

complaint

Mr L has complained about The Prudential Assurance Company Limited. He is unhappy that it wouldn't let him pay increased pension contributions into his personal pension policy without advice from an independent financial adviser (IFA). He says that the condition is unfair.

background

Mr L started a personal pension plan with Prudential in 2009. His application set the level of the contributions he and his employer would pay each. These were fixed amounts.

In 2015 Mr L asked Prudential to accept a one-off payment from his employer. He said this was because his employer had underpaid its contribution over the years as it hadn't been increasing the payments in line with his pay increases. His contract said the employer would pay a set percentage and not a set amount.

Prudential said that any one off payments had to be made through an IFA as it was classed as new business.

Mr L explained how the underpayment had happened and that using an IFA would cost him £200. The underpayment was less than £700 and so this cost wasn't worthwhile.

Mr L complained to this service. He explained that he had a contractual right to these pension payments from his employer. Prudential reconsidered and explained that if the lump sum payment was compensation it could, as a gesture of good will, allow a one off payment to be made.

Our adjudicator didn't agree that Prudential should insist that Mr L use an IFA. He set out extracts from the Technical Guide to the plan. These said;

'Single contributions can be paid at any time...'

'Regular contributions can, on written request to us, be increased at any time. Employer and member contributions can be reduced or stopped independently of each other, provided that there is no infringement of the contract of employment or employment law. There is no charge for increasing, reducing or stopping contributions....'

The adjudicator also referred to the application form that Mr L had signed. Under the heading 'Declaration by investor' this said;

'I understand that I can alter the terms of my plan by giving revised instructions to Prudential, in writing, and that these revisions can be either directly from me, from my employer, or from the financial adviser who arranged my plan (or from any other adviser I appoint in writing and accepted by Prudential) provided that such revisions are allowed in terms of the Rules and Plan Conditions.'

So the adjudicator said the complaint should be upheld. He didn't think Prudential should have said that an IFA had to be used. The terms of the plan said Mr L could make one-off payments and increase regular payments.

The adjudicator said that Prudential should pay compensation to Mr L on the basis that the lump sum payment should have been paid into the plan and the monthly payments increased soon after he raised the issue with them. So it should increase the value of his plan accordingly.

The adjudicator also recommended that Prudential should pay Mr L £200 for the trouble and upset it had caused.

Prudential didn't agree. It said that it didn't accept any non-advised business into this plan. It's a complex product and this has been its position since the product was launched. It doesn't agree that it can't use its commercial decision to over-ride the policy conditions.

The complaint has been referred to me for a final decision.

my findings

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

I agree with the adjudicator. I uphold this complaint and I'll explain why.

All Mr L was trying to do was to make a one off contribution to make up for payments his employer hadn't made and to increase the regular contributions going forwards.

I can see that there may be circumstances where it may be reasonable to require that advice should be taken before a lump sum payment is made into a plan like this. But in this case the one-off payment was relatively small and there was a clear explanation of why it was necessary. In the end Prudential accepted that it could be made if it was a compensation payment and that is effectively what it was.

Also, the Technical Guide to this plan does say that changes to the contributions can be made and that this can be done by the member or the employer. It doesn't have to be done by or with the assistance of an IFA.

In these particular circumstances I don't think Prudential was acting fairly or in line with the terms of the plan (and the Technical Guide) when it refused to allow Mr L to make this payment without using an IFA. I also think he should have been allowed make the changes to the future contributions. The plan did provide for this.

So I uphold this complaint. To put things right Prudential should;

1. Pay Mr L £200 for trouble and upset.
2. Upon completion of all relevant paperwork and payment of a lump sum to cover the past shortfall in contributions from the employer, Prudential should put Mr L's pension policy in the position it would now be in assuming that it had received the contributions due up to 7 September 2015 on 7 September 2015.
3. Prudential should also inform Mr L what amount is now due to allow his employer to pay a further 'catch up' lump sum to reflect the regular contributions that his employer would have paid from 7 September 2015 (including any increases to reflect any changes in Mr L's salary) up to date.
4. Once these contributions from 7 September 2015 are paid on a lump sum basis, they should be treated as if they had been paid regularly and collected on their individual

monthly due dates (from 7 September 2015), with the relevant number of units being purchased on each of those dates.

5. Future regular contributions from the employer should also be collected and increased in accordance with the instructions from Mr L, his IFA or from his employer.

my final decision

I uphold this complaint about The Prudential Assurance Company Limited. It should take the steps set out above to put things right including making a payment for trouble and upset to Mr L of £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 April 2016.

Keith Taylor
ombudsman