

complaint

Mr C's complaint concerns the level of annuity he is receiving from The Prudential Assurance Company Limited ("Prudential"). In addition, he considers that he was coerced into taking a poor value annuity with Prudential because he believed a Market Value Reduction ("MVR") would apply if he transferred his fund to another pension provider.

background

The circumstances of Mr C's complaint were set out in my provisional decision issued on 23 April 2014, which is attached and forms part of this final decision. I concluded that there was no information to indicate Prudential had mismanaged the with-profits fund. In addition, it was not unreasonable for Prudential to apply the MVR if the transfer of his fund took place earlier or later than the selected retirement date ("SRD"). However, an MVR was not applied in Mr C's case, as he took his benefits on his SRD.

Mr C confirmed receipt of my provisional decision and did not accept it. In particular, he considered it suspicious that Prudential was unable to locate the call recording that he believes would have showed he was coerced into taking an annuity with Prudential.

Prudential confirmed it had no comments to make on my provisional decision.

my findings

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

It is unfortunate that Prudential does not have a copy of the call recording; however it did submit a brief file note of the conversation that took place. This indicated that Mr C asked about the consequences of taking his benefits *later* than his SRD. Because of this, it would have been reasonable for Prudential to have informed Mr C about the consequences of delaying taking his benefits, which included the potential for an MVR to be applied.

Further to my provisional decision, I have not been presented with any new evidence that I consider ought to change my decision regarding this complaint.

my final decision

Accordingly, I do not uphold this complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman

PROVISIONAL DECISION

complaint

Mr C's complaint concerns the level of annuity he is receiving from The Prudential Assurance Company Limited ("Prudential"). In addition, he considers that he was coerced into taking a poor value annuity with Prudential because he believed a Market Value Reduction ("MVR") would apply if he transferred his fund to another pension provider.

background

Mr C had two personal pension plans; one with Prudential and one with a third party provider. He says he contributed similar amounts to each plan, for a similar period of time.

The policy with Prudential was invested in a with-profits fund. Mr C says his other plan was self-managed, with investments in a few mixed asset funds. When Mr C reached his selected retirement date ("SRD") in 2013, his plans offered substantially different benefits.

Mr C chose annuities with his two providers on the same basis ie taking 25% as a tax-free cash lump sum, and the remainder as a level pension, paid monthly in arrears, with a 10 year guarantee period and no dependant's pension payable on his death.

The fund held with the third party provider was valued at £88,000. Mr C was offered (and accepted) from that provider a tax-free cash lump sum of £22,000, and an annual pension of £6,000. Mr C's fund with Prudential was valued at £32,000. He was offered a tax-free cash lump sum of £8,000 and an annual pension of just over £1,000.

Documentation provided by Prudential (its illustrations of benefits and its members' booklet) set out that if Mr C wanted to take his benefits on a date *other than his SRD* (May 2013), an MVR could apply. This included if he wanted to take the 'open market option' and transfer his fund to buy an annuity with another provider. The members' booklet confirms that there is no MVR or other deduction from the fund if transferring out *at* the policyholder's SRD.

During a telephone call with Prudential in February 2013, Mr C appears to have asked about the consequences of not taking his benefits on his SRD and delaying for a year or so.

Prudential says it does not have a recording of that call. However, it provided this service with a brief file note made by the Prudential representative who spoke with Mr C. I have asked for Mr C to be provided with a copy of that file note. The file note makes no specific reference to the subject of an MVR. It is therefore not clear whether an MVR was discussed, and if so, whether it was explained that this may apply if Mr C wanted to take a transfer or an annuity before his SRD, or to delay for a year or more beyond his SRD. In any case, Mr C decided to go ahead with taking his benefits at his SRD, and he accepted the annuity offered by Prudential, payable from his SRD in May 2013.

As is standard for annuity contracts, Mr C had a 30 day cancellation period. After the cancellation period had expired, Mr C raised a complaint with Prudential about the amount of pension being paid. In particular, he noted that his monthly income was less than the monthly contribution he had paid in over many years, and was six times lower than the income provided from the annuity with his other pension provider. He asked Prudential to check the annuity it had offered him and to remedy any miscalculation it had made.

Prudential did not uphold Mr C's complaint about the level of his annuity, so he referred the matter to this service.

The adjudicator who investigated Mr C's complaint also concluded that it could not be upheld. In summary, this was because:

- The fund performance had differed for the two pension plans he had invested in, and Mr C's other fund value was substantially higher than the fund value with Prudential. The benefits available were also dependent on the annuity rate offered by each provider, and the rates depended on a variety of factors. A higher fund value may also attract a better annuity rate.
- The adjudicator understood Mr C's disappointment with the performance of his fund with Prudential, but considered that it was difficult to make a like for like comparison.
- Prudential's annuity rate was a matter of its own commercial judgement, and this service could not intervene with this.
- Prudential had confirmed it had not applied an MVR to Mr C's annuity. Because the member booklet explained that Prudential could apply a reduction to Mr C's fund value if he took a transfer on a date other than his retirement date, the adjudicator considered that Prudential was entitled to do so.
- Based on the information available to her, the adjudicator had found no reason to believe that Mr C's fund value with Prudential had been incorrect.

Mr C did not agree with the adjudicator's assessment, so asked for the complaint to be referred to an ombudsman. He made the following further points:

- Similar sized contributions over 40 years had produced massively different fund values. His other pension had been self-managed with absolutely no expertise and no regular switching. The professional fund managers at Prudential had massively underperformed by comparison.
- He considers that leverage was applied by Prudential at the point when he was considering exiting to dissuade him from transferring elsewhere.
- He did not agree that because he failed to query it within a very short cancellation window, it was too late to query it now.
- He disagreed that because he had been informed by Prudential that an MVR could apply that somehow made it acceptable.

Prudential said it had no further comments to make.

my provisional findings

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

Although I accept that it may be of little comfort to Mr C, I will start by saying that I can fully understand his frustration and disappointment at the performance of his pension plan with Prudential, when compared with his other pension investments. At the heart of Mr C's complaint is the fact that one of his policies had a fund value at retirement of £88,000, whereas the Prudential fund had a value of £32,000. If it is correct that Mr C contributed similar amounts over a similar term, it is entirely understandable that he is dismayed about the performance of the Prudential policy.

However, fund performance is not guaranteed, and there can be many reasons why one fund may perform better than another. This may be particularly so if the underlying investment structure is different eg if one plan is invested in a with-profits fund managed by the provider, and the other in a spread of self-selected funds. I would only be able to consider upholding the underperformance aspect of Mr C's complaint if I had specific evidence of negligence or misconduct by Prudential in the way it managed the with-profits fund Mr C was invested in. I have been provided with no such evidence. I cannot conclude on the basis of comparative fund performance alone that there has been any negligence or misconduct on the part of Prudential.

Mr C received annual statements from Prudential showing the value of his policy. He therefore had the opportunity to monitor the comparative performance of his two pension plans. If he did so, he will have become aware over the course of time that his plan with Prudential was not matching the performance of his other pension. Mr C also had the option to stop his contributions to the plan, and to arrange a transfer to another pension arrangement (although I accept that a transfer value reduction and an MVR may have been applied to his fund on a transfer out).

I recognise that, in addition to fund performance, the annuity rate offered by Prudential for Mr C's residual pension (after his tax-free cash lump sum) is lower than the annuity rate available from his other pension plan. I do not know whether Mr C's other policy benefited from any guaranteed, preferential annuity rates, or whether that was his other provider's standard rate. However, in any case, Mr C was entitled to transfer out his Prudential fund when he wanted to take his benefits, to take advantage of the open market option. It was therefore not the case that he had to accept the rate offered by Prudential.

I note what Mr C has said about being told that an MVR could apply to his fund if he chose to take a transfer rather than accepting Prudential's annuity offer. However, this was only the case if he chose to take the transfer at an earlier or later date than his SRD in May 2013.

Although it appears that Mr C considered delaying taking his benefits, he did ultimately decide to take them at his SRD. I have not been provided with any evidence indicating that Prudential told him, incorrectly, that an MVR or any other reduction would apply if he requested a transfer as at his SRD. The warnings in the illustration I have seen make clear that an MVR could apply only if benefits are taken at a date other than the SRD.

I have also considered the members' booklet which would have been provided to Mr C when he started his pension plan with Prudential. The booklet set out the circumstances under which Prudential had a right to apply an MVR and/or a reduction to a fund on transfer. I am satisfied that the booklet makes clear that there is no penalty if taking a transfer on the policyholder's SRD.

Mr C complains about the unfairness of applying a penalty to a transfer. However, this forms part of the terms and conditions of Mr C's policy, which were made available to him at point of sale. I therefore do not consider it unreasonable if Prudential applies those terms. But, in any case, the terms complained of did not apply if Mr C wanted to take a transfer at his SRD.

my provisional decision

Subject to any further comments or evidence provided by the parties by the deadline stated above, my provisional decision is that I am not minded to uphold this complaint. Therefore I do not intend to make an award.

Venetia Trayhurn
ombudsman