

## **complaint**

Mr G is unhappy that The Prudential Assurance Company Limited won't allow him to take his deferred annuity as a lump sum.

## **background**

Mr G has two deferred annuities with Prudential. These were set up by the trustees of his former occupational pension scheme when the scheme was wound-up.

Mr G has asked to commute the smaller of these deferred annuities to a lump sum. Prudential's said this isn't possible under the terms of the plan.

The complaint was looked at by one of our adjudicators. He didn't uphold the complaint for the following reasons:

- The terms agreed when Mr G's former occupational scheme was wound up mean Prudential has a legal requirement to pay Mr G's benefits in a certain way.
- For a cash payment to be made, the payment has to be permitted under the policy rules.
- 'Small pots' legislation brought about the option to take funds as a small lump sum. But this didn't override the policy rules.
- The policy rules do allow for a triviality payment. But Mr G isn't eligible for this due to the overall value of his pensions.
- The option to transfer to another provider ended at Mr G's retirement date.

Mr G doesn't agree with the adjudicator's findings. In summary he's said:

- He didn't secure his benefits in a deferred annuity with Prudential. And he wasn't asked if he agreed to this.
- The deferred annuity is an uncrystallised pension fund.
- He and his employer paid into the former occupational pension. So he considers it was a defined contribution pension scheme.
- It isn't economical for Prudential to administer the annuity given the modest amount involved.
- Guidance from the Pensions Advisory Service and from the 2014 Budget announcement suggests that he can take a small lump sum.
- Clause 4.1.6 in the policy rules allows for a "*stand-alone sum*" before his 75<sup>th</sup> birthday.

As this matter hasn't been resolved, the complaint has been passed to me for consideration.

## **findings**

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

In 2012 The Pensions Regulator issued guidance for trustees, providing suggestions of good practice to help in relation to the winding up of occupational pension schemes. This guidance specifically states that trustees aren't required to provide members with options when deferred annuities are bought. Whilst this guidance may have been issued after Mr G's occupational scheme was wound up, I don't think it's unreasonable to suggest the same good practice principles would have applied. So I don't think the trustees were required to obtain Mr G's consent prior to arranging the deferred annuity plan.

Mr G has said that he'd like Prudential to pay him a lump sum instead of the annual annuity the smaller of his policies was set up to provide.

In general, there are three circumstances where an individual may be able to take their pension pot as a lump sum – under trivial commutation rules, small pots rules and pension flexibility rules.

With regards to trivial commutation, there are rules that apply; one of these being that the value of all the individual's pension benefits can't exceed £30,000. In Mr G's case, he has another pension with Prudential valued at just under £200,000. So it's not possible for him to take his smaller fund – worth £1,295 - under trivial commutation rules.

The tax rules allow individuals to take their pension pot as a small lump sum when the value of the pension arrangement is less than £10,000. Unlike trivial commutation, other pension arrangements aren't taken into account and individuals are allowed to take up to three pension arrangements under the small pots rules.

Prudential says that it's unable to pay Mr G a lump sum under the small pots rules as this isn't permitted under the terms of the plan. And having considered the terms and conditions further, I don't think Prudential is being unreasonable by not doing so. If it was to pay it as a lump sum, it would be in breach of the contractual terms it agreed with the trustees of the previous scheme. And it doesn't have the discretion to alter the terms of the contract.

Mr G thinks this is possible and he's referenced Clause 4.1.6 of the policy terms. Clause 4.1.6 states:

*"Where on the Commencement Date the conditions are met for a "stand-alone lump sum" to be paid in accordance with Articles 25 to 25D of The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (as amended), then the Policyholder may choose to exchange all benefits detailed in the Statement of Policy Benefits for a stand-alone lump sum."*

I've carefully considered the above. But I don't think this clause affects Mr G's case. I say this because it's only possible for individuals with primary protection to take a "*stand-alone lump sum*". Primary protection was introduced by Finance Act 2004 to protect individuals that exceeded the newly introduced Lifetime Allowance from additional tax charges. And having considered this further there's no indication that Mr G had primary protection. So I don't think it's unreasonable that Prudential are not allowing Mr G to take his policy as a "*stand-alone lump sum*" under this clause.

In April 2015, the government introduced new pensions legislation with the aim of giving individuals increased flexibility when accessing their pension benefits. Under these rules it's possible for some individuals with defined contribution plans to take their entire pension fund as a cash lump sum. However, these new rules enable providers to allow people to cash in their pensions; they don't make it *compulsory* for providers to do so.

Prudential says that these new rules don't apply to Mr G's plan. It says this is because Mr G's employer's pension scheme was a defined benefit plan – also known as a final salary scheme; it wasn't a defined contribution plan.

I note that Mr G believes that because he contributed to his employer's pension scheme, it must have been a defined contribution scheme. But this isn't the case. Although some defined benefit schemes don't require members to pay contributions, most do. This doesn't make them defined contribution schemes. The member's contributions go towards the cost of providing the guaranteed pension the scheme will pay at retirement, but the contributions aren't held or invested for the benefit of that individual member in the same way as a defined contribution scheme.

In Mr G's case, his benefits are from a defined benefit scheme, so it's my understanding that the pension freedoms rules don't apply. For this reason I don't think Prudential is being unreasonable by not allowing Mr G to take his pension benefits as a lump sum under the new pension freedoms rules. And, even if I was satisfied that the pension freedoms rules did apply to Mr G's deferred annuity, it's still the case that it's Prudential's decision whether to apply these rules to Mr G's policies.

Mr G did have the option to transfer his policy to another registered pension scheme. And it may then have been possible for him to access his benefits in a different way. However, the letters that Prudential sent Mr G made it clear the transfer could only be done up to his normal retirement date. In Mr G's case this was February 2015. In accordance with the policy terms, it's no longer possible to transfer to another pension arrangement after this date. So unfortunately this option's no longer available to Mr G.

I appreciate Mr G will be disappointed with my decision. I do understand his frustration at being paid a small amount as an annuity. But having considered the policy terms, I don't think Prudential is being unreasonable by not allowing him to take his policy as a lump sum.

In closing, though, I'd say that further changes have been proposed by the government and are currently due to be implemented next year. It's envisaged that these changes will allow individuals with annuities to sell these for a cash lump sum. But the exact details of how this might work are yet to be announced.

### **my final decision**

Having considered all of the information, I'm unable to 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 18 July 2016.

Lorna Goulding  
**ombudsman**