Financial Ombudsman Service

complaint

Mrs R complains about the amount of compensation paid to her after she made a complaint to The Prudential Assurance Company Limited ("Prudential") in 2002 about advice she had received to opt out of her occupational pension scheme.

background

Mrs R was advised by Prudential to opt out of her occupational pension scheme in 1988. She complained about this advice in 2002, and Prudential reviewed it accordance with the industry-wide Pension Review. That involved Prudential following regulatory guidance for reviewing advice of this type. Once Prudential had concluded the review, it offered Mrs R compensation of £6,129, which she accepted.

Mrs R says, in summary:

- She didn't have enough information at the time that the compensation was offered to make an informed choice about whether or not the compensation would be sufficient to replace the benefits that would have been paid from her occupational pension scheme when she retired.
- The correspondence from Prudential didn't make her aware that the level of income she would receive at retirement would be dependent upon the pension achieving the levels of annual investment growth and annuity rates that had been assumed when the compensation was calculated.

Our adjudicator looked into things and concluded that the complaint should not be upheld. He said, in summary:

- Prudential had calculated the redress in line with the guidance and assumptions required by the regulator at the time. At that time there was nothing to suggest the compensation may fall short of replacing the benefits. These things are only clear with hindsight.
- The Pension Review instigated by the regulator was meant as one-off exercise and not something that recipients of compensation could re-visit at a later date. We can't go back and change the outcome now.
- Prudential's letter explained that the compensation was equal to the financial loss suffered plus an additional amount to allow for future charges. It also highlighted that Mrs R was free to seek independent advice before accepting the offer.

Mrs R did not accept the adjudicator's view. She said, in summary:

- There is no mention in Prudential's letter from 2002 that the compensation offered was based on assumptions such as growth or annuity rates.
- No illustration was provided of the amount of pension that would be required to provide her occupational scheme benefits when she retired. Nor was there any reference to the risk that the amount of compensation might not be enough to provide those benefits.

- The loss assessment was very high level and does not explain how it was calculated. She should have been given a comparison between the projected pension from her occupational scheme and that from Prudential.

- She accepted compensation on the basis that it would put her in the position she would be had she remained in her company scheme. This has not happened and she was not told that was a risk.

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 have reached the same conclusions as the adjudicator. I appreciate Mrs R will be disappointed by this.

When receiving a complaint from Mrs R in 2002 Prudential was required to review it following guidance produced by the regulator on what was described as the Pensions Review. The Pension Review was put in place because the regulator had concerns that some advice given to transfer out of pension schemes offering guaranteed benefits did not meet the required standards.

The aim of the Pensions Review was to look at the position that existed at the time and to pay compensation with the objective of putting matters right then. It was a one-off exercise, which recognised the impracticalities of waiting until someone retired (which might not be for a further 30+ years in some cases) before assessing loss. The aim of the compensation calculation was to work out what would to be enough to increase the value of Mrs R’s personal pension plan to provide the same level of benefits as her occupational scheme would have provided.

For many people, such as Mrs R, there was a long period left until their retirement date. So the calculations had to be based on a number of assumptions of what might happen between then and the retirement date. The regulator set down how the calculation needed to be run, and the assumptions that all businesses had to use to assess the potential loss. Unfortunately the assumptions used haven’t mirrored reality – and annuity rates have also fallen significantly. The cumulative impact of this has been significant, meaning the benefits provided by personal pensions are lower than might reasonably have been anticipated. So although the value Mrs R’s personal pension was increased with the aim of matching the benefits payable from the occupational scheme subsequent economic events have meant this won’t, unfortunately for Mrs R, now happen.

I appreciate Mrs R accepted the compensation on the understanding it would put her back in the position she would be, had she stayed in her occupational scheme. But this doesn’t mean it would be fair to ask Prudential to revisit things 16 years later, with the hindsight knowledge of investment returns and annuity rates since the calculation was carried out. Prudential followed the guidance that was set by the regulator at the time, and that was set following careful consideration by the regulator of how the issue of pension mis-selling should be addressed. As mentioned, this was a one-off exercise, and the objective was to draw a line under things at the point the review was carried out using assumptions which were considered reasonable at the time.

I have not seen any evidence to show Mrs R’s calculation was not carried out correctly. Businesses such as Prudential employed actuaries to carry out the calculations, and compliance with the review guidance was closely monitored by the regulator at the time.

I appreciate Mrs R wasn't given full details of the calculation carried out by Prudential. But there was no requirement for Prudential to provide this detail, and it would not have been readily understood by most consumers, owing to its complexity. Prudential explained the aim of the calculation and the broad basis on which it was carried out. I'm satisfied that was fair, in the circumstances. If Mrs R wanted further detail before accepting the offer, she would have been able to ask for this at the time.

I do not think it was unfair of Prudential to make Mrs R aware that compensation would be recalculated after a period of time. That was consistent with the guidance from the regulator, which required the assumptions to be regularly updated, and for compensation to be calculated by reference to the latest assumptions. And, whilst I can understand why Mrs R now feels she should have been warned of the risk that the compensation might not transpire to be enough to replace the benefits from her occupational scheme I think Prudential did enough by explaining, in general terms, the basis on which the calculation had been made.

my final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 January 2019.

John Pattinson
ombudsman