

complaint

Mr A's complaint is that he was wrongly advised to set up a new personal pension with The Prudential Assurance Company Limited and redirect premiums from his existing policy.

Mr A says the funds under his old policy would have benefited from a Guaranteed Annuity Rate (GAR). He also claims that a waiver of premium claim under his new policy has not paid out the correct level of benefit, and that the delay in resolving his complaint has resulted in him receiving a lower annuity from Prudential than he might otherwise have had.

background

The background to this complaint, as set out in my provisional decision dated 2 December 2014, has not been disputed by either party and has been set out below.

In July 1992 Mr A met with Prudential's adviser, who had previously worked for the insurance company with whom Mr A had taken out his existing pension policy. Mr A was paying an equivalent of about £40 per month on a gross basis to his existing policy (meaning he was able to claim tax relief on the contribution at the end of the tax year). The adviser completed a 'fact find' document which noted that Mr A wished to increase his existing pension provision, by paying an additional £100 per month to a new policy. (This was again on a gross basis, as was the normal practice for self-employed people at that time.)

Mr A alleges that Prudential's adviser recommended he should cancel premiums to the existing policy when he started the new one. However the premiums for the existing policy were due annually in advance each October and were paid up to and including October 1994 rather than ceasing in October 1992.

In 2001 self-employed people were no longer permitted to pay gross premiums to personal pensions. Prudential would have started collecting a net amount from Mr A and begun to recover the additional tax relief from HM Revenue & Customs 'at source'.

Mr A subsequently suffered ill health and discovered that the new policy did not include the waiver of premium insurance he would have benefited from under his older policy. As a result of a complaint Mr A made in January 2003, Prudential could not demonstrate its adviser discussed adding waiver of premium to the new policy, and it agreed he was likely to have wanted to include this benefit. Prudential therefore retrospectively added waiver of premium and allowed Mr A to make a claim for the rest of the remaining term up to 2006.

As part of Mr A's complaint at that time, Prudential said that it would be prepared to consider evidence that he had ceased paying into the existing policy as a result of the adviser's recommendation. Mr A supplied Prudential with a letter from his original provider which appeared to confirm this was the case – so Prudential offered to refund Mr A the additional setup charges he incurred from starting a new policy, as well as £100 for the distress and inconvenience caused. Mr A did not accept the offer, however the value of the extra charges was automatically added back to his policy.

When Mr A was looking at taking benefits from his Prudential policy in 2011, he became aware that the annuity rate was considerably lower than he had already obtained from his other provider, because it did not have a GAR. He raised a new complaint with Prudential.

Prudential investigated further and noticed that Mr A had not ceased premiums to his original provider at the same time he was advised to take out the new policy. It considered its adviser had been entitled to recommend a new policy to supplement his pension provision, on the understanding that he would continue to pay into both policies. Prudential said that if it had known this information in 2003 it would not have refunded the setup charges to his personal pension. It also did not agree that its adviser's actions had prevented Mr A from building a larger fund with his existing provider that would have benefited from the GAR.

Prudential issued its final response on these issues in June 2012. As Mr A had some other complaints with Prudential at that time, which are not the subject of this decision, a further combined response was issued in September 2012. Although it did not uphold Mr A's pension concerns, Prudential offered him £500 for its mistakes in handling the complaint.

Mr A remained dissatisfied and brought his complaint to the Financial Ombudsman Service. The complaint form he completed for us mentioned the issues I have covered above. However during our adjudicator's investigation Mr A added that he continued to have concerns about a loan he took out against his Prudential endowment policy, about which he had reached a separate settlement with Prudential in 2007. The overall effect of that settlement had been that Prudential had written off approximately £3,500 of an overpayment it had made to Mr A on the maturity of his endowment policy.

Prudential was not willing to assist the adjudicator with his enquiries into Mr A's comments about his endowment loan. It said that this was not part of the complaint Mr A had referred to the Financial Ombudsman Service, and Mr A had an opportunity to refer that complaint to us in 2007. (I can confirm our records indicate that Mr A never returned a complaint form we sent to him at his request at that time about his endowment loan.)

Whilst his pension complaint was with this service, Mr A added that he believed his waiver of premium insurance had only credited his policy with premiums net of tax relief, rather than the gross premiums. He also said that as the delay in resolving the complaint meant that he did not take his pension benefits until April 2013, Prudential was no longer able to give him a higher, gender-specific rate as a result of the December 2012 EU Gender Directive.

Based on the evidence presented by both parties, I took a different view to the adjudicator on the outcome of this complaint. I concluded the following in my provisional decision:

- I did not consider that whether or not Mr A gained from Prudential's settlement of the loan he took from his endowment policy should be a factor when assessing his pension complaint.
- I noted that close to Mr A's signature on the 'fact find' the adviser completed, he had responded no to the question '*will any policy be discontinued as a result of the advice given?*'.
- The existing policy was not cancelled until 1995, and it was not unusual for self-employed people such as Mr A to have annual premium policies alongside monthly premium ones to offset instalments of income tax. So I found it unlikely that Mr A's existing policy was cancelled as a result of the advice he received in 1992.

- The adviser was a 'tied agent' of Prudential and in 1992 there was no obligation on the adviser to compare all the features of its policy with any competitors' products. He was required to explain the features the policy he was recommending, and to ensure it was suitable for Mr A's requirements from within Prudential's product range. The absence of a GAR in particular would not have altered its overall suitability for Mr A.
- I accepted that the legislation and therefore the terminology relating to whether Mr A's contributions are paid 'net' or 'gross' had changed over time, and had led to some confusion. However Mr A had not suggested to Prudential at any point up to 2006 that his waiver of premium claim was not paying the full £100 per month into his policy, and this was consistent with the remaining evidence.
- I also concluded that although the complaint had been long running, Prudential did inform Mr A at least twice during March and April 2012 that he could complete his annuity purchase then if he did not want to run the risk of worsening annuity rates. Prudential was not in a position to (and had not agreed to) provide Mr A with ongoing advice about taking benefits from his policy.
- In my view the £500 'distress and inconvenience' payment Prudential made in 2012 represented appropriate compensation for the fact that its approach to Mr A's complaint changed whilst it was being investigated. I was not minded to make a higher award.

In response to my provisional decision, Prudential confirmed that it had no further points to add. While Mr A said that he did not agree with my conclusions, he did not present any new evidence to be considered.

my findings

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

As no further evidence or arguments have been submitted in response to my provisional decision, I have found no reason to revise my earlier findings.

my final decision

I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 19 February 2015.

Gideon Moore
ombudsman