

complaint

Mr G complained to The Prudential Assurance Company Limited (Prudential) about the advice given when his pension policy was sold in 1990.

background

Mr G complained to us by letter dated 12 November 2018. He explained that he'd taken out a pension policy with Scottish Amicable (which later became part of Prudential) in February 1990 as a repayment vehicle for an interest only mortgage. Mr G understood the policy would produce a tax free cash lump sum of at least £34,000 on his retirement on 19 June 2017. Mr G had made a previous complaint to Prudential about the sale of the policy. But Prudential wasn't responsible as it hadn't sold the policy. It had been sold by an independent adviser. But that business had ceased trading some time ago.

Mr G accepted that. But he still felt that there'd been shortcomings on Prudential's part. For example, in failing to warn him that there was a risk that the policy wouldn't generate sufficient tax free cash to pay off his mortgage.

We made Prudential aware of Mr G's new complaint. It issued its final response on 12 February 2019. In the main it didn't uphold Mr G's complaint. But it did identify some instances of poor service for which it offered compensation of £100.

Mr G's letter dated 8 July 2019. He wasn't satisfied with what Prudential had said in its final response letter or with the compensation offered.

The investigator issued her view on 11 December 2019. She didn't uphold the complaint. She said the £100 Prudential had offered for any poor customer service was reasonable. In summary her findings were:

- She didn't agree Prudential was 'complicit' in the mis selling of the policy. Even if Prudential was aware that the pension was being sold as a mortgage repayment vehicle, Prudential hadn't provided advice or recommended the policy to Mr G. It wasn't responsible for what another business had done.
- Prudential wasn't obliged to send warning letters to highlight any potential shortfall. The situation wasn't the same as for endowment policies where the regulator had introduced special steps.
- No guarantees had been offered.
- Mr G had received annual statements setting out the fund value.
- Waiver of premium benefit hadn't been added. Cover had been declined. Mr G hadn't paid for the benefit and the whole of the premiums he'd paid had been added to his fund.
- Mr G's policy was made up of ten separate arrangements. Prudential had explained that the member can 'phase' taking benefits to purchase an annuity on the open market (as Prudential no longer offers annuities) or take tax free cash and a reduced open market annuity. Prudential's 'legacy' policies didn't have a drawdown option but Mr G could do a partial transfer into drawdown and take the tax free cash or transfer the full proceeds into drawdown either with Prudential or another provider. As Prudential's drawdown product was only available on an 'advised' basis, Mr G would need to take financial advice if he wanted to take that option.
- The £100 Prudential had offered for inadequate customer service was reasonable and in line with what we'd award in similar cases.

Mr G didn't agree. In his letter of 29 January 2020 he commented in detail and provided documents in support. I've read all that Mr G said, some of which he repeated in his later letter which I've summarised below.

We told Mr G that his complaint would be referred to an ombudsman. He then wrote saying that should be delayed as he was still waiting for some information he'd requested from Prudential. He said he'd have further contact with Prudential which had resulted in further mistakes. And some earlier errors had proved to be significant and had caused considerable losses.

Mr G also wanted to correct a couple of points in his earlier letter. And he said he wanted to know whether we thought it was more or less likely that Scottish Amicable was aware the pension was a repayment vehicle for a mortgage. He also made some comments about the policy being segmented. Mr G continued to press the point about what Scottish Amicable knew when he took out the pension policy. The investigator replied saying from what we'd seen Scottish Amicable may have been aware it was intended to repay a mortgage.

Mr G made further comments in his letter of 14 July 2020. He noted that the investigator's view was that Prudential was probably aware that the pension was to be used as a repayment vehicle for a mortgage. He said his complaint now comprised some six points. I've set out those below. One of his concerns is about whether his pension can split. I've considered below about how his pension is split (into ten segments) and how he can access them as part of this complaint. But we've also set up a new complaint for Mr G. Under that new reference we'll consider the customer service he's had around this issue and whether he's been given confusing information about how to access his pension benefits. This is in relation to a final response he was issued on 18 February 2020.

Mr G's six complaint points were:

Should he have been sent warning letters about an expected shortfall?

- Mr G maintained the use of a pension as a mortgage repayment vehicle was comparable to an endowment policy. It would have been clear that the shortfall in the lump sum provided by the pension would cause similar difficulties to endowment policies. Providers should have given warnings in both cases.
- The financial adviser was responsible for assessing the ongoing suitability - financial advisers were only responsible for the sale of the endowment policy not reviewing its performance. Mr G's financial adviser had ceased to trade in 1991.
- Prudential didn't deny it should have been aware the pension had been sold to pay off the capital of an interest only mortgage. The paperwork he's retained from Scottish Amicable proves it was aware at the time of the purpose of the pension.
- He'd had an endowment mortgage as well and had received a six page leaflet from the regulator in early 2000. He wasn't unduly concerned when he received 'red' warning notices about a shortfall as the policy wasn't earmarked to repay a loan and so didn't need to reach a specified amount. The lack of warnings about his pension reassured him that the pension was performing as expected.

Did Prudential provide guarantees?

- He now accepted that the guarantees didn't apply as he only had investment linked funds. But if he'd understood that earlier he'd have had the option to switch to the

with profits fund at no expense. The product literature did refer to guarantees (with profits and cash funds). But the document was unclear and confusing and not fit for purpose. Although the with profits fund differs in many respects from the investments fund its special properties are scattered throughout the document rather than collected in one place.

- Even Prudential's own staff don't understand the product details. And Mr G had been assured that guarantees did apply. From 1989 until 2019 he believed the guarantees applied to his policy not only due to information provided by his financial advisor but also documents from Scottish Amicable and Prudential. At least two communications received from Prudential within that period confirm guarantees are in place. Even if these were sent in error the effect on his actions can't be dismissed.

Did Prudential make it clear how the fund was performing?

- The information from Prudential in recent years shows how the fund was performing to a person who is familiar with the terms used. He trusted the guarantee would fully protect his pension from prevailing market conditions. We'd seen a recent statement. But earlier statements were brief and not as clear. Looking at the 1996 and 2000 statements from Scottish Amicable, showed, in 1996 a plan value of £8,429. In 2000 it was £14,948. Mr G might assume the fund value would double every five years or so. By 2017 it wouldn't be unreasonable to expect the fund value to exceed the £136,000 required to yield the £34,000 tax free lump sum to repay the mortgage.
- More recent statements have more comprehensive information buried within their pages. Mr G produced two pages out of the 20 page 2013 statement. One page shows a current value of £43,414 and a pension of £1,670 pa. The other page shows tax free cash of £13,800 plus a yearly pension of £1,820. Mr G recalled looking at the figures. But he could only correlate them with his expectations but taking the transfer value shown under the heading, 'Benefits at your selected retirement age' as the 25% tax free cash sum. The pension had always been presented to him as a 25% tax free lump sum plus an annuity. He thought he was guaranteed a minimum tax free lump sum of £34,000 which would almost certainly be more. The value shown of £43,414 equated reasonably well with the lump sum. The pension of £1,670 pa was very low but didn't overly concern him provided his mortgage would be settled. The projected tax free lump sum of only £13,800 was so far removed from the minimum £34,000 that he couldn't reconcile the two figures at all.

Has he been paying for waiver of premium benefit?

Mr G accepted that no deductions had been made for waiver of premium benefit. He raised a number of queries, including whether that benefit was ever included free of charge to some policyholders.

Can his pension be split?

- The additional explanation Prudential had provided to the investigator hadn't been communicated to Mr G direct by Prudential and differed from what Prudential had previously said. It now seemed the policy was made up of ten arrangements which could be treated individually by using the proceeds of each to buy an annuity on the open market; or take tax free cash and a reduced open market annuity; or transferring the full proceeds from each arrangement into a drawdown arrangement. But he'd again asked Prudential to cash in one section and been told that wasn't

possible. Transferring to a drawdown product required advice. Yet he could take the full value of all ten arrangements in one sum with no requirement for advice.

- Mr G referred to what the product details said: *'To increase flexibility the Plan is issued as 10 constituent contracts.'* The first page ends, *'The issue of the Plan as a series of 10 identical contracts enables the benefits to be realised gradually over a period of years to assist in cases of phased retirement.'* Prudential should be instructed to treat the policy as ten separate contracts as described in the product details. And increase the value of the pension fund by the amount Prudential sought to charge for unnecessary advice - £2,370.
- Mr G had met with a representative of Prudential on 12 September 2019 who suggested moving the pension to a drawdown product. That required an advice fee. When Mr G said the pension was split into ten parts the representative said he thought that facility had been withdrawn. But he advised Mr G to try again as that would fulfil Mr G's requirements just as well as drawdown.
- Mr G wasn't happy to sign the document the representative produced and which he said was required so he could access Mr G's full details, although he appeared to have those already as well as the information Mr G had given during the meeting. On closer reading the letter appointed Prudential as Mr G's financial adviser and committed Mr G to paying an advice fee. The representative had documents which were marked as not to be given to the client and which he refused to allow Mr G to take a copy of. He said Mr G wasn't entitled to them despite GDPR (General Data Protection Regulation).

Has he experienced an adequate level of customer service?

- Mr G set out a fairly lengthy list of failings on Prudential's part. He suggested it was probably longer than in other, similar cases. I'm not going to repeat everything on the list here. But I note, for example, what Mr G says about Prudential's letters of 5 July 2017; 7 August 2017; 22 August 2017; a telephone call in June 2018 and a letter dated 19 June 2018; a telephone call on 2 November 2018 and various telephone conversations.
- His primary intention in raising many minor inconsequential errors alongside more serious shortcomings was to illustrate how prone Prudential is to making mistakes and providing incorrect or misleading information. Prudential had admitted a number of smaller failures and apologised. If there's a failure on a regular basis with less important matters errors will be made on matters of substance. Some of Prudential's assertions should be treated with some degree of scepticism. For example, it hadn't explained why Scottish Amicable was provided with a property valuation and we hadn't pressed Prudential to say when a valuation might be required.
- His expectations of Prudential providing an accurate and adequate level of service had been badly damaged. Prudential shouldn't need the threat of having to make payments to disappointed customers to maintain an excellent level of service. A payment of £100 wouldn't be any deterrent although it was insignificant compared to Prudential's costs in dealing with the complaint.

summary

Mr G wasn't seeking compensation for the mis-selling of the policy or for minor errors or poor service. He did want compensation for not being alerted to the risk that the fund would fall short of the figure required to repay the mortgage. The numerous errors relating to this should be taken into account as evidence of fault. He was also seeking compensation for the contribution the product literature played in the mis-selling of the pension and which was

unclear, confusing and misleading. It had been misinterpreted by financial professionals and cannot be regarded as suitable for retail customers.

He also wanted Prudential to be required to explain exactly how Scottish Amicable managed the provision of premium waiver benefit. And provide illustrations comparing how the pension would have performed had it been included with how it had actually performed. And Prudential should produce the documents they refer to where waiver of premium was declined on health grounds.

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 G has made detailed comments. I've considered all he's said. But I've focused on what I see as the main issues. To some extent that's consistent with Mr G's own approach – he's provided some examples of minor service errors not to support a claim for compensation but to show the overall level of service and that Prudential was prone to making mistakes.

Mr G's mentioned that Prudential still hasn't provided him with all the documentation he's requested. I can understand Mr G's comments that a pension is a long term contract. A dispute can arise at any time and so it's prudent to retain documentation beyond the sort of timescales that might normally apply to some financial products. But I recognise, given the time since the pension was taken out, not everything will have survived, especially where, as here, the original product provider has been taken over. I'm satisfied I can make a fair decision based on what I've seen.

I can see that Mr G feels very strongly about the issues he's raised. But, having considered the complaint I agree with the findings reached by the investigator and with the reasons she gave. I've added some further comments below.

Should he have been sent warning letters about an expected shortfall?

I don't agree with Mr G that Prudential was required to send warning letters about a possible shortfall or should have done so as a matter of good customer service. I can see why Mr G regards a pension mortgage as analogous with an endowment mortgage. But, and even if Mr G regards it as an oversight by the regulator, a pension mortgage isn't subject to the same regulatory requirements such as reprojection letters and shortfall warning letters. I can't criticise Prudential for failing to provide warning letters to Mr G when there was no regulatory requirement to do so.

Mr G may have felt reassured by the lack of shortfall warning letters. Unfortunately that confidence was misplaced. But I don't think that's Prudential's fault when it wasn't required to issue warning letters.

Nor can I say that, as a matter of good customer service, Prudential should have given Mr G warnings. I say that largely because I think the pension statements Mr G was given had sufficient information for him to keep track of how his pension was doing and whether the fund value would be sufficient to enable him to pay off his mortgage. I've considered the statements further below.

From what I've seen Scottish Amicable was or should have been aware that the policy had been sold to Mr G as a vehicle to repay his interest only mortgage. I note that section 7 of the application form for the pension states it is a pension mortgage. But I don't think that makes any difference and where I'm unable to say that Scottish Amicable/Prudential was obliged to notify Mr G if the projected fund value might not generate sufficient tax free cash to repay his mortgage.

Did Prudential provide guarantees?

It's unfortunate if Mr G has been told that guarantees were in place. He now accepts that there were no guarantees attaching to his fund. But he says the product literature was unclear and misleading, even to professionals and trained staff. Over the years this sort of literature has become more customer friendly and will now be written in a way that's easier to understand. I don't think it would be fair to judge the brochure by today's standards.

But, that said, I don't see any particular problems with the Flexi-Pension product details. This sort of information is invariably complex and is usually something that an adviser will go through with the client. The information sets out the six available funds. Guarantees (and bonuses) are mentioned in connection with the exempt with-profits fund and there's also a guarantee with the cash fund (that the bid values of units in the fund won't fall). Mr G was invested 50/50 in the international and managed funds. No guarantees are mentioned in connection with either fund.

Fund choice would have been something discussed and agreed between Mr G and his adviser. Mr G would or should have known that his fund value was dependent on investment performance. Any failure to make that clear was down to the adviser and not Prudential as is any claim that the funds selected weren't suitable for Mr G. If Mr G thinks he should have been invested in the with profits fund or that the benefits of that fund, including any guarantees, weren't made clear, again I don't think that's Prudential's fault.

There may have been some reference to guarantees in correspondence over the years. For example, Prudential's letter of 17 November 2005 said that changes were being made to *'the guarantees that apply to your pension plan from 1 January 2006. These changes may affect you if you currently hold with-profits units or choose to invest in them in the future.'*

Prudential says the letter was sent in error. But even so, Mr G wasn't invested in the with-profits fund – his policy was split 50/50 between the managed and international funds. So any changes to the guarantees didn't affect him. I think the letter was clear enough. It only applied to with-profits investors. I don't think it gave Mr G any reason to believe that guarantees applied when he wasn't invested in the with-profits fund. I can see why it might have been sent to him in any event as it referred to changes that would affect him if he chose to invest in the future in the with-profits fund.

I note here what Mr G says about believing the option to switch to the with-profits fund was no longer open to him after Prudential had acquired Scottish Amicable. But the letter of 17 November 2005 said that Mr G might chose to invest in with-profits in the future and set out how the guarantee would work for units purchased or switches made after 1 January 2006. And that the 4% guarantee would continue to apply to with-profits units bought from 1 January 2006.

I've note below that Prudential did, on at least one occasion, give Mr G to understand that guarantees did apply when that wasn't the case.

Did Prudential make it clear how the fund was performing?

I note what Mr G has said about the statements having got more complex over the years. I accept that. Pension scheme administrators are required to provide certain information on an annual basis. Statements can appear lengthy and complex. But I don't necessarily agree that certain information was 'buried' in the statements.

Mr G got statements showing his fund value. I think they were enough to make him aware that his tax free cash entitlement wouldn't cover his outstanding mortgage. I accept that Prudential knew that he was, initially at least, planning on using the pension fund to repay his mortgage. But I still don't think there was any duty on Prudential to do what Mr G considers it should have done. And although I understand his point, and his experience with an endowment mortgage, I don't think it was reasonable for him to assume that, as he didn't get any warnings, things were still on track to repay his mortgage from his tax free cash and when he received statements showing the current fund value.

I note what Mr G says about early indications being that that the value of his pension fund might double every five years or so. But I think Mr G had a responsibility to monitor fund performance to ensure that level of growth was sustained over the term of his pension.

I also note what Mr G says about understanding that the pension would produce a tax free cash lump sum plus a pension. And why he thought the fund value was the amount of the tax free cash. But I don't think any misunderstanding as to how the pension would work and in particular the amount of the fund that he could take as a tax free cash lump sum is Prudential's fault. It didn't advise Mr G. I think it was for his adviser to explain how the pension would work and what proportion of the fund would be available as a tax free cash lump sum to meet Mr G's mortgage.

The pension statements did identify the amount of tax free cash that might be available. I know Mr G's said he couldn't reconcile that with what he understood the amount would be. But I don't think that's Prudential's fault. In my view it was up to Mr G to query with Prudential if he didn't understand the statements he got.

Has Mr G been paying for waiver of premium benefit?

Mr G now accepts that the waiver of premium benefit was declined at the outset on health grounds and that no deductions have been made in respect of the premium costs. He's raised some queries but I don't think they're relevant or that the answers will change the outcome of this aspect of his complaint. Essentially he hasn't got the benefit but he hasn't paid for it either.

I note what he says about having redirected the amount of the premium to his mortgage payment but Mr G didn't make those payments. So he's retained the use and benefit of that money. I don't think it would be fair to make any award in respect of money which Mr G hasn't actually paid, even if I could say with any certainty – which I can't – that he would have increased his mortgage payments.

Can his pension be split?

As I've explained above, Mr G's complaint about whether he was provided with confusing information about this issue will be dealt with separately. But I think Mr G is now aware how

the policy operates and what his options are, assuming he doesn't transfer to a new drawdown product (with Prudential or another provider).

Essentially the policy is segmented which does offer some flexibility or the ability to 'phase' taking benefits from the policy. But, although Mr G can take benefits from one or more segments, his options are limited – he can transfer or buy an annuity on the open market (Prudential no longer offer annuities) with the 'full' segment(s) or after he's taken tax free cash. What he can't do is leave the segment(s) invested to be drawn down as income as and when he requires.

To do that he'll need to transfer to a drawdown product but Prudential will insist he takes advice before buying a drawdown product with it and so he'll have to pay an advice fee.

I don't think Prudential is acting unfairly by saying that Mr G will need to transfer. Mr G's existing contract doesn't provide for the drawdown option he wants. Changes to pensions (pension freedoms) were introduced in April 2015 (the Pension Schemes Act 2015) to give more flexibility in accessing pension benefits. The legislation was enabling rather than compulsory so there was no onus on providers to amend existing contracts to provide for the new options. The provider can insist on a new contract.

In certain scenarios advice is a legal requirement. I don't think that's the case here. But Prudential only offers drawdown products on an advised basis. In my view, that's a decision which Prudential is entitled to take. If Mr G wants to transfer to a drawdown product with Prudential he can only do that with advice. But, as I understand it, he's free to transfer to an alternative provider and who may not insist on advice being obtained.

Has Mr G experienced an adequate level of customer service?

I haven't upheld Mr G's complaints. I can understand why he's unhappy and that it's only relatively recently that he's found out that his pension (or the tax free cash) won't repay his mortgage.

But I can only uphold his complaint and make an award against Prudential if I think Prudential has done something wrong. For the reasons I've explained, in so far as Mr G's main issues are concerned, I don't think that's the case.

Prudential accepts that it made some errors. For example, its letter of 5 July 2017 refers to Mr G's units growing by at least 4% pa. As discussed, that guarantee applied to units in the with-profits fund which wasn't where Mr G's pension was invested. And there were failures to provide information – for example during a telephone call in June 2018 Mr G requested a policy value which wasn't supplied to him. I don't ignore those shortcomings but Mr G's focus has been on the more substantive issues.

Against that background I think the £100 that's been offered by Prudential its service failings is fair and reasonable and I'm not going to say that Prudential should pay any more.

my final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 December 2020.

Lesley Stead
ombudsman