

complaint

Mr K complains that The Prudential Assurance Company Limited (“Prudential”) did not contact him on his normal retirement date. This meant that he missed out on retirement benefits.

background

Mr K held a Prudential deferred annuity relating to his previous employer’s pension scheme. Prudential was meant to send him a retirement pack three months before his normal retirement date in 2011. But it didn’t do so.

Mr K contacted Prudential in 2015. It sent him a retirement pack. It said that his payments would be backdated to his normal retirement date. And it quoted a figure for the backdated payment of around £5,100, which it said was gross and would be subject to PAYE.

Mr K wanted Prudential to pay him interest on the missed annuity payments. And he was concerned over the tax due on the backdated annuity payment.

Prudential replied to Mr K’s complaint and said:

- It agreed that it should have told Mr K that he could take his pension in 2011;
- The backdated payments would be taxed in line with HMRC’s normal practice, and he should contact HMRC to discuss this;
- It wasn’t able to add interest to the backdated payments, but it sent Mr K a cheque for £100 for the delays and inconvenience he had suffered.

Mr K didn’t accept the compensation offered and referred his complaint to this service. Prudential then offered him an increased payment, depending on what he decided to do with his benefits. It also pointed out that his plan value had increased significantly since 2011.

Mr K did not accept the new offer. And he transferred to an income drawdown plan with another provider.

An adjudicator considered the complaint. She said that Mr K should receive the missed annuity payments with interest. But she also said that the cost of buying the same annuity now should be compared to the current value of his plan. And she said that Prudential should pay a further £200 for Mr K’s trouble and upset.

Prudential tried to calculate the redress. But a different adjudicator said its calculations were wrong. He said Prudential had included the interest on the lost annuity payments but not the payments themselves. He provided his own calculations.

After discussion Prudential asked for a final decision. It said that the calculations included unnecessary transaction charges. These related to the actual transfer to the income drawdown plan and the notional annuity purchase assumed in the calculation. And it pointed out that Mr K could have contacted it in 2011 if he had wanted his benefits paid at that time.

my findings

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

Prudential has accepted that it made an error when it failed to notify Mr K that he was entitled to take his pension benefits. But the complaint has been referred to me as it does not agree with the compensation recommended by the adjudicator.

Mr K says, and I accept, that he would have taken tax free cash and an annuity from Prudential in 2011 if he had been told that he could take his pension. But he has now decided to transfer to another provider and drawdown his pension benefits.

This option wasn't available to him in 2011. So Prudential says it is impossible to put him back in the position he would have been in. It says that he has benefited from the increase in the transfer value. And it doesn't feel that the compensation suggested by the adjudicator is fair, as it includes transaction costs that wouldn't have applied if Mr K had not decided to transfer.

I have considered what Prudential has to say. And appreciate its comments about the transaction charges. But, in the circumstances, I find that the compensation suggested by the adjudicator is fair and reasonable.

I say this as I'm persuaded that Mr K transferred his benefits because he had lost faith in Prudential. And he was concerned about the tax that would be charged on the backdated lump sum.

Prudential says that it would have told Mr K that he could arrange for the tax to be spread over the period that the payment represented. But this is not evident from the documents I've seen. Instead, Prudential simply directed Mr K to raise the issue with HMRC.

Prudential also says that Mr K could have contacted it in 2011 if he had wanted his benefits paid. But Mr K says, and I accept, that he had forgotten about the pension until he came across some paperwork for it in 2015. So this does not affect my decision.

my final decision

My aim is to put Mr K in as near as possible to the position he would be in now but for Prudential's error. Mr K says, and I accept, that he would have taken benefits from his normal retirement date. Those benefits would have been tax-free cash and a reduced pension. Prudential should calculate the tax-free cash and net income that Mr K would have received.

In calculating the net income Prudential should take account of Mr K's tax position in each year. His accountant has said that he had some residual personal allowance in some years.

My decision is that, in full and final settlement of the complaint, The Prudential Assurance Company Limited should pay Mr K compensation of G, where:

A = The notional tax-free cash and net annuity income that Mr K should have received from 4 August 2011, with interest from the date of each payment to the date of decision at 8% simple;

B = The actual tax-free cash and net drawings (if any) Mr K has received from his drawdown plan, with interest from the date of payment to the date of decision at 8% simple;

$C = A - B$, representing Mr K's past loss on the date of decision;

D = The notional purchase price of an open market pension annuity paying equivalent income to the deferred annuity (taking account of any increases) and arranged on the same basis, on the date of decision;

E = The actual transfer value of the SIPP on the date of decision;

$F = D - E$, less 20% to reflect the fact that the annuity payments and SIPP drawings are taxable, representing Mr K's future loss (or gain) on the date of decision;

$G = C + F$, with interest from the date of decision to the date of payment at 8% simple.

Income tax may be due on the 8% simple interest where applied.

The Prudential Assurance Company Limited must also pay Mr K total compensation of £300 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 July 2016.

Alison Cribbs
ombudsman