

complaint

Mr B is not satisfied with The Prudential Assurance Company Limited's proposals to put right an underpayment of his pension fund value at the point he transferred his with-profits pension policy out to an annuity provider in 2011. He does not consider Prudential has adequately explained how it calculated the underpayment, and considers he has generally received poor customer service in the handling of this matter.

background

I issued my provisional decision on this complaint on 11 June 2014. In summary, I noted the following:

- There was nothing to suggest that the additional payment made in cash to Mr B in 2012 had not been determined accurately, based on the assumptions Prudential had *originally* intended to make (but which it did not make due to an error). However I considered it appropriate to determine how much Mr B had lost in annuity benefits.
- The annuity provider informed Prudential that it could not accept 'compensation or redress'. However, as the payment from Prudential could fairly be described as a delayed sum coming from Mr B's original policies, it seems that the annuity provider *could* have accepted a sum from Prudential.
- Whether Prudential or the annuity provider had issued Mr B's top-up annuity, this would – as Mr B pointed out – have better ensured that he did not lose out even if he lived longer than had been assumed in any calculations.
- However, receiving a lump sum rather than a stream of payments had an intrinsic advantage to Mr B – which it seems Prudential was attempting to point out in one of its letters.
- Having made the offer to Mr B, Prudential waited for Mr B's instructions as to how to proceed. As Mr B had made clear he had reservations about accepting a lump sum, Prudential offered to set up a further annuity, if the cheques for the lump sum were returned. Mr B did not return the cheques as he was awaiting further information.
- However as Prudential did not recognise until some considerable time later that Mr B would have been entitled to 25% of any top-up amount as a tax-free lump sum, it still seemed likely that any annuity would (at least initially) have been set up incorrectly.
- Mr B then referred the matter to our service, which regrettably meant that there was a further delay. So it was in my view now impractical for Mr B to return the lump sum, as 75% of it would by now have been subject to tax.
- Therefore, whilst I considered it would have been appropriate for an annuity to be set up, to bring Mr B closer to the position he should have been in, I needed to take this change of circumstances into account when deciding how he was to be redressed.

I sent both parties a calculation which I considered to be a fair and reasonable representation of the situation. In summary, I considered that the amount of £150 Mr B had already received from Prudential for the trouble he was put to as a result of its past handling of his complaint (prior to contacting this service) was fair and reasonable.

I quantified the additional after-tax loss caused by Prudential not setting up the additional annuity in 2012, which was then exacerbated by falls in annuity rates since that point, to be about £202. However I considered it was then appropriate to increase this sum to £250 to take into account that Mr B was put to further trouble as a result of Prudential incorrectly informing HMRC that 100% of the cash sum he had received was taxable. This error was highlighted by Mr B whilst the complaint was at the Financial Ombudsman Service and had to be corrected retrospectively by Prudential to ensure only 75% of his payment was taxed.

Prudential responded to the provisional decision and confirmed it would agree to my proposed award.

Although Mr B did not respond in writing, he made the following points by telephone:

- He was satisfied that I had agreed that an annuity should have been set up, however the award recommended does not cover the total loss.
- He did not agree that I should take into account the payments Prudential had already made to him for 'distress and inconvenience' as part of this complaint.
- The calculation did not take into account the possibility that he might live until age 100.
- He has not received anything in writing from Prudential that he can say 'yes' or 'no' to.

I asked the adjudicator to write to Mr B to address some of these points, as follows:

- I had considered *all* of the trouble he had been through in this case. It was right to take into account the 'distress and inconvenience' payment Prudential had already made, and I was of the opinion that this should be increased slightly to be broadly consistent with typical awards made by ombudsmen. This was why I increased the total award (including the financial loss he had suffered) from £202 to £250.
- As events had moved on considerably I did not consider it to be reasonable for an annuity to be set up now. Instead, I was minded to award a one off compensation payment. Mr B could use the one off compensation payment as he sees fit – either investing to provide future income, or using as a lump sum to assist with his financial planning in other areas (and it may even have more value as an upfront amount).
- I provided a copy of the quotation the annuity provider had originally given to Prudential, on which my calculations were based.

In response Mr B reiterated a number of his previous points. He added that he was not satisfied a payment of £202 for his financial loss would cover a £60 annual shortfall in future, and the 10-year guaranteed period of payment was not being allowed for. As a result he did not consider that the Financial Ombudsman Service had understood his complaint.

The adjudicator explained to Mr B that any complaints he had about the service he had received from the Financial Ombudsman Service would need to be put to us separately. They are not going to be addressed in this decision on the merits of Mr B's complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As I explained in my provisional decision, ideally Prudential would have simply arranged a top-up of Mr B's existing annuity.

That said, taking into consideration the significant amount of time that has passed, and the fact that Mr B has already received a payment which has been taxed as a lump sum, I do not consider it is reasonable for Prudential to do so now.

Mr B may have misunderstood that the payment of £202 is not intended on its own to replace the loss of a £60 annual income. It is to be combined with the lump sum he has already received from Prudential.

I accept that if Mr B outlives the standard life expectancy for a man of his age, then even if he did invest these amounts and spent an element of the capital and income each year, it might eventually run out. However that is not guaranteed to happen. The only guarantee is that Mr B's annuity would have been paid for at least ten years – and the total payments being made by Prudential will cover a significantly longer duration. Mr B also has the intrinsic benefit of all of these corrective payments as a lump sum, which he can use as he wishes rather than being constrained to receiving an income.

In all the circumstances of this complaint, I remain of the view that the further redress I proposed in my provisional decision provides fair and reasonable compensation to Mr B.

So although I sympathise with Mr B's position – the root cause of which was not of his doing – I have found no grounds to conclude that I should deviate from the outcome outlined in my provisional decision.

my final decision

I uphold Mr B's complaint and require that The Prudential Assurance Company Limited makes a total payment of £250 to Mr B. I make no further award.

Gideon Moore
ombudsman