

## **complaint**

Mr W's complaint relates to the advice he was given by The Prudential Assurance Company Limited ("Prudential") to set up a second retirement annuity plan ("RAP") instead of increasing the premiums to his existing plan. Mr W states he never wanted a second RAP and would like the value of the second plan to be increased in line with the original plan.

## **background**

Mr W applied for a RAP after meeting with a representative of Prudential on 18 July 1980, which was set up on 1 August 1980.

Mr W set up a second RAP on 1 October 1984, which included a waiver of premium.

After recently considering his pension options, Mr W found that the value of the two RAP's differed substantially.

On 27 June 2014, Mr W complained to Prudential. He stated that he should not have been sold the second policy in 1984 as his intention was only ever to increase the premiums on his original RAP. Prudential did not uphold the complaint and as a result Mr W brought the complaint to the Financial Ombudsman Service.

One of our adjudicators investigated the complaint and concluded that it should not be upheld. The adjudicator concluded that the advice given was suitable as the second plan included a waiver of premium benefit, whereas the original RAP did not. He concluded that because Mr W was self-employed at the time the second plan was set up and therefore had no employer's pension scheme or disability plan available to him, the advice to set up a new plan provided Mr W with an alternative method of paying his contributions if he became unable to work.

Mr W did not agree with the adjudicators view. Mr W wrote to the adjudicator detailing why he was dissatisfied with his view. He also rang the adjudicator to reinforce his complaint points which are summarised below:

- Mr W did not want a second policy at all; he only wanted to increase the premiums on his existing pension plan
- He feels that he was only sold a second policy for the advisers benefit and commission
- He was told that by taking the second policy his overall pension would be better

As Mr W was not satisfied with the outcome, he asked that the case be referred to me.

## **my findings**

I have carefully considered all the evidence and submissions provided by Mr W and Prudential in deciding a fair and reasonable outcome to this complaint. Having done so, I have come to the same conclusions as the adjudicator and for the same reasons.

Mr W said that he did not want the second policy at all. He only wanted to increase the premiums he was paying into his original RAP and was advised to set up a second RAP when he met with a Prudential adviser. I note that Mr W did increase his premiums for the

original RAP in 1985 by £25 to a total of £50, shortly after the second plan had been set up in October 1984.

In my opinion, setting up the second RAP did not prevent Mr W from increasing the premiums to his original RAP as is evidenced by the increase in contributions made in 1985 following the set-up of the second RAP in late 1984.

I note that no fact find or suitability letter from the time of advice is available; either of these would have most likely been helpful in establishing the precise reasoning behind Mr W's decision to open the second RAP. In circumstances where there is no definitive evidence to support either parties contentions or assertions, I base my decision on the available evidence and the balance of probabilities. In other words, what I consider is most likely to have happened having taken account of all the circumstances.

Mr W stated that he feels the policy was only sold for the advisers benefit. However, given Mr W's circumstances at the time I am persuaded that the plan was set up for the benefit of Mr W. The second plan included a waiver of premium benefit whereas the original RAP did not. As explained by the adjudicator, Mr W was self-employed in 1984, which meant he had no alternative provisions in place to pay his premiums if he were to become incapacitated. If Mr W had not set up his second plan and became unable to work and therefore unable to pay his contributions, no premiums would have been paid to the RAP and the value of the fund would not have increased as much. It is also possible that the fund value would have decreased as the effective charges would have been taken from the existing fund.

For this reason, I agree with the adjudicator that the second RAP with the waiver of premium benefit was arranged to provide protection to Mr W and his pension fund.

Mr W has said that he was told that by taking the second plan he would receive a better overall pension. The illustrations and projections provided to Mr W at the point of sale would have been calculated based on the investment growth rates and annuity rates in 1984 which were considerably higher than those today. As a result it may appear to Mr W that the plan has under-performed. However these are not guaranteed and were provided only to give Mr W an idea of what the plan value might be in time. The investment performance of Mr W's plans is not something we are able to investigate at the Financial Ombudsman Service.

The main reason for the disparity between the two RAP's is the different amounts contributed to each plan over a prolonged period of time. The original plan was set up in 1980 with contributions of £15, which were increased to £25 in 1981. These contributions were made monthly for four years before the second plan was set up in 1984 with contributions of £20. In 1985, the contributions to the original plan were increased to £50, and in 1989 they were further increased to £80. The original plan therefore has significantly larger contributions made for 17 years before those made to the second RAP were increased to £84 in 1997 and then £109 in 1998.

The additional four year period the original RAP fund has been able to build on top of the significantly larger contributions paid in to this plan for such a long period in comparison with the second RAP has resulted in a substantially larger fund value for the original plan.

I conclude that the advice given to set up a second RAP was suitable given Mr W's circumstances at the time this policy was set up. The waiver of premium on the second policy would have ensured that contributions into Mr W's pension were protected had he

been unable to pay them. The reason for the disparity between the two plans is a result of the original plan being active for longer and the significant difference in contributions to each plan.

**my final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 16 February 2015.

Terry Connor  
**ombudsman**