

## **complaint**

Mr W has raised a number of complaints against The Prudential Assurance Company Limited ("Prudential"). In summary, he complains that:

- Tax relief has not been claimed on his behalf for the contributions he paid into his pension plan. Because of this, he considers that the policy was mis-sold.
- Prudential did not provide him with an enhanced annuity quotation after he requested it and completed a second medical questionnaire. It had previously offered him an enhanced annuity when he had completed a medical questionnaire a few months earlier.
- He received poor customer service from Prudential when trying to obtain the second enhanced annuity quote.
- He was told there would be no penalties, deductions, fees or charges for stopping his contributions and making his plan 'paid up'. However, he found that his fund had been reduced by just over £300 when he came to take his benefits.

## **background**

In 1985, Mr W set up a retirement annuity contract with Prudential. This was done on the advice of a firm of independent financial advisers, who arranged the policy with Prudential. Mr W understood that Prudential was claiming tax relief on his behalf. However, Prudential has informed him that this is not the case, and that he was responsible for claiming tax relief each year through his income tax return. As a result, Mr W did not benefit from tax relief on his pension contributions for over 25 years. In early 2012, Mr W stopped paying contributions to his plan. Mr W then took his annuity with Prudential in late 2012.

The adjudicator who investigated Mr W's complaint concluded that it could not be upheld. She explained that the policy with Prudential was a retirement annuity contract, and that these types of arrangement were set up so that contributions were paid gross, with the individual reclaiming the tax from HM Revenue and Customs ("HMRC"). As Mr W had received financial advice from a third party in relation to the sale of the policy, the adjudicator considered that the third party firm should have explained this to Mr W. For that reason, she did not consider that Prudential was responsible for any mis-sale of the policy.

The adjudicator also explained that the policy had valuable guarantees, which meant that the pension Mr W was offered was higher than what was available to him from Prudential for a pension enhanced on medical grounds (using Prudential's standard enhancement terms). She therefore considered that Mr W had not lost out by not receiving an enhanced annuity.

Finally, the adjudicator explained to Mr W that he had not had a charge applied to his policy because of it being made 'paid up' early in 2012. She considered that the policy terms and conditions had been correctly applied, and that the final fund value differed due to the contributions not being paid up until retirement.

Mr W did not agree with the adjudicator's assessment, and asked for it to be reviewed by an ombudsman. He explained that he had changed advisers over the years, but he still considered that Prudential was at fault, and that his complaint should be upheld.

## **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 can fully understand Mr W's distress at discovering that his pension contributions to his policy with Prudential have not benefited from tax relief, especially over such a long period. Whilst sympathising with Mr W, what I need to consider is whether Prudential is at fault for failing to advise Mr W of the need to claim tax relief from HMRC (previously known as the Inland Revenue).

Retirement annuity contracts, such as Mr W's, were set up under the Income and Corporation Taxes Act 1970. With these policies, contributions were paid to the provider gross, out of net income. Tax relief could then be claimed on those contributions through a policyholder's annual income tax return. This was an important feature of the policy, and should have been explained to Mr W at the time the policy was taken out.

When Mr W set up his policy, he received independent financial advice from a third party firm. Because of this, I agree with the adjudicator that the third party firm was responsible for explaining this to Mr W. Prudential did not undertake to provide its policyholders with tax advice, and therefore I do not consider that it can be held responsible for Mr W not being aware of the need to claim tax relief through completing an annual income tax return. As a result, I do not consider that the plan was mis-sold on the basis that Prudential did not claim the tax relief.

Prudential has explained to Mr W that it had reviewed the second medical questionnaire he completed, but had found that it could not improve on the retirement benefits he was being offered. This is because his policy benefited from valuable guaranteed annuity rates. This meant the pension he was being offered was higher than that available to him under the enhanced terms (which did not benefit from the valuable guarantees). It is for this reason that it did not provide Mr W with the enhanced annuity quote he had requested.

Prudential was not required to offer Mr W enhanced annuity terms. With the benefit of hindsight, it might have been better if it had confirmed to Mr W whether or not it was able to offer him an enhanced annuity (having done so previously). If he had been provided with a quotation for an enhanced annuity, he could then have made a comparison between the enhanced rate available and the higher pension offered to him using his policy's guaranteed annuity rates. This would have demonstrated to him that the enhanced terms were still not going to be as beneficial to him as having the guaranteed terms applied.

However, I do not find fault with Prudential's actions, as I am satisfied that it did consider the enhanced annuity request made by Mr W, before concluding that it produced a lesser pension, and so was not in Mr W's best interests. It is therefore not correct to say that Mr W's request for an enhanced annuity was rejected on his second application (as he appears to believe was the case). Rather, that it was not taken further once Prudential had established that it would not produce a better outcome for Mr W. As a result, I agree with the adjudicator that Mr W did not lose out by not receiving a medically enhanced annuity.

Mr W referred in his complaint form to a letter he sent to Prudential in which he set out his concerns about the customer service he received while trying to arrange an enhanced annuity quote. I have seen that Prudential sent Mr W a cheque for £125 to compensate him

for the cost of his calls and the inconvenience caused to him. I consider that this was a fair and reasonable outcome to that aspect of Mr W's complaint against Prudential.

Having reviewed the policy terms, I am satisfied with the explanation provided by Prudential for the reduction in Mr W's final fund value, and that no penalty has been applied. The policy terms set out that there is no charge for making the plan 'paid up', or for surrendering it early (ie before the set retirement date of age 75). They go on to explain that the pension amounts guaranteed at the start of the plan were calculated on the assumption that contributions from the policyholder would continue until set retirement ages. Ending the contributions earlier than planned under the policy will therefore have the effect of reducing the final benefits.

**my final decision**

I do not uphold this complaint, and therefore I make no award.

Venetia Trayhurn  
**ombudsman**