

## complaint

Mr W complains about the service he has received from The Prudential Assurance Company Limited (“The Pru”) in respect of a personal pension plan he held with it up to late 2010.

## background

In 2010 Mr W exercised what is known as the ‘open market option’ and transferred a personal pension plan he held with the Pru to Z. Mr W then purchased an annuity with Z that paid him £898.68 a year (gross).

In May 2017, and with correspondence having passed between Mr W and The Pru since February 2017, The Pru wrote to Mr W to explain that on him exercising the open market option in 2010 it transferred to Z £1,403.00 less than it should have done. And for this error it was prepared to pay him £1,312.09. The Pru explained that this sum had been calculated as follows:

Underpayment identified	£1,403.00
Interest on this identified underpayment of £1,403.00 at Bank of England Base Rate plus 1% per annum for the period 2010 to 2017	£140.59
<i>Total (gross)</i>	<i>£1,543.59</i>
Payable to Mr W (25% of £1,543.59 tax free)	£385.90
Payable to Mr W (75% of £1,543.59 taxable at 20%)	£926.19
<i>Total payable to Mr W (net)</i>	<i>£1,312.09</i>
Total payable to Mr W (net)	£1,312.09
Total payable to HMRC (20% x £1,157.69)	£231.50
<i>Total payable to Mr W (gross)</i>	<i>£1,543.59</i>

In July 2017 The Pru wrote to Z to confirm that it had transferred to it, in 2010, less than it should have done when Mr W exercised the open market option. It also asked Z what impact an underpayment of £1,052.25 (75% of £1,403.00) had on Mr W’s annuity payment and whether it would accept a lump sum payment to rectify this error.

In August 2017 Z responded to The Pru to confirm that it couldn’t accept a lump sum payment to rectify the 2010 error. And that the effect of this 2010 error was a gross annual annuity payment shortfall to Mr W of £30.72 (£929.40 - £898.68).

In August 2017 The Pru issued Mr W with a final response letter (“FRL”). In this FRL The Pru offered Mr W £150 by way of an apology, this being in addition to the £100 it had offered by way of an apology a month or two earlier.

Unhappy with The Pru’s FRL, Mr W referred a complaint to our service.

Mr W’s complaint was considered by one of our investigators who concluded that it should be upheld. The investigator also outlined what The Pru should pay Mr W by way of fair compensation, including a further £100 for its poor service (bringing the total payable in this respect to £350).

The Pru disagreed with the investigator's findings and so the matter was passed to an ombudsman for review and decision.

Mr W's complaint was considered by one of our ombudsmen who concluded that it should be upheld. The ombudsman also outlined what The Pru should pay Mr W by way of fair compensation, which included a further £50 for its poor service (bringing the total payable in this respect to £300).

The Pru initially disagreed with the ombudsman's provisional findings. However on the understanding that the only issue that needed to be resolved was how much it should have to pay for the trouble and upset (non-financial loss) it had caused Mr W (Mr W being happy that £1,312.09 sufficiently compensated him for his financial loss), it agreed to pay Mr W a further £50.

Mr W initially agreed with the ombudsman's provisional findings. However he then said, having reflected on the matter, that The Pru should have to pay him a further £300 for his non-financial loss (taking the total to £550) rather than an additional £50 (taking the total to £300).

The ombudsman wasn't persuaded to change his mind so the matter was passed to me for further review and decision.

I issued a provisional decision on this case in February 2018. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

*Mr W's financial loss*

Based on The Pru's admission that it failed to transfer £1,403.00 to Z in 2010, a figure I've no reason to doubt, then Mr W:

- Has been deprived of a lump sum of £385.90 in 2010 and seven annuity payments of £24.58 (80% x £30.72) for the years 2011 to 2017 inclusive, giving a grand total of £557.96.
- Will be deprived from 2018 onwards of an annuity payment of £24.78 a year, such that he would have received £247.80 after 10 years (2027), £495.60 after twenty years (2037) and £743.40 after 30 years (2047).

The above (to 2047) gives a total of £1,301.36 against the sum already offered by the Pru in this respect in 2017 of £1,312.09.

I accept that that Mr W has been deprived the opportunity of earning a return on the £385.90 he should have been paid in 2010 and the annuity payments of £24.58 a year he should have been paid from 2011 to 2017. But in my view this notional loss is more than compensated for by the notional gain Mr W will benefit from in accepting the payment of £1,312.09 offered by The Pru, this sum in essence representing, amongst other things, the payment of 30 annuity payments of £24.78 in one lump sum rather than yearly over a thirty year time horizon.

So in summary I find that the £1,312.09 The Pru has already offered Mr W is sufficient compensation for the financial loss its error has caused him, or might reasonably cause him in the future.

#### *Mr W's non-financial loss*

It's clear that Mr W has very strong feelings about what The Pru should pay him for this aspect of his complaint. But taking everything into account I'm satisfied that £300 represents an appropriate sum.

In coming to this conclusion I've had regard to, amongst other things:

- The fact that The Pru addressed Mr W's concerns (albeit not to his satisfaction) in some detail and very soon after they were raised, this being on 26 May 2017 (when £100 was offered by way of compensation) and on 24 August 2017 (when £150 was offered by way of compensation).
- How quickly The Pru notified Mr W of his right to refer his complaint to our service, this being on 26 May 2017, 11 July 2017 and 24 August 2017, and the fact that he did so on 31 August 2017.
- That although The Pru didn't identify its 2010 error for seven years, it can't be said that Mr W has had seven years of trouble and upset. This is because Mr W himself wasn't aware (during this seven year period) that an error on the part of The Pru had occurred.

The Pru responded to say that it had nothing further to add.

Mr W responded to say that The Pru should be directed to pay him:

- More than £300 for his non-financial loss.
- Pay him interest at 8% simple per annum on the sum of £1,403 (for the period 2010 to 2017) rather than Bank of England Base Rate plus 1%.

#### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes listening to the call Mr W had with one of my fellow ombudsman following the receipt of my provisional decision.

I don't underestimate Mr W's strength of feelings in this matter. I also accept that Mr W is disappointed that I concluded in my provisional decision that The Pru need only pay him £1,612.09 by way of compensation, rather than a higher sum.

But I remain of the view that £1,612.09 represents a fair and a reasonable sum for The Pru to have to pay Mr W. There is also nothing I can usefully add to my provisional reasons for concluding this. However, for the sake of clarity I would add that:

Although it's not unusual for this service to award a consumer, who has been deprived of a sum of money, interest on that deprived sum at 8% simple per annum for the period they were deprived of it, Mr W hasn't just been deprived of a sum of money. And for the avoidance of doubt what Mr W has been deprived of isn't £1,403 (or £1,543.59) since 2010, but 25% of this sum (in 2010) followed by seven annuity payments (2011 to 2017).

As well as being deprived of a sum of approximately £550 since 2010, Mr W has also had the benefit of being paid approximately £750 'now' rather than approximately £25 a year for the next thirty years or so. And this cash flow advantage to Mr W can't be ignored. In my view this cash flow advantage will allow Mr W to earn a return (with little or no risk) in excess of the loss he has suffered as a result of being deprived (since 2010) of the sum of approximately £550 (for which The Pru has in essence offered £140.59). I would also add that I'm of this view even if I was to apply 8% simple interest per annum to the sums Mr W has been deprived of since 2010 and a substantially lower rate to what Mr W could reasonably earn going forward on the sum of approximately £750.

Therefore I see no reasons to change my provisional findings and I now confirm them as final.

### **my final decision**

For the reasons I've explained I find that The Prudential Assurance Company Limited must pay Mr W, to the extent it hasn't already done so, £1,612.09\*.

I appreciate Mr W will be disappointed by my conclusions. My final decision, however, represents the last stage of this service's dispute resolution procedure. Mr W doesn't have to accept my decision and if he doesn't do so, he will be free to pursue legal action against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 April 2018.

Peter Cook  
**ombudsman**

*\*it's my understanding that The Prudential Assurance Company Limited has already paid Mr W £1,312.09 (cheque 1), £100.00 (cheque 2) and £150.00 (cheque three) and might have paid Mr W £50.00 (cheque 4).*