doing so.

Hopefully that background explanation provides some context to the problems and delays that Mr R has experienced. And it will help him to understand why Prudential made some of the demands it did before his pension benefits were paid. But, most importantly here, I don't think those reasons provide any reasonable excuse for the length of any delay, or Prudential's failure to deal with Mr R's instructions in a timely manner.

Our investigator set out what he thought would have been a reasonable date for the payment of Mr R's pension benefits. Both Mr R and Prudential have accepted that date as being fair. And I too think that it reasonably represents what might have happened had nothing gone wrong. So I need to consider the position Mr R would have been in had his pension benefits been paid on that date – 21 March 2023.

It seems to me that Mr R has lost out in two ways from the delays that took place. There was an extended period of time before he received the PCLS that he had requested. And, since his annuity would be paid for the whole of his life (and so there was no opportunity to catch up on missed payments at the end of the annuity period), Mr R missed out on the annuity payments he would have received during the time of the delay.

Where a consumer is deprived of the use of money, I would generally think it reasonable for that loss to be compensated by the payment of interest, at a rate of 8% simple. But here Mr R says that he needed to use a credit card to support some of his expenditure given the delays that he faced in receiving his pension income. He has provided us with a credit card statement showing that he was carrying a debt of around £4,000 during that time on which he was paying interest.

I don't know how much interest, if any, Mr R was paying on his credit card debt. But on balance I think compensatory interest of 8% is fair and reasonable here to reflect the delay in Mr R receiving his PCLS payment. But the PCLS Mr R received, albeit 11 months later than he should have, was marginally higher than he would have received in March 2023 had nothing gone wrong. So I think it reasonable that difference is taken into account when any compensation is calculated.

Mr R's annuity is paid every six months in arrears. So, if the annuity had started in March 2023 as I think it should have, Mr R has lost out on the income payments he would have received in September 2023 and March 2024. So I think those payments (plus some compensatory interest to reflect the delay in their payment) should be paid to Mr R by Prudential. But the annuity payments Mr R will receive going forwards are actually higher (by around £120 per annum) because of the delay. Prudential isn't seeking to offset any of that gain against the compensation it has paid meaning that the delay means Mr R will actually be better off than he would have been over the longer term.

There is no doubt that the extended delays will have caused considerable distress and inconvenience to Mr R. And I think those issues will have been compounded by both his medical condition and the fact that he lives outside the UK. So I think it right that Mr R is compensated in this regard. As I said earlier, Prudential has already paid Mr R a total of £750 for the distress and inconvenience he has been caused. I think an award of that amount is in line with what I would expect to make in circumstances such as these. So I don't think Prudential needs to pay Mr R anything more for his distress and inconvenience.

I have seen that Mr R has set out some other costs that he thinks Prudential should be considering. Specifically he says that he needed to travel to the UK so that he could use the assistance of a family member when taking with Prudential on the phone. And he says that his health has deteriorated as a result of the travelling and the stress this matter has placed on him.

I am very sorry to hear about these problems. And I can understand why Mr R might have thought it necessary to travel to the UK to seek some resolution. But I'm not satisfied that he was required to make that trip by Prudential. The firm had previously dealt with Mr R whilst he was abroad, and seemed happy to continue to do so. So I don't think Prudential should pay those costs, or any further compensation in that regard.

Mr R has asked whether it would be reasonable to ask Prudential to reverse his annuity purchase, and allow him to keep his pension savings in a drawdown arrangement. As I explained earlier, the nature of Mr R's pension benefits meant a drawdown arrangement would only be available to him after he took independent financial advice. But that option was open to Mr R at the time and he chose to proceed with the annuity regardless. I'm not persuaded that it would be reasonable to direct Prudential to allow Mr R to reverse the decision he previously made to take an annuity.

Putting things right

I have set out above what I think needed to be done in order for Mr R to be put back into the position he would have been had his pension benefits been put into payment in March 2023. I am satisfied that, over the past months, Prudential has now taken sufficient actions, and paid Mr R appropriate compensation, to meet those aims. Prudential has paid Mr R interest to reflect the delay to his PCLS being paid. It has paid compensation equal to the two annuity payments that Mr R missed out on. And it has paid Mr R £750 for the distress and inconvenience he has been caused.

Overall I am satisfied that there is nothing more that Prudential needs to do in order to fairly compensate Mr R for the delays it caused in the payment of his pension benefits.

My final decision

My final decision is that I uphold Mr R's complaint. But I am satisfied that the compensation already paid by The Prudential Assurance Company Limited is fair and reasonable in the circumstances of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 August 2024.

Paul Reilly
Ombudsman