

complaint

Mr H has complained about the unsuitable advice he was given by The Prudential Assurance Company Limited with regards to his mortgage and pension arrangements.

background

Mr H had a mortgage with a building society. In 1988, following advice from Prudential, a new interest only mortgage was arranged with a bank. Mr H already had two pensions with Prudential at this point which had commenced in 1979 and 1985. A third pension was started in 1988 to coincide with the new mortgage. Further funds were borrowed thereafter, and the amount Mr H paid into his pensions changed as well.

In 2003 Mr H switched to a repayment mortgage with the same bank.

In 2007, Mr H transferred all three of his pensions to a self-invested personal pension (SIPP).

Mr H's mortgage was repaid in full in 2012.

Mr H says his pensions were insufficient to pay off his mortgage in 2007, when he reached 60, which is what he was led to believe would happen. He complained to Prudential.

Prudential upheld Mr H's complaint. It said it wasn't clear from the available evidence (which wasn't comprehensive) whether Mr H did have the risk appetite to have wanted a 'pension mortgage' back in 1988. So it looked at what position Mr H would have been in had he had a capital repayment mortgage all along. However, when comparing the amount Mr H would have repaid if his mortgage had always been on a capital repayment basis with the amount of tax-free cash Mr H had available from his pensions in 2007 (when he transferred his pensions to a SIPP), its calculations showed Mr H had suffered no financial loss.

Mr H disagreed. In particular, he pointed out that the original term of the mortgage was 19 years, which would have meant it ending in 2007 when he reached 60. It's an important point because the tax-free cash available in 2007 would have fallen short of the amount then needed to pay off Mr H's mortgage. Mr H says he suffered financial hardship as a result because when he realised his pensions wouldn't pay off his mortgage as expected, he felt he had no choice but to change to, and pay for, a capital repayment mortgage and extend its term by five years to 2012. He also says his pensions were too small to give him a good retirement income. He thinks Prudential should compensate him for the five years of additional mortgage payments he says he otherwise wouldn't have had to pay. He asked us to look into his complaint.

Our adjudicator was satisfied with the information and the method Prudential had used in its compensation calculations. In particular, he was satisfied that the original term of Mr H's mortgage was 24 years – that is, to 2012 when Mr H reached 65 – rather than the 19 years Mr H has said. However, even though he recognised Prudential's calculations didn't show a financial loss, he thought Prudential should have done more to reflect the trouble and upset it had caused. He recommended Prudential pay Mr H £250.

Both parties disagreed; Mr H because he thinks he has lost out by far more than £250 and Prudential because it doesn't think a trouble and upset award is warranted. Prudential did,

subsequently, offer to pay Mr H the £250 recommended by the adjudicator. But because Mr H rejected this offer, the matter has been referred 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.

I won't comment in detail on the advice that led to Mr H using pensions as repayment vehicles for his mortgage. Suffice to say Mr H thinks he has lost out because of Prudential's advice, and Prudential has agreed that it should look into compensating Mr H for its actions. What I need to decide upon is whether Prudential's approach to Mr H's financial loss was correct and whether £250 is fair and reasonable for the trouble and upset it caused.

In relation to the first issue, the main sticking point between the parties is the original term of Mr H's mortgage. Mr H says the pension was originally set to run for 19 years, maturing in 2007 when he reached 60. Mr H says this was because he didn't want to be paying his mortgage after he reached 60 because his occupation would have made it difficult to find work after that age. Mr H also points to two 1988 letters sent by his mortgage lender detailing a pension quotation for a period of 19 years and an agreement-in-principle for a mortgage of 20 years. And he says the mortgage term was only extended to 24 years in 2003 in response to the performance of his pensions. In addition, I've also seen a September 1988 letter from Mr H's mortgage lender to Prudential that gives the pension date for the pension he took out with the mortgage as being 1 June 2007. And I've seen correspondence between Mr H and Prudential from 2007 that shows Mr H chose to defer his retirement age for this pension for another five years.

Against this, Mr H's mortgage lender has confirmed the mortgage was originally set up to run for 24 years, maturing in 2012. It has also provided a letter it sent to Mr H dated 3 April 2003 (which was shortly before Mr H changed to a repayment mortgage) showing the "original loan term" as being 24 years. And it has provided a letter it received from Mrs H dated 10 April 2003 requesting a change from an interest only mortgage to a capital repayment mortgage. The letter doesn't say anything about changing the term of the mortgage.

I recognise the evidence is incomplete and contradictory here. However, as Mr H's mortgage provider is a neutral party in this complaint, I consider its statement that the original mortgage term was 24 years carries a significant amount of weight – especially given the other supporting evidence it has provided. As such, I'm satisfied the original mortgage term was for 24 years and, therefore, I'm satisfied Prudential's approach to compensation, and the assumptions it used, are in line with our usual approach in such circumstances.

There appears to be a mismatch between the retirement date of the pension Mr H took out with the mortgage (2007) and the date the mortgage was due to be paid off (2012). But, Mr H's other pensions – which appear to have been considered as repayment vehicles for the mortgage as well – had later retirement ages. And even if Mr H had been led to believe his 1988 pension would pay off the mortgage early, in 2007, and produce a sizeable retirement income as well, the fact that the pension wasn't sufficient to do this doesn't change the outcome of the complaint. I say this because Mr H would have needed to have contributed more into his pension to have achieved these goals so it wouldn't be fair to hold Prudential responsible for compensating Mr H for payments that would always have needed to come from Mr H.

Turning to the issue of trouble and upset, Prudential initially objected to the adjudicator's recommendation that it should pay Mr H £250. Prudential subsequently said it would be willing to pay the £250 in order to bring the complaint to a close. But Mr H rejected this offer. So, for the sake of completeness, I will look at Prudential's arguments on this issue.

Prudential disagrees with a trouble and upset award because it says it responded to a query from Mr H about his projected pension back in 1998. It also said Mr H switched to a capital repayment mortgage in 2003 and paid off his mortgage in 2012. It concludes that it isn't fair to pay a trouble and upset award for events that were dealt with 15 to 20 years ago. It also points out that Mr H hasn't lost out financially as a result of what has happened.

Firstly, Prudential's comments about the length of time between the events in question and Mr H's complaint are not relevant here. Time limits do apply when it comes to making a complaint, and we wouldn't ordinarily look at issues that have been dealt with already. So Prudential could have raised these points with us. But, instead, it consented to us looking into Mr H's complaint. As such I don't think previous events, and how long ago they were, are relevant when assessing the trouble and upset Mr H experienced. I also don't think Mr H's lack of financial loss is a consideration here. By its own admission, Prudential should have done better when it advised Mr H so I think Mr H would have suffered at least some angst over the years as a result – his query to Prudential in 1998 and change of mortgage in 2003 would seem to attest to that. The fact that Mr H didn't, ultimately, lose out financially doesn't change this. Putting a figure on the amount Prudential should pay as a result isn't an exact science, but I'm satisfied £250 is fair and reasonable in the circumstances.

As for Mr H, he rejected Prudential's offer of £250 because he feels he has suffered an even greater financial loss as a result of Prudential's actions. So I don't think Mr H has objected to the £250 for trouble and upset as such although I appreciate why he will be upset that this is all I'm awarding.

In sum, I'm upholding Mr H's complaint but not to the extent he would like. Prudential, by its own admission, should have done better. And it should pay Mr H £250 for the trouble and upset it caused as a result. However, there is no further compensation for Prudential to pay.

my final decision

For the reasons given above, I'm upholding Mr H's complaint. The Prudential Assurance Company Limited must now pay Mr H £250 for the trouble and upset it caused. There is no further compensation to be paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 November 2020.

Christian Wood
ombudsman