

complaint

Mr W complains about The Prudential Assurance Company Limited. He is unhappy with the method it has used to calculate the redress it has guaranteed to pay for the unsuitable advice it gave Mr W in 1988 to take out a personal pension instead of joining his employer's pension scheme.

background

Mr W belonged to a final salary pension scheme from 1978 to 1988. After that he became eligible to join another occupational scheme, which offered both a final salary and a money purchase alternative. However, he met with Prudential who recommended that he took out a personal pension instead. He agreed to make contributions of around 4% of his salary.

In 1994 the trustees of the scheme gave Mr W an opportunity to join the occupational pension scheme but he declined.

In 1997 Prudential contacted Mr W as part of the industry wide pension review. It offered to review the advice Mr W had been given. As a result Mr W had to join his employer's pension scheme but by then only the money purchase option was available.

Prudential calculated the loss that Mr W had suffered based on not joining the money purchase scheme from 1988 to 1997. It said it would apply that money to his personal pension to ensure he would receive benefits at least equal to what he would have received from the money purchase scheme.

In 2016 Mr W's adviser was reviewing his retirement provision and contacted Prudential to confirm the guarantee it said it would apply. He questioned why Prudential hadn't used the final salary scheme when comparing lost benefits. He said the most suitable advice would have been for Mr W to join the final salary scheme.

Prudential didn't uphold the complaint. It said it had used the level of contributions Mr W was prepared to pay into his personal pension as a guide of what he would have paid into the occupational pension scheme. It concluded that would have been the 4% money purchase scheme. It also said Mr W had declined to join the final salary scheme when given the opportunity in 1994.

One of our adjudicators investigated the complaint and said it should be upheld. He said Mr W had already been a member of a final salary scheme from 1978 to 1988 and would have most likely joined the new final salary scheme if he'd been aware of the benefits and its availability. He didn't believe the extra 2% contribution would have been too onerous for Mr W to pay and didn't think it was fair to say he couldn't have afforded it.

The adjudicator felt that, if suitable advice had been given, Mr W should have been directed to his employer who would have provide details of both schemes. He thought that when Mr W was provided with a comparison of the benefits of both schemes, he was most likely to have decided to join the final salary scheme for a relatively smaller extra cost.

Prudential didn't agree. It said that due to the "*under contribution process*" it had to mirror the level of contributions paid into the personal pension when calculating redress. It had decided he would have paid the same level of contributions into the occupational scheme which could only have led to Mr W joining the money purchase scheme. It also said that it believed

Mr W chose to pay 4% of salary as a contribution because that was the amount he could afford. Although he could have paid an additional 2% to join the final salary scheme, Prudential believed Mr W would have most likely told his employer he was prepared to pay 4% and his employer would have enrolled him as a member of the money purchase scheme.

The adjudicator wasn't persuaded to change his view. He said the final salary scheme was a contracted out scheme, therefore the national insurance reduction Mr W would have received meant the net effect of contribution to him would have been around 4% of his salary.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator and for broadly the same reasons.

Prudential had completed a calculation for the redress it said Mr W was due for unsuitable advice it gave in 1988. So, I don't have to consider the suitability of the advice as Prudential had accepted responsibility for its recommendation.

The issue to resolve in this complaint is whether Prudential should have used the final salary scheme that was available to Mr W from his employer in 1988, as opposed to the alternative money purchase scheme that was also available and was the scheme that Mr W joined in 1997, when Prudential undertook its review.

In a situation like this, where both parties have different views, and the facts don't demonstrate conclusively what would have happened, I have to make my decision on the balance of probability and assess what was most likely to have happened.

I think Prudential should have directed Mr W to his employer in 1988, and told him to enquire about joining his employers' occupational pension scheme. The adviser from Prudential wouldn't have been able to advise Mr W on which scheme to join, it would have been down to the employer to make Mr W aware of his options.

In my view the employer would have presented Mr W with details of both schemes, which would have included a list of the ancillary benefits offered by money purchase and final salary schemes. I think, when made aware of benefits such as death in service, indexation of income in retirement, guaranteed levels of income based on service and salary and spouses pensions Mr W would, most likely, have chosen the final salary option. I note he'd already had experience of belonging to a final salary scheme for the previous 10 years.

What I also have to consider is the question of affordability. Prudential says that Mr W consistently paid the equivalent of 4% of his salary into both the personal pension and subsequently the money purchase scheme when he joined in 1997. I note the level of contribution required from his earlier final salary pension was also 4%. Prudential has also said that it is obliged to mirror that contribution when deciding what scheme to base the redress calculation on. It concluded that it should use the money purchase scheme.

However, in my view the increase from 4% to 6% of salary at the time would have been a relatively modest increase. And I think it was likely that Mr W would have paid the higher contribution if he'd been made aware of the extra benefits of the final salary scheme. But I also note that the final salary scheme was 'contracted-out'. This meant that Mr W paid a

lower amount of national insurance to reflect the fact that the scheme would ultimately provide a “*guaranteed minimum pension*”. So, the overall effect on Mr W’s salary would have been that he would be the equivalent of around 4% worse off.

I agree with the adjudicator that Mr W’s contribution position within the final salary scheme would have been broadly similar to the position he was in within the Prudential personal pension. But even if I’m wrong about that, I think payment of an extra 2% would have seemed worthwhile and affordable.

Taking all the above factors into consideration, I believe that, on balance, Mr W was more likely to have joined the final salary scheme and Prudential should use that scheme to compare when calculating the redress due to him for the previous unsuitable advice.

my final decision

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice.

Prudential must undertake a redress calculation in line with the regulator’s pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using the most recent financial assumptions published (at the date of the decision). In accordance with the regulator’s expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W’s acceptance of the decision.

Prudential may wish to contact the Department for Work and Pensions (DWP) to obtain Mr W’s contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a ‘SERPS adjustment’ in the calculation, which will take into account the impact of leaving the occupational scheme on Mr W’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any past loss (i.e. extra net income or tax-free cash Mr W would already have received from the occupational scheme) should be paid to him as a lump sum.

The compensation in respect of any future loss should if possible be paid into Mr W’s pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance.

If the future loss payment into the pension isn’t possible or has protection or allowance implications, it should be paid directly to Mr W as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mr W hadn’t yet taken a tax-free cash sum from the occupational scheme, 25% of the future loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

But if a tax-free cash sum from the occupational scheme has already been taken into account in the payment for past loss above, the remaining future loss is in respect of taxable income only. So it would be appropriate to make a notional deduction of 20%.

Where I consider that total fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

determination and money award: I require Prudential to pay Mr W compensation as set out above, up to a maximum of £150,000.

The compensation resulting from the loss assessment must where possible be paid to Mr W within 90 days of the date Prudential receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Prudential to pay him this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Prudential pays Mr W the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes it to pay him from the date it receives notification of his acceptance of the decision, as set out above.

my final decision

I uphold this complaint about The Prudential Assurance Company Limited. It must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 August 2017.

Keith Taylor
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