

complaint

Mr D is unhappy that last year his personal pension in payment only increased by 3%, whereas his former occupational pension scheme (OPS) benefits would have increased by 5.2%. When the transfer of his pension benefits from his former OPS to a personal pension was reviewed by the Prudential Assurance Company Limited ("Prudential"), he was given a guarantee that he would not lose out as a result. Mr D wishes to be compensated accordingly.

background

The complaint was investigated by one of our adjudicators. She issued her assessment of the complaint in April 2013. In summary, the adjudicator stated the following:

- The wording of the letter of January 1998, which stated "*our guarantee, which you have accepted, is that we will pay you benefits of at least equivalent value to those you would have received from the occupational pension scheme*" could have been clearer and Mr D's interpretation of this was understandable.
- However, the guarantee accepted by Mr D as a result of the industry-wide review of his pension had been made in line with the regulator's guidance. As such, Prudential was not required to perform any further review of Mr D's pension.
- The pension review was intended to use a "one off" calculation as at a specific date. The software used for this was approved by the regulator, which also monitored the conduct of businesses such as Prudential throughout the review.
- Although it may have been the case that, when inflation has risen over 3%, Mr D's former OPS would have received a higher increment, in the years where inflation had been below 3%, the personal pension increments would have been higher.

Mr D responded to the adjudicator's findings, stating that the guarantee promised that he would not be disadvantaged as a result of the advice to transfer his pension benefits to the personal pension. This acceptance was a contract of law, which Prudential should honour.

He also commented on the content of the adjudicator's view, stating the following in summary:

- He complained to Prudential in 2012 as he believed that his former OPS would have paid him an additional 2.2% income compared to his personal pension. Over an extended period, this could amount to thousands of pounds. The guarantee he accepted was set to ensure that this would not happen and in his opinion was a "like for like" pension.
- Mr D questioned whether all the information from his former OPS was used in the calculations and asked who wrote the software which performed the review.

As agreement has not been reached on the matter, it has been referred to me for review.

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 would firstly acknowledge Mr D's interpretation of the comment as highlighted above in the letter sent to him January 1998, which was that the personal pension would provide "like for

like” benefits compared to his former OPS. I can understand why the specific wording relating to the equivalent benefits which would be payable would have led Mr D to believe that the benefits would indeed be “like for like”.

Having said that, whilst I must have regard for the law and interpretations which might be made on a strictly legal basis, I must also base my determinations on what I consider to be fair and reasonable. The review of Mr D’s pension was undertaken in line with the regulator’s guidance and, as the adjudicator explained, the purpose of the review was to allow a “one off” comparison to be performed to determine if any redress was required to policyholders. In Mr D’s instance, Prudential was able to determine the benefits which would have been payable to Mr D in 1998, had his preserved benefits remained in the ceding scheme.

The same annuity lump sum was therefore paid to Mr D as if his benefits had remained in the scheme and, although the pension in payment would have increased in line with inflation, as a likely proxy for this, Prudential set an escalation rate of 3% pa on his payments. The pension in payment was therefore designed to match, as closely as possible, the benefits which would have been payable from the OPS, but Prudential of course could not know what future rates of inflation would in fact be. As such, it will have been the case that in some years, Mr D will have received a higher increment than would have been received from his OPS benefits, but in others will have received less.

In its letter of March 2013, Prudential confirmed that *“an escalation rate of 3% was chosen as this would have been the rate paid under the Section 32 Transfer Bond he had with us. It is also the ‘standard’ rate we use when issuing retirement quotations”*. I do not consider this to have been an unreasonable methodology to use.

Furthermore, in terms of the aims of the pension review, which was to replace as closely as possible the benefits relinquished from an OPS, I am satisfied that Prudential has complied with its obligations at the time. I do not therefore consider that Prudential is required to enhance Mr D’s pension in payment.

In closing, I would also reiterate the comments previously made that Mr D will of course benefit from a fixed escalation rate in years when the rate of inflation is lower than 3%. I note that this will have been the case in many years since 1998 to date. It is also worth noting that Mr D’s pension in payment was in fact reassessed in 2001, at which point it was ascertained that due to the usage of Mr D’s basic salary as opposed to that which would have been used under the scheme rules, he had in fact benefitted after the review by over £15,000.

my final decision

My final decision is that I do not uphold the complaint. If Mr D rejects this decision, he will be free to pursue the matter in court subject to the usual time limits.

It may of course be that a court would find that a strictly legal interpretation of the statement made by Prudential when it offered the redressed pension to Mr D would oblige it to pay to Mr D the exact pension he would otherwise have received from his OPS. In addition to particular years of underpayments, however, this may of course also include a rebate to Prudential of the overpayment described above, in addition to a return of the overpayments made when the 3% escalation outpaced inflation. Mr D may therefore wish to note the historical rates of inflation from 1998 to date prior to taking any further action.

Philip Miller
ombudsman