

complaint

Mr B complains about the administration of his annuity based pension by the Prudential Assurance Company Limited. He says Prudential has made deductions from his pension plan and hasn't provided a proper explanation in respect of those deductions. Mr B says Prudential hasn't explained the repeated daily and monthly fluctuations to the value of his plan. He also complains about the level of his annual bonuses.

Mr B complains about the customer service he received from Prudential when he asked for information and asked to be called back.

Mr B also complains that Prudential repeatedly wrote to him encouraging and enticing him to increase his contributions without warning him of the consequences to his original contract and benefits.

background

Mr B took out an annuity based pension plan in 1986 and paid monthly premiums (or contributions) into the plan. The plan provided guaranteed and non-guaranteed benefits.

In 2013 Mr B enquired about making a transfer into his pension plan.

In 2016 Mr B enquired about making a lump sum payment of £4,000 to his pension plan.

In 2016 Mr B complained to the business about fluctuations to the daily value of his plan. He explained he was able to see these on his online account.

The business didn't uphold his complaint. It explained Mr B's plan didn't have a fund value; it had a notional transfer value. That was because it wasn't a typical money purchase pension but provided a promise of a future pension.

The business said the transfer value was a calculation of the value of the benefits provided by the plan (in other words, how much it would cost to buy an annuity to provide those benefits) which depended on a number of factors. It explained the value fluctuated as the factors taken into account – for instance – annuity rates and gilt yields – went up and down.

The business also explained that some of the factors used to calculate the policy benefits were relevant to the anniversary dates. So in order to calculate a notional value for a particular date the rates had to be interpolated between the anniversary dates.

It also said that overall Mr B's plan had increased in value over six months. The business said it was unable to provide detailed information as to how the value was calculated as this was commercially sensitive.

Mr B didn't accept the explanation given by the business. He said he could see deductions from his plan which started suddenly and then occurred consistently and on a daily basis. He said he could see this by keeping a track of the daily value of his plan online.

Mr B also said that Prudential had repeatedly written to him encouraging and enticing him to increase his contributions without warning him of the consequences to his original contract and benefits.

Mr B referred his complaint to our service. Our investigator didn't think Mr B's complaint should be upheld. She said his plan had a notional transfer value. The investigator said different factors were used by the business to calculate that value. She accepted there were fluctuations but felt this was due to changes in the factors used to calculate the value.

Our investigator wasn't persuaded that the business had administered Mr B's plan incorrectly. She also didn't think the business should have to give Mr B commercially sensitive information about how it calculated the notional value. The investigator suggested that Mr B ask the business for illustrations which would give him the best idea of what he might get back from his pension.

Mr B complained again to our service that the business had continued to make deductions without proper explanation and that it had failed to provide a plausible explanation for those deductions. He said those deductions were daily, weekly and monthly. He also complained that the business refused to provide him with records of telephone calls and refused to accept his screen shots as evidence. He asked for his complaint to be referred to an ombudsman.

Our investigator took into account the points made by Mr B. But overall she felt he was complaining about the same issues he had previously raised in 2017 and her view remained unchanged.

The investigator also considered the points Mr B had previously raised about making additional contributions. The investigator agreed that Prudential had provided Mr B with the option to increase his contributions on a number of occasions but she didn't think there was any evidence to show his original plan would have ended.

She noted Prudential hadn't given Mr B advice about increasing contributions but she said it did have to provide Mr B with information that was clear, fair and not misleading. She took into account that Mr B had enquired in 2013 about making a transfer in to his plan and in 2016 about making a lump sum payment. The investigator noted that Mr B hadn't gone ahead with either option. So she considered Mr B was aware that these were options and he was aware he didn't have to take them. The investigator wasn't persuaded that the information provided by Prudential had been unclear, unfair or misleading.

Mr B disagreed with the investigator's conclusions. He said Prudential encouraged him to increase his contributions but didn't make it clear he would be worse off by making a lump sum payment. Particularly as Prudential would treat this as a new plan which meant he would pay higher charges.

As no agreement could be reached Mr B's complaint was referred to me for a review
my findings

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

Mr B has raised a number of matters over the course of his complaint. In this final decision I have focused on the content of Mr B's original complaint to this service and the issues which I consider to be central to his complaint.

I note Mr B has also raised some additional concerns about the taxation of his plan and the calculation of death benefits under the plan during the course of this complaint. As these are new matters I haven't addressed them in this final decision. I note we have informed Mr B that the taxation matter would be dealt with separately by the business. But it is of course open to Mr B to raise new matters with the business.

Plan value

Mr B took out an annuity based pension plan. It was set up on a with-profits basis and had guaranteed and non – guaranteed benefits. It provided a basic annuity which was a guaranteed benefit.

Mr B was able to look at the value of his plan online. When he looked at the value on a daily basis he saw fluctuations which concerned him. He feels deductions were being made from the plan as it was reduced by a similar daily amount over a certain period. He also says similar changes happened on a monthly basis. So he doesn't accept these changes are caused by market fluctuations.

The business has explained and I accept that this is not a plan which has a fund value. Mr B's pension plan provides certain benefits and the value of those benefits is calculated to give a notional transfer value. So I consider what Mr B is seeing when he looks at his plan online is the recalculation of that notional transfer value based on a number of factors. If one of those factors is changing this may well have the effect of changing the notional value. However, whilst the notional value may go up and down, Mr B's guaranteed benefits remain the same. So I'm not convinced on balance that there is evidence to indicate the business has incorrectly administered his plan.

I appreciate that Mr B would like further detail from the business as to what is happening to the notional value. But the business has explained and I accept that information as to how it calculates the value involves commercially sensitive information. So I don't think it would be fair and reasonable for me to tell the business to disclose that information.

I also note that whilst there were fluctuations to the notional value in 2016 overall the value of his plan increased.

Mr B also says in effect that there is a contradiction in the information provided by the business. He says the business has told him this is not a typical money purchase pension. However, it provided him an illustration in 2016 which quoted sales costs for setting up an annuity. The setting up of an annuity would normally involve sales costs so I am not persuaded that including this on an illustration shows his pension is a typical money purchase pension. I take into account that the documentation shows his plan has certain guaranteed benefits.

Bonuses

Mr B also complains about the level of bonuses he has received. This plan was set up on a with profits basis. A with-profits fund provides plan holders with annual bonuses but the level of those annual bonuses is not guaranteed. This will be affected by the performance of the with –profits fund. In addition with-profits funds apply smoothing which means in good years some bonuses will be held back for poorer performing years. The aim is to try to protect plan holders from short term fluctuations in market conditions.

I do understand that Mr B has concerns about the transparency of how bonuses are applied to his plan and how the transfer value is calculated. I appreciate that the operation of a with-profits fund might appear to be unclear to a plan holder, such as Mr B. And it can be difficult to understand how much a policy is worth at any given time, how a value has been calculated and if bonuses have been fairly applied.

With-profits providers such as Prudential do have quite a bit of discretion about how they run their with profits fund. Having said that, Prudential can't operate in an arbitrary manner and is accountable to the industry regulator as to how it manages its with-profits funds. And Prudential does have to manage its with-profits fund in line with rules and guidance set out by the regulator.

I'm not aware the regulator has found any problems or raised any concerns about how Prudential has managed its with-profits fund. So although I do understand Mr B's concerns, I've not seen enough evidence to show that it's done anything wrong in the way it has calculated the value of Mr B's policy and applied bonuses to it.

Also as the level of bonuses is not guaranteed I don't consider the business has failed to fulfil any contractual promises or acted incorrectly in the bonuses rates it has applied to Mr B's plan. I note it has provided Mr B with information as to the rate of bonuses that have historically been applied to his plan.

Information requests and customer service issues

Mr B has complained about customer service issues over the course of the last two years or so. He says the business has failed to call him back and failed to provide him with information. He also says the business has refused to provide any further response to his complaint and has not taken into account screen shots he has provided.

I can see that there have been a number of phone calls and letters between Mr B and Prudential since 2016. I can also see that Prudential has followed up calls and responded to Mr B by letter and has provided information to him about his plan on a number of occasions. While I appreciate Mr B would prefer to have been called back I don't think it is unreasonable in the circumstances for Prudential to provide explanations in writing. I think the difficulty is that Mr B doesn't accept the explanations that have been given by Prudential. This is what I think has ultimately led to Prudential saying it won't respond to his complaint any further.

I note that Mr B provided Prudential with screen shots of his plan and in particular the notional value of the plan. The screen shots show fluctuations in the notional transfer value but this is not something which is unusual for the reasons Prudential has explained. So it didn't feel that information took the matter any further.

I can see from the correspondence that Mr B asked Prudential for information and in particular for records of telephone contact. Prudential has already provided Mr B with relevant correspondence. In January 2019 it asked Mr B to contact a particular department and make a Data Subject Access Request. It also asked him to provide clarification as to whether he was asking for particular calls on specific dates. Prudential repeated this in a second letter.

Mr B hasn't responded to Prudential with a request for a particular phone conversation or given any further detail about the telephone contact. So I'm not persuaded there is likely to be any evidence in the telephone calls between Mr B and Prudential that is relevant to the crux of this complaint – which is about the fluctuations to the value of his plan.

Prudential hasn't refused Mr B's request for information. In fact it has already supplied him with correspondence. But it has asked Mr B to direct his request to a particular department and it has asked for further clarification to try to narrow down which information he requires.

So I think that is a matter that is still ongoing between Mr B and Prudential. I would hope that it can be resolved fairly simply. However, if Mr B does have a complaint about a data subject access request that would constitute a new complaint and something that would need to be raised with Prudential. If the matter is not resolved it may ultimately be best directed to the Information Commissioner.

Additional contributions

Mr B says Prudential tried to entice him to make additional contributions to his pension plans.

Prudential provided Mr B with annual statements for his pension plan. In that documentation there was some discussion about whether Mr B had sufficient pension provision in place. A top up form was also provided to Mr B which set out options of increasing regular contributions or making a lump sum payment.

Although this correspondence was addressed specifically to Mr B the content was fairly general in nature and I don't think it could be considered to be advice. I think it was more of a suggestion of something Mr B might want to consider. I think Prudential made it clear in the documentation that it hadn't given any advice in relation to the pension plan and there was a clear suggestion that the plan holder, Mr B, should seek financial advice if unsure about the suitability of the pension.

I consider the information provided by Prudential with his annual statements gave Mr B the option to increase his contribution should he wish to do so. But I'm not persuaded that any specific enticement was offered by Prudential to pursue that option.

Mr B contacted Prudential in 2013 and 2016. In 2013 he asked for information about making a transfer in and in 2016 about making a lump sum payment. Prudential said it wouldn't provide an illustration for the transfer in unless Mr B could show he had received advice.

Mr B complained to Prudential about its refusal to provide an illustration and it responded to that complaint.

In 2016 Prudential did provide Mr B with illustrations and figures for three scenarios; stopping his regular contributions, carrying on his regular contributions to retirement date at the same amount and frequency and making a lump sum payment.

Mr B has pointed out the figures provided by Prudential showed he was better off carrying on paying his regular contributions rather than stopping them and making a lump sum payment. Mr B has also pointed out that the lump sum payment was treated as a new annuity and was therefore subject to higher charges.

The information provided by Prudential to Mr B had to be clear, fair and not misleading. I think the information in the illustrations and annual statements provided by Prudential enabled Mr B to look and see whether he was better off carrying on with his regular contributions or making a lump sum payment. Using these documents Mr B could compare what he could receive under both scenarios. I also note the covering letter sent with two of the illustrations expressly set out the different amounts depending on whether Mr B continued making his regular contributions or stopped contributions which I consider enabled Mr B to make a comparison.

There was also a warning in the note section of the annual statement about the effect of stopping Mr B's regular contributions. It said:

Important information

The Guaranteed Pension is the amount guaranteed by your policy, which on retirement at the specified retirement date would be payable yearly in arrears throughout life. There are alternative ways your pension can be paid, details of which will be provided on retirement.

The yearly bonus to date is the increase in Guaranteed Pension on account of bonuses already declared.

It must be emphasised that on regular premium paying policies the Guaranteed Pension, yearly bonus and the illustrated pension(s) quoted are calculated on the basis that premiums are maintained at the current rate until the specified date. If premiums are discontinued before then, these amounts will be reduced in accordance with the terms and conditions of the contract.

Lump sum payment

Mr B has complained about the charges that would have been applied if he had made an additional contribution by way of a lump sum. But I don't think those charges were hidden from Mr B. The illustration for the lump sum payment set out what the deductions were for and their impact on the investment return. It said:

What are the deductions for?

The deductions include the cost of expenses, charges, implicit costs or charges for any guarantees and other adjustments. The figures also demonstrate the effects of inflation.

The deductions will have the effect of reducing your investment growth. This is called the 'Reduction in Yield' and can be a useful means of comparing the charges of different pension products.

The illustration for the single lump sum payment also said:

If you are in any doubt as to the suitability of this transaction, you should seek the advice of a Financial Adviser.

I appreciate Mr B would have liked Prudential to have given him more information about the advantages and disadvantages of each option. But Prudential wasn't acting as his adviser- it wasn't advising Mr B to pay a lump sum or to increase his regular contributions. Prudential was responding to requests for information made by Mr B about the different options he might pursue. I consider sufficient information was provided for Mr B to make a comparison for the reasons I have already outlined. In fact Mr B, having been provided with that information did make that comparison and decided he was better off carrying on with his regular contributions.

I note Prudential didn't give Mr B any specific information about increasing his regular contributions (as opposed to a lump sum) as it wasn't asked to do so.

Overall, I'm not persuaded on balance that Prudential misled Mr B in relation to making additional contributions or gave him information that was unclear or unfair.

I am also not persuaded that making a lump sum payment would've ended Mr B's original plan. I think it was clear from the paperwork provided to Mr B that this single payment would buy a separate annuity.

Changes to the terms and conditions

Mr B says that the terms and conditions of his plan have changed to his detriment. He says he took out a pension plan that was flexible and allowed increased contributions which would add value to the plan. Whereas Mr B says it is not now possible for him to enhance his plan by making additional contributions.

Mr B and the business have provided term and conditions for Mr B's plan. There is some difference in the wording of the terms and conditions. But overall they appear to be slightly different versions of the same document. Crucially I don't think there is any marked or significant difference in what is said about the benefits provided under the plan and any additional contributions.

Benefits under the plan

The terms and conditions say:

The Policyholder named in the Schedule has contracted with The Prudential Assurance Company Limited (in this policy called 'the Company') for the grant of such of the two Benefits described in this policy as are stated in the Schedule to apply on the terms contained in this policy and on the basis of the proposal (and any supplementary proposal or memorandum) signed by the Policyholder.

They also say:

"The Benefits which apply to the Policyholder are specified in the Schedule and only where both Benefits are stated to apply will the whole of this policy be applicable.

There is a description of the benefits provided by the plan. In relation to the annuity it says:

An annuity (in this policy called the Standard Annuity) which shall consist of an annuity of the basic amount stated in the Schedule increased by 25p per £100 in respect of each complete month between the Policyholder's anniversary of birth immediately before the Specified Date and the Specified Date. There shall be added to the Standard Annuity any further amount that may apply by way of bonus as stated in Clause 4 on Page RP2 (hereinafter called 'Clause 4')

Prudential has said the original basic annuity was purchased at the beginning of the policy and was specified in the policy schedule. It has said that the rate by which a premium purchases a basic annuity does not form part of the terms and conditions.

I consider the agreement between Mr B and Prudential was that Mr B would pay a regular contribution (or premium) of a specified amount for a set number of years in return for a guaranteed basic annuity and some non-guaranteed benefits. The amount of the basic annuity was set out in the policy schedule.

The option to make additional contributions is contained within the terms and conditions so the flexibility Mr B refers to does exist. But there is no promise about what return any additional contributions will provide or what rate will be used to calculate this. In both versions of this document it says the amount by which the basic annuity will be varied "*shall be determined*" by Prudential.

Prudential has said any additional contributions will purchase a new basic annuity. It has said the amount of that basic annuity is dependent on the rates that Prudential are offering at that time to its policyholders (of these deferred annuity pension contracts), and the age of the policyholder, whether the payment is regular or a single lump sum.

So it says for these reasons different types of premium payment made at different times will secure different basic annuities that will attract different guaranteed and non-guaranteed bonuses.

Prudential has also said that investment growth rates have changed and it cannot now offer the same guaranteed basic annuities as it did when Mr B took out this pension plan. In addition annuity rates are now much lower than they were when the plan was taken out.

I consider the contract between Prudential and Mr B is based on his original regular contribution and the guaranteed basic annuity as set out in his policy schedule. Whilst the contract allows for additional contributions I'm not persuaded on balance that it gives any promise about the rate at which additional contributions will purchase an annuity. So I'm not persuaded that Prudential has changed the terms and conditions of the plan in respect of the additional contributions.

Mr B feels it isn't possible to enhance his plan by making additional contributions. Prudential has said it is possible to do so by increasing his regular contributions. If Mr B wants to explore this further he may want to ask Prudential for some illustrations to give him a better idea of what could potentially be achieved. But that is of course a matter for Mr B.

my final decision

My final decision is that Mr B's complaint against Prudential Assurance Company Limited is not upheld for the reasons outlined in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 January 2020.

Julia Chittenden
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