

## **complaint**

Mr W has complained that The Prudential Assurance Company Limited (“Prudential”) has reduced the level of bonus payable to his pension when he reaches retirement over a number of years without telling him.

## **background**

Mr W took out a Prudential Personal Retirement Plan with Prudential in 1985. This was a deferred annuity contract, so with his contributions he bought parts of a basic annuity, instead of building up a fund to use later to buy an annuity. In 1988 he was given some information about his pension and it was estimated that the final and terminal bonuses formed around half of the pension value at maturity. The final and terminal bonuses were to give Mr W a fair share of the underlying fund at retirement.

Mr W says he was aware he could ask for Prudential to provide him with a transfer value of his pension fund. He didn't want to move his pension as he wanted to secure the final bonus that would be added when his pension reached maturity. He says that over the years Prudential told him the value of his basic annuity and regular bonuses, but he wasn't told what his final bonus was likely to be. And when he was given regular updates, with a transfer value, Mr W thought this didn't include anything for the bonuses payable on maturity.

But when Mr W approached his retirement date in March 2018, he found out that the final bonus was likely to be much lower than he thought it would be and that it had been reflected in the transfer values given all along. He thinks this isn't fair and if he'd known this he could have moved his fund and achieved higher returns and he wouldn't have made several one off payments in the past. Mr W has also said that the underlying fund has performed well in recent years, so he should receive a higher final bonus.

One of our investigators looked into Mr W's complaint and didn't think it was one that should be upheld. But Mr W disagreed, so the complaint was passed to me for a decision.

I issued a provisional decision as, although I agreed with our investigator, I thought it fair to give Mr W the opportunity to respond to my initial conclusions before I issued a final decision.

I noted that Mr W's pension plan was a deferred annuity contract, so with his contributions he bought parts of a basic annuity. And if the underlying with-profits fund did well bonuses would be attached, so Mr W's annuity value would go up. And once guaranteed bonuses were given, they couldn't be taken away.

But there were other non-guaranteed bonuses payable when Mr W reached retirement or took the benefits from his plan – these are the final and terminal bonuses. And these bonuses aren't at a set rate or, by definition, guaranteed – something Mr W said he knew from the start. But Mr W thought Prudential weren't clear to him that the final bonus rates were decreasing or that the transfer values produced included an element of these bonuses.

In 2012 Mr W asked Prudential to give an indication of the terminal bonus that would be included in the benefits at the time of retirement. But Prudential said it couldn't give precise information as any bonus depended on future investment returns which weren't known. And it indicated that a terminal bonus might not be given at all. At that stage Prudential told Mr W he could bring his complaint about that to this service, but he had six months to do so. Mr W

didn't do that, so I didn't think I was able to consider what Prudential said at that point. But I did look at what it said since then.

In September 2017 Prudential wrote to Mr W and set out a breakdown of the transfer value of his pension – this was 'converted' from his annuity taking into account annuity rates at the time and to give a fair share of the underlying fund. It said 68.1% was the basic annuity, 25.1% the annual bonuses, 6.6% the terminal bonus and 0.2% the final bonus. Prudential explained that normally when transfer values are calculated, it doesn't break down the value to show each bonus element due to cost and complexity. It explained that the transfer value reflected annuity rates and Mr W's policy's fair share of the underlying fund, so it included the non-guaranteed bonuses.

Mr W's pension is partly dependant on the performance of the with-profits fund. Prudential are required to operate the fund in accordance with their Principles and Practices of Financial Management document ("PPFM"). Any bonus payment when Mr W retired was aimed to reflect the overall growth of the fund and give him a fair share of it.

The regulator, the Financial Conduct Authority ("FCA"), has set down principles and rules that businesses must follow when working out and applying bonuses in with-profit funds. The FCA Handbook sets this out in some detail, but in particular a business must 'pay due regard to the interest of its customers and treat them fairly' (Principle 6).

There is a part of the FCA Handbook that deals with with-profits funds, the Conduct of Business Sourcebook (COBS 20). Here it says:

*"With-profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders...(COBS 20.2.1(1))"*

and

*"A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.(COBS 20.2.3)"*

Prudential publishes its PPFM document that sets out how it manages its with-profits funds and it's accountable to the FCA in doing this. It's required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. Prudential also has an independent With-Profits Committee whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly.

The Financial Ombudsman Service was set up to handle individual complaints about financial products from consumers. This service is not able to carry out a forensic audit of Prudential's management and operation of its with-profits funds - as explained above, it is the regulator that monitors the management of these funds. Prudential exercised its commercial discretion in setting bonus rates on the fund that backed Mr W's pension, and that decision will have a wider impact on all investors, not just on him. Mr W can report this to the FCA if he thinks himself and others haven't been treated fairly, however I am not aware of it having any concerns about the operation of this fund.

Mr W said that the final and terminal bonuses should be higher given the overall performance of the with-profit fund. But the growth in any one year won't necessarily lead to a similar growth in bonus rates because of the smoothing process. Prudential didn't give a

guaranteed annual growth rate or guaranteed bonus in Mr W's fund. Annual bonuses are added to Mr W's pension and, once added, can't be reduced or taken away. So I thought Prudential had exercised its commercial discretion in setting the level of bonus rates. And I hadn't seen any evidence that Prudential had mismanaged the fund.

I also thought about whether or not Prudential gave Mr W clear explanations about his pension and the likely benefits when he retired. In 2012 Prudential gave Mr W an estimate of pension income depending on investment growth – this was a figure he would receive after he retired. The illustration noted that any figures weren't guaranteed. Mr W's regular contributions and bonuses gave a guaranteed income and the final and terminal bonuses were added at retirement date. And I saw similar illustrations were given in 2016 and 2017. But all of these illustrations gave an estimate of Mr W's pension income in retirement – so what it would be after all of the final and terminal bonuses were paid. I didn't think there was anything to suggest a different, separate final bonus would be added on top to increase the overall value of the pension. So I didn't think Mr W was led to believe he was going to receive a higher bonus or that Prudential unfairly hid any reduction in bonus rates from him.

Both Prudential and Mr W received my provisional decision, but neither gave me anything further to consider.

### **my findings**

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

As neither party have sent me any further evidence or arguments, I can't see any reason to depart from my provisional decision.

### **my final decision**

For the reasons set out above, I don't uphold Mr W's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 March 2018.

Mark Hutchings  
**ombudsman**