complaint

Ms R has complained about information given to her by the Prudential Assurance Company Limited (Prudential) at the time she was selecting her pension benefits. Ms R says she was wrongly advised that she wouldn't be able to take her pension as a cash lump sum.

background

Ms R had a personal pension with Prudential and a pension with the NHS. Prudential wrote to Ms R in June 2012 with information about her pension as she was approaching her retirement age. Her pension fund with Prudential was worth around £1,000. Ms R says she then called Prudential to discuss her options. Prudential don't have a recording of this call, but a call was logged on their systems in September 2012.

A retirement pack was later sent to Ms R by Prudential in October 2012. Ms R completed and signed the Benefit Instruction Form. In doing so, she confirmed that she wanted to use 25% of her pension fund to take tax free cash and use the remainder to buy an annuity with Prudential. She is receiving an annuity of around £10 a year.

Ms R has now complained to Prudential about the information that was provided to her about her pension options. She says she was told in the telephone call with Prudential that she couldn't take her entire fund as a lump sum. This is because her total pension fund (including her NHS pension) was likely to be over £18,000. She has since found out that this was possible under the "small pot" rules that applied at the time as her pension fund with Prudential was below £2,000.

The complaint was investigated by one of our adjudicators. He didn't feel the complaint should be upheld because:

- There was no evidence that Ms R was advised by Prudential to take out the annuity. The arrangement was carried out on a non-advised basis with no recommendations given as to which pension benefit should be taken.

- Ms R had completed and signed the Benefit Instruction Form, confirming that she wanted to take a tax free cash amount and the remainder of her pension fund to be paid as an annuity.

- There were clear explanations of an annuity and that it couldn't be cancelled or altered once it was in place. The option of taking a lump sum was available at the time the benefits were being selected but wasn't taken.

- Given the length of the call in September, it was unlikely that the Prudential representative would have had time to explain the triviality rules in place.

I then looked at the complaint and issued a provisional decision setting out why I thought that it should be upheld. Essentially, I said that Prudential hadn't told Ms R that she could have taken her fund as a lump sum under the small pot rules that applied at the time. I thought that had she known this, she would have taken this option rather than an annuity. So, I thought that Prudential should put pay Ms R a sum of money which would put her into the position she would now be in had she taken her fund as a small pot.

Prudential disagreed with my provisional decision. In summary, they said that:

- It wasn't mandatory for providers to facilitate small pot payments. Prudential took a commercial decision not to offer small pot payments for any products at that time. Prudential would have explained this to Ms R if she had asked about it in 2012.

- At the time of her retirement, Ms R was free to explore the market to see if there was a provider who would have accepted the transfer of her fund and pay her a small pot lump sum. But there was no guarantee that another provider would have facilitated this.

- The documents issued to Ms R explained the option to take her full fund as a lump sum. The documents also said that customers should seek financial advice as to how a cash lump sum may be paid.

- Ms R had already started taking benefits by way of an annuity. She was made aware in 2012 that this couldn't be cancelled or surrendered.

my findings

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

Ms R was sent letters by Prudential setting out her retirement options in June, September and October 2012. These letters said that Ms R could take benefits with Prudential or use the Open Market Option to approach other pension providers. They also said she could potentially take the entire pension fund as cash as her fund was below £18,000. At the time, this was the "triviality" limit set by the Government so that anyone with a total pension fund value less than this could take the whole amount as cash, subject to tax. I've looked at the "Prepare" brochure referred to in the letters on this issue. This doesn't add any further relevant information.

However, the general rules covering small pension pots at the time were that people with a limited number of pension "small pots" of less than £2,000 could take the entire amount as a lump sum, subject to tax. So, as Ms R's fund with Prudential didn't exceed this amount, I think her fund would have qualified as a small pot.

I've taken into account that these rules didn't make it mandatory for providers to make this available to customers. Prudential didn't offer small pot lump sums to their customers at the time. But other providers did offer this option. There's no evidence that Ms R couldn't have taken this option with another provider had she transferred her fund. So, the key question I've considered is whether Prudential should have let Ms R know about her option to take a small pot lump sum.

The Association of British Insurers issued "Guidance on Retirement Choices" in March 2012. This encouraged providers to give information about small pots. The Conduct of Business Sourcebook also sets out that information given to customers should be fair, clear and not misleading.

Despite this, I've seen no evidence that Prudential let Ms R know about the rules relating to small pots. The letters from Prudential and the Benefit Instruction Form that Ms R signed said that Ms R had the option of taking her entire fund as cash. But, based on the Prudential letters, I think it was reasonable for Ms R to believe that this was only if the total value of her pension funds was less than £18,000. In other words, I think the Prudential documentation let Ms R know that she could potentially take lump sum under the trivial commutation rules, but they didn't make her aware of the small pot rules.

Ms R called Prudential in September 2012 to discuss options. She says that she was told that she couldn't take her funds as a lump sum. There is no recording of the call, but I think it's likely that a discussion did take place about whether she could take her fund as a lump sum. Given that the retirement packs issued to Ms R only gave information about trivial commutation, I think it's unlikely that Ms R was told about the small pots rules and that Prudential didn't offer this to their customers.

I can see that Ms R is now in receipt of an annuity with Prudential. I also accept that Prudential didn't give advice to Ms R and that they explained that customers should seek financial advice about their options. But, I don't think Prudential did enough to tell Ms R about her full range of options in 2012. If Prudential had set out her options clearly to her, I think Ms R would have decided to transfer her small pot to a pension provider that would allow her to take this as a lump sum. This would clearly have been of greater benefit to her than an annuity of around £10 a year.

I think that to fairly compensate Ms R, Prudential should pay her a sum which would reflect the small pot she could have obtained with another provider, less the annuity payments she's already received. So, Prudential should stop the annuity they are paying to Ms R and pay her the value of her entire fund as at the date of her retirement. They should deduct any appropriate tax and any annuity payments or tax free payments already made to her. Simple interest at 8% a year should then be added to the payment to Ms R from the date of her retirement to the date the payment is made.

my decision

I uphold Ms R's complaint. The Prudential Assurance Company Limited should pay Ms R the sum set out above.

Under our rules, I'm required to ask Ms R to accept or reject my decision before 9 November 2015.

Abdul Hafez
ombudsman