

## complaint

A representative, on behalf of Mr S, complains he was given unsuitable advice by a representative of Scottish Amicable (now part of The Prudential Assurance Company Limited) to transfer his occupational pension (OPS) benefits into a personal pension.

## background

Mr S was contacted in the early 1990s by a representative of Scottish Amicable about transferring his existing OPS benefits into a Scottish Amicable personal pension. He conducted a fact find meeting and showed Mr S some projections based on growth rates of 8% and 13.5% which showed fund values at 55 – the age Mr S hoped to retire.

The representative recommended that Mr S should transfer his OPS benefits into a Scottish Amicable personal pension. Mr S accepted this advice, and the transfer went ahead.

Scottish Amicable wrote to Mr S in 1999 inviting him to have his pension transfer reviewed as part of the industry-wide pension review that was being undertaken at that time. Unfortunately the letters were sent to Mr S's previous address and so he did not receive them and request a review.

Mr S's representative made a complaint to Prudential in 2017. His representative said the advice to transfer had been unsuitable and that he had not been properly informed about the benefits that he would be giving up from his OPS.

Prudential did not uphold the complaint. It said it couldn't be sure what was or wasn't said at the meeting between Mr S and the Scottish Amicable representative, but the paperwork completed at the time stated that Mr S had been advised about the benefits that he would be giving up by transferring away from the OPS. Mr S was unhappy with this response, so his representative brought the complaint to us.

One of our adjudicators investigated this complaint and concluded that it should be upheld. She said the Scottish Amicable representative did not give suitable advice when giving the advice for Mr S to transfer away from the OPS. She said, in summary:

- She had not seen sufficient evidence to show Mr S had been made aware of the benefits he was giving up by transferring away from his OPS.
- Scottish Amicable recorded very little detail about Mr S's circumstances and existing pension benefits at the time of the sale.
- What was recorded about Mr S's objectives suggests he was risk averse and the security of the OPS would therefore have been important to him:

The fact-find recorded that. Mr S said "Financial Security in Retirement" was "1" when Mr S was asked to prioritise his financial objectives on a scale of 1 to 4, where 1 is the highest priority and 4 the lowest priority.

Elsewhere the representative recorded "*I recommended to the client that the with-profits fund be utilised as an investment vehicle, as the clients main wishes were that the pension should be totally secure and have good guaranteed [indistinct word] growth*"

The adjudicator recommended that Mr S's pension transfer should now be reviewed, as it wasn't in 1999, in line with the revised pension review methodology issued by the Financial Conduct Authority in October 2017.

Prudential did not accept this view. It said, in summary:

- Scottish Amicable's advice should be considered in the light of the standards of the time, not the current standards.
- The fact-find document records that Scottish Amicable obtained a deferred benefit statement from the OPS. This suggests the details of the existing benefits were known before the transfer advice was given.
- The fact-find document also records that Scottish Amicable's representative explained how the OPS benefits would increase over time, and would have referred to the projection for the personal pension to show the possible benefits it would pay.
- Employees leaving the OPS of which Mr S was a member would have been given a leaflet setting out the benefits of remaining in the OPS.
- When the transfer was completed, there was no requirement to record a consumer's attitude to risk. And there is no evidence of the risk he was willing to take. The comments quoted were from Scottish Amicable's representative, not Mr S. It would also expect anyone to say that security in retirement is a priority.

The adjudicator was not minded to change her view, so the complaint was referred to me.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator, and for the same reasons.

I acknowledge Prudential's point about the need to consider what is fair and reasonable in the light of its regulatory obligations at the time, not the current ones. But it does not appear to be disputed that Scottish Amicable's representative had an obligation to give Mr S suitable advice. And, to be clear, I am satisfied it did have such an obligation. So I have focussed on the question of whether it is fair and reasonable to say Scottish Amicable gave Mr S suitable advice.

Like the adjudicator, I think the available evidence shows Mr S wanted security and that it is therefore fair to say he did not want to take any risk with his pension.

Prudential says everyone would be likely to say security in retirement was a priority for them. That appears to suggest that the fact-finding exercise (or at least the part of it which asked about Mr S's priorities) was effectively redundant. I don't agree. The fact-find listed a number of financial goals, and asked Mr S to say what was a priority for him. And I think different consumers in different circumstances would have different priorities, depending on their age, longer term goals, assets etc. Mr S said financial security in retirement was a top priority for him but gave less priority to equally desirable goals. So I think this shows this was

something of particular importance to him – and this was a factor Scottish Amicable’s representative ought to have considered.

Prudential also says that the following is not a quote made by Mr S:

*“I recommended to the client that the with-profits fund be utilised as an investment vehicle, as the clients main wishes were that the pension should be totally secure and have good guaranteed [indistinct word] growth”*

Strictly speaking, that may be so. But it is a contemporaneous record by Scottish Amicable’s representative of Mr S’s “*main wishes*”. And one of those wishes was for “*total security*”. So I think a lot of weight should be attached to this, particularly given the record that security in retirement was a top priority for Mr S.

The transfer from the OPS involved risk. It entailed the exchange of guaranteed benefits for benefits payable at an unknown level, dependent on investment performance. So I do not think it would be fair and reasonable to say Mr S was suitably advised to make the transfer.

I note the adjudicator and Prudential exchanged views on whether Mr S was aware of the OPS benefits he was giving up. I think there is some evidence that Mr S may have had a degree of awareness of the benefits payable from his OPS, but I don’t think this is a critical point. Even if Mr S did have some awareness of the benefits payable from the OPS it remains the case the advice to transfer did not meet his stated objectives and was not therefore suitable.

For these reasons, I think it is fair and reasonable to uphold Mr S’s complaint.

### **fair compensation**

Prudential should calculate if Mr S has suffered a loss by comparing the position he is in now with the position he would be in if he’d stayed in the OPS. The calculation should be completed in accordance with the regulator’s pension review guidance, as updated by the Financial Conduct Authority in the guidance published in October 2017.

If a loss is found compensation should also be paid in accordance with the updated pension review guidance. However compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance. In that case it should be paid directly to Mr S, subject to an adjustment to allow for the fact that the income that would have been provided would otherwise have been subject to income tax when in payment.

For example, if Mr S would have been able to take a tax-free cash sum from the occupational scheme, 25% of it would be tax-free and 75% would have been taxed at his income tax rate in retirement. I think this is likely to be at 20%, so it should deduct 15% from the total compensation (i.e. 20% income tax on 75% of the total fund/income paid from that fund).

The calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions that are relevant at that date.

The compensation resulting from the loss assessment should be paid to Mr S within 90 days of the date Prudential receives notification of Mr S’s acceptance of my final decision. Further interest must be added to the compensation at the rate of 8% per year simple from the date

of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Prudential to pay Mr S compensation.

I don't know how much compensation, if any, would be payable on the basis of the above calculation. I think it unlikely it will be over £150,000. But, for completeness, I should point out that, where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

### **my final decision**

**determination and award:** I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that The Prudential Assurance Company Limited should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

**recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that The Prudential Assurance Company Limited pays Mr S the balance plus any interest due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 April 2019.

John Pattinson  
**ombudsman**