

complaint

Mrs H has complained that The Prudential Assurance Company Limited ("Prudential") repeatedly failed to use the correct information when completing its Pension Review loss calculation. As a result she employed the service of a financial adviser to check this and incurred costs of £450.

She has also suffered significant distress and inconvenience as a result of this process.

background

Mrs H was mis-advised to opt out of her occupational pension scheme and start contributions to a Prudential personal pension plan in December 1991. At the time she had been an employee of a business since 1988.

In 1999 Prudential wrote to Mrs H to explain that the advice had been included as part of the Pension Review; it had concluded the advice had been unsound. It proposed to redress any loss she may have suffered when she came to retire. In anticipation of this it requested Mrs H provide authority for it to contact her former employer in order to gather relevant details of her employment. Mrs H did not feel that she could accept this offer at the time and therefore authority was not provided.

In 2012 Mrs H contacted Prudential to begin the process of taking benefits and to restart the loss assessment process. Mrs H contacted her former employer at this point to confirm details for the calculation and explained to Prudential that she was waiting for this information.

An offer was made to Mrs H towards the end of November 2012, prior to her receiving a response from her former employer. The offer was made on the basis of key facts and assumptions confirmed verbally with Mrs H in a telephone call. The key dates agreed in the call were the dates of her pensionable service:

Joined employer's scheme: 1 January 1988
Opted out/started personal pension plan: 9 December 1991
Left employer: 31 March 1992

On the basis of these dates Prudential implicitly assumed that Mrs H was entitled to deferred benefits from the employer's scheme (having in excess of two years pensionable service), and its liability was approximately four months (December 1991 – March 1992).

This offer incorrectly noted Mrs H was married when in fact she was not. The offer was for £1,245 calculated as the loss would have been at 1 February 1999.

Shortly after, Mrs H contacted Prudential to highlight the incorrect details used, confirm that she was still awaiting a response from her former employer and complain about the level of service received. Prudential agreed to wait for the former employer's response before running a second loss assessment.

The following day Mrs H received a response from her former employer's pension administrator. This stated that she had joined the scheme in August 1989 but that it had no other details of the accrued benefits, or where these were transferred to. It suggested she use the pension tracing service to identify this.

Later that month Prudential wrote to Mrs H in response to the complaint about the way the first loss assessment had been undertaken. This addressed Mrs H's concerns over the way the calculation had been conducted and referred Mrs H to this service if she required the calculations to be reviewed.

Mrs H spoke to Prudential on several occasions in January 2013. The call notes confirm that on each occasion she confirmed that her former employer had no record of her pension. There is no record that she informed Prudential of the August 1989 start date as confirmed by her former employer. Mrs H is certain that she made this clear to Prudential.

Following these calls Prudential completed a second loss assessment on the basis of the information confirmed. It issued two letters, the first confirming the loss up until 1999, and the second confirming the value of this loss re-valued to 2013. The total offer was £2,479. The key dates used in this calculation were:

Joined employer's scheme: 1 January 1989
Opted out/started personal pension plan: 9 December 1991
Left employer: 31 March 1992

This offer correctly noted that Mrs H was divorced, and, on the basis of the dates above concluded that Mrs H would have entitlement to benefits from the scheme for the period January 1989 – December 1991.

Dissatisfied with this offer Mrs H contacted an independent financial adviser to review the calculation. It made further enquiries about Mrs H's former employer but located no further information related to it. Having liaised with Prudential it agreed, in the absence of evidence of a deferred pension, that Mrs H must have had less than two years' service and therefore will have received a return of contributions.

A further loss calculation was run on this basis, and resulted in a higher offer of £9,503, as at 1 May 2013. This offer was accepted by Mrs H. The key dates used in this calculation were:

Joined employer's scheme: 1 January 1990
Opted out/started personal pension plan: 9 December 1991
Left employer: 31 March 1992

Having accepted this offer Mrs H raised concerns over the absence of a distress and inconvenience payment, the length of time it had taken to reach this stage and the need for her to pay £450 for a financial adviser to review the calculation.

Following further communications Prudential issued final response letters acknowledging that distress and inconvenience had been caused by the review process and offering £250. It declined however to pay the costs of the financial adviser explaining that it had said that it would not pay these. Prudential added that it had referred Mrs H to this service early on in the process if she remained dissatisfied.

Unhappy with this offer Mrs H referred the complaint to this service for independent review.

An adjudicator considered the complaint. Having done so he concluded that the process had taken too long; however, to his understanding on each occasion the calculations had been run on the basis of the key facts agreed with Mrs H, excepting the first which referenced her being married. Therefore the delays, in the main, were not Prudential's fault.

Additionally he noted that Mrs H was referred to this service if she had concerns over the calculation as an alternative to using a financial adviser. He considered that the offer of £250 was adequate in the circumstances and did not recommend Prudential pay the cost of the financial adviser.

On further investigation he could see no evidence that Prudential had been made aware of the August 1989 date, confirmed by Mrs H's former employer, although Mrs H was certain that she had provided this. He concluded that had it been provided Prudential would have used this date, and not an assumed date agreed with the financial adviser. Had it been used, this would have resulted in a lower offer of redress.

As agreement on these issues could not be reached the complaint was referred to me for a final decision.

Mrs H made a further submission clarifying the terms of her complaint. In her view the mixed communications received meant that she had no alternative but to instruct a financial adviser to provide assistance in resolving the loss calculation and she would not have used this service because it would not have properly reviewed the calculation.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Mrs H has raised a number of concerns; however my decision here will focus only on those issues which are material in deciding whether the offer of redress proposed by Prudential is reasonable as that is the substance of Mrs H's complaint to this service

There is no doubt that it took longer than would ordinarily be reasonable in the investigation and resolution of a Pension Review loss calculation. It should not take three attempts to complete it. However, my view on this is moderated somewhat by the requirement that in order to complete the calculation correctly Prudential needed to have the correct information to hand.

Mrs H maintains that Prudential ought to have been in possession of all the relevant facts prior to the second loss assessment. It should have applied these and had it done so she would not have been required to employ a financial adviser at a cost of £450. It should therefore pay these costs and acknowledge the distress and inconvenience caused with a more significant payment.

I note though that Mrs H accepted Prudential's offer of redress in June 2013. In doing so, Mrs H confirmed that *'I accept this amount in full and final settlement of all claims I may have against Prudential Assurance Company Limited arising out of being mis-sold a personal pension plan instead of remaining a member of any pension scheme available to me during my employment (employer).....'*

I also note that on the redress offer acceptance form, signed by Mrs H, she appended a comment stating that the offer was *'Accepted on condition that your subsequent letter dated 21/5/2013 copy attached relates to this final offer.'*

In that letter of 21/5/2013, it said in relation to the offer of compensation that *'there is no allowance made for any compensation in respect of stress, upset or additional expenses incurred as these matters fall outside the remit of the pension review'*. The letter gave referral details to this service in the event that Mrs H was dissatisfied with the terms of the offer.

In other words, Prudential made clear to Mrs H that it would not pay the costs of a financial adviser but provided details of this service as a free alternative. However, as Mrs H accepted the offer of compensation with the conditionality attached thereto, including that *'additional expenses'* would not be reimbursed, I do not propose commenting further except to say that I am not persuaded that Prudential did not apply the guidelines of the Pension Review appropriately.

Consequently, it would not be fair or reasonable for me to award further monies to Mrs H. She has already accepted compensation which the Pension Review determined she was entitled to and in so doing confirmed her acceptance of the conditions attached to that offer.

However, I note Prudential has offered an additional £250 for the service levels provided to Mrs H over this period. In my view this is fair and reasonable; in the circumstances set out above I do not direct Prudential to pay more than they have already offered.

my final decision

I uphold Mrs H's complaint against The Prudential Assurance Company Limited but direct it to pay only the £250 already offered for the poor service it provided to Mrs H.

Terry Connor
ombudsman