

## complaint

Mr P complains that The Prudential Assurance Company Limited (Prudential) gave him unsuitable pension advice.

Mr P says that as a result of this unsuitable advice he thinks he has lost around £30,000.

## background

In early 2016 Prudential advised Mr P to move his Prudential Retirement Annuity Contract to a Flexi-access drawdown account with Prudential so that he could take the tax free cash lump sum from his pension pot.

Mr P's pension pot was worth over £119,000 in March 2016. A tax free cash lump sum of £29,821 was paid to Mr P.

The adviser noted that Mr P wanted to access his tax free cash lump sum to:

- repay car finance of £5,000;
- buy additional land to enlarge his garden at a cost of around £5,000;
- contribute £10,000 towards his daughter's wedding; and
- increase his existing savings from £6,000 to £10,000 in order to have a larger emergency fund.

The fact find, completed at the time, said that Mr P was self-employed, earning around £300 per week, with around £6,000 in savings.

The adviser noted:

*You would like to consider withdrawing the tax free cash from your Prudential Retirement Annuity Contract to fund your objectives. You do not require any further income at present and you do not want to commit to an annuity. You plan to use the remainder of your Pension Funds for retirement or possibly sooner if your health prevents you from working.*

*You fully understand that you will lose tax relief, potentially higher annuity rates and growth potential by early vesting, but you feel that your priorities are semi-retiring and improving your quality of life. You do not want to commit to an annuity as you prefer to retain the flexibility of your funds through a Drawdown.*

*You understand that your RAC has a valuable Guaranteed Basic Annuity at Selected Retirement Date of 1 February 2018 of £8,783.17 (single life annuity, paid annually in arrears with no guarantee period and no tax free cash). You are prepared to give this GBA up in order to obtain flexibility.*

*Your RAC is not segmented, therefore you would like to move the full amount into Drawdown. The surplus tax free cash will be added to your emergency fund.*

The adviser noted that Mr P intended to continue working until his state pension age (age 65) and did not want to take an income from his pension until he stopped working.

Mr P contacted Prudential in early 2019 and asked what the projected value of his pension would have been at retirement if it had not moved his pension pot to a drawdown plan. On 28 February 2019, Prudential set out that if Mr P's policy and contributions had been maintained his plan would have had a transfer value of £151,696.26 on 1 February 2018.

In early March 2019, Mr P complained to Prudential about the advice he had received.

Prudential did not uphold Mr P's complaint. It said it felt the advice Mr P had been given was suitable for his needs and circumstances.

Mr P wasn't satisfied with Prudential's response and brought his complaint to this service.

Our investigator looked into Mr P's complaint. Having done so he said he felt it should be upheld.

He noted that Mr P's recollection of events did not tally with the information recorded by the adviser at the time. In particular, Mr P said the adviser had asked about all the things he could spend money on – he said he didn't tell the adviser he needed a lump sum.

Mr P said he had already set aside funds for his daughter's wedding and he wasn't concerned about his car loan. He agreed he'd had a general discussion with a neighbour about buying land to extend his garden, but it had never progressed any further.

Mr P also said his bank would provide a business overdraft of £30,000 which meant he could cope with any unexpected work related costs.

Mr P provided this service with copies of bank statements from the time the advice was given. These showed that Mr and Mrs P had around £18,000 in savings. Mr P also provided a copy of a recent savings account statement. This showed that Mr P still had around £25,000 of the tax-free lump sum.

In view of this our investigator said he thought it was unlikely Mr P would have pro-actively sought to access his tax free cash. He noted Mr P had significantly more in savings than the adviser had recorded on the fact find. This was further supported by the fact that Mr P had only spent a small proportion of the tax free cash.

He also said he didn't think that Mr P had fully understood the value of the Guaranteed Basic Annuity attached to his Retirement Annuity Contract (RAC) when he accepted the advice to transfer his pension pot to the drawdown plan.

To put matters right he said Prudential should pay Mr P the difference between the current value of his pension pot and the value the pot would have been worth (minus the tax free cash already taken) if Mr P had not been advised to transfer it to a drawdown plan.

Prudential did not accept our investigator's view. It reiterated that it felt its advice had been suitable and had met Mr P's stated objectives. It said;

*It may be that Mr P has not utilised the TFC for the objectives recorded in the Fact Find, and that the money remains available in a joint account, but this could not have been foreseen.*

It said that the fact find information its adviser had recorded only related to Mr P as he had wanted his finances to be assessed separately, despite Mrs P being present at the meetings with the adviser.

And it said that Mr P had stated that flexibility was a priority as he planned to continue working part-time beyond State Pension Age. It said Mr P '*...liked the idea of flexibility to choose an income to suit his needs rather than the inflexibility of an annuity. He could then*

*select a level of income to suit his needs as and when required. His surplus income was relatively low so reducing expenditure made sense. He also felt it was very important to ensure the family fully benefitted from any unused retirement funds in full. He had saved since 1979 and did not want his family to lose the money in the event of death. The flexibility of having a fund available to the family in the event of death, was something that Mr P was keen to ensure.'*

It also noted that Mr P's attitude to risk was categorized as low to medium risk. It said: *'His current RAC was medium risk and he was concerned that the value of his contract could fall as well as rise in the short time prior to retirement. He did not need any further income, and had recorded capital need so a Flexi Access Drawdown (FAD) was agreed as the appropriate solution.'*

I issued my provisional decision on Mr P's complaint on 27 April 2020. In it I said I agreed with our investigator's view that Mr P's complaint should be upheld. But I said that I thought the redress, as set out by our investigator, did not adequately compensate Mr P for the loss he has suffered. I have explained my provisional view as follows:

Prudential said that Mr P wanted to release a tax free lump sum to meet the various expenses detailed in the fact find its adviser completed. It also said Mr P understood the implications of giving up the GBA attached to his pension plan. I carefully considered both these points.

#### *Guaranteed Basic Annuity*

I noted that in the suitability letter the adviser said:

*You fully understand that you will lose tax relief, potentially higher annuity rates and growth potential by early vesting, but you feel that your priorities are semi-retiring and improving your quality of life. You do not want to commit to an annuity as you prefer to retain the flexibility of your funds through a Drawdown.*

*You understand that your RAC has a valuable Guaranteed Basic Annuity at Selected Retirement Date of 1 February 2018 of £8,783 17 ( single life annuity, paid annually in arrears with no guarantee period and no tax free cash) You are prepared to give this GBA up in order to obtain flexibility as this is more important to you.*

I said I was not satisfied that Mr P had fully appreciated the value of the GBA he was giving up. In particular, I noted the adviser did not provide Mr P with an illustration to show how much it would cost Mr P to buy a comparable annuity on the open market.

I said I thought this would have helped Mr P to better understand the value of GBA.

I also noted that the table attached to the suitability report comparing Mr P's retirement annuity contract and the drawdown plan recommended noted that as well as offering a single life annuity paid annually in arrears, *'different options are available'*. I said it was not clear what these options were and I had not seen anything to show that Mr P was made aware of these options. I said it may well have been the case that one of these 'options' would have been more suitable for Mr P's personal and financial situation.

I said I thought the adviser should have explored these options with Mr P before making any recommendation that involved giving up the GBA Mr P was eligible for.

I noted that the adviser said he had only discussed Mr P's financial situation, but Mrs P was present at the meetings. The adviser says Mr P '*... felt it was very important to ensure the family fully benefitted from any unused retirement funds in full. He had saved since 1979 and did not want his family to lose the money in the event of death. The flexibility of having a fund available to the family in the event of death, was something that Mr P was keen to ensure.*'

I said that I appreciated Mr P wanted to provide for his family, but given the value of the guaranteed annuity Mr P was giving up I thought the adviser could have considered advising Mr P to take out a life assurance policy to provide a lump sum in the event of his death. The cost of the premiums could have been paid from the annuity of almost £9,000 per year Mr P would have been entitled to at age 65 if he had not been advised to switch to a drawdown plan.

#### *Need for a lump sum*

Mr P said he did not need to release a lump sum from his pension. From the account he provided to this service it was clear that Mr P recalled being encouraged to think of things he might need a lump sum for. The adviser provided a different recollection of events.

Having very carefully considered this issue I was not persuaded that Mr P did need to release a lump sum from his pension. In reaching this view I took account of the evidence Mr P provided to show that he and Mrs P had savings of around £18,000 when the advice was given and that Mr P had only spent a small proportion of the tax free cash three years after it was released.

I noted that the fact find only recorded savings of around £6,000. But I said it was not clear to me why this is the case, as this was clearly wrong. Given that Mr P has been very open about his finances with this service it seemed unlikely to me that he would not have been equally open with his adviser.

I also noted that Mr P was charged a 3% '*adviser charge for setting up and arranging the plan*' – this amounted to an initial charge of over £2,500.

I said I didn't think the impact of charges on Mr P's pension pot was fully explained to him. As well as the initial charge of over £2,500 Mr P has also paid an '*ongoing adviser charge*' of around £500 each year.

I said I was not persuaded that the advice Mr P received was suitable. I said I felt it was clear from the information provided that, despite having limited resources, Mr P had saved for over 40 years to provide for his retirement. He had one small car loan and had sufficient savings to repay this loan if he wanted to do so without any need to release money from his pension.

I said I didn't think that Mr P, who had managed his finances so carefully throughout his adult life, would knowingly have taken action that was likely to leave him worse off in retirement. In view of this I said I was not satisfied that Mr P had fully understood the long term implications of the advice he had received or the very significant risk that he would be worse off in retirement as a result of this advice.

I noted that in the suitability report the adviser said:

*We discussed how you would feel if your investment/income were to fall in value. Whilst you would be disappointed if the value of your FADD were to drop, it would not affect your ability to live comfortably in retirement because you anticipate that in retirement your expenditure will be around £1,027 per month as your loan and pension payments will have ceased. You will receive the State Pension of around £150 per week each (Single Tier, I have recommended that you obtain a Forecast).*

*You plan to continue working. Being self-employed for 42 years, you feel able to continue working whilst you are fit and healthy, and work sufficient hours to balance both work and life in retirement. You feel an income of around £200 per week will be sufficient to cover a comfortable lifestyle. When you do have to retire completely, you feel that your Drawdown will be able to cover the shortfall of £377 per month. In the event of financial difficulty you would look to downsize.*

Mr P had a modest lifestyle and had saved throughout his working life for his retirement. I said I thought that if the adviser had more fully explained the long term implications of moving his pension pot to a drawdown plan and taking his tax free lump sum - when he had no pressing need for it - Mr P would not have gone ahead with the recommendation.

I noted that Prudential has said that Mr P should have 'challenged' the advice if he wasn't happy with it. I reminded Prudential that it is required to give suitable advice and treat its customers fairly. In any case I noted that Mr P did 'challenge' the advice when he became aware that the advice he had received might be unsuitable.

Having carefully considered this matter I said that my provisional decision was that Mr P's complaint should be upheld. In addition to compensating Mr P for the loss he has suffered as a result of the unsuitable advice I said I thought that Prudential should also pay Mr P £200 for the worry and upset this matter has caused him.

### *Redress*

I explained that the redress our investigator set out in his view was intended to compensate Mr P for the difference between the capital value of his RAC, had he maintained his pension contributions into the plan and the current value of his drawdown plan.

I said I didn't think this adequately reflected the loss Mr P has suffered as a result of this unsuitable advice.

Mr P gave up a Guaranteed Basic Annuity at a Selected Retirement Date of 1 February 2018 of £8,783 17 (single life annuity, paid annually in arrears with no guarantee period and no tax free cash) when he went ahead with the drawdown plan.

This was a very valuable guarantee and I reiterated that I did not think Mr P would have gone ahead with the advice if he had fully understood the cost of replacing this benefit on the open market.

In view of this I said the redress calculation should take account of the loss of this benefit.

I explained that the redress calculation I had set out assumed that Mr P would have taken tax free cash at his normal retirement date. I said that if Mr P felt he would not have done so and was in a position to repay all or part of the tax free cash he received I would re-consider this aspect of his complaint.

Mr P responded to say that he accepted my provisional decision.

Prudential did not accept my provisional decision. It said it remained of the view that the advice Mr P received to transfer to a drawdown plan was suitable *'based on the evidence recorded at that time'*.

It made the following points:

- It accepted that there was a *'disparity'* between the information recorded on the factfind and evidence and information Mr P had provided to this service. But it said the factfind information recorded by its adviser was based on information Mr P had provided at the time.
- It noted that (as per the factfind) Mr P was self-employed and kept his finances separate from his wife's.
- It accepted its adviser was required to provide suitable advice and to treat customers fairly. But it said, *'this can only be possible if full disclosure of facts are given and not withheld'*.
- It said Mr P had been *'made aware'* that his wife's financial circumstances were not being considered by the adviser and this might have an impact on any recommendation made.
- It did not know why *'full disclosure may not have been made'* to its adviser or why Mr P hadn't challenged the information recorded in the fact find if it was inaccurate.
- In particular it said it felt it was *'somewhat surprising'* that, if the reasons recorded about why Mr P needed to access his tax free cash were wrong, Mr P had gone ahead with the advice.
- It was not clear why I had reached the view that Mr P had not fully understood the value of the GBA.
- It said its adviser had given Mr P a GBA Vesting Pack. It said its adviser had discussed this pack and the GBA had been *'highlighted'* to Mr P.
- It noted that the suitability report said *'You are prepared to give this GBA up in order to obtain flexibility as this is more important to you.'* It said its adviser had fully discussed this with Mr P at the time.

It also explained that the *'other options'* to the guaranteed annuity rate Mr P was eligible for were that he could take his benefits on an alternative basis to the GBA. It said this included taking a tax free lump sum, joint life benefits or an escalating annuity. And it said it could have provided quotations to Mr P for these if he had requested them.

It reiterated that the GBA was single life, paid annually in arrears with no guarantee period and no tax free cash. So it would not have provided any benefits for Mr P's wife if Mr P pre-deceased her.

It said that my view that its adviser should have considered whether life assurance could have been used to meet Mr P's objective to provide for his wife was *'subjective'* It said *'The cost of life assurance may be prohibitive based on how much cover was required, Mr P's age and over what term?'*

In relation to the redress calculation set out in my provisional decision, it noted that Mr P had been making a £120 per month payment to his RAC. These payments stopped when Mr P was advised to move to the drawdown plan. It said it did not think this had been taken into

account in the redress calculations. It said the additional contributions Mr P would have made if he had retained his RAC would have been around £5,760.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I carefully re-considered Mr P's complaint in light of the comments Prudential has made in response to my provisional decision. Having done so, I remain of the view that Mr P's complaint should be upheld. However, I have adjusted the redress calculation to account of the contributions that were not made after Mr P was advised to transfer out of his RAC.

#### *fact find information*

Prudential says that it feels the advice its adviser gave was suitable, based on the information recorded on the fact find at the time the advice was given. It says it feels Mr P should have '*challenged*' the information recorded if it wasn't correct. And it says it is '*somewhat surprising*' that Mr P accepted the recommendation if the reasons recorded about why he needed to access his tax free cash were not correct.

I don't think Mr P had any reason to deliberately provide incorrect information to the adviser. Having carefully reconsidered this aspect of the complaint I remain satisfied that Mr P was as open with the adviser as he has been with this service. He had no reason not to be. I am also mindful that Mr P says he recalls being asked about things he could spend money on, rather than telling the adviser that he needed to access a lump sum from his pension.

A basic principle of pension advice is that, if there are other resources which could be used instead of giving up guaranteed benefits, then these should be explored first Mr P was continuing to work and so repayment of the car loan wasn't a pressing issue, and he had no immediate need for money to buy additional land for his garden. The only compelling requirement appears to have been his wish to contribute to his daughter's wedding. Notwithstanding the evidence that he had more than enough to be able to contribute the proposed £10,000, I'm not persuaded that this alone would have been enough to prompt Mr P to give up the valuable guaranteed benefits if he'd fully understood what he was being advised to do. I'll address this in the next section.

I have also taken into account that as well as the initial charge of over £2,500 Mr P also paid an 'ongoing adviser charge' of around £500 each year for the advice he received. I understand that no charge would have been made if Mr P had been advised to retain his RAC.

#### *did Mr P fully understand the value of the Guaranteed Basic Annuity (GBA)*

In its response to my provisional decision Prudential said it was not clear why I had reached the view that Mr P had not fully understood the value of the Guaranteed Basic Annuity (GBA). It said its adviser had given Mr P a GBA Vesting Pack and had discussed the pack with him.

It also noted that the suitability report said;

*'You are prepared to give this GBA up in order to obtain flexibility as this is more important to you.'* It said its adviser had fully discussed this with Mr P at the time.

I have reconsidered this issue in light of Prudential's comments. Having done so, I remain of the view that Mr P did not understand the value of the GBA he gave up.

I think the fact Mr P did not refer to the GBA (by name, or in general terms) in his complaint and thought the loss he has suffered as a result of the unsuitable advice was only the investment growth he would have benefitted from supports my view that Mr P did not fully understand the value of the GBA he was eligible for.

Prudential has not explained why, if Mr P did fully understand the value of the GBA and how much it would cost to replace the guarantee, he decided to go ahead with the recommendation. I think this is key to whether the recommendation was suitable. As Mr P has demonstrated – and as I've discussed above - he did not have a pressing need for the lump sum. In fact, he still had around £25,000 of the tax-free lump sum left more than three years after the advice was given. This would have been better served remaining in the tax efficient pensions wrapper to provide the guaranteed benefit which Mr P would otherwise have been entitled to.

Prudential also says my view that its adviser should have considered whether life assurance could have been used to meet Mr P's objective to provide for his wife was '*subjective*'. It said '*The cost of life assurance may be prohibitive based on how much cover was required, Mr P's age and over what term?*' This may well be the case, but I think these are issues the adviser should have considered before advising Mr P to give up his guaranteed annuity.

As I set out in my provisional decision I appreciate that Mr P wanted to provide for his family, but given the value of the guaranteed annuity Mr P was giving up I think the adviser could have considered advising Mr P to take out a life assurance policy to provide a lump sum in the event of his death. The cost of the premiums could have been paid from the annuity of almost £9,000 per year Mr P would have been entitled to at age 65 if he had not been advised to switch to a drawdown plan.

#### *premiums to RAC*

In its response to my provisional decision Prudential noted that Mr P had been making contributions of £120 per month to his RAC. These payments stopped when Mr P was advised to move to the drawdown plan. It said I had not taken this into account in the redress calculations. It said the contributions Mr P would have made if he had retained his RAC would have been around £5,760.

I agree that the value of these contributions should be deducted from the redress Mr P receives. As I explained above I think that, but of the unsuitable advice, Mr P would have continued to make these payments until he reached his Selected Retirement Date on 1 February 2018. From the evidence that has been provided to this service I am satisfied that Mr P had sufficient funds to maintain these contributions.

I note that Prudential has said the value of the contributions would have been around £5,760. I don't think this figure is correct. Mr P was advised to move to the drawdown plan in early 2016, two years before his Selected Retirement Date, not four years before as Prudential has suggested. Mr P was paying £120 per month to his RAC so I think the value of the missed contributions is around £2,880.

#### **what Prudential needs to do to put things right**

My decision is that I uphold this complaint, and that a fair and reasonable outcome would be for the business to put Mr P, as far as is possible, in the position he would now be in but for the unsuitable advice.

If Mr P had been given suitable advice, I think he would have continued with his Retirement Annuity Contract and maintained his contributions to the plan. And I think Mr P would have chosen to take tax free cash and the Guaranteed Basic Annuity he was entitled to at his selected retirement date.

As Prudential has noted, once Mr P transferred out of his RAC his contributions towards the plan stopped. I cannot reasonably require Prudential to cover the cost of these contributions. I am satisfied that Mr P would have continued to make the contributions if he had not received unsuitable advice. I therefore do not think that the growth Mr P would have received if he had made these contributions should be deducted from the redress he receives.

Prudential should deduct the value of the missed contributions from the lump sum it pays Mr P to cover the loss he has suffered. I note Prudential has calculated that value of missed contributions is '*circa £5,760 over the last four years*'. But as I set out above, as Mr P's selected retirement date was 1 February 2018 and his payments were stopped in early 2016 I think the missing contributions are around £2,880.

#### *summary*

I don't think that Mr P, who had managed his finances so carefully throughout his adult life, would knowingly have taken action that was likely to leave him significantly worse off in retirement than he would otherwise be with the policy intact. In view of this I am not satisfied that Mr P fully understood the long term implications of the advice he had received, or the very significant risk that he would be worse off in retirement as a result of this advice.

I'm also not persuaded that he needed to access the tax free cash at that time, or that he didn't have other resources upon which to draw to meet his immediate objectives.

To compensate Mr P fairly Prudential should:

#### **past loss**

- A. Work out the total income net of tax that the Mr P has received (if any) from his drawdown plan, with the addition of interest at 8% pa simple from the date each withdrawal was made to the date of settlement.
- B. Work out the total income net of tax that the Mr P could have received using the Guaranteed Basic Annuity from his selected retirement age, assuming a continuation of contributions and fund growth/reduction to the vesting date Interest at 8% simple pa should be added to each net income payment from the date that each payment would have been made to the date of settlement.

If B is greater than A, this should be paid to Mr P.

Prudential should also establish the tax free cash amount which would have been paid to Mr P at the vesting date of the original policy. If this is higher than that which he did receive,

the difference should be paid to Mr P, with the addition of interest at 8% pa simple from the vesting date to the date of settlement.

Prudential may then deduct the missed pension contributions from any total loss figure.

### **future loss**

C. Work out the annual gross income that Mr P could be receiving using the Guaranteed Basic Annuity and the fund value that would have existed at the retirement age. Mr P will need to confirm to Prudential upon what basis – within the parameters available for the GBA - he would have taken the annuity.

D. Work out the open market cost now of replacing the income in C, using the same basis as determined above.

If the amount determined in D is lower than the fund value in Mr P's current pension plan, Prudential should pay a sum to that plan to make it equivalent to D, taking account of any available tax reliefs and charges. If that's not possible, or there are lifetime allowance protection issues, then the amount should be paid directly to Mr P, with the deduction of 20% to reflect the tax band which I've assumed Mr P would fall within in retirement.

Prudential should provide the details of its calculations to Mr P in a clear, simple format.

Income tax may be payable on any interest paid. If Prudential consider that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it has deducted. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

In addition, Prudential should also pay Mr P £200 for the worry and upset this matter has caused him.

### **my final decision**

My decision is that I uphold this complaint. In order to put matters right The Prudential Assurance Company Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 August 2020.

Suzannah Stuart  
**ombudsman**