

## **complaint**

Mrs M complained The Prudential Assurance Company Limited (Prudential) gave her unsuitable advice when she was made bankrupt.

## **background**

Mrs M was made bankrupt in 1993 and stopped making contributions to the pension plan she had started with Prudential the year before.

In 1995 Mrs M met with Prudential's adviser. Mrs M's plan was then revived and she started making payments into it again. Mrs M was discharged from bankruptcy in 1996. And she continued to make contributions for just under twenty years.

It was when Mrs M applied to take benefits in 2012 that she indicated on Prudential's form she had been made bankrupt. Prudential were told after they made the usual checks, that the contractor (C) appointed by the Insolvency Service, retained an interest in the plan. So Prudential could not release any benefits to Mrs M.

Mrs M has complained that Prudential failed to advise her properly because:

- She told them when she was made bankrupt.
- Prudential told her to suspend her plan until she could re-start payments.
- She should not have then been told to revive the plan and make payments into it.
- She should have been warned there was a risk that she would not get any benefit from the plan.

Mrs M isn't complaining that her plan is considered an asset from the time. And she understands why C has an interest in it.

Prudential don't accept Mrs M's complaint and say they didn't know Mrs M had been made bankrupt before 2012.

One of our adjudicators investigated Mrs M's complaint but didn't think there was anything that showed Prudential had known Mrs M had been made bankrupt. Mrs M asked for an ombudsman to look at her case.

The adjudicator asked Prudential to contact their adviser from the time. The adviser has no memory of the meeting with Mrs M in 1995. But he says that his usual practice in such a situation would have been to speak to someone more senior before doing anything. None of Prudential's records make any reference to bankruptcy.

Mrs M says she does not have any paperwork from the time but she did:

- Disclose her pension plan when she was made bankrupt.
- Telephone Prudential to let them know this had happened.
- Meet with the adviser who knew about her circumstances.

So the grounds for her complaint are the same as those looked at by the adjudicator. Mrs M thinks Prudential should include a direct question in their documents about bankruptcy given the risks involved.

## my findings

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

I understand that it will disappoint Mrs M but on what I've seen I don't think Prudential did anything wrong. This is a difficult balancing exercise but I haven't seen anything that suggests Prudential knew before 2012 that Mrs M had been made bankrupt.

None of Prudential's records make any reference to Mrs M mentioning her bankruptcy. This includes in the fact find documents from 1995, which she signed, as well as internal handwritten notes.

It may be that Mrs M did declare her plan as she says at the time of her bankruptcy. The usual practice would have been for the Trustee in Bankruptcy (TIB) to have contacted Prudential to register their future interest. But Prudential have nothing to suggest they were contacted. And unfortunately the Insolvency Service and C have no information available from the time as it seems a number of papers were destroyed some years ago.

It is the fact find document completed at the meeting in 1995 that I have particularly looked at. As the advice to revive the plan and re-start making payments into it was given at this meeting. The form shows that Mrs M was not expecting any change in her financial circumstances within the next 12 months. That was clearly not correct, as Mrs M was to be discharged from her bankruptcy within the next year. The form also records that she was waiting for her decree nisi to come through. And it goes on to give detailed information on her finances, employment and family.

I accept that Mrs M might not have realised her bankruptcy needed to be noted in a particular way or using special words. But it is such an important piece of financial information that I think the adviser would have recorded it if he had known. Especially given the potential consequences on a pension plan at the time. And he would have had to take account of it in his advice.

I can't see any reason for the adviser not to have made a note at any point of Mrs M's bankruptcy if he knew. As he continued to advise Mrs M for some time, I'd expect other documents to have a reference to it, even if there had been an oversight on the fact find. But there's no mention of it. Even when there were missed payments into the plan in the two years that followed its revival. The reason ticked on the form for these missed payments is "*lack of funds*". I accept there was no box to tick that said bankruptcy, but there was space to give more information. So I don't think the adviser did know at the time.

In Mrs M's application to revive payments to her plan there is a section just above Mrs M's signature that says:

*"Benefits may be lost if material facts are not disclosed. If in any doubt as to whether a fact is material, you should disclose it in this application".*

So Mrs M could have asked why her bankruptcy had not been noted on any of the forms.

I accept Mrs M's point that she would have no reason not to tell her Prudential adviser that she had been made bankrupt. And that it would not have been in her interests not to tell him.

I also understand why Mrs M says she would not have re-started payments to this plan if she'd known that all the payments that followed for nearly twenty years might be claimed by the TIB.

It also seems likely to me that the Prudential adviser would have asked Mrs M why she stopped making payments to her plan in 1993. This would be an obvious question. But there are no records of any conversations or meetings around this time.

It's clear it was Mrs M who drew Prudential's attention to her bankruptcy when she came to take benefits. Because of this I don't think Mrs M was trying to hide anything.

As I've said this is a difficult balancing exercise given the passage of time and limited information available. But there is nothing to show that Prudential did know about Mrs M's bankruptcy before 2012. And the material that is available suggests Prudential did not know. So I don't think Prudential did anything wrong. I accept that if they had known, their advice to revive the plan in 1995 does not seem to have been suitable.

I understand Mrs M first brought this complaint because she believed she would lose the whole value of her plan. And she was understandably very unhappy that all the payments she had been making to the plan since 1995 would be lost. I've seen very recent information from C which says it intends to release a proportion of the plan representing all the payments made after she was discharged from bankruptcy in 1996. I hope that has brought Mrs M some comfort.

#### **my final decision**

For the reasons given, I do not uphold Mrs M's complaint.

Under our rules, I am required to ask Mrs M to accept or reject my decision before 8 February 2016.

Louise Wilson  
**ombudsman**