

complaint

Mr G has complained about how The Prudential Assurance Company Limited (“Prudential”) wants to pay redress for unsuitable advice he was given.

background

Mr G had paid into his employer’s pension scheme up until 1988 when he was advised to leave his existing scheme and start a personal pension with Prudential. He paid into that personal pension until it was transferred back into his employer’s scheme in 1999.

Mr G, through his representative, complained to Prudential in 2017 saying, amongst other things, that he would have been better off staying in his employer’s scheme.

Prudential upheld the complaint, agreeing that its advice to start a personal pension wasn’t right. It worked out that Mr G’s pension had lost £128,533 in value due to the advice. So Prudential said it would reinstate his pension taken out in 1988 and pay this amount into it – it would be for Mr G to then decide what to do with the money.

Mr G confirmed he was happy with the redress amount offered, but felt Prudential was being unreasonable by putting it into his old policy – he thought it would be better paid directly as cash or put into a pension that offered a flexible draw down facility.

One of our adjudicators investigated the complaint. He thought Prudential’s proposed method of redress was fair in all the circumstances as it put Mr G as close as possible to the position he would have been in if he hadn’t been given unsuitable advice in 1988.

Mr G’s representative didn’t agree. They said that someone at this service’s technical team had indicated that a cash payment wouldn’t be unreasonable. And they thought there had been delays in the redress payment being made, which was unfair to Mr G as he’d already had to wait several years for his money. They didn’t think it was right to put the money in a pension that started due to the incorrect advice and a more flexible type of pension would be better for him.

Our adjudicator responded to what Mr G’s representative had said. He explained that a cash payment might be suitable where alternative options weren’t available, but that wasn’t the case here. He pointed out that the compensation that was offered took into account the fact that Mr G could have accessed this earlier, and he didn’t think Prudential had caused any delays in processing Mr G’s complaint. Unhappy with this, Mr G asked for the complaint to be passed to an ombudsman.

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 have come to the same conclusion as the adjudicator and for broadly the same reasons.

It’s not disputed that Mr G was given unsuitable advice, nor the amount of redress offered to him. So I won’t consider those points further. The issue for me to decide is the way Prudential pay the redress due.

Mr G's representative has said that someone at this service's technical team said asking for a cash payment wasn't unreasonable. I don't know what was discussed, but I don't think anything said was based on an assessment of the individual facts of this complaint. As I've said above, I've considered this complaint on its own merits in coming to my decision.

Since bringing his complaint to this service, Mr G has accepted that a lump sum payment of the entire redress might not be suitable due to the tax implications. So I've only considered whether or not Prudential should pay the redress into the reinstated personal pension or into a different type of pension product and whether it should pay any tax-free lump sum now.

The FCA issued guidance in this area in October 2017 that said:

"the basic objective of redress is to put the customer, so far as possible, into the position they would have been in if the non-compliant or unsuitable advice had not been given or the breach had not occurred." (FG 17/9, para 2); and

"If it is not possible to pay the redress amount into the customer's personal pension by augmentation, the redress should be paid in the form of a lump sum to the customer." (FG 17/9, para 5)

In Mr G's case he had been in both a personal pension and his employer's pension scheme. The pension savings in his personal pension were transferred in 1999, so there was nothing left in it after that date. And in 2005 he retired early, so his employer's pension scheme is now paying him an income.

I don't think it is likely that his employer's pension scheme would now take a payment from Prudential to increase his annual income and that's not something either Prudential or Mr G have suggested as a solution. But I do think it would be fair to pay the redress into Mr G's Prudential personal pension.

If I think about what should have happened when he was given advice in 1988, he would have been told to remain in his employer's scheme. So when he came to retire in 2005 he would have been able to get a higher pension income than he currently has. And at that time he had some limited options. But not to take the whole amount as a lump sum or have the flexibility available from some personal pensions today.

I think Prudential's offer puts Mr G in a similar position and as close as practically possible to the position he would have been in, but for the advice in 1988. The redress that has been worked out attempts to put him in the position as if some of his pension fund continued to grow until the date Prudential pay it. Once the redress has been paid, Mr G can decide what to do with it.

I accept that Mr G wants this fund placed in an alternative type of pension that might allow him to take his money in a different way. However I don't think it's unreasonable for Prudential to pay redress into the reinstated personal pension which is the plan that was originally arranged and for which compensation is being paid. I don't think it's obliged to set up a different type of arrangement to pay that compensation into as it puts Mr G into a different position and may have other implications.

Mr G's representative has asked for 25% to be paid immediately tax-free. But I don't think it would be right to say that should happen. The amount of tax-free lump sum available, if any, could be determined by a number of factors including what benefits he took in 2005. So I

think that is something Mr G will have to consider further when deciding how to access his pension once redress has been paid.

I've also thought about any delays that have taken place. I can't see that Prudential has acted unreasonably or caused any delays. It responded relatively promptly after Mr G complained, upholding his complaint and offering redress. I understand this hadn't been paid, but I think this is because Mr G didn't accept the offer made in November 2017 and this isn't something Prudential can be responsible for. Prudential has agreed to update the calculation to the date it is actually paid, so I don't think Mr G will lose out as a result.

my final decision

For the reasons set out above, I think The Prudential Assurance Company Limited has offered fair compensation. I direct it to update its calculation of redress and pay what is owed to Mr G into his personal pension.

If The Prudential Assurance Company Limited is unable to pay the total amount into Mr G's pension plan, it should pay that amount direct to him. The amount should be reduced to notionally allow for the income tax that would otherwise have been paid at retirement making an allowance for any tax free cash that can be taken.

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

Mark Hutchings
ombudsman