

## complaint

Mr A's complaint is about his Section 32 Buy-Out Bond with The Prudential Assurance Company Limited ("Prudential"). Mr A is unhappy that he has not received a 25% tax free lump sum from his final fund value at retirement. Mr A also believes that the plan was mis-sold to him.

## background

Mr A's complaint was investigated by one of our adjudicators. She wrote to Mr A explaining that in her opinion Prudential had fulfilled its obligation to pay him a pension that was at least equal to the Guaranteed Minimum Pension ('GMP') that would otherwise have been provided by his former scheme at state pension age. Unfortunately, at the time that Mr A took his benefits the value of the fund was not sufficient to meet the cost of providing the GMP, and therefore Prudential had made up the shortfall of over £20,000. However, Prudential was not obliged to pay a tax free lump sum because the fund that had accumulated had all been used to pay for the GMP.

In relation to the issue that Mr A believed his pension policy had been mis-sold, the adjudicator was of the opinion that we were not able to consider this particular aspect of his complaint as it had been referred to us outside of the relevant time limits.

Mr A did not agree with the adjudicator's assessment. He said, in summary, that he remained of the belief that the adviser did not make him aware that he may not be entitled to a tax free lump sum when he reached retirement. Mr A had since been diagnosed with cancer, and wants his wife to be financially stable in the event of his death.

Both parties were invited to provide additional evidence or make further comment. Prudential did not make any further submissions. However, Mr A said, in summary, that:

- *"The agent ... told me this was the best policy to have and I would receive a lump sum on retirement and on my death the wife would have a lump sum".*
- Mr A is *"not saying Prudential are to blame"*, however *"the agent miss sold me the policy and I expect to receive the lump sum"*.
- He was not going to get his money back from Prudential and all he wanted was the 25% tax free lump sum.

As Mr A did not agree with the adjudicator's assessment, the complaint was passed to me for my consideration.

## 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 overall conclusions as the adjudicator and for broadly the same reasons.

Clearly, I sympathise with Mr A's circumstances and understand why he wants the lump sum paid from his plan. However, in order to uphold his complaint I would need to be persuaded that Prudential did something wrong. But having carefully considered the evidence presented, it does not appear to me that Prudential acted inappropriately or treated Mr A unfairly.

When Mr A transferred his benefits from his former occupational pension scheme to a section 32 plan, the benefits that were payable at retirement depended on, amongst other things, investment returns, which were not guaranteed. So there was a risk that the pension from it would be lower than would otherwise have been provided by the former scheme. But it could also have been higher. However, irrespective of the risks, as a minimum, the firm had to provide the same level of GMP that the former scheme would have paid. So in effect, whatever happened, there was an underlying minimum guaranteed pension. But the 'downside' of this guarantee was that the firm was obliged to pay it before any tax free cash was payable.

In Mr A's case, the value of his fund was not sufficient to provide the GMP. Its cost was over £20,000 more than the value of Mr A's fund. However Prudential was required to make good that shortfall. But this also meant that there was no remaining fund to pay Mr A any tax free cash. In the circumstances, I have seen no grounds on which to require that Prudential alter the way in which it pays Mr A his benefits or pay him a tax free lump sum.

Mr A has also complained about the potential mis-selling of his pension policy. However, as explained by the adjudicator, we are bound by certain rules that set out what complaints we are able to consider - the Dispute Resolution Rules (DISP) which can be found in the regulator's handbook.

DISP rule 2.8.2 provides that:

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*more than;*

- (a) six years after the event complained of; or (if later)*
- (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within the period and has a written acknowledgement or some other record of the complaint having been received;*  
*unless*

*in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances*

The advice to transfer was given in 1993, clearly more than six years before Mr A raised his complaint in 2013. For Mr A's complaint to be in time, it must have been made within three years of when he became aware (or ought reasonably to have become aware) that he had cause for complaint.

In the late 1990's the regulator required firms to ask people in Mr A's position whether they wished to have the advice they were given reviewed. The aim of the Pensions Review was to provide consumers who had been mis-sold personal pension plans with redress (where due) as an alternative to court action.

Prudential has provided evidence to show that it mailed Mr A with a pension review invitation at his known address in 1999. My understanding is that Mr A does not dispute that he

received the second letter, and although he had been in contact with Prudential about the matter he never requested for a review to be carried out.

In my view Mr A ought to reasonably have requested a review. And, on doing so, I am satisfied that its likely he would subsequently have received the result of that review and known whether he had cause for complaint well before the three year time period before he raised this complaint. Accordingly, I do not consider that he raised his complaint within the relevant time period.

I can consider complaints outside of the time limits mentioned above where, in my view, failure to comply with the time limits was as a result of exceptional circumstances. However I am not aware of any exceptional circumstances that were applicable here.

Accordingly, in all the circumstances, I have not been persuaded that Mr A raised his complaint about the original sale of the section 32 plan within the relevant time limits, and therefore I am unable to consider this aspect of his complaint.

#### **my final decision**

My decision is that I am unable to consider the merits of Mr A's complaint about the original sale of the section 32 plan, because it was made outside of the relevant time limits.

And I do not uphold Mr A's complaint about the payment of the tax free cash.

David Ashley  
**ombudsman**