

complaint

Mr N has complained about The Prudential Assurance Company Limited's (Prudential) handling of his request to transfer the value of his deferred occupational pension scheme (OPS) benefits to an alternative plan. He is unhappy with what he believes is Prudential's over reliance on the critical yield in order to determine whether or not the transfer was in his best interests.

Mr N states that as a result of Prudential's actions he had to accept a lower transfer value and that he has had to incur fees that he would not otherwise have had to.

Mr N has argued that Prudential has not treated him fairly.

background

Mr N was working as an adviser for Prudential in October 2016 when he asked for a transfer analysis to be completed regarding the possible transfer of the value of his deferred pension benefits in a former employer's OPS.

On 25 October 2016 Mr N had received a transfer value quote of over £240,000 as at 6 September 2016. This was guaranteed for three months. In the event that the required completed forms were not returned to the OPS administrator by 6 December 2016 the transfer value quoted would lapse and a new transfer value would need to be produced. This letter made it clear that Mr N had to get appropriate advice from a qualified financial adviser before the transfer could go ahead.

At the time Mr N was aged 58 and he was contemplating taking some retirement benefits. Mr N had savings of around £39,000, investments of around £315,000 and a self-invested personal pension valued at about £424,000.

A transfer analysis was completed by Prudential which determined that a critical yield of 20.5% was needed in order to match the value of the benefits being given up in the OPS. Prudential didn't recommend the transfer should go ahead saying the critical yield was "...*extremely high*...".

Mr N complained about the outcome saying he'd been provided with internal communications which confirmed there could be reasons, other than just the critical yield, why a transfer might be considered appropriate.

Mr N subsequently transferred to another provider and in the process received a transfer value around £20,000 lower than the amount originally quoted. This was because the original transfer value guarantee period had expired and a new lower transfer value was quoted.

An adjudicator looked into the complaint and didn't uphold it. The adjudicator explained that a transfer analysis had been completed. This showed that an investment return (critical yield) of 20.5% per annum would be needed just to match the value of the benefits given up. The adjudicator considered that it was reasonable for Prudential to have concluded the transfer wasn't in Mr N's best interests at the time. He was likely to be worse off in retirement if he transferred.

The adjudicator noted Mr N's concerns that not all of his circumstances, as recorded by the adviser, had been used to determine the outcome of the transfer analysis. However, the adjudicator's view was that the other factors that might be considered valid reasons were unlikely to outweigh the significance of the critical yield figure given Mr N's circumstances at the time.

In addition, the adjudicator said that Prudential was entitled to decide what business it would and wouldn't accept. He also said that, in any event, it was Mr N's decision to initially choose Prudential with there being no guarantee Prudential would conclude the transfer should go ahead. Consequently Mr N ought to have been aware that he might need to find another provider to complete the transfer for him at a later date if he wanted to proceed regardless of the advice he received.

Mr N didn't agree. He said Prudential had breached several of the regulator's key principles of Treating Customers Fairly (TCF) and this hadn't been considered as part of the assessment of his complaint. In his very detailed response Mr N stated that:

1. He wished to retire early.
2. He wanted to maximise the death benefits payable.
3. He did not need to provide any benefits for his wife as she was completely financially independent.
4. He wanted to maximise the tax free cash sum.
5. He wanted to have the flexibility available under a personal pension arrangement to alter the level of the income that he was taking.
6. He wanted to control the overall investment strategy as he had to ensure that his assets (both pension and non-pension) would have to last for many years in the future.
7. This was probably one of the first pension transfers that the new Prudential Pension Transfer Service had considered. If Prudential had looked at his individual circumstances then the transfer would have been able to go ahead.

However, the adjudicator didn't alter his opinion. He explained he'd considered the TCF principles and found Prudential hadn't done anything wrong.

As agreement has not been reached the complaint has been referred to me for a decision.

my findings

I've considered all the evidence and arguments in order to decide what is fair and reasonable in the circumstances of this complaint.

It is important to note that when looking at pension transfers a business such as Prudential has to follow the requirements that are set down by the regulator. The regulator's requirements have been set out in their publication dated 24 January 2017. Whilst this was published after the transfer advice that Mr N received the publication did not change the requirements on a business. It just set them out as a reminder.

The regulator set out that:

COBS 19.1.1C

- (1) A firm must make a personal recommendation when it provides advice on conversion or transfer of pension benefits.*
- (2) Before making the personal recommendation the firm must:*
 - (a) determine the proposed arrangement with flexible benefits to which the retail client would move; and*
 - (b) carry out the appropriate pension transfer analysis and produce the transfer value comparator.*
- (3) The requirement in (2)(b) does not apply if the only safeguarded benefit involved is a guaranteed annuity rate.*
- (4) The firm must take reasonable steps to ensure that the retail client understands how the key outcomes from the appropriate pension transfer analysis and the transfer value comparator contribute towards the personal recommendation.*

COBS 19.1.2B

To prepare an appropriate transfer analysis a firm must:

- (1) assess the benefits likely to be paid and options available under the ceding arrangement;*
- (2) compare (1) with those benefits and options available under the proposed arrangement; and*
- (3) undertake the analysis in (1) and (2) in accordance with COBS 19 Annex 4A and COBS 19 Annex 4C.*

and finally

COBS 19.1.3A

- (1) To prepare a transfer value comparator, a firm must compare the transfer value offered by the ceding arrangement with the estimated value needed today to purchase the future income benefits available under the ceding arrangement using a pension annuity (calculated in accordance with COBS 19 Annex 4B and COBS 19 Annex 4C)*

Mr N asked for the appropriateness of the possible transfer to be considered in the knowledge that a transfer analysis would be completed in line with the requirements set down by the regulator.

Mr N states that he was aware of this calculation but that it was inappropriate in his case as his circumstances were so different from the standard assumptions that the answer produced of 20.5% was inappropriate.

I note that Mr N has stated that there were other considerations which might make the transfer viable – in his case the provision of potentially improved death benefits.

However, the transfer analysis was completed based on the Mr N's circumstances at the time. As Mr N wasn't, for example, seriously ill he didn't have an immediate need to provide improved death benefits such that this would have overridden the critical yield considerations.

I also note that Mr N has argued that as his wife was financially independent there was no need for the Prudential to allow for a spouse's pension to be provided on his death. Unfortunately for Mr N the regulator's requirement is to value the benefits that would be available under the previous scheme and this would include a spouse's pension. It would therefore be inappropriate to determine a lower critical yield calculation based just on a single life pension.

In the circumstances it was reasonable for Prudential to have deemed the transfer unsuitable at the time. It considered that it was unlikely Mr C would be able to achieve the required annual investment growth of 20.5% per annum just to match the benefits being given up. Like the adjudicator I agree that at the time the other potential reasons for transferring did not outweigh the significance of the critical yield.

A transfer analysis of accrued OPS benefits involves determining the capital value of all the benefits being given up on a standard set of assumptions and comparing it to the transfer value offered. I understand Mr N might have felt he didn't need the benefits of the OPS as he had other means of providing for his retirement and he was interested in taking advantage of a substantial transfer value. However in my opinion Prudential's conclusion that Mr N should not transfer at the time was reasonable.

I note that Prudential has provided the Financial Ombudsman Service with a copy of the detailed booklet that sets out "Our Advice Service". This sets out the charges that it will levy for with a Defined Benefit pension transfer.

It states:

"To determine if a defined benefit pension transfer would be a viable option for you, we would submit a formal request for a transfer value and conduct a review of your financial situation, including assessment by our Pension Transfer Specialists. To conduct this analysis a charge of £100 (including VAT) is incurred and is payable by cheque.

If we believe that you should not transfer your pension

....we will write to you providing a summary of our analysis.

If you want to proceed you can request a formal recommendation report and Appropriate Advice Declaration which may allow you to transfer to another provider. A £500 fee (including VAT) would then apply.

The booklet also sets out:

"Defined Benefit pension transfer value

The transfer value is usually guaranteed for around three months. This means that if you wish to proceed with the transfer, then you would have roughly three months to

plan what to do with the money and for us to advise you and complete any paperwork required.

We aim to process any transfer within the three month guarantee period, however if there are unexpected delays or if you have already requested a transfer value prior to us being involved then a revised transfer value may have to be requested.

Most defined benefit pension schemes will allow one free transfer value request each year, so requesting an additional one could result in a fee. The value could also be lower than the original transfer value. Please note, where this happens we cannot be held responsible.”

Mr N was able to transfer to another provider at a later date. The new provider's critical yield was similar to Prudential's. However, Prudential wasn't prepared to accept a transfer it didn't deem to be appropriate. It had taken a commercial decision to decline to accept transfer values where the critical yield was too high. This was to avoid any future risk that a policyholder might come back to complain that they should not have been advised to transfer.

Prudential has also confirmed that it has taken a commercial decision not to accept pension transfers on an insistent customer basis or on an execution only basis.

Mr N would have been aware that it wasn't guaranteed Prudential would agree the transfer was appropriate. As a result Mr N ought to have been aware there was the possibility he'd need to find another provider and in doing so the original transfer value offered in lieu of his OPS benefits might expire and a new transfer figure would need to be requested.

I note Mr N's application was submitted in mid/late October 2016 with the transfer analysis being issued on 29 November 2016. In the circumstances I don't think Prudential caused any unreasonable delays to Mr N's ability to transfer or caused him an investment loss.

Mr N has said Prudential breached the regulator's Treating Customer Fairly (TCF) principle in deciding the outcome of his complaint. However I have looked at the regulator's statement on the Fair Treatment of Customers that was published on 12 May 2015.

This set out that there are six consumer outcomes that firms should strive to achieve to ensure fair treatment of customers. These remain core to what the regulator expects of firms.

1. Consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture.
2. Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
3. Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
4. Where consumers receive advice, the advice is suitable and takes account of their circumstances.
5. Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
6. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

I have reviewed Mr N's complaint and I consider that Prudential has treated Mr N fairly. In this case I agree with Prudential that given Mr N's circumstances at the time it was not unreasonable for it to decline to accept the transfer given the very high critical yield required to match the benefits that would be given up.

It is clear that Prudential did warn Mr N that its advice might be not to transfer and that if that was the case he would have to transfer to a new provider if he could find a provider willing to accept the transfer sum on offer.

my final decision

I do not uphold Mr N's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 February 2017.

Adrian Hudson
ombudsman