

complaint

Ms A's complaint is about the poor service and lack of information provided to her by The Prudential Assurance Company Limited (Prudential) regarding the options for her pension funds.

background

In summary, my understanding is that Ms A is an American citizen who when working in the UK had invested in a number of Prudential pension plans. Ms A had subsequently returned to live in the USA and when looking to take her retirement benefits she discovered there were better annuity rates available in the USA than those offered by Prudential. She wanted to know how to transfer her funds to the USA and requested information from Prudential.

Prudential provided standard retirement packs with the options for taking retirement income benefits from it. In approaching financial firms in the USA Ms A was told they could not request funds to be transferred in from UK qualified pension schemes. In subsequent communications with Prudential Ms A said she was told repeatedly that she needed to get a financial adviser and complete the forms to transfer her pension. She says it continued to give the same wrong information and did not provide her with any information about alternatives. Ms A also said that she had difficulty in communicating with the business over at least the last 10 years.

One of our adjudicators investigated the complaint but did not consider that it should be upheld.

The adjudicator's view was that Prudential had provided the necessary information and options for Ms A to take her retirement income benefits in the UK. He noted that Prudential had written to Ms A in October 2012 and May 2013 saying "*...it is our understanding that transfers to the United States of America "qualified" retirement plans, which include individual retirement arrangements (IRAs), cannot be made as such plans are not permitted to accept a transfer of funds from a UK registered pension scheme*".

Following further correspondence that was exchanged between Ms A, the adjudicator and Prudential, Ms A asked for her complaint to be considered by an ombudsman. She said, in summary, that she was disappointed she was still unable to gain control over her pensions, which belonged to her, and which she had saved and invested specifically for the purpose of providing a pension of her choice. She said that this was the promise when she originally invested. Ms A said that although both Prudential and the adjudicator had suggested that she get specialist advice, she had been given no indication what was meant by this or where it might be available. Ms A said "*To all intents and purposes, I have lost some \$65,000 in a bad investment with what used to be a rock-solid UK company, and no-one seems to care....*"

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 note that in her correspondence with the adjudicator Ms A expressed concerns that her fund appeared to be subject to UK HM Revenue and Customs (HMRC) rules, yet she is an American citizen and not subject to UK laws. I think what is material here is that one of the main benefits of contributing to a UK pension scheme is that it is usually eligible for

generous tax relief (25 or 40% in 1990/91, depending on the individual's marginal rate of tax). However the rules about how people can take their pensions in retirement in the UK are restrictive, and fairly complex. But people have a choice – they can accept those restrictions, obtain the tax relief and invest in a pension, or they can invest in other investments which are more flexible in how benefits are taken but not obtain the tax relief.

My understanding is that it was not Prudential who advised Ms A to invest in a pension. Prudential has supplied and administered the product. The responsibility for explaining all workings and features of the pension, and weighing up the advantages and disadvantages of contributing to a pension compared with the alternatives, rested with the firm that advised Ms A to make the contributions.

On the one hand, it is clear that Ms A has had problems in contacting Prudential and obtaining definitive information about her options. But on the other, whilst Ms A's circumstances are not unique, the transfer of pension benefits overseas is a complex matter, as both detailed knowledge of the very strict requirements imposed by HMRC rules in the UK is required, as well as any rules that are relevant in the country to which the scheme is being transferred to. I do not consider it would be unreasonable that Prudential customer services would be unfamiliar with the particular rules of overseas countries. And significant penalties are imposed where a pension is transferred to a scheme that is not acceptable to HMRC – so I don't think it was unreasonable that Prudential said that Ms A needed to get specialised advice.

The original plans were UK pension plans arranged under UK pension legislation. The movement of funds to 'approved' pension schemes outside the UK, known as 'QROPS' (Qualifying Recognised Overseas Pension Schemes) requires specialist advice. HMRC maintains a list of the QROPS approved in each country. I note that Ms A has already approached an adviser in the USA, (and I understand her original adviser in the UK), and they have not been able to help. However, as I have said, this is a specialist area, and not all advisers (either in the US or UK), will have the necessary knowledge and experience to advise on this area.

Ms A has said that she has been effectively left to her own devices. Clearly I understand her frustration given that she has found annuity rates in the US are more competitive than the UK. But the tax relief was provided in the UK. Ms A is still able to take the benefits from Prudential. Or Ms A should be able to use the 'open market option' to take the benefits from another UK provider (that might provide a higher annuity rate than Prudential). The Money Advice Service (MAS) is a body that was set up by the UK's industry regulator (now known as the Financial Conduct Authority) to provide free and impartial advice (details can be found on the internet). It is primarily aimed at the UK market, so I realise it may be of limited use to Ms A. But it may be of help if she decided to look at comparative annuity rates offered by different providers in the UK.

Unfortunately I am not able to recommend Ms A with a specific financial adviser who specialises in QROPS. Again, Ms A should be able to find an appropriate adviser by searching on the internet. But transferring to a QROPS will ordinarily involve costs (which can be significant). So Ms A would need to carefully weigh up the advantages and disadvantages of transferring to a QROPS in the United States (if such an arrangement is available), against taking the benefits with a UK provider.

I should also bring to Ms A's attention that there have been proposed changes to UK pension rules announced recently which will provide more flexibility in how pension funds are

withdrawn (subject to income tax payable on part of the fund). These have not yet come into force, but are likely to come into effect in April 2015. This *may* provide another option for Ms A if she is willing to wait until the new legislation is relevant.

So as I have said above, I recognise that Ms A is in a difficult position. But for the reasons outlined, if she does not want to take the benefits with a UK provider, then the prudent course of action will be to obtain advice from a specialist adviser.

Overall, whilst I understand Ms A's frustration with the matter, I have not been persuaded that it was unreasonable that Prudential could not provide the particular information that she required. Prudential has now provided information and documentation to Ms A about transferring, albeit said that she will need to seek specialist advice to do so. I realise it would be helpful if I could point Ms A to a particular adviser, but unfortunately I am unable to provide such a specific recommendation.

my final decision

Accordingly, for the reasons outlined above, my final decision is that I do not uphold this complaint.

David Ashley
ombudsman