Financial Ombudsman Service

complaint

Mr S complains that the way The Prudential Assurance Company Limited (Prudential) set up his pension policies led to him paying higher charges. He also complains that Prudential led him to believe he had to take out life assurance cover, when he didn't.

background

I issued my provisional decision on this complaint on 19 November 2015. The background and circumstances to the complaint, and my initial finding which was not to uphold the complaint, were set out in that decision. A copy is attached and forms part of this final decision. I invited both parties to provide any further evidence or arguments they wished me to consider before I made my final decision.

Prudential didn't have any further representations to make.

Mr S didn't accept my provisional decision and made the following additional comments, in summary:

- His complaint is actually about being mis-sold the pension. He wanted to make a single contribution investment with the option to make further contributions. He didn't want something that he was required to make further contributions into. Particularly as his previous history of maintaining his pension contributions wasn't good.
- He didn't want to be locked into an agreement to make further contributions to get any benefit.
- Prudential did respond in a timely way to his complaint, but it took him years to work out what his complaint actually was. And he only worked this out after a member of its staff explained things.
- He didn't make any further contributions into the plan because he wasn't made aware of the consequences of not doing so.
- He has only had life assurance for one year in his life, which indicates that more likely than not he didn't want this cover.
- He hadn't been told before that a minimum payment of £2,500 was required for a single contribution. He could've paid this as he was looking to split the £5,000 he had between him and his wife. He is cynical about the advice he was given.
- His wife's arrangement was set up differently because she was ten years older than him, and they were told this was because she would be retiring earlier, at age 60.
- With his reputation for not paying his pension contributions, he couldn't understand why Prudential would recommend he sign up again.
- He was a carpenter; he couldn't understand why Prudential recommended an Executive Pension Plan.
- Although details of the costs and charges were set out in the small print, it wasn't in layman's language. And this followed a conversation with his adviser. He thought he was being heard and he placed trust in the adviser. If the small print had been explained, he would have acted differently.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, but my view has not changed. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I can understand Mr S' disappointment that he has not benefitted from the investment he made in 1989. But, I think many of the arguments that he puts forward now are made with the benefit of hindsight.

In addition to the findings I made in my provisional decision I have the following to add in response to Mr S' most recent representations.

I don't think it was plainly obvious to the adviser at the time that Mr S didn't want a pension arrangement, or a pension of the type set up; or that he would make no further contributions into his policy. I say this even taking into account Mr S' past history. He had £5,000 he wanted to invest, so his financial situation was different. As I said in my provision decision, I can't see that the adviser ought to have known that Mr S' business would fail. Mr S presented as a company director, who said he was employing other carpenters, as well as being a carpenter himself. So I don't think an Executive Pension Plan was clearly inappropriate.

I don't think the fact that Mr S only had life assurance for this one year, shows that more likely than not, he didn't choose to take it out. Based on what I have seen, he could afford to take it out, and I haven't seen anything that leads me to conclude that he was forced, or misadvised into doing so.

I can't know what was discussed between Mr S and Prudential at the time he took out the policy. But had he continued to pay into his pension plan the charging structure for the regular contributions may not have turned out to be so disadvantageous, when compared to the charges for a single contribution. So, I don't share Mr S' cynicism as to the reasons why his initial contribution was set up below the £2,500 required for a single contribution. And I think his and his wife's pensions were set up differently based on their individual circumstances.

Finally, I think the information Mr S was given about the costs and charges was clear, fair and not misleading and capable of being understood by a layman, as he puts it.

my final decision

I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 February 2016.

Kim Parsons
ombudsman

copy of provisional decision

complaint

Mr S complains that the way The Prudential Assurance Company Limited (Prudential) set up his pension policies led to him paying higher charges. He also complains that Prudential led him to believe he had to take out life assurance cover, when he didn't.

background

Mr S and his wife both took out Executive Pension Plan (EPP) policies through Prudential in 1989. Mr S was 36 years old at the time and self-employed as a director of his own company, which he had been running with his wife for a year.

Mr S took out two policies:

- a special single contribution policy which he paid £700 into; and
- a regular yearly contribution policy, which he paid around £1,750 into. An annual premium of around £250 was taken out of the regular contribution policy for death in service cover of £76,000.

Although Mr S' wife paid around the same amount into her pension arrangements, they were set up differently. She paid more into her single contribution policy, and less into her regular yearly contribution policy. She also had life cover through her regular contribution policy, but this was set much lower than Mr S'.

Prudential charged:

- a set up fee of £162 and an administration fee of £24 per year for the single contribution policy.
- an annual administration charge of 7% of the fund value at the end of the year purchased by the regular contributions paid in the first year for the regular contributions policy.

Mr S' company stopped trading and he didn't make any further contributions into his EPPs.

Mr S complained to Prudential. Prudential didn't uphold his complaint and so he brought his complaint to us. Mr S said if Prudential had told him the consequences of not making any further annual payments into his regular contribution policy he would've paid the least possible into that policy, and paid the rest into a single contribution policy. Also had Prudential explained the charges position on the later occasions he contacted it, he would have arranged to transfer his benefits out of the regular contribution policy to avoid the higher charges.

One of our adjudicators looked into Mr S' complaint and upheld it. He concluded that:

- Mr S ran a small business. It was not unusual for a small business to have an income which fluctuated. The advice given ought to have taken account of the business' cash flow, tax liabilities and provide flexibility.
- Yearly contributions meant the business had to retain sufficient profit at the same date each year to make the required payment. It was difficult to predict the future income of a business, unlike a salaried employee.
- With suitable advice Mr S's pension contribution would have been made as a one off single payment. As it was not possible to take out life assurance through a single contribution policy likely Mr S wouldn't have taken this out.

Prudential didn't agree with the adjudicator's findings. It said, in summary:

- The minimum stand alone payment under the single contribution policy was £2,500; Mr S paid in £2,450.
- It was unfair to assume that Mr S wouldn't have taken out the life assurance and this money would've been invested. Mr S had benefited from having life assurance cover.
- Mr S hadn't suffered material inconvenience bringing his complaint to Prudential as the complaint had been dealt with quickly by it.

The adjudicator responded to Prudential. He said, in summary:

- Mr S wanted to invest £5,000 from his business to benefit him and his wife in the longer term.
- If Mr S had received suitable advice he would have made a single contribution of £2,500.
- Mr S had been caused a modest amount of upset and inconvenience.
- Mr S wouldn't have paid for life cover through his pension if he had made a single contribution. But he might have taken this cover outside of his pension. Therefore the redress should be amended to recalculate Mr S's investment on the basis he made a single contribution less the cost of the life cover.

As Prudential didn't agree with our adjudicator's view Mr S' complaint has been passed to me to consider.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The key questions I need to consider here are:

- Did Prudential make sure the advice it gave Ms S was suitable for his needs?

- Did it give him the information he needed to make an informed choice whether to take its advice?

If there was a problem with the way the advice was given then I need to consider if Mr S is worse off as a result because he would have done something different.

suitability

Mr S' plans were taken out over 25 years ago. The records available now are scant. So, it is difficult to know what was discussed at the time and the reasons for the advice given.

Mr S says he wasn't told how the charges worked, particularly if he didn't make any further regular contributions. He says had he been told this he would've set up his plan with a higher single contribution.

Mr and Mrs S' policies were taken out at the same time, but set up differently, even though they were both investing around the same amount. This leads to me to believe these were deliberate decisions, based on their individual circumstances. I think more likely than not, Mr S expected to be able to contribute more into his pension plan than Mrs S did, after the initial investments.

Mr S' said his business had had "a reasonable first year of trading". From what I have seen I can't see that the annual regular contribution set was obviously unaffordable. Mr S didn't make any further contributions, but that doesn't mean it was clearly unaffordable from the outset. And the minimum stand alone payment into a single contribution policy was £2,500, more than the annual regular contribution set.

The adjudicator said that many small businesses cease trading in the early years. He thought Prudential should've taken this into consideration when advising Mr S. I haven't seen anything to show that Prudential ought to have known that Mr S' business was likely to cease trading that year. I don't think the fact that Mr S was running a small and fairly new business leads me to conclude that it was obviously unsuitable advice to recommend a regular yearly contribution policy.

The regular contribution policy provided death in service benefit, the single contribution policy didn't. I can see that Mr and Mrs S' levels of cover where quite different. This again leads me to conclude that likely this was a deliberate decision on their parts. These decisions were taken many years ago, so with the passage of time I can understand why Mr S may not remember now exactly why the plans were set up as they were.

Based on what I have seen I don't think I can fairly conclude that the advice Mr S was given at the time was clearly unsuitable based on his circumstances. Of course with the benefit of hindsight it is clear that he would have been better off if he had paid all the money he was investing into the single contribution policy. But it wouldn't be fair to apply hindsight when reaching this conclusion.

informed choice

I can't know exactly what Mr S and his adviser discussed at the time. I have looked at the information he would have been given telling him about the costs and charges that applied. I think it sets out clearly the different costs and charges for the single contribution and regular contribution policies. I think therefore Mr S was given sufficient information about how the charges worked.

Mr S said that Prudential should have pointed out at a later date the implications of the charging arrangements after he stopped making contributions. But, Prudential wasn't under any contractual obligation to provide him with any further advice. Later correspondence did set out the charges. Mr S also said three different financial advisers didn't pick up on what was going on over the years.

I think the information Prudential gave Mr S about the charges was sufficiently clear, fair and not misleading to allowing him to make an informed choice about the plans he was investing in.

For the reasons given above, and whilst I can understand Mr S' disappointment that his investments haven't done as well as his wife's, I don't think I can reasonably hold Prudential responsible for this. And in those circumstances I can't reasonably require Prudential to pay Mr S compensation for the trouble and upset he has been caused through bringing this complaint.

my provisional decision

My provisional decision is that I am minded not to uphold Mr S's complaint.

Kim Parsons
ombudsman