

complaint

Mr S is unhappy about the difference in value between two pension plans he took out with The Prudential Assurance Company Limited (Prudential). He feels he was mis-sold a second policy when he should have been advised to increase contributions into his existing plan instead. He is also unhappy about the life cover which he took out with the second plan.

background

Mr S took out a pension policy with Prudential in March 1985, paying a gross monthly premium of £20. The plan was a 'Deferred Annuity Contract' which meant it provided a guaranteed minimum return on retirement. But contributions could only be increased on the anniversary of the date the plan was taken out.

Mr S then took a second plan in October 1987, with a gross monthly premium of £20. Included within the plan was a life cover benefit of £25,000 – which cost an additional £5.25 per month. This plan was different to the first in that there was no minimum guaranteed income. Instead contributions were invested into a fund which was to grow over its lifetime with the resulting amount used to purchase an annuity on retirement. Contributions to this plan were increased in September 2001 through a financial adviser and a waiver of premium option was added to the increase in premiums.

In 2018, Mr S transferred both of these plans into a Prudential Retirement Account. The plan taken out in 1985 had a significantly higher transfer value than the plan taken out in 1987. So, Mr S complained about the lesser performance of the second plan and also that he shouldn't been advised to take out a second plan and could have made additional contributions to the first one instead. But Prudential didn't uphold the complaint. It said Mr S had received a number of benefits from taking out a new plan.

- He'd been able to increase his retirement provision straight away without having to wait a number of months to increase his original plan.
- He didn't have to pay the backdated premiums that would have been due if he'd increased the original plan outside of its anniversary date.
- He was able to add additional life cover straight away again without having to wait for the anniversary of the original plan.

Prudential also explained that the original plan paid out a guaranteed minimum income whereas the second plan paid out the value of the pension – as an investment, which then had to be converted into an annuity. The calculation of the two plans meant that the original plan had a higher 'notional' transfer value when the plans were paid into the retirement account in 2018. Therefore, on that basis the original plan had a higher value. But Prudential said it wouldn't have known this when the plans were sold and the values now were based on investment performance and other factors – which couldn't have been predicted at the time the plans were taken out.

But Mr S didn't agree. He said he was mis-sold the second policy as well as the life cover. He said he would have been happy to wait a further six months to increase contributions to his original plan and had calculated that he was about £13,500 worse off as a result of the advice to take out a second plan. So, unhappy with the outcome Mr S brought his complaint to us.

One of our adjudicators looked into the complaint and said it shouldn't be upheld. He pointed out that it would not have been possible for Mr S to top-up his 1985 plan when he took out the 1987 plan. The terms and conditions made clear this could only be done on the 1985 plan's anniversary, which was some six months before the date the second plan was taken out. Although this could have been managed by paying back dated premiums into the 1985 plan's anniversary or by waiting until the next anniversary, the adjudicator felt there was no evidence that Mr S was willing to do either of these things.

The adjudicator also felt that the fact the two transfer values were different in 2018 was not evidence in itself that one was mis-sold. Because the plans were both entirely different in how they worked, the adjudicator felt it was always the case the resulting transfer values would have been different. And, because the salient details of the life cover element of the 1987 plan (sum assured, cost, term and when it would pay out) were noted on the signed application form, the adjudicator felt that Mr S would have been aware of it at the time.

Mr S disagreed with the adjudicator's view, and so as no resolution has been found the complaint has been referred to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I can see Mr S feels very strongly that he should have been advised to increase contributions to his original plan – and that this has caused him to be worse off overall at retirement. And I have some sympathy for Mr S' position as it's clear now that his original plan does have a higher 'transfer value' than the second plan. But I don't think this means that Prudential mis-sold the second plan and that it was unsuitable for him. I know this will disappoint Mr S, so I'll explain why.

I think it's important when deciding on the outcome of this complaint to look at the context of the time in which this recommendation was made. The regulations in place in 1987 were very different to those of today and there was much less requirement for Prudential to keep records of any advice it gave. Although it would have been required to consider Mr S' financial circumstances and provide a suitable recommendation.

Mr S hasn't suggested that the recommendation to make *further provision* for his retirement was unsuitable just that Prudential should have used his existing plan to help provide that provision. But I think there would have been a number of reasons for the adviser at that time to believe that a new plan would have been an appropriate recommendation. The new style plan had a number of features and benefits of its own – different to the existing plan, and the recommendation gave Mr S the benefit of an extra six months of contributions, allowed him to add life cover to the plan straight away and he didn't have to potentially incur the significant cost of the backdated premiums from the first plan's anniversary date. I've also seen, from the detailed description of the second plan – which would have been made available to Mr S, that it had more flexibility built in and Mr S could have increased – or reduced, his contributions at any time during the life of the plan. So I think, on balance, and given the passage of time, the recommendation of the newer style pension was a reasonable one to make.

I note that Mr S' existing plan included guarantees which meant he could expect a minimum guaranteed income at retirement. And as things have turned out those guarantees have provided him with a greater benefit than the newer plan. But that wouldn't have been known at the time of the sale and Prudential wouldn't have been able to forecast that in 1987. So I

think the adviser acted reasonably by thinking he was giving Mr S an alternative plan which might provide him with similar benefits but with additional flexibility during the term.

I know Mr S has demonstrated that the transfer value of the older plan is greater than the newer one. And that this means he's worse off. And I accept that has turned out to be the case. But I don't think that would have been known in 1987 and I think the adviser would have thought there were advantages to recommending the new plan, so I can't safely say now – with the benefit of hindsight, that wasn't a reasonable recommendation.

I note Mr S is unhappy about the life cover that was added to his plan. This life cover has now stopped but was added at the time he took out the second plan. As I've already explained the requirements for keeping records for a recommendation made in 1987 were lighter than they are today and there's no evidence of what was said or recorded to support that recommendation. But it seems reasonable that Mr S was aware of the addition of life cover to his pension plan as there's reference to it on the application form – which Mr S signed – and also reference to health questions that needed answering within the form.

So I'm satisfied Mr S was aware of the life cover element of the plan and I would have expected him to have raised the issue of the cover at that time if he felt it was unwarranted or inappropriate. And I've also borne in mind that Mr S did actually receive the benefit of the life cover being in place while he maintained payments.

As I said previously the recommendation of the new pension plan doesn't seem unreasonable for a number of reasons, but it would also have allowed Mr S to add the life cover to his plan – and receive tax relief on the premiums, at that time. So, from the evidence I've seen I don't think that was mis- sold either.

my final decision

For the reasons I've given I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 July 2019.

Keith Lawrence
ombudsman