

## **complaint**

Mr E has complained about The Prudential Assurance Company Limited (“Prudential”). He’s unhappy with Prudential’s responses to queries he’s raised about his Personal Retirement Plan.

## **background**

I issued a provisional decision on 1 March 2018. I’ve recapped the background below:

*“A Prudential Personal Retirement Plan was set up for Mr E in 1985.*

*Prudential wrote to Mr E in May 2017 and confirmed the approximate value of his plan. It also enclosed information about Mr E’s retirement options.*

*In June 2017 Prudential provided Mr E with his bonus statement for the previous year. It outlined the regular bonuses that had been added to his plan in 2016.*

*On 26 July 2017 Mr E and his financial adviser contacted Prudential to query what the terminal and final bonuses added to his plan would be. Questions were also raised about the following:*

- *premiums that had been paid*
- *how retirement benefits were calculated by Prudential*
- *what the guaranteed benefits available under the plan were*

*Prudential responded on 2 August 2017. Its letter covered the following:*

- *the type of plan Mr E had and benefits associated with it*
- *guarantees available under the plan*
- *retirement options and how benefits would be calculated*
- *clarification around Mr E’s annual premium*

*Following this Mr E complained to Prudential. He didn’t think it had responded properly to the queries he’d raised about his plan. Mr E’s financial adviser also contacted Prudential several days later. He asked for a benefit quotation for Mr E’s plan to be sent.*

*Prudential wrote to Mr E and his financial adviser on 12 August 2017. It sent the requested benefit quotation. And within its letter it:*

- *explained how decisions about annual and terminal bonuses rates were reached each year*
- *explained what smoothing was and how it worked*
- *confirmed that when Mr E took retirement benefits from his plan terminal and final bonuses may be added*
- *enclosed the rate at which bonuses had been applied historically along with a breakdown of annual bonuses for the last five years*

*Following a call on 15 August 2017 Prudential wrote to Mr E and his financial adviser on 21 August 2017 outlining the transfer values for Mr E’s plan from 2007 to 2016. It also confirmed the bonuses applicable. In addition to this Prudential also clarified what proportion of Mr E’s yearly pension and transfer value comprised of non-guaranteed bonuses.*

*Mr E's financial adviser contacted Prudential again on 24 August 2017. He said he wasn't satisfied with Prudential's explanations regarding how bonuses were calculated and asked for more information to be provided and clarification given.*

*On 1 September 2017 Prudential wrote to Mr E's financial adviser. A copy of the same letter was sent to Mr E on 6 September 2017. It said:*

- the guaranteed basic (single life) annuity payable from 1 February 2017 was £5,375.59 per year (this included total annual bonuses)*
- the equivalent pension figure payable from 17 August 2017, adjusted for late retirement and inclusive of any further non-guaranteed bonuses was £5,710.28*
- the transfer value as at 17 August 2017 was £98,645,90 of which £39.46 was made up if non-guaranteed bonuses*
- it didn't share its rates and calculation methods with third parties*
- the specific rates and calculations used for guaranteed and non-guaranteed bonuses were commercially sensitive so it wasn't its practice to provide this information*

*Following this, on 5 September 2017 Mr E's financial adviser wrote to Mr E outlining the contents of Prudential's 1 September 2017 letter. Mr E's adviser also provided an explanation regarding bonuses. In conclusion Mr E's financial adviser said:*

*"They [Prudential] have actually honoured everything they promised in the policy document i.e. guaranteed minimum income with bonus additions and paying a final and terminal bonus. The addition of bonuses has always been contentious on With Profits funds as they are opaque (...)*

*I hope this satisfies you that there is a final bonus and that the income is actually greater than the open market option (...) If you have any further queries please contact me".*

*Prudential wrote to Mr E on 5 September 2017 reminding him that his retirement date of 1 November 2017 was approaching. It outlined again the options available to Mr E and confirmed the value of his plan at that date was £98,900.*

*Prudential responded to Mr E's complaint of 7 August 2017 on 6 September 2017. In summary it said:*

- it was sorry for how long it had taken to respond to his complaint*
- it had spoken to Mr E's financial adviser who confirmed he'd received Prudential's response to queries raised about Mr E's plan*
- when the policy started in 1985 it advised that as long as premiums were paid up until the selected retirement date it would pay out a guaranteed basic annuity (GBA). This would include any bonuses that the policy accrued over the years which would be paid out as an annuity on top of the GBA*
- but as there'd been changes to way people could access their pensions, it had put calculations in place to convert the GBA and accrued bonuses into a transfer value for a customer. It wasn't able to provide the actuarial calculations for this to customers*
- because the questions asked by Mr E and his adviser were not about issues Prudential was regularly asked this sometimes meant that its replies didn't always directly answer the questions posed and took some time*
- to apologise for the poor service Mr E had experienced it sent him £100*

*Following a conversation with Mr E on 19 September 2017 Prudential wrote to Mr E on 26 September 2017. It provided a further explanation of how Mr E's plan worked and the bonuses applicable.*

*Correspondence between Prudential and Mr E continued. Unhappy with Prudential's responses to his queries, Mr E referred his complaint to our service.*

*One of our investigators considered the matter and:*

- *said she thought Mr E's complaint should be partially upheld*
- *provided a detailed explanation of how Mr E's plan worked*
- *explained how the level of bonuses set was linked to the performance of Prudential's With Profits fund*
- *explained the nature of the different bonuses referred to in correspondence and product literature*
- *said she hadn't seen anything to suggest Prudential had mis-managed the With Profits fund or acted outside its commercial judgement regarding the setting of bonus rates*
- *outlined why Mr E's plan hadn't performed as well as he'd expected*
- *confirmed she hadn't seen anything to suggest Prudential had unfairly calculated or withheld bonuses from Mr E's plan*
- *said she was satisfied Mr E hadn't lost out as a result of paying a final premium in February 2017*
- *said she didn't think Prudential had provided Mr E with enough information about his plan and its performance to answer his questions. So she could understand why Mr E felt something was wrong*
- *said that while she understood that Prudential wasn't able to share full details of its calculations she felt it could've provided Mr E with a clearer explanation of how bonuses worked*
- *said there were occasions where Prudential didn't respond to Mr E's queries at all*
- *said she thought a further £150 compensation in addition to the £100 already offered should be paid by Prudential to Mr E for poor customer service*

*Mr E responded and said:*

- *he wasn't happy with Prudential's lack of transparency*
- *he felt £1,500 compensation was more appropriate*

*Prudential responded and said:*

- *it accepted Mr E had been unhappy with its explanations regarding bonuses added to his plan*
- *it didn't accept that an increase in total compensation to £250 was fair and reasonable*
- *it acknowledged the service Mr E received when calling had not been to the standard it'd normally strive for and this caused him distress and inconvenience. But the information Mr E and his financial adviser had requested wasn't straightforward*
- *trying to work out the actual final bonus was a complex calculation that required actuarial involvement*

- *it had tried to answer the questions Mr E asked as best it could. It'd supplied information and tried to explain things a number of different ways*
- *it didn't agree that there were instances where it had failed to respond at all to some of Mr E's queries"*

Because no agreement could be reached the matter was passed to me. And my provisional findings were as follows:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not intending to uphold Mr E's complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of the correspondence and extensive arguments and comments made by both parties, I have limited my response to what I consider to be the issues central to this complaint. That is to say:*

- *whether Prudential made reasonable efforts to provide adequate responses to the queries Mr E and his financial adviser raised about his plan*
- *whether the service Prudential provided Mr E with regarding the queries he raised could've been better*
- *whether Mr E's request for £1,500 compensation from Prudential is appropriate in the circumstances*

*I should firstly say that I do understand and completely appreciate Mr E's strength of feeling regarding this matter. As he's mentioned several times, it was vitally important he understood how his plan worked and what the benefits available under it were likely to be. This formed a key part of his decision making surrounding his retirement, including whether he'd continue to work or not.*

*From what I've seen, Mr E's concerns seemed to arise from the fact that he felt there was a discrepancy between the benefits Prudential said would likely be available under his plan when he retired compared to what he says he expected he'd receive.*

*Naturally, in an effort to understand things better and gain reassurance that he'd receive what he felt he was due under his plan, both Mr E and his financial adviser asked Prudential, on a number of occasions, questions largely around bonuses (those already applied and those to be expected) and the annual pension available.*

*I don't propose to go into the detail of how Mr E's plan works. This has already been addressed several times by Prudential, clarified by Mr E's financial adviser and further covered by our investigator in her assessment. I should however say again that Mr E's plan is invested in Prudential's With Profits fund. The growth achieved by an investment in a With Profits fund depends on the level of bonuses awarded by the business, which in turn depends on the underlying performance of the assets in the fund. But as bonus rates are not (and were not) guaranteed there was, and remains, the risk with this plan that income levels and transfer values could fall or be below what was originally expected. Indeed the guide and annual statements for Mr E's plan say:*

*"Bonuses are the way we distribute your share of the investment returns of our Fund (...) We may add a final bonus to your Plan on retirement or when a claim is made. Final bonuses are not guaranteed (...) Generally the better our With-Profits Fund performs over the*

*medium to long-term, the more scope we'll have to pay bonuses. We aim to pay you a fair share of the investment return over the lifetime of your investment. It's important to remember that past performance is not a reliable indicator of future performance (...)"*

*Mr E has been concerned about the performance of his plan and the fact that bonuses have reduced year on year. I do sympathise with Mr E as he clearly expected his plan to provide a better income than Prudential is saying it will. However bonus rates take into account various factors; these include not just current or recent investment performance but also how Prudential expects the With Profits fund to perform in the future, as well as the fund's liabilities in respect of the guaranteed benefits applicable to all plans.*

*It's also important to note that the amount of bonus declared for the fund is a matter for Prudential's commercial discretion. And providers, like Prudential, do have significant discretion about how they operate this type of fund.*

*But Prudential is accountable to the industry regulator, the Financial Conduct Authority (FCA) for the way in which it operates its With Profits fund (in accordance with its Principles and Practices of Financial Management document). And the regulator monitors the management of it.*

*The FCA's Principle 6 requires that firms "...must pay due regard to the interests of its customers and treat them fairly". The Conduct of Business Sourcebook (COBS 20) also provides specific rules and guidance for firms on the operation of these funds. We have not been told that the regulator has any concerns with the way Prudential has managed its With Profits fund. Therefore I see no reason to interfere in Prudential's commercial decision about the bonuses paid on Mr E's plan.*

*But I'd like to emphasise that I can appreciate Mr E's concerns. I accept that the matter may not seem very transparent to him. With the type of plan Mr E has it can be difficult to know what it's worth, how its value has been calculated and whether bonuses have been fairly applied. However, I hope that my explanation around the FCA having oversight of Prudential's operation, will assure him that Prudential can't simply do as it pleases.*

*I can understand that Mr E is disappointed by the reductions in bonus rates and how this has affected the transfer value of his pension. But I haven't seen any persuasive evidence that Prudential has acted unfairly in how it has awarded bonuses on Mr E's plan.*

*Turning now to the issues Mr E has raised about the way Prudential responded to queries both he and his financial adviser raised about his plan. In his submissions to this service Mr E has said:*

- Prudential failed to provide him or his financial adviser with enough information to explain how his plan works*
- Prudential has avoided giving responses to queries about what benefits would be available to him at retirement*
- Prudential had purposely withheld information about his plan because it didn't want to pay out his retirement benefits correctly*

*As a result of what's summarised above, Mr E says he became severely worn out by his dealings with Prudential. He didn't trust what it had to say and felt confused and frightened about the position he'd be in when he retired.*

*Prudential has accepted that it could've provided Mr E with better service over the telephone and paid £100 for this. In the circumstances I think this is fair. From the available evidence it seems there were instances where as a result of speaking to a number of different people at Prudential on the phone about his plan, some of his queries were misunderstood at the times and therefore not answered correctly. Understandably this caused Mr E some frustration and I think Prudential's compensation offer was fair and reasonable recognition of this. So I don't intend to require it to pay any more in this respect.*

*I've carefully considered what Mr E has said about his experience with Prudential. And while I don't doubt that the information Mr E was provided with at times may not have made immediate sense to him or been what he expected, I haven't seen anything to suggest Prudential failed to make reasonable efforts to respond to Mr E's questions. Indeed, as I think is clear from the extensive correspondence between all parties involved, the way Mr E's plan works and how benefits are calculated isn't simple. Prudential made repeated efforts to clarify points it made and the explanations it provided. It also discussed Mr E's queries directly with his financial adviser. In my view Prudential's responses were the majority of the time as comprehensive as they could be. So I can't fairly say that Prudential failed to make reasonable attempts to answer queries and requests made regarding Mr E's plan.*

*I can appreciate that at times Mr E didn't think Prudential's explanations were very clear. But I'm mindful of the fact that at the time Mr E also had a financial adviser who was making enquiries on his behalf. I would've expected that further to Prudential's explanations that Mr E would've discussed anything he still didn't understand about his plan with his financial adviser. Indeed Mr E's financial adviser provided Mr E with reassurances regarding his plan on 5 September 2017, and specifically said following his explanation, "I hope this satisfies you that there is a final bonus and that the income is actually greater than the open market option (...) If you have any further queries please contact me".*

*As I've said, I think the main reason Mr E is unhappy is because his plan hasn't performed as he'd expected. This disappointment while understandable doesn't mean Prudential has done anything wrong in terms of the information it provided Mr E and his financial adviser with. I should also say that I haven't seen anything to support Mr E's claim that Prudential has purposely withheld information about his plan because it doesn't want to pay out Mr E's retirement benefits correctly.*

*As has already been mentioned, some of the information Mr E would like such as Prudential's rates and calculations for its bonuses is commercially sensitive. And therefore not something it shares with customers. But this doesn't mean it is deliberately trying to be unhelpful. Indeed I think Prudential has been as cooperative as it could be in the circumstances. And there's nothing I feel I can add to the explanations already provided.*

*I don't doubt that Mr E has put time and energy into getting information from Prudential about his plan. But equally, I haven't seen anything to suggest this was avoidable given the nature of his requests or that Prudential wasn't also putting genuine time and effort into trying to respond to Mr E's queries. Because of this I don't intend to ask Prudential to pay Mr E further compensation. Based on what I've seen I'm not persuaded that what Mr E has experienced is to the extent that an award of £1,500 would be appropriate in the circumstances.*

*Our investigator suggested that a further £150 compensation should be paid by Prudential to Mr E because on several occasions it failed to respond at all to Mr E's queries. But I'm*

*unable to agree with this recommendation as I haven't seen anything to support this. I can't see where Prudential completely ignored Mr E or his financial adviser's requests or questions.*

*Overall, I have sympathy for Mr E and do understand the continued efforts he's made to understand the nature of his plan. But for the reasons outlined above I'm unable to conclude that further compensation is due in the circumstances."*

I invited both Mr E and The Prudential Assurance Company Limited to comment on my provisional decision.

Prudential confirmed it received my provisional decision but made no further comments.

Mr E responded and provided his comments to our investigator during a telephone call. As requested, I've listened to a recording of this call. To summarise, Mr E made the following points:

- he felt my provisional decision was biased and an attempt to make him 'go away'
- he felt more reference should've been made to the original illustration he'd been given. He said the illustration showed there was 'intent' by Prudential to pay a certain level of bonuses. And the fact that this hadn't and wasn't going to happen showed 'deceit'
- he can't understand why I didn't comment on the size of bonuses Prudential awarded relative to the value of his plan
- he felt my decision not to award compensation for trouble and upset caused (as had been recommended by our investigator ) was 'out of spite'
- he said he felt Prudential were denying him something that it had previously guaranteed

### **my findings**

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

My decision remains largely as before (and as set out above). That means I'm not upholding Mr E's complaint for the reasons I've given. But I'll respond to some of the points Mr E made following my provisional decision.

I'd like to emphasise that I have carefully listened to the recording of the call in which Mr E made comments regarding my provisional decision. Mr E did say during the call that he didn't expect me to respond to every single point he made. But I'd still like to say that, while I won't be responding to all of Mr E's points, I have considered them. And if I don't mention something, it isn't because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. I hope Mr E understands that I mean no discourtesy by this, but I'll confine my comments to what I think is relevant.

Mr E has said he thinks my decision is biased and an attempt to make him go away. While I accept this may be the way Mr E feels, I'd like to reassure him that this isn't the case at all. I do understand why Mr E is unhappy with the responses he's received from Prudential about bonuses and benefits under his plan. Especially as he clearly expected his plan to provide a better income than Prudential is saying it will. But what I've had to consider is whether

Prudential's responses to queries Mr E raised were reasonable and whether, if they weren't, Mr E should be awarded compensation for this.

Overall I think Prudential handled Mr E's queries about his plan reasonably. As I've already said I do accept that Mr E should've received a better level of service on the telephone in some instances with Prudential. But I think the £100 he has been paid for this is fair in the circumstances.

I understand Mr E remains unhappy with Prudential's responses regarding his plan, but again, I think this largely stems from the fact that his plan hasn't performed as he expected it to. I do have sympathy for Mr E and can appreciate why he's so disappointed. But that doesn't mean Prudential has done anything fundamentally wrong.

Turning now to Mr E's point regarding the original illustration he was provided with when he took out his plan. Mr E is unhappy I didn't make more reference to this in my provisional decision. He says the illustration showed that Prudential had an intention to pay a certain level of bonuses, and the fact that it hasn't shows "*deceit*". I see the point Mr E is trying to make here but I disagree.

I've carefully reviewed the original illustration Mr E has provided. And while I accept that it does outline potential bonus levels, nowhere does it provide a guarantee for these. So I don't think the fact that the level of bonuses Prudential has applied to Mr E's policy isn't the same as what was outlined in the original illustration shows that Prudential has been deceptive or that it's denying him something that was ever guaranteed.

Bonuses are set at a level that Prudential believes are justified and supported by the With Profits fund assets. In deciding whether to apply bonuses it will take into account such issues as the bonuses already declared, any benefits that have to be paid under policies, previous investment returns and what returns may be possible in future.

It should be noted that expected returns for policies like Mr E's have been, and are generally expected to be, much lower than when Mr E took out his policy. This has led to bonus rates dropping, sometimes to zero. In turn, this has created a very different picture of returns from investments than that which was expected and illustrated when Mr E took out his policy.

Mr E has questioned why I haven't made more comments about the size of bonuses Prudential has awarded to him relative to the size of his plan. The reason I haven't done this is because Prudential has discretion in terms of the bonus rates it applies. I can't say that a certain level of bonuses is unfair or incorrect. Nor can I find it unfair or wrong that what Mr E will ultimately receive is so much lower than Mr E was expecting. I appreciate why Mr E is unhappy and it is very unfortunate that bonuses have fallen so much. However, that is not in itself evidence that Prudential has acted incorrectly. And it is not the role of an ombudsman at the Financial Ombudsman Service to overturn the decisions taken by Prudential about the levels of bonuses that it should declare on individual policies.

Mr E has said he felt my decision not to award compensation for trouble and upset caused (as had been recommended by our investigator) was 'out of spite'. I'd like to reassure Mr E that this is not the case. As I explained in my provisional decision, I didn't feel I could fairly endorse the £150 recommended by our investigator because she'd said it was for instances where Prudential had failed to respond at all to some of Mr E's queries. I didn't see any evidence to support this so I wasn't, and I'm still not able to direct Prudential to pay the further compensation our investigator suggested. I hope this explanation clarifies the matter.

Overall I still have sympathy for Mr E. But my decision remains the same as that set out in my provisional decision. And so it follows that I don't uphold his complaint.

**my final decision**

My final decision is that I don't uphold Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 30 April 2018.

Chillel Williams  
**ombudsman**