

complaint

Mrs C had complained that she was badly advised by The Prudential Assurance Company Limited (“Prudential”) to transfer out of her occupational pension scheme (“OPS”) in 1993. Prudential later reviewed the transfer under the industry wide pension review and offered Mrs C compensation. But she doesn’t think that was done properly or has led to a fair outcome.

background

In 1993 Mrs C transferred her pension to Prudential’s Pension Transfer Bond 32 from her OPS – at the time she had already left her employment and wasn’t paying into his OPS. Her pension was worth around £7,000 at the time of transfer. As part of the transfer Mrs C was entitled to a guaranteed minimum pension (“GMP”), so whatever her actual pension was worth when she turned 60, she would get a guaranteed minimum annual income of around £2,700.

In 2001 Mrs C’s pension was looked at as part of the industry wide pension review into how these types of policies were sold. Following its investigation, Prudential offered compensation which increased her fund value by around £7,400 – this was to cover any loss from her transferring out of her OPS. Mrs C accepted this offer in July 2001.

In 2016 Mrs C asked Prudential if she could take her pension early at 55, take a lump sum or if she could transfer it to another provider. But Prudential said none of these options were available as the value of her pension fund wasn’t enough to provide her GMP.

But Mrs C wasn’t happy with Prudential’s response, so she brought a complaint to this service. And she also asked whether Prudential should’ve reinstated her into her OPS as part of the pensions review. Mrs C thinks she should be put in the position she’d be in now if she was still in her OPS.

One of our investigators looked into Mrs C’s complaint. He thought that Prudential weren’t able to do the things Mrs C was asking it to do – as there weren’t enough funds in Mrs C’s pension to cover the GMP, under the rules, Prudential wasn’t able to transfer the pension, pay a lump sum or allow retirement at 55. He also thought that Prudential couldn’t have reinstated Mrs C into her OPS at the time of the review, so he didn’t recommend that his complaint be upheld. But Mrs C disagreed, so the complaint has been passed to me for a decision.

my findings

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

Mrs C was advised to transfer out of her OPS to Prudential in 1993 and that advice was reviewed as part of the then regulator’s industry wide pension review in 2001. The review was put in place as the regulator feared that some consumers had been given advice to transfer their pensions that didn’t meet the required standards at the time.

Prudential accepted that Mrs C hadn’t been given the right advice and it offered her compensation. The aim of compensation was to provide, as far as possible, the same level

of pension benefits as the OPS would've offered at retirement. It was worked out in a specific way using a number of assumptions about Mrs C and her pension. Mrs C signed to accept the offer and I can't see she said any of the assumptions were wrong at the time. And I think Prudential has worked out the compensation in the way I would've expected it to at the time.

I've also thought about whether Prudential should've tried to transfer Mrs C's pension back into her old OPS in 2001. But Mrs C had left her employment in 1991, so she wasn't in continuous service up to the time of the review. My understanding is that her OPS wouldn't accept transfers back from people who hadn't been in continuous service, so Prudential wouldn't have been able to reinstate Mrs C into her OPS.

Transfers out of Pension Transfer Bond 32 can only take place if the transfer value ("TV") of the fund is at least as much as the cash equivalent transfer value ("CETV") needed to buy a pension equivalent to the GMP rights. In Mrs C's case, her TV isn't high enough to cover the GMP. At the moment Mrs C's fund value is around £50,000, but the current cost of providing the GMP is around £100,000. So I think it's fair for Prudential to not agree to any transfers out at this time.

I've also seen in the conditions for Mrs C's policy that say any option to retire early can only be taken if there would be enough funds to cover the cost of providing the GMP. Unfortunately at the present time, Mrs C's investment hasn't performed at the level that would let her take an annuity. So I don't think Phoenix need to start paying an annuity at this point. Similarly Mrs C's TV isn't high enough to allow her to take a lump sum payment at this time – if she did so there would be an even larger shortfall to pay for the GMP.

I can understand why Mrs C is frustrated with this situation – the pension is now worth a lot less than she thinks it would've been if she stayed in her OPS. And she says she's lost some options, for example taking a lump sum and retiring early. This was looked at in 2001 and Prudential offered compensation, which she accepted at the time. Since then both growth rates and annuity rates have fallen, so she's not in the position she and Prudential thought she'd be in now. But the purpose of the review was to make a one off payment to put right what had gone wrong. I have a great deal of sympathy for Mrs C, but as this has already been looked at in the pension review, and Prudential did what it was required to do by the regulator at that time, I don't think it's appropriate for me to make a further award.

Mrs C has also said that Prudential told her in 2012 that she would have to wait until she was 55 to do anything with her pension. Prudential don't have any phone call recordings that go back that far. I'm not surprised by that as there's no requirement for it to keep recording for that long, but it does mean I don't know exactly what she was told. I think it's likely she was told she had to wait until she was 55, as that was the earliest she'd be able to access her pension. But even then, she'd only have been able to do so if her fund was large enough to cover the GMP. And as I've already said, that unfortunately wasn't the case.

my final decision

For the reasons set out above, I don't uphold Mrs C's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 8 December 2017.

Mark Hutchings
ombudsman