

complaint

Ms B's complaint is that The Prudential Assurance Company Limited issued incorrect statements indicating that she could receive her entire fund as a tax free lump sum at retirement. She made a financial decision based on these and is now unable to repay her mortgage as a result.

background

Ms B had a pension plan with Prudential that provided benefits from the Retirement Benefit Scheme from a former employer. The calculation of the tax free cash sum available at retirement was a formula using the number of years' service and the final salary.

Prudential issued two consecutive pension statements to Ms B confirming that she could have her entire pension fund on retirement as tax free cash. Ms B then took out a mortgage, on a part repayment and part interest only basis. The tax free cash that she thought was available from the pension was to be used to repay the interest only portion of her mortgage.

Upon retirement Ms B discovered that these statements were incorrect and she was unable to use her entire pension fund to repay the interest only part of her mortgage. She has since taken the maximum tax free cash sum of 25% of the fund and used the balance to buy an annuity with Prudential.

The adjudicator who reviewed Ms B's complaint reached the conclusion that the complaint should be upheld. In summary, she considered that:

- It was reasonable for Ms B to rely on the accuracy of the pension statements;
- Ms B made a financial decision on the basis of the incorrect information, Prudential could be held responsible for the implications of this decision;
- She considered that fair redress would be for Prudential to provide Ms B with an interest free loan for the outstanding amount of the interest only portion of her mortgage;
- Repayments should be set in line with Ms B's annuity payments; and
- That £500 compensation for the distress and inconvenience caused was reasonable.

Prudential accepted the recommendation in principle. It confirmed that there were some conditions on its offer, namely:

- That it received evidence of the outstanding interest only mortgage balance;
- The amount of the loan be no higher than the original interest only aspect minus the tax free cash already paid to Ms B (£34,880.96);
- A legal non-interest bearing charge be placed on Ms B's property to recover any outstanding monies due on death; and
- That the monthly repayment plan is in line with the annuity payments being received.

The adjudicator considered all of these conditions to be in line with her recommendation and forwarded these to Ms B for her consideration.

Ms B responded requesting clarification on some points and requesting that she receive a loan for the full £34,880.96 and not the remaining outstanding debt which she had managed to reduce to £31,316. She felt that this would go at least some way to compensating her for the distress and inconvenience caused by the situation.

Prudential responded to confirm that it would accept additional payments in excess of the annuity to reduce the debt as quickly as possible – and that, once the loan is repaid annuity payments would continue to be made. It explained that a non-interest bearing charge would have to be placed on the property and this would be classified as a mortgage. It also confirmed that a cheque for the £500 would be issued and the previous cheques cancelled providing that they had not been cashed.

It did not however, agree that it should provide a loan for any more than the outstanding amount of the interest only aspect of the mortgage.

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 conclusions as the adjudicator and for broadly the same reasons.

It is not in dispute that Prudential made an error. I am satisfied that Ms B reasonably relied on the incorrect information when she decided to buy her new home. But for that error, Ms B would have made different financial decisions. The pension fund is now providing guaranteed income, whereas Ms B needs a lump sum to pay off her mortgage. In my view, the offer made to provide an interest free mortgage to be repaid by the annuity instalments is a pragmatic solution.

Prudential has agreed to the adjudicator's recommendation. I understand that Ms B's primary concern is that the current offer does not reflect the level of distress that this situation has caused. This situation must have been very stressful for Ms B.

The awards this service makes for distress and inconvenience are generally modest. I consider that a significant payment is appropriate in this case because Ms B has been worried about losing her home. I consider that £500 is appropriate in the circumstances.

Ms B feels that she ought to receive £34,880.96 rather than the actual outstanding amount on her mortgage. Ms B has been receiving annuity payments since she took benefits from the plan. If she had been able to take her entire fund as tax free cash as a lump sum she would have paid off her mortgage. The annuity payments would not have been received, but have been used to reduce the mortgage. In addition, Prudential has agreed that once the loan is repaid Ms B will continue to receive annuity payments, meaning that it would be to Ms B's advantage to pay off the loan as quickly as possible – and, the less that loan is, the easier it will be to pay it back.

Ultimately the purpose of the loan is to pay off the interest free portion of the loan, not to compensate Ms B. I feel that it is reasonable that Prudential only provide Ms B with a loan for the actual outstanding amount on the interest only portion of her mortgage.

my final decision

I uphold the complaint. The Prudential Assurance Company Limited should now provide Ms B with an interest free loan for the outstanding balance of the interest only portion of her mortgage, upon written confirmation of this sum.

If possible, a legal non-interest bearing charge should be placed on Ms B's property to allow recovery of any outstanding monies due on death. If not possible, this assurance should be provided by other means.

A monthly repayment plan should be set up in line with the annuity Ms B is receiving.

In addition, I award Ms B £500 compensation for the distress and inconvenience caused.

Roy Milne
ombudsman