

The complaint

Mr E is unhappy that The Prudential Assurance Company Ltd mistakenly told him he was entitled to a tax-free lump sum from his pension

What happened

Mr E had two 'section 32' pension policies with Prudential. In 2022, in anticipation of Mr E reaching his 65th birthday in May 2023, Prudential began writing to him to provide retirement quotes and other information about taking benefits from these when he reached age 65.

Mr E's initial complaint to us concerned the larger of the two policies. Prudential's letters about this policy explained it had an important benefit by providing a Guaranteed Minimum Pension (GMP) of £5,582.20 per year in retirement, payable via an annuity, and may also provide a tax-free cash lump sum (TFC) of £25,365.05 if the value of the policy was high enough to also cover this.

However, because Prudential no longer offered annuities, and so were unable to provide the income set out in the quotes, they confirmed that Legal and General Assurance Society Ltd (L&G) would honour these if Mr E chose the annuity option. Mr E sent the necessary documentation to L&G, confirming he wanted to take advantage of the TFC that was quoted, together with the above-mentioned annuity option.

It soon became apparent the policy value wasn't enough to be able to fund the purchase of an annuity, as well as pay the TFC. There was no TFC option available on the larger policy. Mr E was unhappy about this, as he felt he'd been misled. He felt that Prudential's various letters and quotes clearly said he was entitled to this sum, so he complained to them.

Prudential didn't uphold Mr E's complaint, saying they'd repeatedly told Mr E in their letters that he wasn't entitled to any TFC. Unhappy with this, Mr E brought his complaint to this service – he felt that Prudential should pay him the £25,365.05 as compensation for missing out on those funds, which Prudential had clearly told him he was entitled to and in respect of which he'd made certain financial commitments.

One of our Investigators began considering this complaint. As part of that process, he also asked Prudential about the smaller policy, which had yet to be paid. It transpired that Prudential had provided incorrect information regarding its value, which helped cause delays in these funds being paid to L&G. Prudential approached L&G for information to allow it to calculate whether this delay had caused any financial loss to Mr E.

In the meantime, our Investigator issued his view on Mr E's complaint (regarding the larger policy and unpaid TFC). He explained we couldn't ask Prudential to pay Mr E the TFC amount. It was never a sum Mr E was entitled to. But he felt Mr E had been misled, and had experienced considerable distress as a result, and so asked that Prudential pay Mr E compensation of £1,000 in recognition of the distress their actions had caused. And he set out the steps he felt Prudential should take to calculate if Mr E had suffered any loss caused by any delay in transferring the larger policy funds to L&G.

Mr E accepted our Investigator's view, although was disappointed with the compensation that was recommended. However, Prudential disagreed, repeating their belief that they'd made it sufficiently clear in all communications that TFC was not available. They felt £1,000 compensation for distress and inconvenience (D&I) was disproportionate to the amount of time that Mr E thought he was entitled to the TFC. And they also questioned the mistaken reference to a loss calculation being needed in respect of the larger policy, which they felt had been paid to L&G on time.

Our Investigator responded to Prudential, agreeing that the larger policy had been paid on time, but confirmed his belief that £1,000 was fair compensation for the significant disappointment Mr E experienced as a result of being incorrectly told he was entitled to TFC.

Prudential still disagreed and so asked that this complaint was considered again by an Ombudsman. In the meantime, Prudential received a response from L&G regarding their 'small policy delay' enquiries. It transpired that Mr E was actually better off, by over £600, as a result of their delay, and so no financial loss calculation was needed. However, they did agree that Mr E had experienced distress in relation to this issue and paid him £250 compensation in recognition of that distress.

As the parties remained unhappy with our Investigator's outcome, this complaint was passed to me, an Ombudsman, to consider the matter afresh. And having done that, I reached a slightly different conclusion to our Investigator, and so issued a Provisional Decision outlining my thoughts.

My Provisional Decision said as follows:

I've looked very carefully at all of the information on file, including all communications with our Investigator after he'd issued his view on the matter. I want to begin by looking at issues relating to the payment of the TFC.

The larger policy

Firstly, I want to comment on Mr E's key issue when he brought his complaint to our Service – that Prudential should pay him the £25,365.05 TFC that he believes he was promised by them in respect of this policy. I don't agree Mr E is entitled to this.

I think it's clear, from the outset, that Mr E's pension fund wasn't of sufficient value to enable any TFC to be paid. On 21 January 2023, Prudential sent a letter to Mr E confirming the value of his pension fund was £78,396.86 at that time. This letter also explained about the valuable benefits that his pension provided, a GMP of £5,582.20 per year. That letter said, amongst other things:

- *The GMP – "The first priority of your fund is to purchase your GMP. Any surplus fund may then be used to provide additional options".*
- *"We are required to pay the following GMP benefits – a pension for you of £5,582.20..."*
- *"Based on our current pricing, the cost of providing your GMP is £135,894.28... Please note that your current fund value isn't large enough to secure the GMP benefits payable at age 65. We'll make up the shortfall so that the benefits can be provided from your normal retirement date, but this will mean that no tax free cash, or further benefits are available".*

Leaving aside the communications that took place after this date, it's clear the amount Prudential needed to pay to secure an annuity to pay the GMP Mr E was entitled to was

significantly in excess of the value of his policy - £135,894, against only £78,396.86 being available to purchase it. Prudential needed to make up the shortfall to allow the necessary annuity to be purchased. And the 21 January 2023 letter is clear that TFC would not be paid. So, in simple terms, Mr E was never entitled to any TFC payment (unless he transferred his pension away on the open market, losing his GMP guarantee in the process).

When someone brings a complaint to our Service, and if we conclude that a business has acted unfairly or incorrectly, we ask that business to take the necessary steps to return that consumer to the position they would have been in had the business' 'mistake' not occurred.

Here, Prudential didn't make a mistake – their conclusion that there were no funds to pay the TFC was correct. Mr E was never entitled to the TFC, and so it wouldn't be appropriate to ask Prudential to pay him that (or any) sum – to do so would put him in a significantly better position than he would otherwise have been in. So, I won't be asking Prudential to pay anything further to Mr E in relation to the TFC element of the 'larger policy' complaint.

The smaller policy

The same principles apply to this policy as the larger one – the policy is set up to provide a GMP first and foremost. Although here, the cost to provide the GMP under this policy – £434.72 per annum – was less than the total value of the policy which stood at approximately £12,000. As such, this policy allowed Mr E to receive a TFC payment too.

The processing of this policy/GMP annuity was affected by delays, which Prudential have since accepted some responsibility for. The facts are known to both parties, so I won't repeat them in detail here. In summary, however, Prudential provided incorrect policy data to Mr E on 3 May 2023, which they corrected on 11 May 2023. However, Mr E had already sent the first set of documents to L&G to enable an annuity to be purchased (and TFC paid) but didn't send the updated set of documents. This caused L&G's request for funds from Prudential (based on the wrong amounts) to be rejected. And it wasn't until September 2023 that the matter was addressed and rectified.

Prudential subsequently accepted that had they provided the correct details on 3 May 2023, Mr E's annuity would have been set up on time, and TFC paid. So, they approached L&G to find out if that delay had caused him any financial loss (which they'd compensate). However, it transpired the delay had actually resulted in Mr E being better off. This was because the cost to purchase the annuity to pay the fixed GMP amount was less in October 2023 (£7,662.71) than it would have cost in May 2023 (£8,280.61). This meant there was more TFC available to pay Mr E in October 2023 (£4,385.78, which he did receive) than there would have been in May 2023 (£3,639.27, which he should have received). And even after allowing a calculation for late payment interest to be made, Mr E was still better off by over £600 as a result of the delay. That being the case, Prudential concluded there was no financial loss they needed to pay to Mr E in respect of the delays.

And, having considered this matter, I agree. I'm satisfied Mr E is better off as a result of the delays, and so no financial loss payments are due, and so I won't be asking Prudential to do anything further in this regard either.

Which brings me to the second element of this complaint – the extent to which Prudential's communications have caused Mr E any circumstantial loss and/or distress and inconvenience. Because Prudential have assessed Mr E's complaints separately – initially his complaint was about the larger policy TFC, followed months later by a complaint about the smaller policy delays, and Prudential issued separate final response letters in respect of each, I'll deal with each separately.

Distress and Inconvenience – the larger policy

In considering this, I need to make it clear I can only consider awarding a payment for D&I where I'm satisfied distress has been caused as a direct result of any unfair or misleading actions on Prudential's part. I can't award a D&I payment if I think Prudential have acted fairly, and Mr E's distress has been caused by any misunderstanding on his part regarding what Prudential had sent to him.

So, to consider this further, I need to look at the sequence of events in more detail here. I've already highlighted above that Prudential sent Mr E a letter in January 2023 setting out he wasn't entitled to any TFC. I think that letter was sufficiently clear that Mr E would (or should) have been aware it was, at the very least, extremely unlikely he'd have been entitled to any TFC if he was intending on taking benefits from his 65th birthday onwards.

Prudential wrote again to Mr E on 21 March 2023, as he was only weeks away from his 65th birthday, inviting him to consider what actions he wished to take about his pension. On page two, it explained again about the importance of the income guarantee (GMP) he had. And on page three, it repeated the same text as that contained in the 21 January 2023 letter, as shown above. So, again, the message that Mr E wasn't entitled to any TFC was, I think, made sufficiently clear. I think it's a reasonable conclusion that he should have been clearly aware of this fact after receipt of the 21 March 2023 letter.

However, on 3 May 2023, following a telephone call between Mr E and Prudential, they sent him an information pack outlining the next steps he needed to take to enable him to obtain an annuity. The letter explained Prudential no longer provided annuities, but that L&G will provide this on their behalf, and that he'd need to contact them to arrange this. This letter was accompanied by a 'customer information pack', which (on page one) confirmed (amongst other things) the new value of the pension policy (£75,115.31), the GMP pension amounts (totalling £5,582.20), and the maximum TFC cash allowable (£25,591.81).

This document also stated, next to the TFC figure, that:

"this is the maximum amount and may not be available from the policy".

And on the second page of that document, it said:

"Special features, restrictions, or conditions that may apply to your policy: The tax free cash value shown in the table on the previous page is the maximum amount under the policy. The amount of tax free cash that is actually available may be less than shown and will depend on the funds remaining after your GMP has been secured. If the cost of securing your GMP exceeds the fund value then no tax free cash will be available".

I think this letter, and attachment, clearly repeats the message from the earlier letters and quotes – that TFC is only available if the value of the pension fund is large enough to fully cover the cost of securing an annuity to pay the GMP.

However, this letter and attachment didn't include details of the current cost to secure the 'GMP annuity' in the same way as the earlier letters did, which I think could have (and it appears did) cause Mr E to believe that TFC was available. And it was this document that was provided to L&G by Mr E, and on which they calculated their own quote.

I'm aware Mr E spoke with L&G on 15 May 2023, who quoted the annuity amount and full TFC on the basis of what was written in Prudential's 3 May 2023 documents. Mr E clearly

thought he was getting the full TFC at that time, and on that basis. And it was only some weeks later that Mr E began to have concerns as he hadn't received any TFC.

I understand that L&G advised Mr E to contact Prudential on 19 June 2023, and again on 7 July 2023, to ask why no TFC had been received. It appears that Mr E did contact Prudential on 18 July 2023, where he was told that there was no TFC available under this policy.

I know further communications took place after this date when Mr E sought to challenge this, and in which he expressed his frustrations. However, I don't think I need to consider these here for the purposes of establishing if D&I is payable. I say that because, from 18 July 2023 onwards, Prudential had made it clear to Mr E, correctly, that he wasn't entitled to receive any TFC. And I don't think it's reasonable for Prudential to have to pay Mr E compensation for any distress he experienced after it had been reiterated to him that no TFC was payable, or because he was unwilling to accept that.

So, I think the question for me is to what extent Mr E experienced distress – due to Prudential's communications and actions – between 3 May 2023 (the date of the information pack) and 18 July 2023 (the date Prudential re-confirmed that no TFC was due).

I can understand, up to a point, when Mr E says the 3 May 2023 information pack was confusing. Up to this point, he had been provided with documentation that clearly stated no TFC was available, because of the cost necessary to purchase the 'GMP annuity'. Although, it's not unreasonable to conclude he should have been aware of the potential conflicting information contained in the 3 May 2023 documents, prompting him to make timely further enquiries with Prudential to clarify this issue. I'm unaware that he did this.

But by the same token, it would have been clear to Prudential that no TFC was available either. Mr E had commenced the process to start taking benefits, only weeks after Prudential had confirmed the cost needed to purchase the 'GMP annuity' was nearly £60,000 more than the value of the policy. There was no chance of any funds remaining that would allow any TFC to be paid under this larger policy, something Prudential should have been clearly aware of. To include a clear reference to a defined TFC amount in the 3 May 2023 pack, at least without including the information to show there were no spare funds to provide it, was capable of being misleading – which it clearly was.

Furthermore, Mr E received quotes from L&G (based on the 3 May 2023 information pack) that stated he was entitled to the TFC. And at that point, he firmly believed he'd be getting it. Mr E was not an expert in pensions, and so it's not unreasonable that he would have relied on what he was being told by a pension company (L&G) in this regard. That's clearly not a criticism of L&G – they'd initially relied on the information contained within the 3 May 2023 documents Mr E forwarded to them (although I'm aware they've since accepted they could have been more proactive in assisting Mr E with his concerns).

So, considering the above sequence of events, I'm prepared to accept there was a period between 3 May 2023 and 18 July 2023 when Prudential's actions would have contributed to causing Mr E some avoidable confusion. And I think it's clear that Mr E experienced some distress as a result of that confusion.

However, I'm not persuaded the level of distress was significant. Mr E mistakenly believed he was getting the TFC for a period of about nine weeks only. And had he made proactive enquiries with Prudential regarding what I think were clearly identifiable inconsistencies (as detailed above), that period could have been shorter still. In other words, I think Mr E could reasonably have taken action to help mitigate this distress.

I'm aware Mr E said he started making plans about how to use the money – amongst them booking a family holiday and upgrading his car – which he wouldn't have done had he known there was no TFC. He believes this has caused him a financial loss. However, he continued with these purchases after he became aware there was no TFC available – which of course was his choice. But it wouldn't be appropriate for me to ask Prudential to pay compensation to cover this expenditure. Leaving aside what I've said above about what Mr E should have realised, he (and his family) had received the full benefit of that expenditure.

So, having considered all of the above, I do think a D&I award is appropriate here, albeit a much more modest one than was recommended by our Investigator. I must explain that the amounts this Service awards for D&I are fairly modest in value. Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website. So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think a D&I award of £200 is appropriate in relation to the distress caused by Prudential in relation to the larger policy issue – and is the amount I'll be asking Prudential to pay to Mr E.

The smaller Prudential policy

Prudential have accepted they initially provided incorrect information to Mr E on 3 May 2023 regarding the value of the policy, providing corrected information on 11 May 2023. As explained above. Mr E provided the initial documentation to L&G, rather than the updated documentation. This subsequently caused delays in the transfer of funds from Prudential to L&G, and accordingly the payment of the TFC and purchase of the GMP annuity.

Prudential have accepted that, had they provided the correct information at the outset, the delay would never have occurred. They've accepted responsibility for that, and as I've mentioned above have taken steps to enquire if any financial loss was caused by that delay. They've also accepted the delays would have caused Mr E distress, and in recognition of that has already paid him £250 compensation.

I agree this delay caused Mr E distress. He was without funds he was entitled to, and it appears the issue was only fixed after our Service's involvement. However, given what I've said above about the levels of D&I this Service awards, I think the amount Prudential has paid is fair in these circumstances, and is in line with what I'd have awarded. So, I won't be asking Prudential to do anything further in relation to the problems Mr E experienced accessing his 'smaller' policy.

Conclusion

I appreciate what I've concluded above will come as a disappointment to Mr E. I also acknowledge that Mr E has been unwell, and this whole episode has increased stress and anxiety experienced by him. However, I must approach this complaint from an impartial, fair and reasonable standpoint – that is my role. And if I think the evidence suggests Prudential were clear in the majority of their communications, I can't fairly hold them responsible if those communications were misunderstood.

I'm satisfied Mr E has experienced no financial loss here. And, given everything I've said above, I think £200 is a fair award for the distress Prudential's actions have caused Mr E.

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.

Prudential responded to my Provisional Decision, accepting my comments. No response has been received from Mr E.

Having reviewed the case again, my conclusion remains the same as that set out in my Provisional Decision. I think Prudential should pay Mr E compensation of £200 in respect of the distress their actions caused him.

My final decision

I uphold Mr E's complaint against The Prudential Assurance Company Ltd, and require them to pay him £200 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 August 2024.

Mark Evans
Ombudsman