

## **complaint**

Mr C has raised a number of concerns about how The Prudential Assurance Company Limited ("Prudential") handled his annuity purchase in 1999, in particular that:

- His pension started a month later than he had requested.
- He should have been advised to add a spouse's benefit onto his annuity.
- He was not asked about his health and/or medical conditions.
- He was not made aware of the open market option.
- He was charged nearly £600 for setting the annuity up.
- His pension was taxed because he was not sent the relevant forms.
- He was not told about the guarantees and bonuses attached to his policy.

Mr C has been represented by his daughter, Ms C.

## **background**

Mr C returned his annuity forms in August 1999. He chose to defer his pension until 1 January 2000. This was his 65th birthday.

However, in December he contacted Prudential because he had not heard anything. Prudential arranged for one of its representatives to visit him with the forms. The representative went to Mr C's house on 22 December 1999. The forms were completed and returned to Prudential for processing by the representative that day.

Prudential set up the pension selected, which was a fixed, single life pension that would be payable monthly in advance for 10 years certain and throughout Mr C's lifetime thereafter. Mr C's pension started on 2 February 2000.

Following later advice from a Prudential representative Mr C invested the tax free cash sum into an ISA. A 'fact-find' was completed for this re-investment. This advice itself is not subject to a complaint, although Mr C did complain to Prudential in late 2000 about a charge of £580 that was said to have been the cost for the advice he'd received. Prudential issued its final response and did not receive a reply.

Mr C made his current complaint to Prudential in November 2014. He detailed his concerns and correspondence followed between Mr C, Prudential and Ms C.

Prudential did not uphold the majority of his complaint, although it did later acknowledge that he had been inconvenienced as a result of having to chase for revised annuity quotations in December 1999.

Unhappy with this outcome and as a result the matter was referred to the Financial Ombudsman Service. An adjudicator considered the documentation available and did not uphold the complaint for the following reasons:

- Whilst Mr C's pension started a month after he thought it would, there was no requirement for Prudential to pay the benefits on his 65<sup>th</sup> birthday. Moreover, Mr C had benefited financially from this delay by receiving more by way of his annuity and cash lump sum.
- The pension vesting forms did provide for a spouse's pension.
- Prudential did not offer enhanced annuities in 1999.

- The pension vesting forms gave him the option of taking his benefits elsewhere by providing a transfer value.
- The charge of £580 was for the advice Mr C received about the re-investment of the cash lump sum. This sum was not taken from Mr C's pension plan.
- Prudential updated their records to show Mr C's correct tax position one month after his pension commenced.
- The Guaranteed Basic Annuity and bonus application was explained to Mr C within the policy documentation.

The adjudicator did feel that an offer of £100 to reflect the distress and inconvenience that had been caused was fair and reasonable given the circumstances. Prudential had previously agreed to pay this amount.

With regard to the increased income and tax free cash sum Prudential has demonstrated that because the benefits started a month later Mr C received about £285 more tax-free cash sum benefits and also about £80 more a year in income payments.

Ms C responded. She did not agree with the adjudicator's findings.

She felt that Prudential had contracted to start Mr C's pension on 1 January 2000 – when Mr C had detailed this as his intended retirement date on the pension vesting forms he completed in August 1999.

Ms C also said that Mr C did not have sufficient time to consider his options. She said that he felt pressured into choosing his benefits due to the holiday period and because he was worried that the forms would not be processed promptly.

It was accepted that the option of providing for a spouse's pension was provided for on the pension vesting forms. Ms C said, however, that the option of an enhanced joint-life annuity was not available.

Ms C submitted that if the open market option been explained to Mr C he could have shopped around for this product. Ms C maintained that the open market option was as important in 1999 as it is today but it had not been explained to Mr C. Ms C did not think that providing this option via the 'Transfer Value' was in line with the general requirements at the time.

In addition, Ms C said that, irrespective of whether the representative present when Mr C completed the pension vesting forms was acting as an adviser, Prudential sold Mr C the annuity. Ms C repeated that Mr C thought that the representative was there to assist him financially. She questioned why a fact-find, which queried Mr C's health, had been completed for the re-investment in 2000 and was not considered when the pension was set up in December 1999.

In relation to the tax issues encountered Ms C stated that due to a third party this had taken longer to resolve. She again questioned the guarantees and bonuses relating to the policies.

The adjudicator responded to these further points. The adjudicator said that Mr C had simply deferred his pension when he replied in 1999 and this had not created a contract to pay out benefits on 1 January 2000. In addition, no evidence had been presented to suggest that the representative did anything other than assist in the completion of the forms when Mr C selected his benefits.

The adjudicator said that whilst Prudential did not offer enhanced annuities in 1999 the representative was not giving advice and there was no duty to tell Mr C about any other providers' products.

The adjudicator also provided Ms C with copies of the relevant historical regulations to demonstrate that Prudential had acted in accordance with the requirements at that time. The adjudicator agreed that the open market option was just as relevant and important in 1999, but explained that it was simply the case that the requirements were as not as prescriptive then as they are today.

Ms C contacted the Financial Conduct Authority for a definition of 'mis-selling' and provided this to the adjudicator. The adjudicator replied to Ms C saying that because Prudential had provided a transfer value it had met the obligations it had at that time. The adjudicator added that because the representative was not providing advice the annuity had not been mis-sold.

The adjudicator said that the tax issue was resolved promptly by Prudential and so it would not be fair to uphold this element of the complaint.

Finally, it was explained that the guarantees and bonuses attached to Mr C's plans would have been detailed in the product information when initially started the plans.

The adjudicator clarified that bonuses were added to Mr C's policies because they were invested in With-profit funds and the underlying investments performed well. Mr C's plans also had a Guaranteed Basic Annuity which meant that the plan would guarantee to pay a specific income (including the bonuses) provided premium payments were maintained. However, the Guaranteed Basic Annuity was reduced to reflect the fact that Mr C did not make payments to the plans for the whole period.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have considered and addressed each part of Mr C's complaint separately below.

#### *pension commencement date*

When Mr C completed and returned the pension vesting forms in August 1999, he said that he wished to retire on his 65<sup>th</sup> birthday, on 1 January 2000.

Having reviewed everything I cannot see that Mr C was placed under any pressure when he chose to take his benefits.

It is apparent that the options form that was completed by Mr C in December 1999 showed that the pension was due to start on 1 February 2000. I note that, for his pension to start on 2 February 2000, the paperwork did not need to be returned until 12 January 2000. Moreover, there was a cancellation period in which Mr C could have cancelled his annuity. I am satisfied that Mr C had sufficient time to make an informed choice and to change his mind if he wanted to.

I can appreciate Mr C's frustration that he had to chase Prudential for his retirement forms and why he feels his pension was delayed. Prudential made an offer of £100 to reflect the

inconvenience it had caused. In light of the fact that Mr C's income is higher as a result of the delay detailed above, I believe this to be sufficient compensation. Looking at the additional income and tax free cash, even if interest were to be added to the missing payments, the increased income and lump sum means that Mr C has, and continues to, receive a greater benefit than he would have if the benefits had started a month earlier. I therefore conclude that the delay has not caused Mr C to suffer a financial loss.

Ms C has submitted that Prudential and Mr C entered into a contract to have his pension commence on 1 January 2000, however this is not correct. Mr C simply deferred his benefits to the date that he intended to retire. The terms and conditions of the policies did not require Prudential to pay the benefits from his policies on this date and required the appropriate forms to be completed before it could start the annuity. For these reasons I do not uphold this part of Mr C's complaint.

#### *Spouse's pension, enhanced annuities and the open market option*

Ms C has said that she accepts that the option of having a spouse's pension was provided for on the pension vesting forms but has submitted that the issue is that there was no option for an enhanced pension on a joint-life basis.

Prudential did not offer enhanced annuity rates until 2001, but Ms C has said that Prudential should have made Mr C aware of the open market option so that he could shop around. However, I do not consider that the representative was acting in an advisory capacity. On balance it seems that Prudential simply arranged for the papers to be hand delivered so that they could be completed promptly and returned without further delay to Mr C.

So I do not think that there was an obligation on Prudential's representative to provide a detailed explanation about the open market – the role here was simply to provide the forms and return them, with the ability to *describe* the options. I have not seen anything to suggest the representative recommended any one particular annuity feature over another.

In any event, even if advice was being given the representative would not have been able to recommend products available elsewhere. The pension vesting forms themselves provide for the open market option by providing a 'Transfer Value'. This gave Mr C the option to transfer his funds away from Prudential if he wished. And whilst the requirements surrounding the open market option are a lot more prescriptive today, at the time Mr C took his benefits this was sufficient.

A fact-find was not completed in 1999 when Mr C chose his benefits. It is my view that this is because the representative was not advising him. This is in contrast to the events of 2000, when Mr C received investment advice. I do appreciate why Mr C may have thought that the representative was there to advise him financially. However, and as Ms C acknowledges, no advice was given or offered. Because of this it would not be fair to hold Prudential responsible for Mr C's annuity choice.

#### *£580 charge for advice*

In 2000, following Mr C vesting his pension, he received investment advice from Prudential. This was to place the tax free cash lump sum he'd received into an ISA. Prudential paid its adviser a commission of £580. This upfront payment was not taken directly from the ISA or the pension fund, but was an expense it paid and would recover through the anticipated charges of the new product over its lifetime.

### *Tax*

Because Mr C was not provided with the relevant tax forms he was initially taxed incorrectly. However, Prudential updated their records one month after Mr C's pension had started. I accept there were other tax issues faced by Mr C, but these were as a result of the Inland Revenue not updating their system. I cannot hold Prudential responsible for the ongoing issues and feel that they corrected their systems promptly.

### *Guarantees and bonuses*

Ms C has said that Prudential failed to provide Mr C with information about the guarantees and bonuses attached to the policy. Ms C has said that Mr C could have lost out financially had he transferred away from Prudential. I am satisfied however that the guarantees and bonuses detailed above were itemised in the product information provided when Mr C began his pension plans. This documentation also explained what would happen should Mr C transfer away from Prudential.

Finally Ms C has argued that Prudential sold Mr C the annuity and as a result they were under a duty to place Mr C in an informed position providing information that wasn't misleading.

Whilst Prudential is the annuity provider and offered Mr C the benefits, I am unable to reach a conclusion that it 'sold' him the plan. It simply gave him information about the various options available to him. Prudential were, therefore, acting only as the product provider in that they set the benefits up in accordance with the instructions given by Mr C. I am happy that Mr C was given sufficient information and time, including that of the cancellation period, to make an informed decision.

### **my final decision**

I do not uphold this complaint against The Prudential Assurance Company Limited and I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 20 July 2015.

Adrian Hudson  
**ombudsman**