

complaint

Mr V has complained through his son, Mr A, that correspondence issued to him by The Prudential Assurance Company Limited ("Prudential") when he part-surrendered an investment bond in 2012 led him to believe that he had surrendered the investment in full.

Specifically, the 'chargeable event certificate' he received also appeared to confirm that this capital withdrawal would incur him a tax charge when he had already paid tax on the withdrawal. The certificate also made reference to the concept of 'top-slicing' relief, which was not adequately explained. When Mr V questioned this correspondence with Prudential, initially, it was unable to provide a satisfactory explanation which caused Mr V a considerable degree of distress.

In response, Prudential offered Mr V the sum of £200 for the lack of clarity of its correspondence regarding the surrender of his investment bond and its subsequent handling of his queries. Mr V rejected this offer.

This matter prompted Mr A to revisit a previous complaint he had made on behalf of Mr V in March 2009 concerning a number of verbal valuations Mr V had received from Prudential of a pension annuity he held, which varied significantly from illustrations he received in writing around the same time. In a final response letter dated April 2009, Prudential provided an explanation for the discrepancies in these illustrations but nevertheless offered Mr V the sum of £50 for any confusion this correspondence had caused him. If he was dissatisfied with this response, he was entitled to refer the matter to this service within six months of the date of this response.

Mr V rejected this offer at the time and did not refer the matter to this service within the six month time limit prescribed by regulatory rules because he had suffered serious health issues during this process. Notwithstanding this, Prudential has submitted that, in referring this complaint to our service in November 2012, Mr A has brought it to us out-of-time.

Mr A has requested both complaints to be reviewed by this service; specifically because he considers that the offer of £50 made by Prudential in 2009 for the issues surrounding the valuation of his pension annuity was disproportionate, given the nature of this complaint and the effect it had on Mr V's health at the time, to the offer of £200 made by Prudential to resolve the complaint about his investment bond.

background

Mr V's complaint was investigated by one of our adjudicators, who concluded that the offer made in relation to his complaint about the Investment Bond in 2012 was fair and reasonable.

However, she considered that the complaint first made by Mr A on Mr V's behalf to Prudential in March 2009 could not be considered further as it had not been referred to our service within six months of the 'final response letter' Prudential sent to him in April 2009.

This time limit was re-stated in a further response to Mr A from Prudential in June 2009.

The adjudicator acknowledged that Mr V had suffered a serious medical condition in March 2009 that may have made it difficult for him to have referred the matter to our service at that time. However, she noted that Mr A had made this complaint on Mr V's behalf in 2009

and, in the circumstances, she did not appreciate how Mr V's state of health necessarily prevented Mr A referring it to this service on his behalf.

In response, Mr A did not agree with the adjudicator's assessment and said that the stress of the initial complaint caused Mr V to suffer ill-health and, on balance, his family felt that any further stress in pursuing this complaint with our service could lead to deterioration in his health. Mr A has stated that, although Mr V still has health issues, he is now better able to attend to this matter.

As Prudential maintained that the complaint made by Mr V in 2009 was time-barred, and that the complaint he made in 2012 was fairly resolved, no agreement has been reached and these complaints have been referred to me for review.

findings

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

With regard to the complaint first made by Mr A to Prudential on Mr V's behalf in August 2012 about the part-surrender of the investment bond, it is evident that the 'taxable gain' quoted in the 'chargeable event certificate' did arise from the surrender of some (but not all) policies (or 'clusters') within the bond. However, I agree that some parts of the certificate suggest that *all* policies had been surrendered.

Whether Mr V part-surrendered or fully surrendered his bond, Prudential was required to issue him a 'chargeable event certificate', and the certificate he received did quote the taxable gain arising from the partial surrender value he requested.

That Mr V received a 'chargeable event certificate', however, does not mean that he will have suffered a tax charge on this gain. Prudential was obliged to inform Mr V of the gain that is *potentially* subject to an income tax charge; it was not confirming that this gain would have an income tax implication for him or not because it would have no knowledge of Mr V's income position. Prudential is obliged to issue this certificate to Mr V so that he can disclose the taxable gain to Her Majesty's Revenue & Customs (HMRC) as part of his income tax returns. It is HMRC, and not Prudential, that determines whether or not this gain gives rise to a tax charge. I am satisfied that the correspondence Prudential issued to Mr V on this matter was factually correct, although I agree that concepts such as 'top slicing relief' were not explained.

For this reason, and also because Prudential did not satisfactorily address Mr V's concerns in the first instance, it offered him £200 for the shortcoming in its administration of this transaction. As this correspondence was factually correct, I am satisfied that this offer is fair and reasonable and would be no less than I would award him in the circumstances of this complaint.

With regard to the complaint first made by Mr A to Prudential on behalf of Mr V in March 2009, the issue for me to consider is not whether Mr V's complaint has merit, but whether it has been brought to this service within the timescale set out by the Financial Conduct Authority (FCA) Dispute Resolution (DISP) Rules under which I am obliged to operate.

These rules provide that, where Prudential objects, I cannot consider a complaint that is referred to me more than six months after the date it sent Mr V a 'final response letter' resolving his complaint, unless he can offer exceptional circumstances for failing to refer the matter to this service within this requisite timescale.

In response to this complaint, Prudential sent Mr A its final response dated 27 April 2009, providing an explanation for successive valuations of his pension annuity varying over a one month period, the different retirement dates quoted, the assumption made about Mr V's wife's date of birth and the mis-spelling of her Christian name on some illustrations.

Accordingly, it offered him £50 for any upset some of these issues may have caused him.

This response informed Mr A that, if Mr V was dissatisfied with this decision, Mr A was entitled to refer his complaint to the Financial Ombudsman Service within six months of the date of this decision, i.e. by 27 October 2009.

While it was evident at the time that Mr V did not accept Prudential's offer, Mr A did not refer the complaint to this service until November 2012, which is clearly more than six months after the date of the business's final response letter.

Therefore, given the complaint now made by Mr A on Mr V's behalf is the same in nature as the complaint he made to the business in March 2009, on the face of it, his complaint has been made too late for me to consider it.

However, as the adjudicator explained, FCA DISP Rules do allow me to exercise my discretion to admit a complaint that is referred to this service outside the time limit, if I am satisfied that the delay is due to exceptional circumstances; for example, if the business had failed to inform Mr V in 2009 of his referral rights to this service or where he has been unable to attend to this matter due to serious health, or other, issues.

In order for his circumstances to be regarded as *exceptional*, I would need to be satisfied that they prevented Mr A attending to this complaint for most, if not all, of the six months period since the business issued its final response letter.

I cannot be sure whether Mr V's health would be more or less adversely affected if Mr A had taken steps to resolve his complaint by referring it to this service immediately following Prudential's final response letter in April 2009. Given it is evident that Mr V felt strongly that the offer made by Prudential of £50 was inadequate, my inclination is to believe that it might have been preferable for his complaint to have been resolved by this service at that time, rather than to leave the matter unresolved for more than three years. There was no practical reason for Mr V's complaint not being referred to this service given Mr A had acted on his behalf throughout and I have not been made aware of any reasons why Mr A himself could not have referred this complaint to our service at that time.

If fears persisted that Mr V's health would have deteriorated if Mr A had continued this complaint after June 2009, it is reasonable to suppose that Mr A might have contacted us at that time to explain the situation and this could have been noted for future reference.

As it is, this complaint was not brought to our attention until more than 3½ years after Prudential had sought to resolve it. In these circumstances, my inclination is to believe that it was the issue arising in 2012 concerning the administration of Mr V's investment bond that

prompted Mr A to revisit the complaint he made on Mr V's behalf in 2009 about his pension annuity.

On balance, I am not persuaded that it would necessarily have been inadvisable for Mr A to refer Mr V's complaint about his pension annuity to this service when he was first invited to do so by Prudential in April 2009.

Therefore, as the business has submitted that Mr V's complaint cannot now be considered because it has been referred to us outside the regulatory time limit, I am not inclined to review the merits of this complaint.

I acknowledge that Mr V will be disappointed by this decision. However, I am bound by the provision of FCA DISP Rules on this matter and cannot disregard them.

decision

My final decision is that the complaint made by Mr A to Prudential on Mr V's behalf in March 2009 has been made too late for it to be considered by this service.

Additionally, I do not uphold Mr V's claim for compensation beyond the sum of £200 offered by Prudential in settlement of the complaint he made in 2012 about the administration of his request to part-surrender the investment bond.

Therefore, if Mr V accepts this decision, I require The Prudential Assurance Company Limited to pay him the sum of £200 for the distress this matter may have caused him, if it has not already done so. Otherwise, I make no award.

I leave it to The Prudential Assurance Company Limited to decide whether it still wishes to offer Mr V the sum of £50 to resolve the complaint he made in March 2009, although Mr V's acceptance of this decision does not bind Prudential to this offer.

Kim Davenport
ombudsman