

complaint

Mrs C complains that The Prudential Assurance Company Limited mis-advised her to opt out of her occupational pension scheme and is seeking appropriate redress.

background

Mrs C opted out of her occupational pension scheme in order to commence a Prudential policy in 1990. Prudential's advice was subsequently considered as part of the industry-wide pensions review and it made an offer to Mrs C in 1998 to guarantee that she would be no worse off at retirement as a result of opting out (between 1990 and 1998). Mrs C did not accept this offer.

In 2013 Mrs C complained to Prudential having been made aware by a new adviser that she had foregone the valuable benefits under her occupational scheme, which she had still not re-joined. Prudential explained that Mrs C had not responded to the 1998 offer. As a result it was no longer prepared to offer a guarantee on the same basis – but it calculated that she had suffered a loss of £29,229 based on certain future financial assumptions, which it was willing to pay to her as redress.

Mrs C was unwilling to accept this offer because Prudential had 'capped' its liability by assuming she left her employer in November 1998. Prudential said it had done this because it was reasonable for her to re-join her occupational pension scheme in November 1998, and it understood that she has still not done so.

Mrs C referred her case to this service, where it was assessed by one of our adjudicators. The adjudicator came to the conclusion that Prudential's new offer was fair and reasonable. In summary she said:

- Prudential had demonstrated that it originally sent two pension review invitations to Mrs C's correct address.
- It also provided a telephone note which suggested Mrs C was aware of the pensions review and requested a further review invitation, which she then returned.
- A subsequent telephone note suggested Mrs C was going to join the occupational pension scheme and would return the acceptance form for the offer of a 'guarantee'.
- Prudential's new offer was calculated in accordance with the regulator's guidelines which allowed it to 'cap' liability as at the point of the 1998 calculations.

Mrs C did not agree with the findings. She pointed out that:

- She does not recall any of the phone conversations about accepting the offer or joining her occupational pension scheme. She would have remembered an offer of tens of thousands of pounds had this happened.
- The regulator's rules state that all documentary evidence of the pensions review should be retained indefinitely. She does not believe 'screenshots' provided by Prudential are sufficient to prove letters were sent to her address and phone conversations took place

Prudential has made no further comments.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same overall conclusions as the adjudicator, for essentially the same reasons.

I understand Mrs C's point that under the pension review, firms were required to keep records indefinitely. These records should be able to show information such as the outcome of the review, the redress payable, when offers were made and when the acceptance was received. Prudential's records are in a combination of electronic and paper form, and unfortunately Mrs C's paper file could not be found in its expected location.

However I do have to bear in mind that this is a paper file which was last used some 14 years prior to when Mrs C raised the issue again in 2013. Paper records can be misplaced, and I am sorry to tell Mrs C that I do not see this as compelling evidence that the letters and phone calls – noted in skeleton form on Prudential's computer system – did not take place.

This is also not a case where the evidence of Mrs C being sent a 'guarantee' letter is the only thing I have to consider in isolation. There is also evidence on Prudential's computer system that 'chaser' letters were sent, and a phone call took place specifically discussing the offer. Given the length of time it has taken Mrs C to raise her complaint I am satisfied that these computer notes are an adequate record that the phone calls took place. This in turn supports the likelihood that the offer recorded on Prudential's computer system was sent to Mrs C in November 1998, and that she had received it.

Whilst I understand Mrs C does not recall being made the offer, it would not have been expressed in monetary terms at that time but in terms of a guarantee that she would be no worse off at retirement. Given the length of time which has passed it is understandable that this offer does not register as clearly with Mrs C as the figure of £29,229 she was offered recently.

For consumers such as Mrs C, who had opted out of their occupational pension scheme, and the scheme was still available for them to re-join but they had not yet re-joined it, the guarantee would have been conditional on them now re-joining that scheme. This meant that they would regain a future period of service linked to their eventual final salary, which would not therefore form part of any loss they had suffered. This is essentially based on a legal principle that a consumer should act to mitigate their loss.

Prudential would not have been able to make the offer of a guarantee without explaining in its letter what the guarantee depended upon, and this is consistent with the fact there was a subsequent letter and telephone conversation about why Mrs C had *not* re-joined the scheme. By not proceeding to re-join the scheme at that time, Mrs C did not re-establish a period of service linked to her eventual final salary – and demonstrate that she *would* have been prepared to remain a member of the scheme throughout her employment but for Prudential's advice.

The pensions review process ended many years ago and Prudential's offer of a guarantee at that time went over and above the regulator's requirement for compensation. This was to carry out a loss calculation and make a monetary offer of redress, as at November 1998, based on future financial assumptions. As Mrs C did not accept any offer in 1998, Prudential is still required by the regulator to make a monetary offer of redress – but it is entitled to 'cap' its liability to that which existed in 1998.

My understanding is that Mrs C had still not rejoined the scheme in 2013. So when recalculating her redress Prudential was entitled to assume she would always have been treated as a scheme 'leaver' as at November 1998 – the last point for which *it* was responsible for her failing to rejoin the scheme. This means it has calculated the value of her 'missing' service in the scheme prior to November 1998, and assumed this would have become a deferred pension in the scheme in November 1998, to be taken at retirement.

I consider this was a fair and reasonable approach for Prudential to take and in line with the regulator's methodology for the pensions review. I say this because Prudential has provided screenshots to evidence that Mrs C was invited to have a pension review as far back as 1996, and her action in requesting a further questionnaire in 1998 suggests she had already become aware that she might have lost out financially as a result of opting out. It follows therefore that by the point Prudential issued its offer of a guarantee in November 1998 at the latest, Mrs C should reasonably have re-joined the scheme. Prudential is no longer responsible for her failure to do so.

Mrs C's comments imply that she did not receive any further contact from Prudential since she completed the pension review questionnaire in 1998. If this was the case, it is reasonable to assume that Mrs C would have asked Prudential for an update in relation to her pension review considerably sooner than 2013.

my final decision

I do not uphold Mrs C's complaint and make no award on the basis that the new offer from The Prudential Assurance Company Limited is still available for Mrs C to accept.

Gideon Moore
ombudsman