

complaint

Mr A has complained that The Prudential Assurance Company Limited ("Prudential") provided incorrect information regarding the value of his pension policies. He considers that this affected his retirement and tax planning, and believes that Prudential should pay the cost of him obtaining independent financial advice to address the consequences of this error.

Further, he considers that the error has caused a detrimental impact to his lifestyle, due to Prudential's failure to identify and correct the error in a timely manner. He says there is now a significant shortfall in his pension compared to his expectations, and he has less opportunity to address the shortfall.

Mr A is also dissatisfied with the compensation offered by Prudential for the distress and inconvenience he has suffered as a result of its error. He considers that it does not adequately compensate him for the poor quality of the responses he received from Prudential, and the extensive time he had to spend seeking an explanation of the issue.

background

Mr A has two pension policies with Prudential, both invested in with-profits funds. In December 2008, Mr A's representative wrote to Prudential requesting fund values for the two policies, *as at 5 April 2006*. This information was requested in connection with Mr A's intention to apply to HMRC for 'primary protection' and/or 'enhanced protection' against any tax charge arising from Mr A exceeding the Lifetime Allowance.

In error, Prudential provided the fund values *as at 5 April 2008*, rather than the requested date of 5 April 2006. Mr A's representative was therefore told that *on 5 April 2006* the funds had a combined value in excess of £1.5 million, whereas Prudential has since confirmed that the correct figure was in the region of £1.25 million. This error was not identified and brought to Mr A's attention until July 2012, after he had contacted Prudential to raise concerns about the way in which his funds (and annual bonuses) had been calculated. Annual statements had been sent to Mr A over the relevant period, which Prudential says provided Mr A with correct information on the current fund values for his policies. Mr A had extensive correspondence with Prudential over the course of a year (from March 2012 to March 2013), whilst he tried to obtain detailed information about how his policies were being managed. It is common ground amongst the parties that Prudential provided Mr A with incorrect information in 2008 about his fund values. However, the adjudicator who investigated this complaint concluded that it should not be upheld. Prudential had offered Mr A £300 for the distress and inconvenience he had suffered as a result of its error, and the efforts he had to go to in order to get to the bottom of what went wrong. The adjudicator considered that Prudential's offer was an appropriate amount in the circumstances, and in line with what this service would recommend for the original error and the poor way Mr A's complaint was initially handled.

Mr A disagreed with the adjudicator's findings, and asked for his complaint to be referred to an ombudsman for a final decision. In particular, he considered that he would have to seek further financial advice because of Prudential's error, and the sum of £300 would be insufficient to cover this.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I will start by addressing the circumstances surrounding Mr A's application for primary and enhanced protection. Significant changes were made to the tax regime for pensions with effect from 6 April 2006, including the introduction of a Lifetime Allowance. In 2006, the Lifetime Allowance was set at £1.5 million. This meant that anyone accruing a pension fund in excess of that amount would become liable to a tax charge. Transitional arrangements were put in place to offer protection to individuals who had already exceeded the Lifetime Allowance of £1.5 million (known as 'primary protection'), or who might exceed the Lifetime Allowance in the future as a result of growth in their existing pension funds ('enhanced protection').

One of the conditions for being eligible for primary or enhanced protection was that further pension contributions could not be made after 5 April 2006. Mr A had written to Prudential on 2 April 2006 to cancel his direct debit for his monthly pension contributions, so that he would not make himself ineligible for primary and/or enhanced protection.

Individuals had until 5 April 2009 to apply to HMRC for primary and/or enhanced protection. In connection with that application, Mr A's representative had written to Prudential in December 2008 asking for information about Mr A's fund values, as at 5 April 2006. This was presumably so that a decision could be made about whether it was necessary to apply for primary protection (for funds valued at £1.5 million or more as at 5 April 2006), or just enhanced protection (which applied to funds of less than £1.5 million on that same date).

Prudential has acknowledged that incorrect information was given to Mr A's representative. The effect of this was that Mr A applied for primary protection as well as enhanced protection, when it was only necessary for him to apply for enhanced protection. This is because Mr A was incorrectly told that his total fund values exceeded £1.5 million (the primary protection threshold), when the correct amount was £1.25 million.

The question I need to consider is whether Mr A has been detrimentally impacted by this incorrect information. I will start by considering this from a tax perspective. It seems to me that the consequence of Mr A receiving the incorrect information is that he applied for primary protection unnecessarily, when he should only have applied for enhanced protection. I consider it likely that Mr A would have continued to apply for enhanced protection if he had been given correct information in 2008. I take this view because Mr A appears to have made the decision to apply for enhanced protection early in 2006 (and primary protection, if necessary), when he decided to stop his pension contributions to ensure his eligibility for the transitional protection.

I accept that if Mr A had been given the correct information in 2008, Mr A *could* have decided not to apply for enhanced protection, and instead to start making pension contributions again. However, I consider it likely that, before making such a decision, he would have asked for confirmation of his current fund values (as at December 2008), in order to see if he was likely to be affected by the Lifetime Allowance in the future. If he had done so, he would then have established that *by that date*, his funds had already exceeded £1.5 million. Given this information (which would also have been available to him from his annual statements), on balance, I consider it more likely than not that he would still have proceeded with an application for enhanced protection.

As Mr A has become aware that the information on which his application for primary and enhanced protection was based was incorrect, he is required to make a notification to HMRC to cancel his primary protection certificate. HMRC's tax manual on its website says:

“Amending details of the notification made to HMRC

[Reg 17 The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 - SI 2006/131]

If after the individual has submitted their notification form to HMRC they realise that

- the information given in the notification is incorrect or has become incorrect, or*
- information given in connection with the notification is incorrect or has become incorrect*

they must tell HMRC without undue delay.

HMRC can then revoke the first certificate and issue an amended certificate, which will supersede the first certificate.”

The adjudicator handling Mr A's complaint has contacted HMRC to confirm the consequences for Mr A of making that notification. HMRC has confirmed that, provided the required notification is received from Mr A without undue delay, it will issue him with an amended certificate granting him enhanced protection alone. HMRC has also confirmed that there will be no financial penalties for Mr A from a tax perspective by making this correction.

I do not consider that it is necessary for Mr A to obtain independent financial advice in order to assist him with making the notification to HMRC, although he may of course choose to do so if he prefers. If he does, I do not agree that Prudential should be required to fund the cost of that advice, given that the notification to HMRC should be a straightforward matter.

Although Prudential's letter in December 2008 did contain incorrect information, I have taken into consideration that this was the only incorrect fund value information that Prudential sent to Mr A. I have not been made aware of Prudential providing incorrect fund values in the annual statements it issued to Mr A. I therefore consider that Mr A ought reasonably to have relied on those annual statements when undertaking financial planning. The annual statements provided more up to date fund values, whereas the letter issued in December 2008 was intended to provide retrospective information about his fund value on 5 April 2006 for a specific purpose. I therefore do not consider it to have been reasonable for Mr A to rely solely on the incorrect information, in the light of the annual statements he received.

I therefore do not hold Prudential responsible for any financial loss arising from Mr A's general retirement planning being based on the December 2008 statement of his fund values as at April 2006 (or any loss of opportunity Mr A may claim). As explained above, in any case, I consider it unlikely that Mr A would have made additional pension provision if he had been provided with the correct information in 2008, given that he had already made the decision in 2006 to cease making pension contributions in order to benefit from enhanced protection, and his fund had grown considerably over the intervening period.

Having carefully reviewed the extensive correspondence between Mr A and Prudential, what is clear to me is that Mr A has received poor customer service, and, on a number of occasions, inadequate responses to the legitimate questions he has raised. It seems to me that this has led to Mr A having little faith in the information provided by Prudential, and no

doubt it has contributed to his belief that he now needs to seek further independent financial advice on his pension arrangements. I find that Prudential's actions have caused Mr A considerable inconvenience, and undoubtedly distress as well. I therefore consider that a more appropriate award for the distress and inconvenience he has suffered is £500.

Prudential has confirmed its acceptance of my decision and this higher award.

my final decision

I uphold this complaint in part. I therefore direct The Prudential Assurance Company Limited to pay to Mr A £500 for the distress and inconvenience caused to him by its original error and the poor customer service he received when trying to get to the bottom of the matter.

Venetia Trayhurn
ombudsman