

complaint

Mr E has complained that The Prudential Assurance Company Limited (“Prudential”) failed to provide him with sufficient documentation, specifically policy terms, when he purchased his pension plan in 1989. On attempting to assign part of his pension to cover a loan, Mr E was told that this could not be done. He has said that if he had known the rules of the plan he would have invested differently and not committed his finances to a pension.

Having now read the terms of the policy, Mr E is also unhappy that:

- Prudential has discretionary powers over death benefits
- His 25% cash lump sum is not available to him before the age of 55

background

In 1989, Mr E set up a personal pension plan with Prudential. At the time, he had no other pension arrangements in place, was aged 30 and self-employed. His pension and the level of his contributions were reviewed in 1992, 1998 and 2002.

In February 2013, Mr E arranged a loan agreement and in order to ensure repayment, he asked Prudential to allow him to assign the 25% cash lump sum from his pension policy to cover the loan. He was advised that under the terms of his policy this was not possible. However, Mr E insisted that he had never received documentation stating the terms of his pension policy.

In further correspondence with Prudential, Mr E complained that he was unhappy that he had not previously been made aware of the restrictions on the use of his pension, which included a minimum retirement age of 55. Also, having read the copies of the policy documents provided by Prudential, he felt it was unacceptable that Prudential has discretionary status on who might receive benefits from his pension in the event of his death.

Prudential did not uphold Mr E’s complaint. It said that:

- As the relevant documentation was automated, it had no reason to believe that the policy information had not been issued to Mr E in 1989.
- The scheme rules detailed Prudential’s discretionary role with regard to the payment of benefits if Mr E should die. It is also clear from the policy documents that the 25% cash lump sum cannot be assigned to cover a loan.

Mr E did not accept Prudential’s final response and subsequently raised a complaint with this service. His complaint was considered by an adjudicator who did not consider that it should be upheld.

The adjudicator concluded that it is not possible to say what documents may have been received by Mr E at or near the point of sale, given the number of years that have passed. She noted that Mr E had held the policy for over 24 years. She considered that during this time he had the opportunity to request policy documentation about his pension. She also said that Mr E had agreed with Prudential that a personal pension plan was appropriate for his retirement needs.

The adjudicator noted that Mr E had entered into a long-term financial arrangement to secure a pension income and had subsequently co-operated with Prudential to complete reviews of his finances. She considered that it was reasonable to expect that Mr E would have seen or requested relevant documentation in order to make an informed decision regarding his pension policy.

The adjudicator also said that, in relation to death benefits, Prudential had already clarified that it would pay out funds according to Mr E's wishes, assuming that he made proper arrangements. Prudential had also highlighted further options. However, the discretionary element is included in the policy document for his pension plan and Prudential would therefore be acting within the scheme rules if it applied it.

The adjudicator confirmed that age 55 is the minimum retirement age under legislation, although there are some exceptions to this. Finally, the adjudicator explained that the use of funds from a personal pension plan to cover a loan would be considered an unauthorised payment by the Inland Revenue (now known as Her Majesty's Revenue & Customs, or "HMRC").

Mr E did not agree with the adjudicator's assessment, and asked for it to be reviewed by an ombudsman. In particular, he said that it had not been proven that Prudential had given him the policy documents at the time of sale, and that *"...despite all physical evidence pointing firmly to the fact that Prudential never provided the key documents required, you have still found in favour of the insurer..."*.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. There does not appear to be any question that Mr E entered into a pension arrangement to make provision for his retirement and that a pension plan was suitable for him given that he had no other pension provision at that time.

Having read the adjudicator's assessment letter, I note that she suggested that Mr E had a number of opportunities to ask for the rules of the scheme or other policy documentation, if he had received nothing from Prudential at the time his policy was set up. However, she had not concluded that Mr E must have received the policy documents, since it is not possible to say what happened many years ago. Prudential has said that it sent the documents, and Mr E has said that he did not receive them. I cannot say now whether or not Mr E was sent or received the documentation that Prudential says would have been issued to him at the time. That does not mean that I must find in Mr E's favour, because Prudential cannot now prove, some 25 years later, that it sent the documentation to him. Instead, it is also necessary for me to consider all the other circumstances relevant to reaching a decision on this complaint.

The original application form signed by Mr E includes a *"Declaration by Proposer"* section and instructs the applicant to *"Please read carefully before signing the proposal"*. The declaration includes the statement: *"I agree to be bound by the Scheme Rules and Provisions (as amended from time to time)"*. This declaration was signed by Mr E in March 1989 and would suggest that he should reasonably have been aware that the application form was not a stand-alone document. This being the case, if he had not been given the documents referred to, I consider that it would have been open to him to point this out, and that he should have done so given the length of the planned investment and the financial commitment involved.

The specimen Members' Booklet provided by Prudential to Mr E clarified that:

- Prudential has discretionary powers to decide who should receive any lump sum in the event of the policyholder's death; however, a person (or persons) can be nominated by the policyholder.
- From 6 April 2010, the minimum pensionable age is 55 unless special circumstances apply.
- HMRC rules prohibit the use of benefits from the pension plan as security for a loan.

Since these specifics are part of Mr E's pension plan, and therefore legally binding, and as I have no evidence that Prudential unreasonably withheld information about Mr E's policy, I am of the opinion that Mr E must abide by the terms of the scheme. Crucially, the rules on minimum retirement age and not assigning pensions as security for a loan are also required by legislation in order for a pension scheme to be authorised by HMRC. I therefore cannot say that Prudential is incorrect to apply them.

I do understand why Mr E is concerned about Prudential's discretionary powers in relation to the death benefits from his plan. However, this is the standard way in which the vast majority of pension schemes are set up. The reason for this is that by setting the scheme up in this way, the benefits do not generally form part of the policyholder's estate for inheritance tax purposes. It is therefore intended to be advantageous to the policyholder's beneficiaries.

This does not mean that Prudential is entitled to choose to pay the benefits to itself upon Mr E's death. It will have to have regard to any nomination that Mr E may make, and to any other potential beneficiaries under Mr E's estate eg family members or dependants. In the vast majority of cases, a provider will follow any nomination made by the policyholder. It is only likely to do something different, if it becomes aware of a change in circumstances that might have meant that the nomination was no longer valid – for example, if a policyholder had nominated their spouse but subsequently got divorced and remarried. In that case, the provider might decide to make a payment to the new spouse, but only after careful investigation of all the circumstances.

I hope that this explanation will give Mr E some comfort that he need not be concerned about Prudential having a discretionary power in relation to death benefits.

my final decision

My final decision is that I do not uphold Mr E's complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman