

complaint

Mr B complains that the Prudential Assurance Company Limited (Prudential) advised him to take out a new pension plan, instead of increasing his contributions into his first plan, which led to him paying higher charges.

background

Mr B took out a Personal Retirement Plan (PRP) with Prudential in September 1984 (Plan 1) when he was around 25 years old. He paid £15 per month into Plan 1.

He took out a second PRP with Prudential months later, in March 1985 (Plan 2). He paid £20 per month into Plan 2, on top of his contribution into Plan 1. Mr B said he can't remember exactly why Plan 2 was taken out. He said he'd always planned to increase his payments into Plan 1.

Each PRP incurred a monthly policy fee of £1. But the fee didn't increase when the contribution did. Mr B said over the years Prudential's representatives had told him that any excess fees incurred would be sorted out when the plans became due. Prudential said it didn't have any record of these discussions.

Prudential said Plan 2 gave Mr B more flexibility as it allowed him to increase his pension contributions during the year without incurring extra costs. He could only increase his contribution on the plan anniversary date otherwise.

One of our adjudicator's looked into Mr B's complaint and upheld it. She didn't think that it was in Mr B's best interests for Prudential to advise him to set up Plan 2.

The adjudicator said, in summary:

- Whilst Plan 2 allowed Mr B to increase his pension contributions that didn't make the sale of it in Mr B's best interests – he could have paid more into Plan 1 instead.
- Taking out Plan 2, rather than increasing his premiums into Plan 1, meant Mr B had to pay double the monthly fee each month.
- Mr B would've had to pay a late payment charge to increase his contributions into Plan 1 in March 1985, prior to the plan's anniversary date in September 1985. But, overall, this would've been a lot less than paying two lots of fees each month.
- Mr B likely was able to afford to pay the costs so he could pay more into Plan 1.
- As Mr B was only months older when he took out Plan 2 the benefits were unlikely to be much different to justify the need for a new plan.

Prudential didn't agree with the adjudicator. It said:

- In March 1985, if Mr B wanted to increase his payments into Plan 1, he would've had to pay £140 in missing contributions plus a late payment charge.
- As no point of sale documentation is available from the sale of Plan 2, we can't know what was discussed.
- The adjudicator can't state with any certainty what Mr B may or may not have done back in 1985.
- There is no evidence to suggest Mr B could afford to pay the arrears.
- There is no evidence to suggest topping up his existing policy was not discussed – it is more likely that this was brought to Mr B's attention.

- From a fact find completed in 1999, when a recommendation was made to Mr B to increase his contributions into Plan 2, it was found he had additional pension plans with other providers. He had a Group Personal Pension (“GPP”) from 1990, which employer contributions only were paid into. And a personal pension plan (“PPP”) started in 1992. Prudential concluded from this that Mr B wanted to have the flexibility of having separate pension arrangements.

The adjudicator issued a second opinion, still upholding Mr B’s complaint. She said, in summary:

- Where the evidence is incomplete her opinion is based on what is more likely than not to have happened in the circumstances.
- As Mr B was able to increase his contributions, paying more each month into Plan 2, whilst continuing to contribute to Plan 1, more likely than not that he would’ve been able to pay the arrears.
- Just because Mr B had later taken out a GPP and PPP didn’t necessarily mean he wanted flexibility – there may have been other reasons for taking these out.
- She didn’t think Mr B had changed his mind about increasing his contributions into Plan 2 in 1999 because of the late payment charge he would have incurred. She concluded that he changed his mind because of adverse comments being made in the press about pensions.

Prudential disagreed with the adjudicator’s findings and made further comments, in summary:

- Neither Prudential nor the adjudicator can say with any certainty what Mr B may have done in 1985, or whether Mr B could afford the extra costs.
- Likely Mr B wanted more flexibility as shown by his willingness to start separate arrangements.

This complaint has now been passed to me to consider.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the conclusions reached by the adjudicator, and for much the same reasons.

The point of sale documentation for Plan 2 is not available. So, it’s difficult to say with any certainty what Mr B’s intentions were at the time. I don’t know if he was given details of the costs involved in setting up Plan 2, compared to increasing his contributions into Plan 1. I don’t know if the advantages and disadvantages of setting up a new plan were discussed.

But, where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Prudential says Plan 2 was in Mr B’s best interests as it offered him the flexibility to increase his pension contributions part way through the year, without having to pay a late payment charge or missing contributions. But, I can’t see that Mr B made use of that flexibility. His contributions remained at the same level as when both plans were set up. So, I think unlikely that Mr B would’ve told Prudential that having this flexibility was important to him.

I think more likely than not Mr B would have been able to pay the missing contributions in one go, and the late payment charge, had he increased his monthly contribution into Plan 1. I say this because very shortly after taking out Plan 1 he decided to more than double his monthly pension contribution. And the missing contributions only represented 4 months' worth of payments at the increased rate.

Mr B did take out two other pension plans after taking out Plans 1 and 2. But I don't share Prudential's view that this shows that Mr B liked to keep his pension arrangements separate. I think likely he had other reasons for setting up these plans. For example his employer paid contributions into his GPP.

The effect of taking out Plan 2 was that Mr B had to pay double the amount of fees. And I can't see that the benefits of taking out Plan 2, in his circumstances, outweighed having to pay these extra fees. So, I think it likely that Mr B has lost out financially as a result of Prudential's advice to set up Plan 2 rather than increase his contributions into Plan 1.

fair compensation

As a result, I direct that Prudential should treat the contributions Mr B has paid into Plan 2 as having been paid into Plan 1.

I think it likely that Mr B would have paid the late payment charge and missing contributions in March 1985, had he increased his monthly contribution to £35 per month into Plan 1, instead of setting up Plan 2. Prudential should give Mr B the opportunity to pay these amounts now, within 28 days of receiving this decision. Should Mr B pay these Prudential should treat them as having been received by it in March 1985.

I also think it would be fair and reasonable for Prudential to pay Mr B £100 for the trouble and upset caused by this. This is in line with other awards made by this service.

my final decision

My final decision is that I uphold Mr B's complaint against The Prudential Assurance Company Limited.

I direct The Prudential Assurance Company Limited to pay Mr B compensation as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 28 September 2015.

Kim Parsons
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