complaint

Mr D's complaint is that a retirement age of 75 has been unilaterally applied to his personal pension plan with The Prudential Assurance Company Limited (Prudential), and that Prudential has informed him that an Early Retirement Charge (ERC) will apply to part of his benefits if taken before reaching age 75.

background

Mr D believes that his pension plan was established with the option to retire at any time between age 60 and 75, without incurring an ERC. When he applied to set up the pension plan in 1981, he had not specified a Selected Retirement Age (SRA).

Mr D says he became concerned in 2003 when he received a statement from Prudential which showed an SRA of 75. He asked his financial adviser to query this with Prudential as he had not selected this retirement age. Prudential responded to his financial adviser in December 2003, and the letter stated that the SRA was *"set at 75 however [Mr D] is entitled to take benefits at age 60 years without penalties"*. Mr D considers that his entitlement to take his benefits from age 60 without an ERC applying was confirmed by this letter from Prudential.

Mr D's pension plan consists of a 'base plan' (set up in 1981) and various 'increments' that were set up under different policy numbers at various times. Prudential say that their statement in the December 2003 letter only related to the policy number quoted at the top of the letter, and to the base plan also mentioned, and should not have been read as meaning that *all* increments can be taken at age 60 without penalty.

Having investigated Mr D's complaint, the adjudicator wrote to Prudential concluding that, in his opinion, Prudential should allow Mr D to take benefits from his plan at any age between 60 and 75, without the deduction of an ERC. In summary, the basis of the adjudicator's assessment is:

- Mr D always understood that his pension plan was established with the flexible option of retiring at any time between age 60 and 75, with no requirement to decide on an SRA when the plan was set up. Prudential has also confirmed that no SRA was recorded on the original application.
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- The policy documents and schedule subsequently issued when the plan commenced in 1981 made no reference to an SRA of 75, nor requested Mr D to confirm as such.

- Given that the assumptions made about life expectancy were significantly lower in 1981, and with no evidence to the contrary, the adjudicator was not persuaded that Mr D would have chosen age 75 as his preferred retirement date.

- It would appear that the choice of age 75 was a unilateral decision taken by Prudential or one of the plan's previous administrators.

- There is no evidence to suggest that:

  1) Mr D was made aware of any requirement to select a retirement date from the outset; or
  2)
  3) Prudential (or one of its predecessor companies) contacted Mr D to advise him of its intention to implement a default SRA of 75, and the potential implications of doing so, or gave him an opportunity to select an earlier retirement age.

- If an ERC is applicable, to then default the SRA to age 75 would be most favourable to the business and potentially most onerous to the consumer.

- It is not sufficient or reasonable for Prudential to say that it has simply applied the SRA implemented by the previous administrators, particularly where the application form is silent on the issue and an SRA of 75 is least favourable to the consumer.

- It is not unreasonable to expect Prudential to have verified Mr D's intended retirement date rather than simply continuing with a default SRA that is potentially onerous to him.

- There was no ambiguity in Prudential's December 2003 statement (set out below) and it did not bring to Mr D's attention that an ERC might apply to other parts of his plan taken before age 75.

  "The selected retirement age is also linked to the base plan and is set at age 75 however [Mr D] is entitled to take benefits at age 60 years without penalties. We are unable to write the business to a reduced selected retirement age…"

Prudential did not agree with the adjudicator's assessment, and in summary said:

- Mr D's pension plan was originally taken out with another company and as such Prudential does not have any responsibility for the advice that was given to him when he started his plan. Nor is it reasonable for Prudential to have details of the original provider's new business processes in setting up these schemes.

- Mr D would have been provided with the terms and conditions when setting up each increment, which are clear regarding the charges that may apply on early retirement. Mr D would not have disregarded this information taking into consideration his professional occupation and the importance of reading such documents.

- On the transfer of the business to Prudential, no system changes were made. The data imported at the time showed that the plan had an SRA of 75 and this has not been altered at any time since.
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- They disagree with the adjudicator's opinion that their letter sent to Mr D in 2003 was confirmation that *all* his pension benefits can be taken from the age of 60 without penalties, as they say it was only confirmation in respect of the benefits under that particular policy number, which is only one of several policies making up Mr D's pension plan.

- The adjudicator has not considered the evidence in respect of the subsequent application forms completed by Mr D. It is surprising that if Mr D had no intention of retiring at age 75, that this date has been completed on more recent forms (2006).

- They disagree with the adjudicator's opinion that the unilateral decision to adopt age 75 as Mr D's SRA was that of Prudential or Scottish Amicable previously.

Mr D made the following comments on Prudential's response:

- At no stage did he elect for retirement at the age of 75. When he took the policy out, expecting to retire at 75 would have been most unusual, not least because his employer had a compulsory retirement age of 65 at that time.

- He cannot find anything in his papers which confirms his agreement to an SRA of 75.

- When he first became aware of Prudential's use of 75 as the SRA, he immediately raised the issue with his financial adviser and the outcome was Prudential's letter dated December 2003, which put his mind at ease that he could retire from age 60 without penalty, regardless of the SRA of 75 appearing on his statements.

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 conclusion as the adjudicator and for broadly the same reasons.

I will start by considering the actual terms and conditions of the plan regarding the ERC. The original policy set up in 1981 did not include an ERC provision, which is consistent with the ability to retire at any age between 60 and 75. The ERC concept was introduced into Prudential policy wording relevant to the later increments. Clause 9.2 of the later policy document includes the following:

"If the Retirement Date is before Selected Retirement Date then the value will be reduced by an Early Retirement Charge. The Early Retirement Charge will be calculated as follows…"

The 'Selected Retirement Date' is defined in the contract as the *"date shown on the schedule".* Mr D's original application form and schedule did not specify such a date and this is not disputed by either party. This appears to be in line with Mr D's understanding that his pension plan was established with the flexibility of retiring at any time between age 60 and 75, without incurring any penalties. In order for an ERC to now be applied to increments, the SRA needs to be clearly established. Prudential's 2003 letter says that the SRA for the increment is linked to the SRA of the base plan. However, there was no SRA at the point of sale, and one was only introduced to the base plan at a later date without consultation with Mr D or his consent.

Copies of more recent application forms completed by Mr D have been supplied which do specify an SRA of 75. Prudential have referred to this as evidence of Mr D having an explicit intention to retire at age 75, or selecting age 75 in respect of his later increments.

However, the documents in which Mr D had recorded 75 as his SRA were completed *after* Prudential's letter in 2003. That letter was issued after Mr D had raised concerns about Prudential's reference to an SRA of 75, and had been told that his SRA was linked to his base plan and *could not be reduced*, but that he was entitled to take his benefits from age 60 with no penalties applied.

In my view, the later application forms for increments which specified an SRA of 75 should be read in that context. Based on Prudential's December 2003 letter, it was reasonable for Mr D to have understood that he was stuck with an SRA of 75 whether he liked it or not, but that he had received confirmation that he would not suffer any detriment as a result.

In reaching this view, I have considered that when Mr D queried the SRA of 75 when it was first brought to his attention in 2003, it is unlikely that he was seeking a response from Prudential which would only cover one particular increment (the policy number quoted by Prudential at the top of its letter). It is much more likely that Mr D's concern about having an SRA of 75 unilaterally applied to his pension plan was relevant to each increment he had purchased since setting up his base plan in 1981, and therefore that he was looking for confirmation that penalties would not apply to any of his policies if taken from age 60.

I would therefore have expected Prudential to be much clearer in its letter of December 2003 if it wanted to limit its statement (that Mr D was entitled to take benefits at age 60 without penalties) only to one specific increment. If it had been clear on that point, Mr D would then have had the opportunity to raise the same query in respect of each increment, and to take action if informed that he had a fixed SRA of 75 for each increment which could not be changed, and that ERCs would apply if benefits were taken prior to age 75. At the very least, Mr D could have decided in late 2003 to set up a separate arrangement for further pension contributions (with a new provider if necessary) to ensure he could take these benefits at age 60 without penalty.

It is not clear when and why an SRA of 75 was entered into the records for Mr D's base pension plan, but I am satisfied that it was not as a result of Mr D's instructions. As he says, a retirement age of 75 would have been unusual at the time and does not accord with his employer's compulsory retirement age of 65. In the particular circumstances of Mr D's case, I have concluded that it would not be fair or reasonable for Prudential to use a default retirement age of 75, unilaterally imposed, to now apply an ERC to certain of Mr D's benefits if taken prior to age 75, particularly given the response issued by Prudential following Mr D's specific enquiry in 2003.

my decision

My decision is that The Prudential Assurance Company Limited should allow Mr D to take all his benefits from his pension plan before the age of 75, without the deduction of an ERC.

Venetia Trayhurn
ombudsman