

## **complaint**

Mr J complained that the Prudential Assurance Company Limited (Prudential) hadn't paid him all the bonuses his plan was entitled to.

## **background**

Mr J had a deferred annuity contract with Prudential. The plan wasn't fund based and had guarantees attached to it.

Over some years Mr J asked questions about his plan and made complaints in relation to some of the replies he received. In October 2013 Prudential paid Mr J £125 to reflect his trouble and upset. They also sent him a cheque for £50 in July 2014, but it's understood this cheque wasn't cashed.

In 2015 Mr J was looking to take benefits from his plan, and asked Prudential some questions about his plan. Mr J went on to complain. In October 2015 Prudential apologised that he'd been given inconsistent information and there had been some delay. They offered him £150. Mr J went on to raise further concerns. Prudential sent a further response in January 2016. Prudential didn't uphold his complaint in respect of the further concerns; but they repeated their offer from the previous October. Prudential have confirmed their offer remains open.

Mr J didn't accept this offer and complained to this service. In April 2016 Mr J transferred his plan to Prudential's income drawdown scheme. The value transferred was £126,406.25.

Our adjudicator didn't uphold Mr J's complaint. She said his plan contained two types of bonuses, guaranteed and non-guaranteed. Prudential confirmed that all guaranteed bonuses were applied to Mr J's plan before the transfer took place. And there hasn't been any suggestion this isn't accurate.

Prudential also told this service that Mr J had received a non-guaranteed terminal bonus, and they provided the breakdown of his basic annuity, reversionary and terminal bonus. They said his plan hadn't qualified for a final bonus, as this was usually paid when investment returns were high; and no bonus was paid as a result of the decision made by their actuaries. Prudential went on to confirm that they had ensured a check had been completed of all their calculations for Mr J's plan.

The adjudicator provided further explanation about with-profits funds; including the process of smoothing. Prudential said that in the past when investment returns were higher, the payment of final bonuses (non-guaranteed) had been common.

The adjudicator thought Prudential's correspondence with Mr J had been clear enough. She thought they'd explained that a final bonus might be added, but this wasn't guaranteed. She explained she hadn't seen anything that made her think Prudential had acted unfairly or outside their remit. The adjudicator accepted that based on what she'd seen Prudential had accurately calculated the guaranteed element Mr J was entitled to. She said she hadn't seen anything that suggested Mr J hadn't received other bonuses which he was entitled to. She also set out that she thought the offer of £150 was fair and reasonable in the circumstances of Mr J's complaint.

Mr J didn't agree. He was pleased to have seen the breakdown of the sums for his plan; but said Prudential had made many mistakes in the past, so he didn't have much confidence they had now provided the correct information about bonuses. He has also added:

- Prudential said his plan didn't qualify for a final bonus because it had no increments after 2001.

Mr J says his plan's terms don't mention anything about increments and he believes Prudential has quoted from the wrong type of plan. Mr J agrees he hasn't increased his premiums since 1981, but there's nothing in the plans terms that suggests premiums have to be increased over the years to comply with bonus participation.

- Mr J finds it hard to believe Prudential didn't apply bonuses to any other plans.
- Mr J thinks Prudential expected to apply a non-guaranteed final bonus and Prudential need to give a '*genuine reason*' why it won't be applied.

Prudential were asked to provide further information and answers. Their responses have been shared with Mr J.

Prudential told us they didn't know where the explanation that Mr J's failure to make contributions since 1981 meant there was no final bonus had come from. They don't suggest this was an accurate explanation.

They have clarified that in more recent years the term "*final bonus*" has been used to refer to all non-guaranteed bonuses added when benefits are taken from a plan. But historically the term was used to refer to a separate bonus element representing the expected investment return received after retirement. In other words, and in summary a form of ongoing returns, given the way this type of plan (deferred annuity contract) operates.

Prudential set out that it is an additional estimation of future investment returns that Prudential may receive in the period after retirement, that has not already been allowed for in the basic annuity, or reversionary and terminal bonuses. Prudential have confirmed that on calculation of benefits and transfer value, all bonuses and bonus rates, including final and terminal are taken into account. And they say the amount of "*terminal bonus*" reflects the performance of the investment fund by that time.

Mr J has added that he has always understood that both terminal and final bonuses are not guaranteed. But that during the long time he has had his plan, there have been times when investment returns were much higher than they are now. So he questions whether Prudential have properly applied the rules when it comes to their decision about whether a final bonus should have also been applied.

### **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 agree with the adjudicator, and for broadly the same reasons.

In summary most of the information that has now been provided is agreed. Mr J understands that a terminal bonus was not guaranteed; nor was a final bonus. I think it's fair to say that a proportion of Mr J's ongoing concern is whether Prudential have done what they should have done.

I can understand why he feels some concern. He has been given inconsistent and inaccurate information previously. But I think, taking everything into account, Prudential have offered enough to reflect Mr J's upset and the trouble he has been caused. I haven't seen anything that makes me think he has loss out, or that bonuses have been wrongly withheld from his plan.

It took some time for the full explanation for the historic difference between a final and terminal bonus to be provided. It's now understood, and I accept, the phrase "*final bonus*" has been used in more recent years interchangeably with the phrase "*terminal bonus*"; but in the context of these type of plans they had a different meaning, so I can understand this might add some uncertainty.

I've seen that Prudential have now better explained how any final and any terminal bonus is calculated; and what is taken account of.

I do understand Mr J's wider concerns too. With-profits funds have attracted some criticism for their lack of transparency and I accept that it is very difficult for plan holders to satisfy themselves they have received what they are entitled to under the terms of their investments. But that does not mean that a firm has got something wrong.

The industry regulator, the Financial Conduct Authority (FCA), recognises that firms have a considerable amount of discretion about how they operate their with-profits funds. Prudential is accountable to the regulator for the way in which they operate their with-profits fund (in accordance with their Principles and Practices of Financial Management document- PPFM), and the FCA monitors the management of it. Firms are required to appoint a with-profits actuary, or actuaries, and the regulator provides rules and guidance on their duties.

Prudential and our adjudicator have set out the information on this in greater detail. And I know Mr J appreciates much of how his plan and the fund operate. I haven't seen anything that makes me think Prudential have acted outside of their legitimate commercial judgment. And it would be a matter for the regulator to consider if there was a failure in the terms Mr J is concerned about.

I've seen Mr J wanted a copy of a particular phone call where he says Prudential gave him information about terminal and final bonuses. Based on what Mr J says took place during the call, the information the representative is said to have provided was inaccurate. As I've explained, it's accepted Prudential has provided some inaccurate information on this to Mr J; and I also think the way in which the use of the phrase final bonus has evolved and changed, will not have made the situation as clear as it could be.

Prudential's offer of £150 for the failings in their customer service remains open for Mr J to accept. I think in the circumstances of this complaint that's a fair offer. And I leave it for Mr J to decide if he wishes to contact Prudential and accept it.

**my final decision**

For the reasons given, I don't uphold Mr J's complaint against the Prudential Assurance Company Limited.

Under our rules, I'm required to ask Mr J to accept or reject my decision before 9 October 2017.

Louise Wilson  
**ombudsman**