

complaint

Mr C has complained that The Prudential Assurance Company Limited required him to take financial advice before he could release only the tax-free cash from his pension plans, and its adviser asked him intrusive questions. He's also unhappy that this isn't an option available under his existing plans.

background

Mr C contacted Prudential in May 2017 as he was thinking of accessing his tax-free cash sums. It's not in dispute that an arranged meeting was then cancelled when Mr C indicated he was uncomfortable paying for advice or sharing personal information. As Mr C mentioned he'd be speaking to the Government's Pension Wise service and considering his options, the adviser checked up with him a few times to see if he'd reconsidered whether he wanted to get regulated advice.

Mr C decided in August 2017 that he would meet the Prudential adviser. They met in early September and the adviser noted that he wanted a Prudential drawdown plan (to access his tax-free cash), as well as transfer funds across from another provider. Although the adviser noted some further reluctance from Mr C to disclose information, and about the cost of advice, it appears he believed that those concerns had been overcome. However Mr C saw it differently and made the complaint I've summarised above.

Prudential explained that in order to provide suitable advice as its regulator required it to do, it needed to know Mr C's circumstances and financial objectives. This was a two meeting process, with a fee being agreed and disclosed before any advice was given. It added that Mr C took out his plans before several innovations in the pension market took place (including the recent 'pension freedoms'). So it wasn't under any obligation to offer newer options on its older plans – but Mr C was taking the right course of action in getting advice on whether he should transfer to another plan that did offer those options.

Mr C asked one of our investigators to review his complaint. Prudential told us at this time that its adviser was still waiting to hear from Mr C whether he wanted to proceed (having last discussed this with him in November 2017). In summary, the investigator concluded:

- Mr C had a retirement annuity policy with safeguarded (i.e. guaranteed) benefits worth less than £30,000, and a personal pension policy without any guarantees, worth more than £30,000.
- He'd also been looking to transfer another policy to Prudential, but we didn't know if this included safeguarded benefits worth more than £30,000.
- As he had no safeguarded benefits over £30,000 with Prudential, it wasn't a legal requirement for it to check he's received advice before transferring out. But if he did have safeguarded benefits over that value with his other provider, the law required *that* provider to check he'd taken advice before transferring elsewhere.
- The terms and conditions of his Prudential plans don't allow any drawdown options. And Prudential was free to choose not to market new flexi-access drawdown plans at all, because the new pension freedoms aren't compulsory for all providers to adopt.
- But if it chose to market new policies with these options, Prudential was also entitled to set any conditions under which it wanted to accept any new business from Mr C, such as wanting him to apply after getting advice from a regulated adviser.
- The questions Prudential's adviser was asking were typical of what's needed to ensure a customer receives suitable advice for their particular situation.

- Mr C was free to look on the open market to see if any other providers of flexi-access drawdown plans *didn't* require him to come to them through a financial adviser. Or he could try and find a financial adviser who charged differently, and see if Prudential was able to accept an application through that adviser.

Mr C didn't agree. He said:

- He was annoyed that he'd put money away which he now has to spend on financial advice. He'd shopped around and seen even more expensive advice charges than Prudential had proposed to him.
- He was never given information that there could be these difficulties (such as having to use an adviser again at retirement) when he took his pensions out originally.

But from what I can see, Mr C also raised two new points that Prudential hadn't yet had the opportunity to address:

- Prudential's adviser had sent him an email contradicting his other provider on whether or not he was able to transfer his benefits. So he'd ended up buying an annuity from that pension, but was thinking of exercising his cancellation rights.
- He thought Prudential's adviser had caused delays which were unnecessary, because he already knew what he wanted to do with the money. And that adviser hadn't spoken to his other provider about the benefits he held with them.

The investigator reviewed what Mr C had said about the delays. She couldn't see that Prudential would be the cause of a delay while Mr C was still deciding if he wanted to take advice. But she also pointed out that as Mr C hadn't yet instructed Prudential to move any of his plans into drawdown, there wasn't a point to measure any loss against. (In effect, she wasn't yet able to offer a definitive assessment on whether Prudential had delayed matters in a way that warranted paying Mr C compensation.)

Mr C was about to meet Prudential's adviser again at the time the investigator wrote to him again in late December 2017. So she suggested Mr C explore his cancellation rights on the annuity at that meeting, given that he was within his cancellation period. Mr C responded further, before he met Prudential's adviser again. He said:

- He did refuse previous meetings with Prudential because he doesn't agree with revealing all his personal details such as *"how much I spent on groceries, entertainment and vehicles"*. And he knows what he wants to do with his pension.
- The adviser took him and his wife through a compulsory set of intrusive questions and a *"ludicrous questionnaire, testing our ability for risk taking"*.
- They signed something giving Prudential the right to access details from the other provider, but they heard nothing from Prudential until a few weeks later when they were told they'd need to do this themselves.
- That provider offered them an annuity with a third party, so they took up that option believing it was their only choice.
- Prudential had told them that they'd misunderstood the adviser's discussions. This has been going on since July 2017 and he was no further forward.
- He doesn't feel a costing of £2,000 plus to transfer his Prudential pension and a further £2,000 plus for the other provider was fair, given he knows what he wants.

We gave Prudential a copy of Mr C's comments. As these were from before the meeting Mr C had with Prudential that day, Prudential asked the adviser to provide an update on what happened. The adviser said:

'We initially discussed their concerns regarding divulging personal information...[and] over the costs of advice as they thought it was a straightforward process to access their money. [We] explained the benefits of advice and the importance and relevance of the information required. We gained agreement from them that they were happy to proceed in receiving advice from us before discussing any other matters.

There had been a misunderstanding between myself and [Mr C] regarding his [other provider] and whether we are able to transfer to us. He was under the impression we could not transfer it and hence proceeded to purchase an annuity... They were unhappy with this, due to the fact that they do not require an income and tax payable on payments. They realised that this was the wrong route to take and intend to cancel this using their cancellation rights.

There is also a discrepancy between the transfer value of the [other provider] provided to us and [Mr C]. I called [other provider] to clarify this earlier in the week and have logged a complaint with them as they have not responded to our request in a timely manner. Once we have this information, I will be proceeding to complete the transfer and drawdown of funds as they originally wanted.'

As agreement couldn't be reached, the complaint was referred to an ombudsman for a final decision. As we'd last heard from the parties at the start of 2018, the investigator contacted Mr C this week for an update on his situation. He told us that he'd decided to take all his benefits with Prudential, and was waiting for this transaction to go through.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. At the outset I should say that, as summarised in the heading at the start of this decision, I'm only considering a complaint from Mr C about whether Prudential was entitled to require him to take financial advice; and whether it asked him for inappropriate or unnecessary information about his circumstances.

I say this as since Mr C's complaint has been with us, he's raised further issues about delays caused in the process of transferring his pension. Taking into account that Mr C didn't meet the Prudential adviser until September 2017, these delays seem to focus around the need to gather details from his other pension provider, the quality of the information received and what Prudential is saying were misunderstandings about whether he could transfer that other pension. Having listened to Mr C's calls with our investigator, he's told us that his credit card is £2,500 'over the limit', and he's been waiting to access his money since July 2017 in order to carry out building work on his home.

Whilst Prudential has passed on its adviser's comments about these administration issues, it hasn't actually investigated them – and this is strictly a complaint that's arisen since it issued its original final response letter. It isn't related to Mr C's concerns about the requirement for advice and how information about him was gathered. And Prudential has also told us that the adviser has raised a complaint on Mr C's behalf with his other provider, because it was apparently unwilling to provide information (which in Prudential's view caused the delay).

I think it will be necessary for Prudential to separately investigate the part it played in the overall timescale for Mr C to access his pensions, since he first met its adviser. For instance I can't see that it's yet looked into the email which Mr C believes indicated that his other provider's pension couldn't be transferred. And until the process of transferring all of Mr C's

pensions is complete, I don't think it will be possible for Prudential to account for the full timescale involved, and say whether or not it agrees it caused any delay. So I think Prudential should separately provide a final response to Mr C's concerns that it poorly handled these administrative aspects of the transfer.

This service isn't strictly in a position to accept a referral of a complaint about those issues until Prudential has looked at them. And in the circumstances if we're asked to look at them it's likely that we'll need to get the views of his other pension provider on what happened. (If Mr C isn't satisfied with any response his other provider gives him, he is of course entitled to ask us to look at a complaint against that provider too.)

do Mr C's Prudential plans have to allow the new flexi-access drawdown option

I understand why Mr C is upset that no-one told him, when he took out his pensions several decades ago, that all these complications might arise at retirement. But that's simply because when he bought the pensions, the newer ways of accessing benefits at retirement hadn't been allowed by the government. His only route would have been to take a tax-free cash sum and commit to receiving an inflexible annual income (as an annuity) at the same time. So the wording of the contracts for Mr C's plans wasn't able to allow for features that hadn't yet been introduced.

The investigator was also right to point out that when the government has passed new legislation, this only enabled new ways of taking your pension – this didn't make it compulsory for all providers to offer them. Some providers have; but it's fairly common to find that with older style plans like Mr C's, it's necessary to transfer to a newer type of pension (either with the same provider, or elsewhere). Unfortunately there isn't anything the ombudsman service can do to require a provider to allow flexi-access drawdown on an existing plan – when for a whole range of reasons that may be impossible or impracticable for the provider to achieve.

is Prudential entitled to require Mr C to seek advice?

The investigator has correctly explained that there isn't actually a legal requirement for Mr C to demonstrate that he's received advice before being able to access his Prudential plans flexibly. That's because neither plan includes safeguarded (meaning, guaranteed) benefits worth more than £30,000. (But such a requirement may apply on his other provider if there are safeguarded benefits worth more than £30,000).

However for the reasons I gave above, the only route Prudential is able to offer Mr C so that he can access flexi-access drawdown is by setting up a new plan with this feature. This represents new business, as Prudential will be taking on a new liability to make sure that a customer buying one of these plans understands what they're buying. Prudential has legitimately taken the view that it can best do this by ensuring that Mr C submits his application through a regulated financial adviser – and it employs its own advisers that Mr C can choose to use. Again, this isn't something the ombudsman service can interfere with because it's a matter of Prudential exercising its own commercial judgement as to how it operates as a business.

I note the investigator did remind Mr C that he was free to shop around on the open market and see if there were other advisers who charged differently – or other providers who would accept an application to transfer to them without necessarily requiring him to take advice. So I think Mr C was aware of his options. And he's told us that when he investigated this, he found other advisers that proposed to charge more than Prudential. Unfortunately there can

be risks associated with giving up guaranteed benefits (even when they're not worth as much as £30,000), so even though they will be competing for custom, advisers are entitled to set their rates at a level they think is sustainable to operate as a business. Neither the ombudsman service nor the industry regulator sets maximum rates businesses may charge.

did Prudential ask Mr C appropriate questions when giving advice?

I realise Mr C found what he and his wife were being asked by the adviser intrusive. It may well be the case that he was asked for more information than he might recall being asked for when he originally bought the pensions. But back then, not only was the industry less tightly regulated, but he wasn't deciding how to draw the income from his pension – which has now become a more complicated exercise with all the options available.

Like the investigator, I've looked at the information Mr C has told us he didn't want to provide the adviser, including his attitude to risk and income and outgoings. I can understand why he found it intrusive, but it's nevertheless what I think an appropriately qualified adviser would need to know in order to give suitable advice on drawing income from a pension – particularly where it involved giving up some guarantees. And I think it's likely the reason why Mr C wasn't prepared to answer the questions was that he felt he already knew what he wanted to do with his pension. Unfortunately, I can't reach a decision based on that because Prudential couldn't assume that what Mr C wanted to do was a suitable course of action, without looking into his circumstances and objectives first.

So in conclusion, I haven't found grounds on which I could uphold Mr C's concerns about the advice process itself. But as I've explained, I think there's a separate issue for Prudential to investigate about the administrative delays – and in particular why it considers Mr C's misunderstanding and the actions of his other provider are responsible for those delays.

my final decision

I do not uphold Mr C's complaint about Prudential's requirement for advice and how information about him was gathered. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 April 2018.

Gideon Moore
ombudsman