

complaint

Mr P says that The Prudential Assurance Company Limited didn't give him enough information in time so that he could take his pension as a lump sum in the 2015/16 tax year.

background

I issued a provisional decision on this complaint on 14 December 2016. A copy of that decision is attached and forms part of this final decision.

Prudential responded to confirm that it had no further points to raise. Mr P added:

- He'd phoned Prudential on numerous occasions and asked that his retirement date be altered to April 2016. But he didn't keep a note of who he spoke to, or the dates.
- He doesn't recall agreeing in 2013 to defer his retirement to 2018. And this doesn't make sense as he received a statement in 2014 saying his retirement date was in 2016. He has most of his yearly statements, all of which show different dates.
- His phone call to Prudential in January 2016 should have been logged on its computers. And a 'wake up' pack should've been sent to him then. He finally received one by special delivery on 15 April 2016 (after the end of the tax year).
- His request to take his benefits earlier was prompted by a chance meeting with his accountant friend – he hadn't seen him for a number of years. But he wanted to take all the benefits before the end of the tax year – not just *some* of the benefits.
- Prudential could've sent him the necessary paperwork on 31 March by recorded delivery, so that he could've returned it by 5 April.
- Could we ask Prudential to send him a recording of his conversation with one of its employees on 17 May 2016, in which he says he was offered £3,300.
- He's found the whole matter difficult to deal with, as he suffers from depression and stress.
- He'd like to know if we can fine Prudential, or if he can take the matter to court.

Some of these points were ones Mr P had raised with the adjudicator in a phone call on 14 June 2016, which I've also listened to in full.

my findings

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

I appreciate the further points Mr P has raised. For the most part I think I've already addressed them in my provisional decision. As I said at that time, Mr P has four plans which each had slightly different retirement dates set on them. So I'm not surprised he still kept getting annual statements giving a variety of dates, as it looks like Prudential would only have needed to take action to extend one of the retirement dates (the earliest of the four).

Mr P seems to be saying he didn't extend this date himself. To some degree this conflicts with what he told the adjudicator in the phone call of 14 June 2016. At that point he said that Prudential had told him his benefits were ready to be taken, and he'd phoned up to say he wasn't in a position (financially) to be able to take them yet. So I'm satisfied Prudential did extend the retirement date for that reason.

That might also explain Mr P's recollection that he thought he'd reset his retirement age to 65. Prudential doesn't seem to have been able to trace a separate request from Mr P to amend the retirement age to 65, but I accept that it might have been mentioned in the above conversation Mr P recalls. It's not going to be possible to get to the bottom of what precisely was discussed, given that neither party has kept a full record. But I think what's likely to have happened is that Prudential's systems by default put back the retirement age by five years. I say this as that's commonly what providers do when the original retirement date has passed without benefits being taken.

I realise that Mr P wanted to have the ability to overwrite the retirement age with a specific date corresponding to his 65th birthday. But that wasn't the basis on which the policies were taken out, and it wouldn't necessarily have been possible for Prudential to do that. Some funds these policies are invested in rely on calculations that are based specifically on an assumed retirement age, meaning that there may be limitations to how that age can be extended. Policyholders aren't however disadvantaged in terms of their ability to later retire at a date of their choosing, because once an actual claim on the benefits is made, any manual calculations that are required can be undertaken.

I confirmed in the provisional decision that Mr P's phone call in January 2016 was logged on its systems. As to what should've happened following this call, I don't have anything further to add to what I said in my provisional decision. In summary, I think Prudential could've brought forward the suggested date Mr P would need to call back, in order to allow enough time for the new procedures required by the regulator. But I'm not persuaded it needed to send a 'wake up' pack, as he would be receiving the same information along with a more up-to-date quote when he requested to take benefits in a couple of months' time.

I'm sorry I didn't appreciate before that Mr P wanted to bring *all* of his benefits forward when he called Prudential on 31 March. My understanding came from the notes of Mr P's 14 June 2016 call on our system; and spreading a payment over two tax years is commonly what people are seeking to do (because it can be the most tax-efficient route in many situations). But having listened to the call in full I agree that Mr P didn't suggest this was what he wanted to do. He was seeking to take *all* the benefits before 6 April 2016.

But even though that's the case, it's still my view that it was too late by 31 March for Prudential to have brought the payment forward. Mr P has said that his meeting with his accountant friend took place by chance. So I still think it wasn't solely as a result of the paperwork Prudential sent him (which he received at around this time) that he chose to bring his retirement forward. It looks to me that Mr P coincidentally got the benefit of tax advice that Prudential wasn't able to give him, and had never agreed to give him. It was somewhat unfortunate that he only got that advice on 31 March. But I can't safely say that he'd likely have got that advice any sooner had Prudential acted in a timelier manner. I'd need to be able to say that in order to uphold Mr P's complaint.

I accept Mr P might already have had a quote and application forms (to take all of his benefits on his birthday) if Prudential had told him in January to get back in touch sooner. But if so, it's also possible that he'd already have returned those forms before 31 March – with the payment date set as his birthday. Prudential would likely either have begun the process for making the payment, or would've been about to do so. In either event, there were only three working days left before the end of the tax year – and it typically takes at least three working days to co-ordinate a bank payment.

So I still think Prudential wasn't reasonably given enough notice to bring Mr P's payment forward. This is unfortunate, but as Mr P's birthday comes so close to the start of a tax year I don't find it surprising that this was one of the first observations his accountant friend might have made. Unfortunately the timing of the observation was such that there was little Mr P could now do to change it.

However Mr P could still have taken further advice as to whether he needed to take all of his benefits in the 2016-17 tax year. As I said in the provisional decision, it doesn't seem likely he would've needed to spend all the funds at once (and Mr P hasn't disagreed with his). Given that Prudential had told him it wasn't possible to achieve what he'd been advised to do, I think it would've been reasonable for him to return to his friend to see if he could mitigate the loss he might suffer. I don't think Prudential can fairly be held responsible for that loss, as it wasn't in a position to give him advice.

I now turn to the matter of a further compensation offer. Mr P previously told the adjudicator that he'd been offered £3,300 on 17 May 2016, which he thought was the difference in value of his policy between 20 and 27 April. Although Prudential is free to revise any offer it might have wished to make, the adjudicator also spoke to it about this before reaching her view of the complaint. Prudential didn't agree it had made an offer. It believed £3,300 might have been one of the figures mentioned when it gave Mr P the values of his policies – to demonstrate that he hadn't actually suffered a loss in fund value over the period of delay. It's confirmed that the call wasn't recorded, so it only has basic records of the call to go on.

I regret that Prudential's explanation hasn't been provided to Mr P sooner, as I realise his understanding of the call is different to this. We've received a letter setting out Prudential's position, which I'm including with this decision for Mr P's information. But I should say in any case that none of this has had a bearing on my decision about whether Prudential should be responsible for the tax loss he suffered.

I'm sorry that Mr P won't be satisfied with this outcome, and that it has been stressful for him. I can confirm he does have the right to take court action if he chooses not to accept my decision. And the Financial Ombudsman Service is not the financial regulator, so it would not have formed part of any award I could make to issue a 'fine' to Prudential.

my final decision

I do not uphold Mr P's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 February 2017.

Gideon Moore
ombudsman

provisional decision of 14 December 2016

complaint

Mr P says that The Prudential Assurance Company Limited didn't give him enough information in time so that he could take part of his pension as a lump sum in the 2015/16 tax year.

background

Mr P's plan with Prudential was divided into four segments:

1. A monthly contribution starting in 1992, with a selected retirement date of 1/1/17
2. A transfer made in 1993, with a selected retirement date of 1/5/08
3. A new monthly contribution starting in 1994, with a selected retirement date of 1/12/16
4. A new monthly contribution starting in 1995, with a selected retirement date of 1/12/16

Mr P's birthday fell in April. So none of these selected retirement dates coincided exactly with a specific birthday. This seems to be a feature of the way the policy was set up. Prudential didn't require the retirement age to be a whole number of years, and the different segments could be drawn at different times to give flexibility in retirement if desired.

From a letter Prudential sent to Mr P in June 2012, I can see that its systems recorded that he'd chosen to defer taking any income until May 2013. This suggests either that Prudential might have sent Mr P a so-called 'wake-up' letter for segment 2 in the months preceding May 2008, reminding him he was due to retire soon. (One of the options would have been not to take the income on offer, and Mr P may have chosen to defer it for another five years.) Or alternatively, the retirement age on this segment could've been changed before the wake-up letter was sent.

Either way, Mr P was sent another wake-up letter for segment 2 in December 2012, to give him time to prepare for the new retirement date of May 2013. But in April 2013, Prudential got confirmation from Mr P that he would like to defer for another five years – to 1 May 2018.

In January 2016, Mr P phoned Prudential suggesting that the next approaching retirement date (1 December that year) was wrong. He explained that he would be 65 in early April. The Prudential representative reminded him he had four segments with different retirement dates (as above – with segment 3 now amended to 1/5/18).

Mr P confirmed that he would be retiring on his 65th birthday. Prudential responded that he could take all his benefits at any point, so he could disregard the selected retirement dates. Mr P asked if he would be sent anything before April 2016. But Prudential explained that any quotes it issued were only guaranteed for 14 days, so they would go out of date. It suggested he call back a 'couple of weeks' before his 65th birthday.

Mr P called again on 21 March 2016 to take all his benefits, and was told regulatory changes meant Prudential had to go through further steps (involving asking questions to then provide targeted risk warnings) before the funds could be released to him as a lump sum. A transcript of the call indicates Prudential recommended that Mr P get impartial guidance from the Pension Wise service, or speak to an independent adviser. Mr P confirmed he had looked at Pension Wise online, but didn't want to use an adviser.

The transcript suggests Mr P was also told that the first 25% of the lump sum would be tax free. But the remainder is added to his income and could push him into a higher rate tax bracket. So he could pay higher rate tax on this and any other income. When Mr P asked if this was at a 20% rate, Prudential told him it depended on what his other income was – because the withdrawal would be added to that income.

On 29 March Prudential sent Mr P a letter and factsheet setting out his options, which included drawing down smaller amounts from his plans. This was to ensure he had all the information available for him to make an informed decision. So it didn't yet include an application form for a specific option (such as taking all the pension as a lump sum).

Prudential's own leaflet reiterated the warnings about a large lump sum potentially putting him into a higher tax bracket. It added, *'If you consider spreading your payments over a number of years, this could possibly help you avoid a higher and more costly income tax bracket.'*

It also included the Money Advice Service's factsheet, which included worked examples of how income tax was charged. That factsheet said, *'Taking your whole pot as cash could land you with a large tax bill – for most people it will be more tax efficient to use one of the other options.'*

Mr P spoke to an accountant friend on 31 March, which coincides with when he would've received this information. He then asked Prudential that day whether he could bring forward some of his benefits before the end of the tax year 2015/16, and then take the rest on his 65th birthday.

Prudential explained that due to the short time left until 6 April 2016, it wouldn't be able to do this. (It wasn't until Mr P decided what he wanted to do that the claim forms could be issued, which would then have to be signed and returned before a payment could be raised.) So Mr P proceeded to take his whole lump sum in the 2016/17 tax year, and this gave him a higher tax bill.

Mr P says that if he'd got a wake-up pack sooner (triggered by Prudential having his correct retirement date in April 2016), he'd have discovered before 31 March that he could spread the payments to mitigate his tax liability. He felt his retirement date had *always* been recorded incorrectly on the policy.

Our adjudicator thought Prudential had acted reasonably in asking Mr P to call back somewhat closer to his 65th birthday. She noted that he'd initially been saying he *did* want to take all the benefits in the 2016/17 tax year (on his 65th birthday itself). She agreed Prudential had nevertheless failed to make the payment by that birthday. However it had already calculated that Mr P had benefited from that delay because the investment value increased, and no compensation for financial loss was due. She also thought the £50 Prudential had paid Mr P for the inconvenience it had caused in that slight delay was fair and reasonable.

Mr P didn't agree. He said he'd contacted Prudential a few times in the past to change the selected retirement date on his plan to age 65. But he was unable to provide any evidence to show this. The adjudicator reiterated that Prudential couldn't reasonably be responsible for not being able to make some of the payment in the 2015/16 tax year, because of the short notice given by Mr P.

The adjudicator also noted Prudential had written to Mr P earlier in April 2013 explaining that pension income was taxed as earned income. And in June 2014 it explained about the pension reforms (which have enabled him to take his fund as a lump sum). She thought he could've taken up the offer of access to further help and guidance in that letter, which would've included the Pension Wise service, to better understand his options.

Mr P remained unhappy. He doesn't feel the adjudicator has listened to what he's said and is accepting Prudential's word over his. So the matter was passed to me to decide.

my provisional findings

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

I'm sorry that Mr P feels he hasn't been listened to, but I don't think that's the case. I can see that the adjudicator's taken what he said into account, but has also had to consider to what extent Prudential has acted unreasonably in this case. That's also what I have to do. It's inevitable in a dispute of this nature that we can't satisfy both parties, and not every complaint succeeds.

I haven't seen any evidence that Mr P's plans were originally set up incorrectly; or that the specified retirement ages weren't set with his knowledge. It's unusual for a provider to need to bring forward a selected retirement date, because with a policy like Mr P's he can ask to take his benefits at any time. And when he does so the same information will be given out in terms of his options and the risks involved, as he'd eventually have got in a 'wake up' pack. So I don't think the response he got from Prudential in January 2016 was unreasonable, apart from the timescale its consultant suggested of only a couple of weeks to take benefits – as I'll explain below.

It's not clear to me what were the regulatory changes Prudential has suggested specifically took place in February 2016. That might create the impression that the consultant in January 2016 had no idea that Prudential was about to be required to go through a lengthier process with Mr P when he took his pension benefits. I don't think such an impression would be entirely correct, so I'd like to set that matter straight.

Although further changes were due to be made to the regulator's rules on 25 April 2016 (so, after Mr P's 65th birthday), the general requirement for risk warnings to be given had actually been in force since April 2015. I think the representative Mr P spoke to in January 2016 could've anticipated this and added a little longer to the timescale he suggested for Mr P to call back, say earlier in March 2016. That would likely have given enough time for an initial discussion, so that Prudential could then get through the necessary risk warnings and provide the factsheets sooner.

So I've looked very carefully at whether this makes a difference to the outcome of Mr P's complaint. Mr P seems to be saying that it was only in a conversation with the accountant that he realised he might be better off spreading a cash payment between the two tax years. So I can't be sure that it was the specific information in the Prudential or Money Advice Service factsheets that made him realise this – or something the accountant said.

Something evidently did prompt Mr P to speak to the accountant. But I think he could reasonably have had that conversation somewhat sooner than 31 March, given that Prudential had told him on a number of occasions that he might pay more tax as a result of receiving this payment. It had stressed the importance of getting independent advice. But rather than thinking he might want to speak to look into this further on (say) 21 March, which I think would've been reasonable, Mr P suggested he didn't want to get advice. I've considered this together with the fact that Mr P was gearing up to take his benefits on his 65th birthday – which fell after the 2016/17 tax year. I can't safely conclude that the discussion with the accountant would've taken place soon enough to have made a difference here.

I've also taken into account the Pension Wise information – because it seems Mr P told Prudential on 21 March that he'd looked at this material. The section of its website about taking the entire pension pot carries prominent warnings about the possibility of higher-rate tax and includes a calculator to help estimate how much tax would be paid. The section about taking out the fund in 'chunks' explains how this could be more tax-efficient.

The pension freedoms had already been in force for a year when Mr P was considering taking his benefits. So I think materially the same information would've been on the Pension Wise website in March 2016. Prudential had also explained in previous letters to Mr P that any income from his pension would be taxed. For whatever reason I don't think it occurred to Mr P (until it was unfortunately too late) that getting too much income in a single year might mean he'd pay too much tax.

I'm sorry to disappoint Mr P. But I can't fairly hold Prudential responsible if he didn't use all of the information available to him, including Pension Wise, in the run up to taking his benefits. I think that if Mr P had reviewed the Pension Wise material – as he indicated in the 21 March phone call – he would've seen there were potentially more tax-efficient alternatives to taking all of the pension as a lump sum. But for Prudential to actually tell him he *should* take several smaller lump sum payments instead, would mean it was giving advice. Prudential would then become liable for the consequences of that advice. But it had never indicated it would be giving Mr P advice or guidance – it signposted him elsewhere for this.

So Prudential hadn't investigated Mr P's particular circumstances – such as how much tax he was likely to pay in 2015/16 and 2016/17. Without making such enquiries an adviser couldn't safely suggest what pattern of payments it would be best to take. In a different set of circumstances Mr P might've been expecting to have *more* income from other sources in 2016/17 than in 2015/16. And Prudential would only reasonably be expected to make those enquiries at all, if it was giving Mr P advice.

In summary, I don't think I can safely conclude that Mr P getting information from Prudential sooner (as a result of being given a more realistic timescale for taking his benefits) would've been the one thing that made a difference. It didn't affect the availability of access to Pension Wise or independent advice; or the fact that Mr P could've spoken to the accountant sooner. Unfortunately Mr P's predicament is somewhat unusual because his birthday falls so close to the start of a tax year.

When Mr P told Prudential he'd changed his mind there were only three further working days left, including the last day of the tax year (5 April). It might've been possible for Mr P to use the flexibility built into his existing arrangement to only encash certain segments of his plan. But Prudential would need to provide a quote and the necessary forms for Mr P to do that, and it was therefore going to be too late to do it before 5 April. Or if cashing in a certain number of segments of his plan didn't give him the flexibility he needed, Mr P might've needed an entirely new product – known as drawdown – to do this. That would've involved making another application which would certainly have taken him beyond 5 April.

Mr P still had the option of only taking part of his pension in 2016/17 and waiting until April 2017 to take the rest. It's not clear to me why Mr P didn't investigate this further, as this would then have mitigated any tax loss he might suffer. Mr P tells us that he took the withdrawal to replenish his savings, having been out of work for two years – and his employment support allowance ended in October 2015.

I appreciate Mr P might've struggled to make ends meet. But at the same time he didn't bring forward his retirement earlier than April 2016. And it seems unlikely that the amount of savings he'd spent, and was expecting to spend during the first year of his retirement, would use up the whole pension fund. That would mean he would have nothing left for the rest of his retirement. Mr P's also told us he wanted to bring all of the funds under his direct control, and I think that's more likely to be the case. But until he actually had a firm need to spend the money, I think it would've been reasonable for him to delay taking it out of the pension if he knew it would cost him too much in tax. Had Mr P sought further financial advice on what he should do, that would likely have been the advice.

It may be that Mr P did have plans for using this money which couldn't wait and which he hasn't told us about. Whilst I sympathise with Mr P if he found himself in that situation, it doesn't mean Prudential is responsible given the information it did give him; and the opportunities he had to look more widely into his options sooner than he did. And I don't think there was anything else he could do if he still had a pressing need for the entire payment before April 2017.

my provisional decision

I do not intend to uphold Mr P's complaint or make any award.

Gideon Moore
ombudsman