

complaint

Mr D's complaint against The Prudential Assurance Company Limited ("Prudential") is about the advice given to him about his pension arrangements. He has said that:

- He was led to believe that the benefits payable at retirement would be significantly higher than actually available.
- He should have been advised to increment an existing plan instead of commencing a new plan.
- Prudential did not collect the correct amount of contributions in respect of the personal pension plan.
- Prudential provided him with incorrect information relating to the waiver of contribution included.

circumstances

Mr D met with a Prudential representative in 1986. At the time his employer did not offer any pension provision for its employees.

Mr D was advised to commence a retirement annuity plan with waiver of contribution where contributions were invested in the with-profits fund.

In 1989 Prudential advised Mr D to start a personal pension plan. Monthly contributions were invested into the with-profits fund. Again, waiver of contribution was added. Mr D was still employed by the same employer with no employer's pension scheme.

Prudential has provided a copy of a report completed at the time which justified the new plan instead of the existing plan saying: "*CUSTOMERS PREFERENCE – STAGED RETIREMENT – GREATER FLEXIBILITY*"

Mr D raised a complaint with Prudential in 2013 saying:

- The original projections for benefits would not be achieved.
- The contributions in 1989 should have been paid into the existing plan which would have given him a higher income.
- Prudential should have collected higher contributions than those actually paid.

Prudential did not uphold Mr D's complaint. It said, in summary:

- The personal pension plan permitted Mr D to pay monthly contributions net of income tax whereas the retirement annuity plan could only receive gross contributions.
- Mr D was aware of the level of contribution collected and could have contacted Prudential to rectify the position.
- The 1986 illustration was based on predictions assuming future investment returns and did not guarantee the benefits. Subsequent investment returns were lower than anticipated.
- The assumed growth rates on illustrations were set out by the regulator and were now lower than previously, hence the lower projected benefits.

As Mr D remained unhappy with this response he referred the matter to this service. He added that Prudential in subsequent communications had given incorrect information about the date of a telephone call and the addition of waiver of contribution to the personal pension plan.

We established that the retirement annuity plan had a policy fee of £1.20. According to Prudential, other expenses were reflected in the bonus declarations and assuming a 7% annual growth would probably represent around 1% per annum.

The personal pension plan incurred a monthly policy fee of £1.50 and a bid/offer spread of 5% on each contribution. Furthermore, there was an initial unit charge of 5% on the remaining units that had been purchased in the first year. (Since 2001, Prudential had removed the bid/offer spread).

The adjudicator who investigated the complaint considered that Mr D should have been advised to increment the retirement annuity contract instead of commencing the personal pension plan. The adjudicator said that Prudential should have compared the plan charges, and having established that the retirement annuity contract offered better value should have advised the increases to be directed to this plan. The adjudicator was not persuaded that Mr D held sufficient pension provision allowing him to stage retirement benefits if that was the reason behind '*greater flexibility*'.

The adjudicator also said:

- The 1986 illustration offered no guarantee in terms of the retirement benefits.
- He did not consider that Prudential had collected the incorrect level of contributions.
- The incorrect information given to Mr D about the waiver of contribution was disappointing, but had not led to any financial loss.

The adjudicator recommended that Prudential should agree to undertake a loss calculation at Mr D's retirement date to determine if he had suffered a loss when he took the benefits from the personal pension plan. This would involve comparing the actual benefits available to him then (in his desired format) with the benefits he would have received had the increased contribution been paid into the retirement annuity plan. If he had suffered a loss, the adjudicator said that Prudential should pay him the shortfall of tax-free cash and income. If he had not suffered a loss, Prudential needed take no further action.

In addition, the adjudicator recommended a further payment of £200 in recognition of the distress and inconvenience caused by the misinformation and inappropriate advice given.

Prudential did not agree with the adjudicator's findings. It said, in summary, that:

- The level of charges for both plans was very similar. It was not reasonable to expect the representative to compare the charges. The retirement annuity contract charges were less explicit and built into the pricing of the guaranteed basic annuity and bonus additions. The personal pension charges were more explicit and so appeared to be higher. However, this was not the case. Both plans invested in the with-profits fund and therefore received the same rate of bonus additions.
- There was no requirement in 1989 to record that a full comparison of pension products and pricing structure was made.
- Mr D would have been provided with the relevant policy literature. He was therefore in a position to make an informed decision.
- It did not agree that Mr D may not phase his retirement benefits.
- The personal pension plan could receive employer contributions unlike the retirement annuity contract. The same applied to contracted-out rebates. Unlike the existing contract, the personal pension plan could receive increases at any time during the policy year.
- The suggested distress and inconvenience payment of £200 was excessive. Prudential asked for evidence of the misinformation etc.

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 conclusions as the adjudicator, and largely for the same reasons.

Prudential has said that there was no requirement to record that a comparison of the two plans had taken place. That may be so, but the representative had a duty to provide suitable advice once he had established a need for further pension provision. These options would have included incrementing the retirement annuity contract. It follows, therefore, that the advantages and disadvantages of both contracts should have been considered in order to decide which was suitable. Given that cost is a key factor, I am satisfied this should have been considered, along with the other features of both plans.

I note that Prudential has said that the charges on both contracts are similar but that the charges on the retirement annuity contract are less explicit. However, although the policy fee on the personal pension was only marginally higher (about 0.5%), the 5% bid offer spread and 5% initial unit charge would have had a significant negative effect on the contributions invested. Whilst I understand the implicit nature of the charges on the retirement annuity contract, given the details that have been provided, it appears to me that the charges on the personal pension plan were materially higher.

So given that Mr D had an existing contract in place, I consider there would have needed to be good reason to recommend a higher charging product. Prudential has said that the original contract would not have given Mr D the opportunity to stagger his retirement – arranging a new plan provided additional flexibility. It has also said it enabled the payment of contributions net of tax and provided the facility to receive employer contributions

Whilst I accept that all of the above were features of the personal pension, I am not persuaded that paying contributions net of tax or a facility to accept employer contributions were likely to have been material in the decision making process in the circumstances of this case. The additional flexibility could have been, given Mr D would have been able to take benefits from the plans at separate times.

However, the additional flexibility that would be provided had to be balanced against the higher charges that were associated with starting a new plan, and their impact on the benefits that would be provided at retirement date. In my view, if Mr D had been alerted to the impact of the charges on the second contract and been aware that, other things being equal, opting for a second plan could lower the benefits ultimately payable at retirement date, I consider, on balance, he would more likely than not have opted to increase contributions to the original plan.

The adjudicator recommended that Prudential pay Mr D a sum of £200 for the distress and inconvenience caused by the misinformation provided and inappropriate advice given. In my view, although Prudential may have provided inaccurate information in its final decision letter the distress and inconvenience caused by this would have been limited. But given that Mr D believed his benefits were lower as a result of Prudential providing inappropriate advice, I consider that this would have caused a degree of distress, and subsequently, inconvenience. And I am satisfied that the amount recommended by the adjudicator is fair and reasonable in all the circumstances of the complaint.

my final decision

My final decision is that I uphold Mr D's complaint in part.

I order that The Prudential Assurance Company Limited provides to compare the benefits that Mr D can receive from the personal pension arrangement to those he would have received had he increased his contributions to the existing retirement annuity plan when he takes his retirement benefits (and on the same basis). If the amount calculated on the assumption that premiums were paid to the retirement annuity contract is higher, Prudential should pay the difference to Mr D – in terms of additional tax free cash and income.

Prudential should also pay Mr D a sum of £200 in recognition of the distress and inconvenience that has been caused by the matter.

David Ashley
ombudsman