

complaint

Mr J's complaint is twofold. First he complains that he received unsuitable advice from The Prudential Assurance Company Limited (Prudential) to transfer his accrued pension benefits from an employer's occupational pension scheme (OPS) to a personal pension plan (PPP). Secondly Mr J complains that he has been unable to increase contributions to his PPP.

background

The complaint was investigated by one of our adjudicators who wrote to Mr J setting out her findings. She considered that the transfer from his OPS to the PPP could not be considered by us because the advice had already been reviewed in 1999 as part of the industry-wide 'Pension Review'.

In respect of the other issue Mr J raised – that he could not make contributions to his PPP – the adjudicator explained that there were a number of factors which resulted in the inability to top up the policy. These included the fact that Mr J was now eligible to join his OPS, the possibility that the policy was set up so as not to allow for top ups and because the policy had been transferred from another provider meant that it was likely that no new business could be transacted.

Mr J did not agree with the adjudicator and said:

- Prudential's reluctance to allow him to top up his policy because he is eligible to join his OPS is surely an admission that the policy should never have been sold
- Prudential told him that complaining about the outcome of the Pension Review was a waste of time, so he did not follow this up

Prudential made no further submissions.

my findings

I have considered all the available evidence and arguments in order to decide what is fair and reasonable in the circumstances of this complaint.

I deal first with Mr J's complaint about the advice to transfer out of his OPS. This service is governed by the Dispute Resolution (DISP) rules contained in the Financial Conduct Authority's handbook.

DISP Rule 3.3.4 (5) provides that:

The Ombudsman may dismiss a complaint without considering its merits if he considers that:

(5) the respondent has reviewed the subject matter of the complaint in accordance with:

(a) the regulatory standards for the review of such transactions prevailing at the time of the review; or

(c) any formal regulatory requirement, standard or guidance published by the FCA or other regulator in respect of that type of complaint;

(including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case.

The regulator at the time set up the Pension Review because it was feared that investors had been given advice which did not meet the required standards at the time. Where firms completed loss assessments the value of the benefits from the OPS was compared with the value of the PPP at the date of the calculation. The calculations were based on a number of assumptions – this was necessary because the calculations were carried out several years before the actual retirement date. The then regulator set down the methodology and assumptions that all firms had to use to assess the potential loss incurred.

Unfortunately those assumptions have not mirrored what has actually happened. In particular investment returns have been lower than anticipated which, coupled with falling annuity rates, has had a significant effect on the resulting benefits. So although it was thought that the redress paid at the time would be sufficient to provide the same level of benefits as from the former OPS, this may not actually be the case. So I can understand why someone in Mr J's situation, where the benefits given up in the OPS are not matched at retirement by the benefits that the PPP will provide, is aggrieved.

But under the Pension Review a 'one off' calculation was carried out as at a specific date. There is no requirement for a firm to undertake calculations again at a later date. The assumptions were updated regularly by the regulator to reflect changing expectations of future economic and demographic experience. If the actual experience had been in line with the assumptions made at the time, then the benefits payable from the personal pension on retirement would be of broadly equal value to those that would have been paid by the OPS.

The Pension Review was aimed at putting matters right at the time (rather than waiting until an individual reached retirement) and effectively drawing a line under any mis-selling. In the circumstances I do not consider the matter should be revisited.

As the event took place before the date on which this service became responsible for dealing with these complaints (1 December 2001), I must also consider the approach the predecessor to this service would have adopted.

The former scheme was the Personal Investment Authority Ombudsman Bureau (PIAOB) and its rules said that the ombudsman would make no award or recommendation in relation to a complaint about a pension transaction that has been reviewed in accordance with the regulatory standards for the review. So in dismissing Mr J's complaint I am taking the same view as would have been reached under the former scheme.

I note Mr J has said that Prudential discouraged him from referring the matter to the PIAOB at the time the review was carried out. However, even if he had referred the matter at that time I am not persuaded that the complaint would have been considered for the reason I have outlined above.

Turning now to the second part of Mr J's complaint, I appreciate his dissatisfaction that his attempts to 'top up' his PPP have been unsuccessful because he is eligible to join an OPS. I take his point that he would not be in this position had he not been advised to transfer out to his OPS. But it is ultimately a matter which falls under Prudential's discretion as to whether or not it will permit a top up to a policy. Although Mr J has explained that it is not a viable option for him to join his OPS because he has been absent from the scheme for so many

years, I appreciate Prudential's reluctance in encouraging him to do anything other than join his OPS.

Further, as the adjudicator has explained, many older policies do not allow top ups. It is often cheaper to take out a new pension or it may be the case that the business in question has closed a particular tranche of policies to new business. It is open to Mr J to take out a new pension arrangement with another provider if he wishes to increase his retirement provisions.

my final decision

I am unable to consider the first part of Mr J's complaint against The Prudential Assurance Company Limited and I do not uphold the second part.

Lesley Stead
ombudsman