

complaint

Mr R complains about the delay in setting up his pension caused by errors made by The Prudential Assurance Company Limited. He says this has caused him a financial loss.

background

I set out the background to this complaint, and my provisional conclusions, in the provisional decision I issued in March 2018 (copy attached).

Prudential responded to say it was disappointed that I intended to increase the sum Mr R should receive for the trouble and upset he'd been caused. It had looked at case studies of such awards on our website, which involve such matters as where a customer has got into financial difficulties, been caused embarrassment or been through an emotionally stressful time. Prudential couldn't see that Mr R fell inside any of these categories. It still thought its original offer of £650 was fair, and asked for the matter to be reassessed.

Mr R also responded with some further points:

- He wished to confirm that if he'd been in possession of the correct facts and figures he would certainly have taken his pension when he reached age 60.
- He can also confirm it was always his intention to keep working until April 2017. However, by 2015 he'd reduced his working commitment and his pay had been adjusted accordingly. There was no logical or financial reason why he wouldn't have wanted to supplement his income with his pension.
- In fact, he was still working part-time when he started drawing his pension in May 2016. He eventually retired, as planned, in April 2017.
- He can only confirm that his retirement plans weren't relevant to the timing of him taking his pension benefits. It was the confusion caused by Prudential which delayed his decision.
- I said in the provisional decision that he hadn't clarified the errors made by Prudential, or why they prevented him taking his annuity. He finds this comment surprising as his initial complaint to us highlighted the errors Prudential had made. The adjudicator who investigated his complaint appears to have accepted there had been errors which had led to the delay in him taking his benefits. He invites me to read his original summary of his complaint again.
- His summary also dealt with the time it took him to start taking his pension after Prudential's offer to "put things right". He explained that his decision to take the benefit on his 61st birthday was simply to take advantage of the increased annuity rate applicable from that age, as a way of mitigating his losses.
- The sum I propose to award does not reflect the facts he's taken a great deal of effort to explain. Nor does it reflect my conclusions or those of the adjudicator. Indeed, I say that I accept making this type of award can appear to be arbitrary. In his view, the figure is not only arbitrary, but ignores the level of losses he's suffered.
- Finally, it's worth noting that Prudential has never sought to challenge his figures or presented an alternative. While accepting responsibility for their failings, Prudential has simply sought to blame him for part of the delay period.

my findings

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

I've firstly considered the points Mr R has made.

I can confirm that when I considered the complaint, I did read Mr R's original submission along with all the other evidence. In light of Mr R's recent comments, I've reviewed the summary of complaint again. I appreciate Mr R set out details of his discussions with his financial adviser and the information Prudential had provided. But it remains my view there was nothing to show for certain that he wanted to take his benefits on his 60th birthday and was only prevented from this by Prudential's errors.

Prudential wrote to Mr R on 1 June 2015 in relation to one of his policies explaining that as he'd passed the date he originally chosen to take his benefits, it had changed his retirement date to his 75th birthday. It also said it had switched his investments into the cash fund. It's worth noting that this was over six weeks after Mr R says he intended to retire – on his 60th birthday.

It appears from this that Mr R had made no definite decision at this point about when or how he should take his benefits. In fact, part of Mr R's complaint is that Prudential took this action despite being informed in March that he was still considering his options. Prudential has a record of Mr R's adviser asking in March 2015 if there were any issues with deferring the benefits.

I'm also mindful that Mr R's adviser complained to Prudential in August 2015. While this referred to incorrect information that Prudential had supplied, it made no reference to Mr R being prevented from retiring on his 60th birthday. On the contrary, one of the comments by the adviser was that Prudential had given out wrong information in relation to Mr R potentially deferring his pension.

I've also noted what Mr R has said about his employment situation. But I think this endorses my view that he had options available to him as to when he should take his pension benefits. As such, there was no financial imperative for him to start drawing his pension at age 60. Rather, he had some freedom when to do so.

I acknowledged in my provisional decision that Prudential's error in switching part of Mr R's pension fund into cash would have impacted on his consideration of the options available. But in order to compensate Mr R on the basis he wishes I must be satisfied it's more likely than not he would have taken his benefits at age 60 but for Prudential's errors. I've simply not seen enough evidence to allow me to make such a conclusion.

By the same token, I've not seen evidence to enable me to "fix" a date somewhere between Mr R's 60th and 61st birthdays, as proposed by the adjudicator, as the point at which Mr R might otherwise have started his pension.

I turn now to the points made by both parties about the sum of £800 I proposed to award Mr R for the trouble and upset he'd been caused.

Both parties have referred to my comment that awards of this nature can appear to be arbitrary. But this is because such awards are, at least to some extent, subjective. That is, there's no definitive "formula" for calculating what should be paid. Instead, the sum will be what is thought to be fair and reasonable based on an overall assessment of the circumstances in any particular complaint.

Prudential has drawn attention to the examples of such payments on our website. But these are only intended to offer a general guide to the types of award this service might make. The examples are not exhaustive, and nor are they intended as templates to be followed.

So while I wasn't able to determine Mr R had suffered an actual financial loss as a result of Prudential's actions, I did think they had caused him some trouble and upset. And this wasn't adequately reflected by the sum of £650 Prudential had offered. Having considered the further points made by both sides, it remains my opinion that a sum of £800 is fair and reasonable in all the circumstances of this case.

my final decision

I uphold the complaint in part and require The Prudential Assurance Company Limited to pay Mr R £800 for the trouble and upset he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 May 2018.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Mr R complains about the delay in setting up his pension caused by errors made by The Prudential Assurance Company Limited. He says this has caused him a financial loss.

background

Mr R held four pension plans with Prudential. The retirement date under the plans was his 60th birthday in April 2015. In fact, Mr R didn't start taking his pension benefits until a year later in April 2016.

Mr R complained to Prudential on the basis that the errors it had made had led to him delaying taking the benefits. But while Prudential acknowledged it had made some errors, it didn't accept these had caused the delay Mr R claimed. It offered to pay Mr R £650 for the trouble and upset he'd been caused. Mr R remained unhappy and referred the complaint to us.

One of our adjudicators considered the complaint, and thought it should be partly upheld. In summary, she said:

- Although Mr R intended to start his annuity in April 2015, she didn't think all the delays were caused by Prudential.
- She looked at when Mr R could have purchased his annuity had a delay not occurred due to Prudential's errors.
- She thought that had Prudential not made the error of switching some of his policies into cash, there wouldn't have been a delay between 1 June 2015 (when the switch took place) and 9 December 2015 (when Prudential offered to correct the matter).
- This delay amounted to 137 working days. Had this delay not occurred, Mr R could've started his annuity that much earlier.
- She recommended Prudential perform a calculation to establish the annuity Mr R could have purchased had this delay not occurred.
- She also considered Prudential should pay Mr R its original offer of £650 for the distress and inconvenience he's suffered.

Mr R responded to the adjudicator's opinion. In summary, he said:

- The adjudicator seems to have ignored the confusion caused by Prudential's errors before March 2015.
- He disagrees with the dates used to calculate the period of delay.
- He maintained that the combination of errors and delays by Prudential meant he wasn't in a final position to take his annuity until May 2016.
- He thinks the annuity he was able to take in April 2016 would have been higher than if he'd taken it earlier, as he was older. But he doesn't think it would be fair to make any deduction that takes this into account, and he shouldn't be penalised for being a year older.
- He doesn't consider £650 to be an acceptable or adequate offer of compensation for Prudential's errors. He's spent many hours over two years trying to deal with these failings.

Prudential also didn't agree with the adjudicator's opinion, and made a number of points:

- It agrees there's no indication Mr R was going to take his benefits in April 2015.
- Its records show that Mr R had appointed an adviser who asked for information on his policies – and there were discussions around the possibility of deferring his benefits.

- Prudential informed Mr R's adviser that it could correct the switch on 3 August 2015. But it didn't hear back until 14 September 2015. And it didn't hear from the adviser with confirmation of Mr R's wishes until 9 December 2015.
- Whilst it agrees that it made a mistake, it can't accept that it was responsible for the entire period the adjudicator has determined as being the period of delay.
- It considers that 90 days of the delay period was caused by Mr R's adviser.
- Although it agrees with the broad principle, it can't agree with the date suggested by the adjudicator for the calculation of Mr R's loss.

As the matter remains unresolved, it's been passed to me for review.

my provisional findings

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

It's not in dispute that Prudential made an error in switching some of Mr R's policies into the cash fund. But it also agreed to put this right when alerted to the problem by Mr R's adviser. There was a delay before the correction was made, but this was largely while Mr R was deciding which option he preferred to take. The key issue in this case is whether Prudential's error has caused Mr R an actual financial loss.

Mr R has told us he intended to take his benefits starting on his 60th birthday in April 2015. I appreciate this was the retirement date his policies were written to. But I'm not convinced it was his definite intention to start taking his benefits at that point. Mr R has referred to errors made by Prudential before March 2015. But he hasn't clarified what these were or why they prevented him from starting his annuity if that was his wish.

Instead, it seems Mr R was considering his retirement options with his financial adviser. I'm aware the policies contained guaranteed annuity rates, which would have been an important consideration. The records show there was much interaction between Prudential and the financial adviser about the value of Mr R's policies and the benefits available. I've not seen evidence Mr R or his adviser made any comments to Prudential about any urgency for the benefits to start.

In saying this I'm mindful that even after Prudential had acknowledged the incorrect switch to cash, and offered to put this right, it still took around two months for Mr R to confirm what action he wanted Prudential to take. And it was about three months after this that Mr R completed the relevant forms to set up his pension.

It also seems that Mr R continued working after he started taking his benefits. So it doesn't appear that he needed the income from his pension, to the extent that his financial situation required him to receive this. As such, I think he had some degree of flexibility when to starting drawing an income from his plans. And having passed his 60th birthday, I can't discount the possibility he may then have chosen in any event to wait until he reached age 61 to take his benefits.

This is not to say that Prudential's error, and the need to have this corrected, didn't impact on Mr R's decision process. But I'm unable to reach a definite conclusion he would have taken his benefits at some unknown earlier date had the error not been made.

I would add that if it could be shown that Mr R would have taken his benefits earlier, the appropriate redress would be to put him back in that position. So his actual pension would need to be compared with what he'd have received at the correct point. This would mean that he'd been deprived of a number of pension payments. But it could also mean the pension would have been smaller. For instance, if the fund value was lower than when the pension actually started or, as Mr R has noted, the annuity rate was lower because he'd be younger. So it's possible that changing the pension to what it would have been if it had started earlier may not be beneficial over the longer term.

I've noted Mr R's comments about this, but it wouldn't be fair to simply allow him to keep the current pension he's receiving while also getting the benefit of any underpayments assuming it would have started earlier.

I've also noted Mr R's view of the sum Prudential has offered for the trouble and upset he's been caused. While he thinks it's insufficient, it is nonetheless higher than many awards of this nature we make in these circumstances.

But taking account of the details of this case, and noting that Prudential seems to concede it could be liable for some additional compensation, I think the sum should be increased. I'm therefore proposing to increase the sum to £800. I appreciate making this type of award can appear to be arbitrary. But on the whole I think this is a fair way to resolve this dispute.

my provisional decision

I uphold the complaint in part and require The Prudential Assurance Company Limited to pay Mr R £800 for the trouble and upset he's been caused.

Doug Mansell
ombudsman