

## **complaint**

Mr M complained the Prudential Assurance Company Limited gave him unsuitable pension advice.

## **background**

In 2012 Mr M and his wife saw an adviser from Prudential and discussed their circumstances and needs. Prudential have provided us with their documents from the time.

The records say the main thrust of Mr M's concern at the time was to address the impact of outstanding credit card debt on income. As Mr M had reached the age of 55, the adviser went on to recommend that Mr M took the tax free lump sum available from his two private pension plans (PPPs) to pay off this debt. The adviser said Mr M should then use the remainder of the fund to buy an annuity. This was preferred over the only alternative choice at the time for Mr M (to start an income drawdown arrangement), as this was considered to be too high risk for Mr M.

As Mr M was working at the time and didn't require his annuity income, Mr M was advised to start a further pension plan into which his annuity payments would be directed, so that he was re-building his fund to an extent. It was said the annuity income was subject to income tax but contributions to the new pension plan would receive tax relief so the two would cancel each other out. In other words it was anticipated this would assist in meeting or cancelling out the tax liability. Due to Mr M's health, an enhanced annuity (resulting in a higher payment than would have otherwise been paid) was available.

Prudential's file from the time, includes the advice letter provided by Prudential to Mr M and his wife, which contained the reasons as to why Mr M was advised to buy his annuity on this basis at the time. Mr M went on to follow the advice.

In 2017 Mr M transferred the value of the PPP started in 2012 to his then employer's pension scheme. Following this transfer the Prudential PPP was closed and Mr M has been receiving the income from his annuity since then.

In early 2018 Mr M contacted Prudential about selling his annuity. They went on to explain that although in 2015 the government had consulted on the possibility of a secondary annuity market (where a consumer would be able to sell their annuity when it was already being paid to another party) the government had gone on to announce this would not currently be proceeded with any further. This remains the position.

Mr M went on to express his dis-satisfaction with the original advice he'd been given. In summary Prudential and this service were told he was concerned because:

- He and his wife had the paperwork but didn't understand what it meant.
- They thought it was a pension plan they were investing into and they can't understand why they had to buy a second product as they thought one would have sufficed.
- Prudential didn't give them sufficient information. This included in relation to "*income drawdown*", and they didn't understand what this was.

- Mr M and his wife weren't aware of any income, and said they'd only recently found out it was called an annuity. They'd also not understood what was meant by "*enhanced*" although they remembered something about a better rate for Mr M's health.
- Mr M and his wife didn't remember being told they could have just received the income from the annuity.

They also thought it would have been more sensible for the annuity to have been in Mrs M's name as she was in a lower tax bracket.

Overall Mr M said he and his wife felt the Prudential adviser had overwhelmed them with information they didn't understand.

In relation to the original advice provided in 2012 Prudential rejected Mr M's complaint. They said they'd provided clear information and the original advice had been provided over a period of time. They said their advice had been suitable given Mr M's requirements and circumstances at the time. And they explained that whilst legislation did allow annuities to be paid as a lump sum in certain circumstances, this wasn't permitted here.

One of our adjudicators looked at Mr M's complaint, but he didn't think it should be upheld. In summary he thought Mr M had a need for cash at the time and the approach recommended wasn't unsuitable for Mr M. The adjudicator explained that the rules that have enabled people to access their entire pension funds (subject to tax) weren't available as an option in 2012.

At the time the only alternative to allow Mr M to access the tax free cash required, would have been to start a drawdown plan. This would have meant that the 75% fund value remaining after the maximum tax free cash had been taken would have been invested. Then an income could have been taken or the money left for growth. But the adjudicator didn't think the adviser had been wrong to think the exposure of the value of the plan to fluctuation associated with investment, involved a higher level of risk than was right for Mr M.

Mr M didn't agree with our adjudicator and said in summary:

- Neither he nor his wife want compensation, they simply want the money they think is remaining in the annuity, instead of a monthly payment for life.
- They would have liked the opportunity to re-invest the money in a more suitable product before retirement.

Mr M continues to say Prudential didn't tell them the plan, that they have only recently discovered was an annuity, couldn't be cashed in. And they maintain Prudential are being unreasonable in not allowing Mr M to cash in his annuity.

### **my findings**

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 agree with the adjudicator, and for broadly the same reasons. Overall I don't think it can be said it was necessarily unsuitable for Mr M to have done what he was advised by Prudential. And Prudential aren't able to do what Mr M would like them to do.

I can see Mr M has felt somewhat unclear about what has happened. And I have no doubt that after he'd sought information he was worried. But that doesn't mean Prudential did anything wrong. I hope Mr M now understands a little better. As the rules have changed since 2012 when he and his wife were advised by Prudential, I appreciate why this might have made things less clear.

Mr M had limited options in 2012 on what he was able to do with his pension funds once he had taken any benefits (here the tax free lump sum). And having seen what was provided, I think sufficient information was provided on his options and what they meant.

Based on what I've seen there doesn't appear to be any dispute that in 2012 Mr and Mrs M wanted to address their credit card debt. I don't think it was necessarily unsuitable for Mr M to release some funds by taking his tax free cash from his pension plan. And I haven't seen that Mr or Mrs M had any other source of funds at the time to achieve this. It was recorded in the adviser's review that restructuring the debt wasn't a possible option. So once Mr M released his tax free sum, it wasn't inappropriate for him to look at and be advised what to do with the remainder of the fund.

Mr M thinks he would have liked the opportunity to invest in a more suitable product before his retirement. I am not sure what he considers would have been a more suitable product. As has been set out, once Mr M had taken his tax free sum, at the time, he then had limited options about what he could do with the remainder of the funds. I don't think the choice of an annuity, instead of income drawdown can reasonably be said to have been an unsuitable or inappropriate recommendation.

As I accept Mr M had no need of an additional income at the time, it wasn't unsuitable for the annuity income to be used to pay into a further pension arrangement, as was permitted. And I think it was made sufficiently clear that this was what Mr M's annuity income was being used for. A plan needed to be started to accept these payments. I've seen what has been said about the plan allowing any additional tax liability incurred from the additional income to be offset by the tax benefits provided by the pension plan; but I do think there would have been a charges element that might alter this thinking to some extent. But overall, and having taken everything into account, this doesn't change my thinking that the advice wasn't unsuitable in the circumstances. I also think enough information was provided at the time. I accept for example that the initial documentation did set out that the annuity couldn't be cashed in. I am not persuaded in any event that Mr M would have done anything differently given his objectives at the time.

Mr M has told us he didn't know he was receiving an income, and that he could have just received an income in 2012, instead of starting a new plan into which his annuity payments were directed. Whilst Mr M could have taken his annuity as income, instead of directing it into a new plan as pension savings, I don't think this would have met what he wanted at the time. They'd indicated there was no need for additional income, and saving in this way did have benefits for Mr M, once he'd received the lump sum. I have looked carefully at all the information provided at the time, and I think it was and would have been sufficiently clear that Mr M was receiving an annuity, that was directed and being saved via a pension plan. I also accept that since Mr M transferred the funds built up in his pension plan between 2012 until 2017 into his employer's scheme, it has been sufficiently clear that Mr M has been continuing to receive his ongoing annuity income.

There have been changes in the rules on how one can access pension benefits from pension savings since 2012. But there hasn't been any change that will allow Mr M to sell or exchange the annuity he bought in 2012, for a cash sum.

I hope Mr M now understands that he doesn't have a remaining fund in the way he seemed to think. Once he bought his flexible annuity in 2012, his fund was used to buy and be invested to generate his income for the future. He does have some flexibility within the terms of his annuity about what he receives, and some people do find it helpful to receive advice on these choices. I think the basis of the annuity purchased might be considered to have a somewhat higher risk than a guaranteed level payment annuity (as it can vary); albeit the documents from Prudential explained how this could be reviewed and changed in the future. And I don't think this was unsuitable.

In Mr M's circumstances, the rules don't allow Prudential to cancel Mr M's annuity, or to make him any payment in lieu of his annuity. I think the information provided by Prudential was clear enough explaining that Mr M would be and then was receiving an income from his annuity.

I understand that Mr M thought he'd been mis-sold his annuity and second pension plan and he has stressed he doesn't want compensation, he just wants to have a pot of money to represent his annuity, to move into his employer's scheme. But I don't accept the advice in 2012 was an example of mis-selling; and in any event, what Mr M wants, isn't possible.

Mr M hasn't pressed the point that he thought his pension funds should have been used to start an annuity in his wife's name. I hope this is because they understand this wouldn't have been allowed. The fund and the benefits (including the tax benefits over the preceding years) were Mr M's, so when benefits were taken, it had to be Mr M who received the benefit, the annuity.

I've also seen that when Mr M first complained he didn't know what an enhanced annuity was, but said he was aware that his health position had enabled him to receive a higher annuity income than he would have otherwise received. I think the information at the time did set out adequately that Mr M was entitled to a higher (enhanced) annuity payment because of his health position. And that in certain situations where circumstances, such as ill-health indicated a potential effect to the length of time an annuity might be paid for, this enabled a higher starting sum to be paid. I hope Mr M now feels he understands a little more about this.

### **my final decision**

For the reasons given I don't uphold Mr M's complaint against The Prudential Assurance Company Limited. Under our rules, I'm required to ask Mr M and Mrs M to accept or reject my decision before 6 December 2018.

Louise Wilson  
ombudsman