

complaint

Miss M says The Prudential Assurance Company Limited (Prudential) has provided incorrect information about her pension plans. She's particularly unhappy that when she wanted to take her benefits in 2018 a MVR (market value reduction) could apply.

background

One of our investigators considered this complaint. It followed on from an earlier complaint Miss M had made against Prudential about the same pension plans. That complaint was about charges and lower bonus rates than Miss M had been expecting. During our investigation of that complaint further issues arose which we've dealt with under this separate complaint reference.

On this further complaint the investigator issued his initial view on 10 January 2019. He didn't uphold the complaint. He issued an updated view on 20 December 2019. Again he didn't uphold the complaint. Very briefly he said:

- Prudential should have adjusted Miss M's plans in line with the final decision we'd issued on her first complaint
- It wasn't possible to ensure Prudential provided correct and clear information on an ongoing basis. Miss M could make a further complaint, although having to do so wasn't ideal. We reported complaints referred to and accepted by us to the regulator.
- Prudential's Principles and Practices of Financial Management (PPFM) document was relevant to Miss M's current complaint. If she thought Prudential was mismanaging her plan she might want to inform the regulator. It was for Prudential to exercise its commercial judgement when managing such a plan, including applying any MVR.
- We don't review a business' commercial judgment. We'd look at if the policy terms were being applied fairly as well as the regulator's rules and principles. And we'd take into account industry practice. It was for Prudential's actuaries to decide when and how any MVR should be applied. Information about a MVR hadn't been clear but Miss M knew it might apply. The circumstances in which a MVR might be imposed included if benefits were taken before the policyholder's selected retirement date (SRD). Given this was an industrywide practice, it wasn't reasonable to say Prudential shouldn't apply a MVR, even if it could have made things clearer.
- Prudential had paid, in total, £300 for the distress and inconvenience Miss M had suffered. It didn't need to pay any more.
- It didn't appear Prudential had made an error about charges separate to that dealt with in the other complaint. Miss M could ask an actuary to provide evidence that an error had been made but there'd be a cost to that. We'd ask Prudential to review any new evidence.

Miss M was disappointed with the investigator's views. In summary she said:

- She didn't need an actuary. Prudential hadn't explained the figures she'd set out in her letter dated 25 July 2018 (repeated in her letter of 19 January 2019). Not all the issues about charges raised in those letters had been investigated under the other complaint reference. There were discrepancies which Prudential hadn't explained. She also referred to her emails to us sent on 8 July 2019 and 10 September 2019.
- General information about the application of a MVR had been provided. She'd read the terms and conditions of her plan and couldn't see where the application of a MVR

is mentioned. She'd understood companies reserve the right to change their policy about MVRs in the light of significant moves in the stock market or if there's a significant increase in withdrawals by policyholders. But Prudential had said the level of MVR applied can change on a daily basis. That means the MVR can change by up to £2,000 from one day to the next. Following industrywide practice wouldn't cause a MVR to alter significantly from one day to the next.

- We'd said information hadn't been clear. If the terms and conditions aren't clear when the contract is entered into, it's an unfair contract. Customers are told it's important to read the terms and conditions at the outset. But if things aren't included and/or are unclear it shouldn't be possible for a company later to rely on them against the customer. That's unfair and probably illegal.

We shared Miss M's comments with Prudential. It said:

- It had replied to Miss M's letter dated 25 July 2018 on 8 October 2018. It understood Miss M didn't receive the letter. But that letter and its letter of 6 February 2019 did address the points she'd raised.
- Its letter of 8 October 2018 explained an issue had been identified with system generated letters for her policies – the aggregated value didn't match the individual values. So special instructions had been added to ensure statements were produced manually. Hopefully that should avoid future conflicting values. Referencing of figures Miss M quoted wouldn't have been appropriate given the error identified.
- The MVR is explained in the annual statements. Miss M acknowledged that in her letter of 25 July 2018 and referred to statements she'd got. Prudential didn't have copies of the early statements she'd mentioned. But it attached copies of the 2017, 2018 and 2019 statements which refer to a MVR and when it might apply.
- It isn't possible to know in advance when a MVR might apply. It had explained the exceptions when a MVR doesn't apply. Information regarding the with-profits fund and its management is contained in the PPFM. It attached the most recent version.

The investigator set out his further thoughts to Miss M on 6 January 2020. In summary, he said Prudential's offer to issue manually prepared statements was fair. He didn't think there was a (further) charging error. He agreed the MVR wasn't clear in the original terms but it was shown on the annual statements. Miss M hadn't suffered any detriment as she wouldn't have acted differently or opted for a plan where a MVR wouldn't apply. Not all situations as to when a MVR might apply had been outlined. But enough had been done for Miss M to know that a MVR can apply. The application of a MVR wasn't a loss as such. Whether a MVR is to apply at any time and the value was for the business' actuaries to decide.

Miss M made detailed submissions in response which I've summarised under three main headings.

figures/charges

Going forwards Prudential will issue manually produced statements. But that won't tell her how much of the information in earlier statements had been incorrect. Prudential should issue manually prepared statements for 2010 to 2018 to allow her to check the charges deducted and which seemed too high. She'd used Prudential's data and if that was wrong her calculations would be incorrect too. It had been agreed, in dealing with her other complaint, that Prudential overcharged in their application of type A unit charges. It's very possible that the charges are still incorrect.

MVR

Miss M explained how her retirement plans had been disrupted. She'd chosen a SRD of 60 but she could have taken her benefits at any time between age 50 and 75. Initially she thought she'd take her benefits at age 50 but the legislation then changed meaning she'd have to wait until age 55. That would have been the case regardless of who her pension was with.

Coming up to her 55th birthday the economy had been stable. But BREXIT was on the horizon. She wanted to take her benefits before any new uncertainty could mean penalties were imposed and final bonuses reduced. It didn't appear a MVR would apply. The only charge would be in relation to the remaining type A units. But she discovered she was unable to take her benefits at age 55 without risking a very substantial MVR.

She accepted that with all with-profits plans a MVR on early encashment was possible. Her policy documentation said Prudential may (not will) apply a MVR. But she didn't think market conditions at the time justified the application of a MVR. Prudential hadn't followed the industry 'norm' and hadn't made that clear prior to her entering into the contract.

She'd have been prepared if MVRs had been shown on statements between 2010 and 2018. Or if other providers were applying MVRs or market conditions had changed. But the last time any of her providers said a MVR would have been applied on the statement date was 2010. So, for nine years on statements and during telephone conversations, Prudential had said a MVR wasn't applicable.

She couldn't have foreseen a MVR could apply, making it almost impossible for her to withdraw from the with-profits fund prior to her SRD without risking a substantial MVR. It wasn't fair for her to have to wait to take her benefits to avoid a MVR when the policy terms were unclear, Prudential had provided incorrect, misleading and unclear information over many years and was acting outside the industry 'norm'. She was also concerned as to how the amount of any MVR could change by some £2,000 in a matter of days. For example Prudential had said a MVR didn't apply on Friday 15 March 2019 but on Monday 18 March 2019 a MVR of £1,791.49 applied.

In particular she referred to the following:

annual statements

- Of the annual statements issued between 2005 and 2018 only the 2008 and 2009 statements said a MVR had been applicable. All the others said a MVR hadn't been applicable on the statement date. That's consistent with statements issued for her pension arrangements with two other major providers – they showed MVRs were only applied in 2009 and 2010 for one provider and 2008 for the other. So the industry 'norm' suggests a MVR was likely between 2008 and 2010. That's consistent with the then banking crisis and the economic uncertainty.

the policy documentation and other information provided

- Miss M explained that she researches products and suppliers carefully, choosing reputable companies with proven track records. If she discovers anything untoward she uses a different provider. At the time her work involved checking the terms and

conditions of contracts including any special requirements. The contract with Scottish Amicable seemed in line with other providers.

- The policy terms and conditions issued by Scottish Amicable form the basis of the contract. There's nothing explaining the application of MVRs. The documentation about the acquisition of Scottish Amicable by Prudential said the terms and conditions of her policy wouldn't change. A booklet included a section about the application of MVRs but didn't suggest the amount will significantly change from day to day. Or that Prudential would act differently from rest of the industry.
- She got a letter from Prudential in June 2006 with a leaflet – '*Your With-profits Plan - A Guide to how we Manage the Fund*'. The section '*What if you decide to move out of With-Profits*' said a MVR is applied if investment returns have been poor while the investment has been in the fund to protect investors who are not taking their money out. Again it doesn't suggest MVRs will alter significantly on a daily basis.
- Since March 2010 a leaflet (updated over the years) entitled '*Your Yearly Benefit Statement*' has been issued with her annual statement. In the '*Your Questions Answered Section*', in response to the question '*Why is there a difference between the current fund value and the transfer value?*' Prudential said final bonus was included in the transfer value but not the current fund value. A further difference was due to any charges made on transfer of benefits to another provider.

Miss M's correspondence with Prudential

- Prudential's letters dated 13 December 2013 and 18 February 2014 said, depending on market conditions, a MVR may apply to any early withdrawal out of the with-profit fund prior to SRD.
- In her letter of 21 February 2014 she'd specifically asked if a charge would be incurred or a loss of bonus arise if she altered her SRD to age 55 or left it at 60 but took benefits early at age 55. Prudential replied on 13 March 2014 saying she couldn't change her SRD to 55 but could take benefits before her SRD. She was only told about the early retirement charge equivalent in value to the balance of the additional fund management charges (ie the charge for the remaining type A units which were discontinued in January 2019).
- It wasn't until Prudential's letter of 21 May 2018 that it became apparent that it was applying a MVR and the amount could change substantially on a daily basis.

service issues

Miss M didn't think the £300 compensation Prudential had paid was adequate for all the distress and inconvenience she'd been caused.

She'd first raised concerns in 2014. Initially her financial adviser was involved but had given up, saying it was impossible to get clear and accurate information from Prudential. For reasons she explained, Miss M hadn't chased things up again until May 2017. Again her financial adviser was initially involved but withdrew for the same reason as before. If her adviser had dealt with it all, the fee would have been several thousand pounds. Instead she'd had all the inconvenience. She shouldn't be 'short changed' when it comes to compensation for the time she'd spent plus the distress and inconvenience she'd been caused.

As matters hadn't been resolved, she'd been unable to take her pension benefits at age 55. It seems she won't be able to take them until age 60 (her SRD) unless she's prepared to accept a MVR which she doesn't think, given current market conditions, there's any reason

for Prudential to apply. Prudential was continuing to cause her distress and £300 wasn't adequate.

Referring to her previous complaint she said she didn't think Prudential had correctly adjusted for its overcharging. But, as incorrect figures had been issued over many years, it was difficult for her to be certain of anything. The whole point of issuing annual statements was so policyholders can check their arrangements are on track to meet their needs. Because, and as Prudential admits, the information given in her annual statements was wrong, she'd thought everything was on track when it wasn't. She'd been misled into thinking she could take pension benefits around her 55th birthday without incurring a MVR.

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'm sorry if Miss M is disappointed. I don't expect her to agree with what I've said. But I hope I've explained my reasoning.

figures/charges

As I've mentioned Miss M made a previous complaint about overcharging. A final decision on that matter has been issued by one of my ombudsman colleagues. But Miss M refers to the '*charging issue*' as overlapping both complaints. And she says she'd like '*her whole complaint*' reconsidered. She also refers to Prudential having '*got away*' with some things.

It's clear she isn't entirely happy with the outcome of her previous complaint. But, and as I think Miss M is aware, as an ombudsman's final decision has been issued, that complaint can't be revisited. So I haven't considered the issues addressed in my colleague's decision.

That doesn't mean that I can't look into any new or different issues about charges. I note Miss M is still worried she's been overcharged. She's referred to her letters of 25 July 2018 and 19 January 2019 to Prudential and to her emails to us sent on 8 July 2019 and 10 September 2019.

Miss M's letters and Prudential's replies dated 8 October 2019 (which letter Miss M initially didn't receive) and 6 February 2019 were considered as part of the earlier complaint about charges. So I'm not going to revisit them here. And, as far as I can see, Miss M didn't raise any new and specific issues about charges which weren't dealt with, either by Prudential in its responses to her letters or which didn't form part of our investigation into her original complaint.

I've looked at Miss M's emails to us dated 8 July 2019 and 10 September 2019. The first is mainly in response to the decision my colleague issued on the original complaint. Miss M did go on to mention her current complaint and (referring back to her letter of 25 July 2018) she said it had been almost impossible to calculate exactly how much Prudential had overcharged her because incorrect information had been provided over many years.

Similarly she said in her later email that she still couldn't be sure, because the errors Prudential has made, that her plans had been fully corrected. In her further email of 10 September 2019 Miss M repeated that she couldn't be sure, in view of all the errors

Prudential had made, that it had fully corrected her plans. And she reiterated that she didn't think Prudential had addressed all the issues she'd raised about charges.

First, if Miss M isn't satisfied that Prudential has correctly adjusted its charges in line with my colleague's decision, then she should take that up with Prudential. Ordinarily we probably wouldn't get involved in what might be termed an enforcement issue. But here, given the history of the matter, if Miss M has specific concerns about whether Prudential has correctly implemented my colleague's decision – and I don't doubt that Prudential would strive to do that anyway – and which she can't resolve with Prudential, she should let us know and we'll see if we can assist.

Secondly, I can understand that, as some overcharging has been identified, Miss M may be less than confident that other charging errors haven't been made. And I can understand why the fact that incorrect information has been provided over the years may make it more difficult to try to reconcile figures.

But I do think it's up to Miss M to point to something specific. From what I've seen she's just generally concerned that she may still have been overcharged but she hasn't pointed to anything in particular. I don't think it's reasonable to expect Prudential (or us for that matter), in effect, to audit her plans from inception up to date (although as we've said it's open to Miss M if she wants to pay a third party to do that). Nor do I think it's necessary or proportionate to say Prudential should be required to create manually prepared statements going back to 2010. And I can't see there's much point in asking Prudential to reconcile figures which it now accepts were wrong.

All in all I'd agree with the approach suggested by the investigator. If, based on the information she's got now and taking into account the adjustments made following my colleague's decision, Miss M considers there has been further overcharging (separate and distinct to the overcharging issues she raised and which were the subject of my colleague's decision) she should explain why that's her view, supported by calculations and/or examples. We can then ask Prudential to check. If things can't be resolved then we'll see if we can assist. But as things stand, despite Miss M's understandable worry that the charges may still be incorrect, I don't think this aspect of the matter can be taken further forward.

MVR

I've next considered the MVR. I'm sorry Miss M's retirement plans have been disrupted and she wasn't able to take her benefits in 2018 because of the risk a substantial MVR might be applied. She's explained how that came as an unwelcome surprise and disappointment.

I don't think Miss M now disputes that Prudential has the right to apply a MVR. Looking at the policy document, R.2.6 is about with-profits funds. It says, about the offer and bid prices:

'The Bid and Offer Prices shall be subject to the following-

(i) The Offer Price shall not fall

(ii) The Bid Price applicable in the event of survival of the Investor to the Selected Retirement Date or on his previous death shall be not less than 95% of the Offer Price, rounded to the next lower 0.1 p.

(iii) Subject to the above, the Offer and Bid Prices of units shall be determined by the Actuary having regard to prevailing financial conditions

Further Bonus units, Special Bonus or Terminal Bonus may be added by the Directors

from time to time as appropriate

The Society reserves the right to introduce further With-profits Funds or to subdivide, close or merge existing Funds.

Units in any Fund may be consolidated or subdivided at any time at the discretion of the Society.'

MVR isn't mentioned as such. When this policy was sold the term MVR or MVA (market value adjustment) wasn't as commonly used. It's now widely understood to represent an adjustment made where the current value of a plan is considered to be greater than the plan's fair share of the underlying investments. The later produced information, such as the booklets and leaflets to which Miss M has referred and the references on the annual statements, do refer to MVR as such and explain it.

And I think the reference, in sub clause (iii) above, to the actuary determining, having regard to prevailing financial conditions, the offer and bid prices of units in the with-profits funds does cover a MVR being applied. It gives Scottish Amicable and its successor, Prudential, the power to adjust offer and bid prices of units on advice from its actuaries. That would include imposing a MVR. At SRD or earlier death the unit price is protected as set out in sub clause (ii). So I'm satisfied Prudential has the contractual right to impose a MVR if benefits are taken earlier than SRD.

Miss M has said the contract was unclear and she was misled into entering it. And I note what she's said about researching Scottish Amicable's terms and conditions before taking out the policy. As I've indicated the policy didn't mention MVR as such. The exact wording of a policy will differ from provider to provider. Some may have made the possibility of MVR (which as I've said wouldn't have been referred to as such at the time) and when it might apply clearer. But I think it was commonplace within the industry to include some provision to allow with-profits fund values to be adjusted to better reflect the current market value of the underlying assets. I'm not convinced that Miss M would have declined to have taken out the policy if the specific provision had been expressed differently or more clearly and in the sort of language which we'd expect to see today.

Miss M's argument is more about if it was right for Prudential to impose a MVR in 2018 which coincided with her plan to take her pension benefits early. So she's really alleging that Prudential isn't managing and running its with-profits fund fairly – by imposing a MVR which wasn't justified in the then financial climate and, as she puts it, outside the industry 'norm'.

First I'd acknowledge that with-profits funds have attracted criticism for their lack of transparency. I understand Miss M's suspicions about the imposition of MVR. I accept that it can be very difficult for policyholders to satisfy themselves they are receiving what they are entitled to under the terms of their plan. But that doesn't necessarily mean that the business concerned has got something wrong.

As previously explained, Prudential is accountable to the industry regulator (the Financial Conduct Authority – FCA) for the way in which it operates its with-profits fund and in accordance with its PPFM document. And the regulator monitors the management of it. Businesses are required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. Prudential also has an independent 'With-Profits Committee' whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly.

Where a commercial decision has been made by a business, relating to policyholders generally, this goes much wider than the individual complaint and concerns the way the business operates. Matters of this nature may be reported to the FCA. We wouldn't normally interfere with the legitimate exercise of a business' commercial judgment.

I think any decision to impose a MVR and if so how much is a commercial decision for the business and its actuaries. Indeed Miss M accepts that's right, in principle at least. But I think her point is that there were no proper grounds for Prudential to impose a MVR in around May 2018. On that basis she might argue that the decision wasn't a *legitimate* exercise of its commercial judgment.

Miss M has pointed to economic conditions being stable in the early part of 2018. She's correct in saying that providers generally reserve the right to impose MVR in the light of significant moves in the stock market or in the event of a significant increase in the level of withdrawals taken by its policyholders. I note sub clause (iii) quoted above says that Prudential's actuaries are required to have regard to prevailing financial conditions.

But that doesn't mean, in a climate of relative financial stability, there will never be valid grounds for imposing a MVR. Whilst Prudential's actuaries must have regard to the prevailing financial conditions that's not the only thing they can consider. They'll take into account actual and known factors affecting the with-profits funds. But they'll also make assumptions about a variety of factors, including future economic conditions and expected fund performance, expenses and liabilities as well as other variables, for example, improving mortality rates.

Any change is applied without prior notice – it wouldn't make sense to give any warning and which could just prompt policyholders to try to withdraw their funds. And which is itself a factor as to why a MVR might be applied. I don't think the fact that not all providers may apply a MVR at the same time or at the same sort of level is indicative of a particular provider being out of step with the industry generally. Different providers will apply different criteria and which are subject to change and related to commercially sensitive factors that aren't made public. The same applies to how any MVR is calculated on any particular day.

I can understand why Miss M may perhaps feel she was perhaps 'lulled into a false sense of security' because the annual statements she received between 2010 and March 2018 didn't indicate that Prudential would impose a MVR. But that didn't mean Prudential gave her wrong information. The statements reflected Prudential's position at the time.

And Prudential's letters of 13 December 2013 and 18 February 2014 said, depending on market conditions, a MVR may apply to any early withdrawal out of the with-profit fund prior to SRD. Prudential's letter of 13 March 2014 (in response to Miss M's letter of 21 February 2014) may not have repeated that. But Miss M was still aware from the earlier letters that a MVR could apply.

All in all Miss M knew a MVR could apply. She was no doubt reassured by the fact that there'd been a long period where no MVR had been imposed. And her view of market conditions was that there was nothing to justify a MVR. That said, I note she wanted to take her benefits in advance of BREXIT. She may not have been the only policyholder who took that view and which may have been factored into Prudential's decision to apply a MVR. As I've said above, it wouldn't make sense to give notice that a MVR was to be imposed with effect from a certain date. That might prompt more policyholders to seek to withdraw their

funds and, as Miss M accepts, increased withdrawals is one of the factors that could give rise to a MVR being applied

The timing was unfortunate for Miss M. She'd got her annual statement in March 2018 which didn't indicate any MVR would apply. But by the time she'd turned 55 just a couple of months later it became clear that she did risk a MVR if she took her benefits early. That's forced her to delay taking her benefits. That may not be ideal for Miss M. But for the reasons I've explained I don't think Prudential had done anything wrong. So I'm not going to say Miss M shouldn't suffer any MVR if she decides to take her benefits early. Nor do I think Prudential is responsible for any further or ongoing distress or inconvenience Miss M has suffered in consequence of not being able to access her benefits MVR free before her SRD.

service issues

I've thought carefully about whether the £300 Prudential has already paid is sufficient compensation for its admitted service failures. I note what Miss M says about the adviser fees she could have incurred. I don't disagree with what she's said. But I'd point out that we wouldn't generally make an award in respect of such costs. We're an informal dispute resolution service and it isn't generally necessary for a consumer to appoint an adviser or other professional to deal with the complaint on the consumer's behalf. A consumer is of course free to appoint a representative to handle the complaint. But it's only in exceptional circumstances that we'd make an award for the fees incurred.

I accept that Miss M has spent much time dealing with this matter. And that she's suffered inconvenience, as well as upset, disappointment and frustration. But our awards for what we'd term trouble and upset are perhaps more modest than Miss M might think appropriate. I think £300 is within the range I'd expect for this sort of situation and bearing in mind that I'm unable to agree with Miss M that all aspects of her complaint should be upheld.

my final decision

Prudential has already paid Miss M £300. I don't think Prudential needs to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 June 2020.

Lesley Stead
ombudsman