

complaint

Mr D complains about the level of compensation The Prudential Assurance Company Limited (Prudential) has calculated he's due, as a result of it setting up a second policy for him instead of simply increasing the premium on his original plan. He says there's no evidence to support Prudential's calculation and he's lost his trust in its administration of his plan.

background

Mr D took out a retirement annuity contract with Prudential in 1984. This type of plan based its returns on a guaranteed basic annuity, with bonuses being added during the plan's term and at retirement. In February 1990 Mr D agreed to increase his monthly pension premium by £20. But as his plan could only be increased on its anniversary date (October) a new plan was set up to accommodate the increase in contributions.

In 1996 Mr D agreed to increase premiums for the second plan by £35 per month and at this point Prudential assessed whether the new plan had been suitable for him. It decided to remove the additional charges from the second plan so that Mr D wasn't disadvantaged.

In September 2018 Mr D was reviewing his plans and decided to complain about what had happened. He said he was disappointed with the returns from his first policy when compared to what he'd been shown in the original illustrations. He also didn't understand how he'd accrued a second policy instead of the increases being applied to his original policy.

Prudential didn't uphold his complaint about the overall plan values as it said there was no evidence that he'd been given any guarantees about what he'd receive at retirement. But it did accept that the plan value might be greater if premiums had been applied to it, instead of a second plan, and it agreed to undertake calculations to ensure Mr D wasn't disadvantaged by having two plans. It said this was because Mr D's original plan had guarantees that didn't apply to the second policy.

Prudential subsequently carried out the calculation and said that at that particular point the original policy would have been worth £10,681.42 more than the second plan had the premiums been paid into that plan instead. It said it would recalculate the loss when Mr D wanted to retire as the value of the funds could go up or down in that time.

Throughout the next year Mr D entered into further discussion with Prudential which involved him making a data subject access request. However, Mr D lost faith in Prudential's ability to carry out the calculation and wanted it to provide a full breakdown of how it arrived at the final loss figure so that he could have it checked. But Prudential, although it provided some further commentary on how it had reached the final compensation figure, wasn't able to provide the information Mr D wanted. So as he remained unhappy Mr D brought his complaint to us where he made the following points:

- The quality of the information provided to him under a data subject access request was poor. It wasn't in order, was unscheduled, and some of the information was illegible.
- He thought the service he'd received from Prudential was below standard. He said there had been long delays in answering his requests and Prudential's administration was "a shambles".
- There was agreement that the additional premium had been applied to the wrong policy but no agreement about the investment loss suffered. He simply wanted a

yearly breakdown of how each plan had performed and to see the performance of the original plan with the increase in premium applied.

- He no longer trusted Prudential's calculation that showed he'd 'lost' around £10,000. He didn't think it was fair that Prudential could refuse to provide the breakdown he wanted due to "*commercial sensitivity*".

One of our investigators looked into the matter. He made the following points:

- He was satisfied with Prudential's explanation of how the two separate plan transfer values were calculated and then compared in order to work out what loss Mr D may have suffered. He was also satisfied that Prudential would recalculate Mr D's compensation at the time he decided to draw his pension plan benefits.
- There were no guarantees within the terms and conditions of the first plan about the amount of pension Mr D could expect. He thought Prudential had honoured its promise of a guaranteed basic annuity within Mr D's plan, so he thought it hadn't done anything wrong on that matter.
- He thought Prudential could have been clearer in its explanations to Mr D and could also have responded in a more timely manner. He considered these issues had led to Mr D losing his trust in the outcome of the calculations and had led him to spend longer asking for further, clearer information.
- He thought Prudential ought to pay Mr D £250 for the distress and inconvenience these matters had caused him.

Prudential agreed with the assessment and said it would pay £250. But Mr D thought Prudential should have to pay more compensation for the initial mis-selling of the pension. He also thought that all of the growth from the second pension should be reflected in the amount that he was due to be compensated.

So as no resolution could be found the complaint's been passed to me for a review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I find I'm in agreement with the investigator and for mainly the same reasons.

The calculation

A company like Prudential will have carried out numerous calculations like this on previous occasions. It has developed the systems, technical expertise and knowledge to be able to do so and we would expect it to carry out such calculations accurately and fairly. And some of the information it uses to undertake transfer value comparison calculations like this one involves specific fund, annuity rate and bonus rate information which is commercially sensitive to Prudential.

However, while I understand providing a breakdown of the like Mr D requested is more information than Prudential would usually provide to its customers, I would expect it to be able to explain its calculation in a clear, simple way that Mr D was able to understand and would give him some degree of confidence that the overall situation had been taken into consideration. Here Mr D was simply informed of the amount of loss Prudential decided Mr D had suffered, along with a statement that confirmed it wasn't Prudential's practice to provide details of how it carried out the calculation.

Mr D wanted his son, who is an actuary, to check the calculation. So I can understand that in the circumstances and with the direct relevance to Mr D's pension plans, Prudential could have done more to help Mr D understand how his final fund values were reached. Specifically, it could have provided the breakdown it has since provided to us earlier than it did.

I've carefully considered the explanation and breakdown that Prudential has provided to us. And I'm satisfied with what it has demonstrated and the method it's used to compare the two policies Mr D held, as if the increased premiums had been applied to the original policy instead. I can see the calculation is quite complex and the two pensions are different in composition – with one being purely a fund that reflects the amount of investment and growth, while the other is made up of a guaranteed basic annuity with bonuses applied. So Prudential has had to express the annuity that could have been achieved in the first plan as a capital value and then compare it to the fund value of the second plan.

But I'm satisfied with the method that it's used to run several calculations so far, which seem fair and reasonable. Prudential has said it will recalculate the final loss when Mr D takes his benefits as the fund values can go up and down in the meantime. I've no reason to think that final calculation will be incorrect, although Mr D can raise his concerns again if he has grounds to demonstrate the calculation isn't correct.

Mr D didn't think that all the growth from the second pension was reflected in the compensation amount. He thought it was too low – especially compared to the value of the first pension which had less paid into it. But as I've already explained the two plans work quite differently and it isn't possible to compare values in that way. But, in any case there's no evidence to suggest that the premiums weren't allocated to each plan accordingly, or that the current values don't reflect the actual underlying value of each plan. What I'm considering here is whether the calculation Prudential has undertaken is correct and whether that means Mr D has suffered a loss from the increased pension premiums being applied to a new plan instead of his original one.

Plan performance

Mr D also complained about the overall performance of his original plan in so much as its value is lower than what he'd been promised from the original illustration. Because of the passage of time I've not been able to obtain a copy of that illustration but I've no reason to dispute Mr D's recollections of what says he was shown. So I can understand why he's now disappointed in the returns he's now seeing.

But I have been able to look at the policy particulars and brochures that applied to the retirement annuity contract. I've also seen copies of the most recent annual statements. What I've seen is that the plan is described as providing “a *basic guaranteed annuity*” along with the addition of “*yearly bonuses*” which aren't guaranteed. There's no evidence that any of the documentation promised Mr D a *guaranteed* final pension amount, so Mr D doesn't have a guarantee to use as a benchmark against which he can safely say the plan has underperformed. The basic annuity – which was guaranteed, is set out within the yearly statements, so I think Prudential has done what it said it would do on that basis.

I appreciate that Mr D is disappointed with the bonuses he has received on his with-profits pension plans. Unfortunately a with-profits fund is not immune from economic factors and will be affected by investment conditions. With-profits providers, such as Prudential, have

quite a bit of discretion about how they run their with-profits fund and the bonuses rates they apply. Having said that, Prudential can't operate in an arbitrary manner and is accountable to the industry regulator as to it how it manages its with-profits funds. But I'm not aware of the regulator having expressed any concerns over Prudential's with-profit fund.

Poor performance of plans isn't normally a reason for us to uphold a complaint unless there's evidence that the advice to take out the plan was unsuitable. In this case although the general advice for Mr D to increase his retirement provision wasn't unsuitable, it has been agreed that this should have been done using Mr D's original plan – and not by setting up a new one. But I've addressed that issue already and I've said that Prudential's method for putting things right is fair and reasonable.

So I can't uphold Mr D's complaint about poor performance generally as that isn't something this service would normally interfere with, as the very nature of investments is that their value can go up and down according to many factors which aren't always within Prudential's control.

Prudential's Administration

Mr D has described his service from Prudential as being "*poor*" and he thinks it's been slow to respond and hasn't helped him to understand the calculations it's undertaken. Indeed he believes Prudential itself didn't fully understand the calculations it undertook. So I've carefully considered the events from September 2018 until Mr D brought his complaint to us, and I can see that Prudential has been slow to respond on occasions and hasn't necessarily provided clear, easy to understand explanations for its actions. I also don't think it explained why it couldn't provide the information Mr D wanted to check the calculation as well as it could.

All of this led to Mr D losing confidence in Prudential and its actions which I think has led to him requiring further investigation around the calculation. It seems he simply didn't trust the figures. So, like the investigator, I think Prudential ought to compensate Mr D for the impact these matters had on his retirement planning. Looking at the level of distress and inconvenience I think Mr D has suffered, I agree with the investigator that Prudential should pay Mr D £250, which I think is within the range of what I'd expect to see for issues such as these.

my final decision

For the reasons that I've given I uphold Mr D's complaint in part.

The Prudential Assurance Company Limited should pay Mr D £250 for the impact this matter has had on his retirement planning.

It should also calculate the final loss Mr D suffers – when he draws his benefits – using the method it's confirmed and explained to us.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 May 2020.

Keith Lawrence
ombudsman

