

complaint

Mr A's complaint concerns advice he received to transfer preserved benefits from his occupational pension scheme to a personal pension plan with The Prudential Assurance Company Limited ("Prudential").

background

The adjudicator who investigated Mr A's complaint concluded that it should not be upheld. The adjudicator considered that the advice to Mr A to transfer his benefits was not provided by Prudential (then known as Scottish Amicable) but by an independent financial adviser ("IFA"). Although he took into consideration that Mr A has said that this IFA had no involvement with the sale of the Prudential personal pension, he had not been provided with any documentary evidence confirming Prudential provided the advice. In his view, the documentary evidence available from the time supported Prudential's position that the advice to transfer was provided by an IFA. The IFA was listed as the selling agent and Prudential said it paid commission to the firm listed.

Mr A did not agree with the adjudicator's assessment, and asked for it to be reviewed by an ombudsman. In summary, he said:

- No IFA was involved. All correspondence relating to the transaction was addressed either directly to him or at a third party address.
- There was no evidence showing that the IFA was connected to the sale, other than a post-sale attribution entered by Prudential and a subsequent letter to him that names the IFA if he has any future enquiries.
- His actual complaint was not related to any IFA role, but that the contract failed in law.

Prudential said it had no further comments to make.

my findings

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

The dispute about who provided advice to Mr A to transfer benefits from his occupational pension scheme in 1991 has been ongoing for some time. Where the evidence is incomplete, inconsistent or contradictory, I am bound to make a decision on the balance of probabilities – that is, what I consider is more likely to have happened based on the available evidence.

Whilst I appreciate that correspondence from Prudential was sent directly to Mr A, I do not consider that this is conclusive evidence in support of his case. This fact alone does not confirm that the policy was sold directly by Prudential without any IFA involvement advising on the decision to transfer. The only documentary evidence available to me in respect of the sale of the policy indicates that the selling agent of Mr A's policy was the IFA listed.

I have taken into consideration that this was completed post-sale and that Mr A would not have held any control over its completion. However, as there is no other documentary evidence to confirm otherwise, on balance, I consider that this document suggests that an IFA was involved in the advice to transfer from an occupational pension scheme to a

personal pension plan with Prudential. In addition, I find that the letter that lists the IFA's address for 'Enquiries' supports this view. I have not seen any evidence that Mr A queried or disputed the reference to the IFA when his policy documentation was issued.

For this reason, whilst very much sympathising with Mr A's situation, I am unable to conclude, on the balance of the evidence available, that Prudential provided the advice to transfer benefits from his occupational pension scheme in 1991.

Mr A has said that his complaint is irrespective of whether an IFA was involved and is about the contract failing in law. In my view this has already been addressed by our service in 2004. An adjudicator considered that, in her opinion, there was little prospect of success:

"As explained to you on the telephone, I would need to be persuaded that you decided to proceed with the transfer of your pension benefits purely on the statement made by the Scottish Amicable representative that your pension benefits, if held in a personal pension policy, would be safe from creditors. However, notwithstanding this statement, I consider that even if you can prove that the representative stated this, your complaint is unlikely to be upheld because it was generally believed at the time that this was correct. The bankruptcy matter was never clarified until 1997. The case in question was Re Landau (1997) that confirmed that personal pension funds could be held in the bankrupt's estate and vested by the trustee in bankruptcy, if required."

This aspect of the complaint has already been investigated by our service and because Mr A did not dispute this outcome with our service at that time, I do not believe that it would be appropriate for it to be considered further now.

my final decision

I am unable to uphold Mr A's complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman