

## **complaint**

Mr G has complained he was badly advised by The Prudential Assurance Company Limited ("Prudential") to transfer out of his occupational pension scheme ("OPS") in 1993. Prudential later reviewed the transfer under the industry wide pension review and offered Mr G compensation. But he doesn't think that was done properly.

## **background**

In 1993 Mr G transferred his pension to Prudential from his OPS – at the time he had already left his employment and wasn't paying into his OPS.

In 1998 his pension was looked at as part of the industry wide pension review and Prudential gave Mr G a guarantee that he wouldn't lose out by transferring his pension to Prudential. He retired due to ill health the following year and in 2001 his pension was reviewed again due to his early retirement. Mr G accepted Prudential's offer for an additional lump sum and higher monthly pension in full and final settlement of all claims against Prudential in October 2001.

But Mr G says he would've been better off if he'd been reinstated into his OPS. So he thinks Prudential should pay further compensation to increase his monthly pension income.

But Prudential say it hasn't done anything wrong. It's said it would've liked to reinstate Mr G into his OPS, but most employers wouldn't reinstate deferred members. So it didn't offer reinstatement for customers who'd transferred deferred benefits and it didn't try to get Mr G's pension reinstated. Mr G's employer withdrew the option of reinstatement for all ex-members in March 2000.

Prudential also say it worked out compensation in line with pension review guidelines at the time and Mr G was no worse off than if he'd stayed in his OPS.

One of our investigators looked into Mr G's complaint. She thought the pension income Mr G would've received if he'd remained in his OPS was similar to what he was getting from his Prudential scheme. So she didn't recommend that his complaint be upheld. But Mr G disagreed, so the complaint was passed to me for review.

In June 2017 I issued a provisional decision. I explained that I'd considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I noted that Mr G was advised to transfer his OPS to Prudential in 1993 and that advice was reviewed as part of the then regulator's industry wide pension review in 1998. The review was put in place as the regulator feared that some consumers had been given advice to transfer their pensions that didn't meet the required standards at the time.

Prudential said as part of the review its preferred outcome was to transfer consumers back to their OPS where available. But it didn't try to transfer Mr G's pension back as he was a deferred member of the OPS when he left and it said most schemes wouldn't accept transfers back from deferred members. So it gave a guarantee that the value of his personal pension would correspond to the value of the benefits as if he'd stayed in the OPS.

Mr G said he'd be better off if he'd been transferred back into his OPS. But I thought the aim of the review was to provide, as far as possible, the same level of pension benefits as the OPS would've offered at retirement. So I didn't now think it mattered whether or not Prudential could've attempted to transfer back to Mr G's OPS in 1998 as the compensation paid, and the guarantee, was to provide him the same or similar benefits as if he'd stayed in the OPS.

Mr G retired early in 1999 and bought an annuity at that time. And this was reviewed in 2001 to make sure the annuity he was receiving was similar to what he would've been entitled to if he'd stayed in his OPS. Prudential made an offer to pay more compensation to adjust his pension benefits to what he would've been entitled to if he'd remained in his OPS. In 2001 Mr G asked Prudential lots of questions and raised concerns about Prudential's offer. I was satisfied he'd carefully considered the offer before accepting it in full and final settlement of his claim. I also noted Mr G was given the opportunity to bring his complaint to an earlier ombudsman scheme at that time, but he chose not to.

Having looked at what Prudential had done, I thought it had worked out Mr G's annuity income in the way I'd expect it to. But I thought he'd been given some confusing information, so I thought it might be helpful to set out what had happened. In a letter sent on 26 November 2015, Prudential told Mr G that by June 2000 his entitlement in his OPS scheme was £3,225.72 per year at 65 and he'd be able to get a pension of £1,935.44 in November 1999. But that didn't take into account the fact that Mr G would've got a full ill health pension.

When Prudential worked out Mr G's pension entitlement it had assumed he would've retired from his OPS in November 1999 with a full ill health pension – i.e the £3,225.72. So there wasn't any early retirement reduction applied. There was a detailed benefit statement from Mr G's OPS in June 2000, so it showed what he was entitled to around the time of the review. The full entitlement in June 2000 would've been £3,225.72 per year, but that would've increased yearly according to the OPS' rules (it's been estimated it would've reached around £4,400 by Mr G's 65th birthday). But that figure was based on Mr G not taking any lump sum.

But Mr G had taken a number of annuities from Prudential over a number of years between July 1999 and November 2008. His current pension income is about £3,900 per year, but he's also taken £18,305.32 as tax free lump sums. I said I accepted that Mr G's pension with Prudential doesn't increase over time whereas the pension he would have got from the OPS would have done. But I was satisfied that when you take the higher income paid by Prudential over the first few years and the tax free cash that has been paid into account, the overall value of the Prudential pension is broadly reflective of the overall value of the OPS benefits.

Prudential was required to undertake a review of Mr G's pension with an aim of putting right any pension mis-selling at the time. Unfortunately I hadn't seen anything that made me think Prudential didn't follow the standards set down for the pension review. And I thought Mr G was aware of Prudential's offer when he accepted it. Given Prudential complied with the regulator's requirements when it investigated Mr G's pension in 1998 and 2001, I didn't think it would be appropriate for me to tell it to look into the matter again.

Mr G also alleged that Prudential staff may have committed a criminal act in respect of his pension. I said that the Financial Ombudsman Service is set up to resolve disputes between financial businesses and their customers. For the reasons set out above I thought his

pension review had been carried out in the way I'd expect. But I didn't think it's for this service to determine whether Prudential had also committed any criminal offences.

Prudential replied to my provisional decision, but didn't have anything further for me to take into account.

Mr G has responded to my provisional decision. He has raised a number of points that I'll summarise below:

- Prudential have committed a fraud against him.
- He should've been reinstated into his OPS at the time of the pension review.
- Prudential looked at his pension in the wrong phase of the pension review.
- He should've been entitled to a full ill health pension.
- He was denied the benefit of advice under section 67 of the Pension Act 1995.
- There is no annual percentage increase in his percentage income.

Mr G has said he doesn't dispute that the compensation calculation carried out by Prudential was done in accordance with the rules set down by the regulator. But he says he's lost out as a result of not being reinstated to his OPS.

### **my findings**

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I explained why I didn't comment on Mr G's allegations that Prudential committed criminal acts in relation to his pension. I understand Mr G feels very strongly about this, however for the same reasons I'm not going to comment further on it.

I've looked at the legislation Mr G has referred me to. But I think this relates to the powers of trustees and other people with the power to alter pension scheme rules. Here I'm concerned with the advice and transfer of a pension by Prudential, so I don't think it assists me in considering this complaint.

The question that Mr G would like answered is whether or not Prudential should've tried to get him reinstated to his OPS in 1998 – Mr G says his OPS would've accepted a transfer back even from a deferred member. I've thought about this, but I've also thought about the consequences of him not being reinstated.

Mr G has said that Prudential looked at his pension in the wrong phase of the pension review – he says his pension was considered under phase 1, but it should've been looked at under phase 2. Mr G says if Prudential had done what it should've done, he would've been reinstated to his OPS and he wouldn't have been denied the benefit of advice. And he says, if this had happened, he'd be financially better off than he is now.

I don't think Mr G was disadvantaged because the review was carried out as part of phase 1 rather than phase 2. And even if I agree Prudential should've reinstated Mr G to his OPS, I wouldn't tell it to do anything differently now. The aim of the pension review was to provide him the same or similar benefits as if he'd stayed in the OPS. And, for the reasons set out in my provisional decision, I think the overall value of the benefits Mr G is taking from his Prudential pension are broadly reflective of the benefits he'd get from his OPS, including there being a full ill health pension being paid. So I don't think it would've mattered now

whether or not he was transferred back into his OPS as I don't think he'd have been a different financial position.

Mr G has said that, if he'd been transferred back into his OPS, when it closed, he might've been able to move over to his new employer's defined contribution scheme. But in this decision I've looked at the advice he was given to transfer from his OPS to his Prudential pension. Prudential has accepted the advice wasn't right and it's done something to put right that failing. As I said in my provisional decision, I was satisfied he'd carefully considered the offer before accepting it in full and final settlement of his claim. I think Mr G was given the opportunity to bring his complaint to an earlier ombudsman scheme at that time, but he chose not to. For all the reasons set out above, I think what Prudential has done was fair.

**my final decision**

For the reasons set out above, I don't uphold Mr G's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 August 2017.

Mark Hutchings  
**ombudsman**