

## **The complaint**

Mr A has complained about how The Prudential Assurance Company Limited has administered his pension policy. He says it has failed to honour a compensation guarantee.

## **What happened**

Mr A was advised by Prudential in 1990 to transfer the benefits of his defined benefit occupational pension scheme to a Prudential section 32 personal pension policy. In 1997, Prudential wrote to Mr A to say he may have lost out financially because of this. To put things right for Mr A, it said it would ensure his personal pension was of sufficient value at retirement to pay the equivalent value of benefits to those that he had lost by transferring.

Prudential also said Mr A could transfer ahead of retirement, in which case it said it would calculate the value of any lost benefits at that point. It is this part of the compensation guarantee that is the subject of Mr A's complaint. He says he would have transferred, or taken early retirement, when Prudential wrote to him in May 2022 with a loss calculation but he wasn't given the option to do so.

When Mr A complained about this, Prudential said he couldn't retire early because it had to pay him his Guaranteed Minimum Pension ("GMP") which wasn't possible at that point because his fund value was too low. It went on to say regulations meant a transfer wasn't possible then for the same reason – Mr A's GMP wasn't supported by the policy's fund value. It said compensation could only be paid at the same time as the GMP which is why its May 2022 letter didn't give Mr A the option to take any action with his policy. Mr A's view is that Prudential should have honoured the wording of his compensation guarantee by allowing him to transfer his policy (and take his compensation) at a point of his choosing which, for the purposes of his complaint, was when Prudential wrote to him in May 2022.

I recently issued a provisional decision in which I set out my preliminary findings. Both parties have been sent that provisional decision, so I won't repeat everything I said here. My provisional decision is, however, attached and forms part of this final decision.

I provisionally decided in favour of Prudential. Prudential had no further substantive comments. Mr A disagreed with what I said. I address his comments below.

## **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.

I've read Mr A's comments in response to my provisional decision carefully. I recognise his strength of feeling. However, he hasn't raised anything that I haven't already addressed. I won't, therefore, be changing my decision.

Mr A points to the root cause of his complaint as being Prudential's advice to transfer from his occupational pension scheme and the fact that it couldn't rectify that by putting him back into that scheme. He says had he been put back in his occupational scheme (or had

Prudential not given poor advice in the first place) he would have been able to transfer out of that scheme when he wanted to or been able to explore an ill health pension in a way that wasn't subsequently possible.

I addressed this in my provisional decision. In short, the issue under consideration *isn't* how best Prudential can now replicate the features and benefits of Mr A's occupational scheme. The issue under consideration is the extent to which Prudential has acted in a fair and reasonable manner in administering his Section 32 policy and compensation guarantee – in other words, consideration of what has superseded Mr A's occupational scheme. There isn't anything I can usefully add in this respect to what I've already said in my provisional decision:

*"I recognise Mr A has said he would have had far greater flexibility to transfer, or take benefits, had he remained in his occupational scheme. Maybe so. But that isn't a relevant consideration here. The issue under consideration is Mr A's compensation guarantee, not the extent to which that guarantee replicated the features of his occupational scheme. The guarantee could only do so much in that respect and, in any case, that issue was settled back in 1997 when compensation was agreed and won't now be revisited. As such, comparing Mr A's current options with what his options would have been had he remained in his occupational scheme isn't the right lens through which to view his complaint."*

Turning to the compensation agreement, Mr A says it was unambiguous that Prudential offered him the opportunity to transfer. He says the "fine print" Prudential is now relying on should have been made clearer to him when he was considering his options back in 1997. And he says the GMP legislation shouldn't be a relevant consideration here.

Again, I addressed all this in my provisional decision in which I agreed with Mr A about the wording of his compensation guarantee and associated "Questions & Answers" document. Indeed, in my provisional decision I quoted from the same documents Mr A is now pointing to in support of his argument. So, yes, those documents allow for a transfer away from Prudential. But this doesn't change the fact that in administering his policy, Prudential also has to take into account the legislative position – specifically The Contracting-out (Transfer and Transfer Payment) Regulations 1996, the key section of which I quoted from in my provisional decision. Those regulations mean Prudential couldn't transfer Mr A's policy unless the transfer value was enough to support his GMP – which it wasn't in 2022. As I said above and in my provisional decision, and repeat now, it's now immaterial whether or not similar considerations would have applied had Mr A remained in his occupational scheme.

The inference in Mr A's argument is that Prudential should have topped up his fund value in 2022 to meet his GMP which would have allowed him to transfer and for his compensation to also be paid. But my view was – and remains – that this wouldn't have been a proportionate response. As I said in my provisional decision:

*"So Prudential and/or the receiving scheme would not have met their obligations unless Prudential also topped up the fund value by the £44,222 shortfall ahead of any transfer. But even if that was possible under the terms and conditions of the policy, and there were no other allowance issues, I don't consider that would have been a proportionate response given Prudential was operating the policy in line with its terms and conditions, it was following the relevant regulations and its commitment to paying compensation to Mr A arising from the Pensions Review was never in doubt."*

Similar considerations apply to Mr A taking his benefits in 2022. That was an option under the policy terms and conditions – but only if the GMP was supported. I assume this is what Mr A is referring to when he talks about Prudential relying on "fine print". Even so, the terms and conditions of the policy are a relevant consideration. And even if Prudential had done

more to explain some of that “fine print” when Mr A was considering his options in 1997, I see no compelling reason why he would have decided against the guarantee offered to him. In coming to that conclusion, I have considered Mr A’s point about Prudential’s projected returns being high. But that’s with the benefit of hindsight. At the time, they wouldn’t have seemed unachievable. And even if they had been, there’s no apparent reason why Mr A would have taken different action bearing in mind being reinstated into his occupational scheme wasn’t an option.

The end result of all this is that Mr A couldn’t transfer in 2022. For similar reasons, he couldn’t take benefits from his policy. And, in the absence of being able to do either, Prudential couldn’t pay him compensation because that could only be paid when Mr A’s losses were crystallised which is on retirement, transfer or death.

Finally, I note Mr A has compared his situation with the situation facing Equitable Life policyholders. In his view, Prudential is similarly trying to avoid its financial obligations. In response, it’s worth noting that there are many reasons why the two situations aren’t comparable. But, more specifically, I draw Mr A’s attention to the following paragraph in my provisional decision which addresses his point about Prudential having to honour its financial obligations:

*“...it’s worth recognising Mr A is still entitled to his compensation. There has never been any doubt that he will be paid for the losses that arose from transferring from his occupational scheme at the point those losses are crystallised. Likewise, Prudential will honour his GMP, the value of which is currently far higher than the value of his pension plan. So, at face value, Mr A will be paid what he is due. Of course, the cost of putting things right for Mr A was higher in 2022 than it is now. And Mr A’s complaint has evolved to the extent that he is now, in effect, just claiming the difference in the cost of compensating him in 2022 relative to that cost now. But I wouldn’t ordinarily consider that to be a fair basis for compensation in itself. And for the reasons given above, restrictions relating to his section 32 policy meant he wouldn’t have been able to access that compensation in 2022 in any case.”*

In my provisional decision, I explained why I thought Prudential’s £100 distress and inconvenience payment was fair and reasonable. Mr A says this amount is “derisory” but hasn’t explained why that is the case, so I’m not persuaded to increase the award. In the same paragraph, he goes on to mention a pension transfer specialist would be needed who would charge 2% of a transfer value (and a minimum of £4,000). It’s unclear whether this relates to the distress and inconvenience award, or whether it relates to how Prudential has calculated his compensation guarantee (which did include an allowance for financial advice). Either way, it makes no difference to my decision. There would be no reason to award compensation to cover the cost of financial advice just because there were some customer service failings (which were limited in any case). And Prudential explained the rationale behind its allowance for financial advice within its loss calculation, and the process for Mr A to challenge that calculation. So Mr A should take the matter up with Prudential in the first instance if he disagrees with any specific element of his loss calculation.

With the above in mind, and having reviewed matters once again, I see no reason to depart from my provisional findings. I’m not upholding this complaint and I’m not directing Prudential to take any further action.

## **COPY OF PROVISIONAL DECISION**

### **The complaint**

Mr A has complained about how The Prudential Assurance Company Limited has administered his pension policy. He says Prudential failed to honour a guarantee on that policy.

## What happened

In 1990, Mr A was advised by Prudential to transfer the benefits of his defined benefit occupational pension scheme to a Prudential section 32 personal pension policy. Prudential subsequently looked into the suitability of its recommendation as part of an industry wide exercise known as the Pensions Review. In July 1997, Prudential wrote to Mr A to say he may have lost out financially by taking out a personal pension rather than remaining in his occupational scheme. It noted that Mr A's losses wouldn't be known until he retired. To put things right for Mr A, it offered him the following:

*“Therefore we offer to guarantee to make good any loss you may suffer by ensuring that your Prudential personal pension is large enough when you retire to pay you benefits of corresponding value to those you have transferred. You may, of course, still choose to transfer your personal pension away from Prudential to another approved pension arrangement. If you do this, we will calculate the value of any lost benefits at that time.”*

Mr A accepted Prudential's offer. Prudential wrote to him in September 1998 confirming its understanding of the pension benefits Mr A had lost as a result of the transfer. It referred to a “Questions & Answers” document it said it had previously provided, the relevant section of which (for the purposes of this complaint) said the following:

*“Q5. Can I take my personal pension away from Prudential?”*

*Yes. You can transfer your personal pension to another approved pension scheme.*

*If you choose to do this we will transfer the value of your guaranteed benefits at that time.*

*This calculation will be based on the benefit scales of your employer's scheme today.”*

In May 2022, Prudential sent Mr A a summary loss assessment. It did so in response to a request from Mr A. Prudential calculated Mr A's losses as being the difference between the value of his 'lost' occupational pension and the value of his personal pension, less a reduction for future income tax and an addition for charges. Prudential calculated Mr A's loss as being £70,672. Its letter didn't indicate whether Mr A could take any substantive action with regards to this, beyond offering up contact details if he had any further questions.

Importantly, Mr A's pension included a Guaranteed Minimum Pension, or GMP. Briefly, the GMP is a minimum amount an occupational pension scheme agreed to pay its members in order to be allowed to contract-out of the State Earnings-Related Pension Scheme. If a scheme member subsequently transferred their occupational scheme benefits to a personal pension, as Mr A did, the GMP has to be guaranteed by the receiving provider – Prudential in this case. In its May 2022 loss assessment, Prudential calculated the value of paying Mr A's GMP as being higher than his fund value. So, for the purposes of its loss calculation, it set the value of Mr A's policy as being the value of his GMP.

Mr A reached his Normal Retirement Date (“NRD”) in November 2023. In the run-up to that, Prudential wrote to Mr A with “important information” about the redress due on his pension. Similar to before, it calculated Mr A's losses as being the difference between the value of the occupational scheme benefits he lost and the value of his personal pension, less a reduction for future income tax and an addition to allow Mr A to take financial advice. Again, the value of Mr A's policy was set at the value of his GMP, his actual fund value still being too low to support the GMP. By this point, Mr A's loss was calculated as being £34,094. This time, Prudential did give Mr A options with regards to taking his compensation. These were summarised on an options form. The first option was to accept the compensation amount, which could only be paid to Mr A if he also took the benefits from his pension. The second option was to reject the offer and ask for a recalculation.

In February 2024, Mr A complained to Prudential. He said, in brief, that for the previous five years he had wanted to transfer his Prudential pension to a drawdown arrangement but had been unable to. He said if an options form had been provided in May 2022, he would have transferred and taken the compensation being offered. He wanted Prudential to honour that compensation amount rather than the lower amount now on offer.

In response, Prudential said Mr A couldn't retire early (in May 2022) because it had to pay him his GMP which wasn't possible at that point because his fund value was too low. It went on to say regulations meant a transfer wasn't possible then for the same reason – Mr A's GMP wasn't supported. It said compensation could only be paid at the same time as the GMP which is why an options form wasn't included in its May 2022 letter.

Mr A referred his complaint to us. He attached the documents Prudential had sent to him in 1997 which said he could transfer, the key passages of which I quoted from earlier. He thought Prudential hadn't honoured the terms of his compensation guarantee. Around the same time, Mr A complained to Prudential again – this time about the thoroughness of its original investigation, its failure to provide documents to him and the lateness of its November 2023 loss assessment letter, which he thought should have been sent far earlier. Prudential reiterated its point that the guarantee it had offered Mr A didn't absolve it of its obligations under the relevant GMP legislation. But it accepted it could have given Mr A more time to make an informed decision when it wrote to him in November 2023. It also thought some aspects of its customer service could have been better. It offered Mr A £100.

The matter is now with me to resolve.

### **What I've provisionally 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.

My starting point here is Mr A's compensation guarantee, the wording of which allowed for a transfer in terms that were hardly ambiguous. Mr A's view is that Prudential should have honoured the wording of that guarantee by allowing him to transfer his policy (and take his compensation) at a point of his choosing which, for the purposes of his complaint, was in May 2022 when Prudential sent him a loss calculation but no option to act upon it.

However, Mr A's guarantee isn't something that can be looked at in isolation. I draw his attention to The Contracting-out (Transfer and Transfer Payment) Regulations 1996, specifically the following in relation to the transfer of GMPs:

*“5(b) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents)”*

Mr A's fund value in May 2022 was £23,173. The cash equivalent value of the GMP was £67,395. So there was a shortfall of £44,222. Clearly, the fund value was not “of an amount at least equal to the cash equivalent” of Mr A's GMP. As such, Prudential was not in a position to allow the transfer. Its analysis was correct.

I note here that the value of Mr A's compensation was the difference between his lost occupational scheme benefits and the value of his GMP. After adjustments, this worked out as £70,672. Had Prudential tried to pay Mr A this amount in May 2022, the GMP would have still been underfunded – the fund value was £23,173 and the value of the GMP that had to be provided was £67,395. So Prudential and/or the receiving scheme would not have met their obligations unless Prudential also topped up the fund value by the £44,222 shortfall ahead of any transfer. But even if that was possible under the terms and conditions of the policy, and there were no other allowance issues, I don't consider that would have been a proportionate response given Prudential was operating the policy in line with its terms and conditions, it was following the relevant regulations and its commitment to paying compensation to Mr A arising from the Pensions Review was never in doubt.

Similar considerations apply to Mr A taking his benefits in 2022. That was an option under the policy terms and conditions (which Prudential has recently supplied) but only if the GMP was supported:

*7.3.1 The Policyholder shall have the option with the consent of Prudential of advancing the payment of his benefits to such Vesting Date...as the Policyholder shall select Provided that this option shall not be available unless the Accumulated Fund...would be sufficient to secure on the Vesting Date*

*(i) a pension for the Policyholder which from State Pension Age is of an annual amount no less than the Guaranteed Pension*

In other words, the decision to transfer is at the discretion of Prudential rather than being an absolute right under the terms of the policy and the exercise of that discretion is fettered by the need to provide for the GMP.

With the above in mind, I'm satisfied Prudential hasn't erred in its approach to the management of Mr A's policy. He couldn't transfer in 2022. Likewise, he couldn't take benefits from his policy at that point. And, in the absence of being able to do either, Prudential couldn't pay him compensation because that could only be paid when Mr A's losses were crystallised (essentially, on retirement, transfer or death). Prudential also couldn't reduce Mr A's compensation to support the GMP. It had to provide both and couldn't disadvantage Mr A by offsetting one against the other. For all intents and purposes, therefore, Mr A was trapped. Whilst this will be of little comfort to Mr A, it's not uncommon for consumers to face similar problems when trying to transfer or take benefits from section 32 policies in situations where fund values don't support the GMP. This isn't an issue that's confined to Mr A or Prudential.

Of course, in an ideal world Mr A's compensation guarantee would have included various disclaimers about the primacy of the policy's terms and conditions, the limits imposed by the legal and regulatory environment and so on. But even that line of thinking doesn't help Mr A. The guarantee was given at a very different time when the notion of unsupported GMPs would have seemed far less likely. And, as Prudential has said, its approach had the support of the regulator at the time. Some of the potential implications of Prudential's guarantee weren't therefore foreseeable. As such, I don't think it would be fair and reasonable to hold Prudential to what it said about transferring now that events have made that particular option unworkable. Besides, if Prudential had included more caveats about the option to transfer, I don't consider it likely Mr A would have changed his mind about accepting the guarantee. It is only much later that he turned his mind to transferring. I'm satisfied it wasn't a determining factor in his decision making in 1997.

I recognise Mr A has said he would have had far greater flexibility to transfer, or take benefits, had he remained in his occupational scheme. Maybe so. But that isn't a relevant consideration here. The issue under consideration is Mr A's compensation guarantee, not the extent to which that guarantee replicated the features of his occupational scheme. The guarantee could only do so much in that respect and, in any case, that issue was settled back in 1997 when compensation was agreed and won't now be revisited. As such, comparing Mr A's current options with what his options would have been had he remained in his occupational scheme isn't the right lens through which to view his complaint.

Finally, it's worth recognising Mr A is still entitled to his compensation. There has never been any doubt that he will be paid for the losses that arose from transferring from his occupational scheme at the point those losses are crystallised. Likewise, Prudential will honour his GMP, the value of which is currently far higher than the value of his pension plan. So, at face value, Mr A will be paid what he is due. Of course, the cost of putting things right for Mr A was higher in 2022 than it is now. And Mr A's complaint has evolved to the extent that he is now, in effect, just claiming the difference in the cost of compensating him in 2022 relative to that cost now. But I wouldn't ordinarily consider that to be a fair basis for compensation in itself. And for the reasons given above, restrictions relating to his section 32 policy meant he wouldn't have been able to access that compensation in 2022 in any case.

It follows from the above that I don't intend to uphold Mr A's complaint. I note here that Prudential offered Mr A £100 because of some customer service issues he experienced and because it accepted its November 2023 compensation letter hadn't given him enough time to consider his options ahead of his NRD. I consider this to be fair and reasonable in the circumstances. Prudential said it was sending its £100 payment by cheque so unless I hear anything from either party to the contrary, or any persuasive reason why the distress and inconvenience award should be increased, I won't be directing Prudential to take any further action in this respect.

**END OF PROVISIONAL DECISION EXTRACT**

**My final decision**

For the reasons given above, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 May 2026.

Christian Wood  
**Ombudsman**