

complaint

Miss M is unhappy with the service she received from The Prudential Assurance Company Limited in relation to her pension.

background

Miss M has had lots of issues with Prudential over the years which she complained about and some matters have been addressed and redressed to her satisfaction. She told this service there were two outstanding issues left she wanted us to look into:

- She's unhappy with additional management charges (AMC) that have been applied to her pension. Miss M has two plans (Plan A and Plan B). Prudential told her the last AMC on Plan A would be charged in 2017 and on Plan B in 2020. Miss M thinks the AMC should stop a year earlier on each plan.
- Miss M also complained that her statements from 1996-2004 didn't show annual bonus rates. The statement in 1995 showed a bonus rate of 7.5%, so she assumed the rate remained the same over the years. She has now found out this isn't the case and the rates were lower. She wants Prudential to honour the bonus rate of 7.5% for the years between 1996-2004.

Our investigator upheld Miss M's complaint in part.

- He agreed with Miss M that the AMC should have stopped for Plan A in September 2016 and for Plan B in February 2019. He asked Prudential to put things right by adjusting Plan A as if the 2017 AMC had not been charged and ensure no AMC was being charged on Plan B after February 2019.
- He also asked Prudential to pay Miss M £300 in compensation for giving her conflicting information about her AMC in their final response letters and causing her distress and inconvenience. He thought Prudential could have dealt with her complaint better.
- The investigator didn't uphold Miss M's complaint about the bonus rates.

Prudential disagreed with the investigator's assessment. They say the AMC has been charged correctly and they also disagreed Miss M should be paid £300. So the complaint was passed on to me for an ombudsman's decision.

I'm aware that since our investigator started looking into Miss M's complaint, she has raised another complaint with Prudential. This will be considered under a separate reference.

I previously issued a provisional decision upholding Miss M's complaint in part. My decision differed slightly to our investigator's opinion. After the investigator's assessment Prudential had informed us that they had converted all A-type units on Miss M's plans into B-type units which resulted in no more additional AMC charges being charged going forward. The last charges were applied in 2018. I didn't think Prudential had to do anything further in this respect. I also didn't uphold Miss M's complaint about bonus rates and I felt the compensation for the service issues should be £150 instead of £300.

Prudential didn't reply to my decision. Miss M disagreed and provided detailed comments.

I would like to assure Miss M that I carefully considered everything she said. I will address what I see as the most pertinent points below in more detail.

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.

charging period for AMC

In my provisional decision I said:

*The terms and conditions for Miss M's plans say **(my emphasis)**:*

Additional Management Charge

*"If the Policy shall have been allocated type A units, then, on the day preceding each anniversary' of the Date of Currency within the **Additional Management Charge Period** (as defined below), the Society shall cancel 1.8% of the type A units allocated to the policy in the Investment-Linked Funds and the With Profits Funds*

***The Additional Management Charge Period** in respect of each Regular Contribution shall be the period of 25 years commencing with the **First Contribution Date** or, if shorter, the period from the First Contribution Date to the Selected Retirement Date. However, if the Policy shall be subject **to more than one Additional Management Charge Period**, ending on different dates, the Society' shall be permitted to extend some such Periods and to reduce others, in order that all such Periods shall end on the same date, provided that such extensions and such reductions, taken together, shall be considered by the Actuary to be neither favourable nor unfavourable to the Investor.*

At the end of the Additional Management Charge Period, the Society may, at its discretion, change all type A units to type B units."

Miss M made the following contributions to her plans:

Plan A:

£50 per month from 11 September 1991, this contribution was automatically increased by 5% every year

Additional regular contribution of £40 per year from 11 July 1993

Plan B:

£66.66 per month starting on 11 February 1994 with annual increments. Miss M says this should have been just another additional contribution to Plan A, but was for some reason set up as another plan.

Looking at the terms I think it's clear that the AMC charging period is 25 years from the date of the first regular contribution. This would be 25 years from 11 September 1991 for Plan A (i.e. until 10 September 2016) and 25 years from 11 February 1994 for Plan B (i.e. until 10 February 2019). These are the dates Miss M thought would be correct.

Prudential say the plan terms mean every additional contribution, including annual increments, starts another 25 year charging period. Prudential say the last increment on each plan was applied in 2009, so the charging period would be 25 year from that point (until 2034) or if shorter until Miss M's selected retirement date. Miss M's selected retirement date is in May 2023, so Prudential says the last AMC would be charged in September 2022 and February 2023 respectively.

The terms refer to an additional charging period of 25 years for each Regular Contribution. They also refer to a scenario where there is more than one Additional Charging Period on a plan, so I agree that Additional Regular Contributions start another 25 year charging period.

Miss M's original contribution of £50 per month on Plan A from September 1991 triggered an AMC charging period of 25 years until September 2016. I think Miss M's contributions of £40 per month on Plan A starting in July 1993 is an Additional Regular Contribution which means another 25 year charging period would start at this point and end on 10 July 2018.

Miss M says Plan B should have just been another additional contribution to Plan A. However, whether as a new plan or an additional contribution, her regular contributions of £66.66 per month from 11 February 1994 would have started another charging period. So I don't think this changes how much AMC is being charged and for how long.

I carefully considered whether the annual increments on Miss M's plan would start additional charging periods of 25 years each. For this to be the case they would need to be Regular Contributions or Additional Regular Contributions. The policy terms say (under R.10.3):

'Any increase in a Regular Contribution (including any increase in terms of the Schedule) [.....] shall be deemed to be equivalent to the commencement of an Additional Regular Contribution [...].'

So the policy clarifies that such increments to Regular Contributions are Additional Regular Contributions and therefore I think Prudential were allowed to start another 25 year charging period whenever the contributions were increased.

The last increment on both plans was paid in 2009, so theoretically the charging periods would continue until 2034. However, as Miss M's selected retirement date is earlier than this (May 2023) any charging period would end then. So following the policy terms Prudential could charge last AMC in September 2022 for Plan A and February 2023 for Plan B.

Prudential have now informed me that- following a commercial decision to bring their legacy business more in line with current plans that deduct charges upfront –they have changed all type A units on these kind of plans into type B units on 20 January this year. This includes Miss M's plans, so this means going forward no more AMCs will be charged on both of her plans. I've seen the latest statements for the plans and the last charges were deducted on 10 September 2018 for Plan A and 10 February 2018 for Plan B.

Prudential has the discretion to change A type units into B type units after each AMC charging period and I think using this discretion is the fair thing to do. As Prudential have now decided to change all A type units into B type units (even though some AMC charging periods have not yet expired), I think Miss M benefits from this decision. So I won't be asking Prudential to do anything further.

Miss M thinks the terms and conditions aren't clear enough. She says R 4.6 only mentions additional management charges being applied to regular contributions and not to automatic increases. She also refers to R 3.2 which relates to automatic increases of contributions and which she feels hasn't been considered.

I can assure Miss M that I have considered the whole policy document. It's correct that R 4.6 doesn't specifically mention automatic increases and only refers to regular contributions. However, as with most policy documents and as Miss M has suggested herself, the terms need to be read in conjunction with one another.

I understand Miss M's argument that R.3.2 mentions automatic increases separately to regular and additional regular contributions-so it could be argued they must be different. R 3.2 essentially explains what automatic increases are, when they are added and what index is used to calculate them. They are described as increases to regular or additional regular contribution amounts which is correct. And if the policy didn't make any further clarifications, I think it could be argued that automatic increases are different to regular contributions. However, the policy does offer further clarification in R 3.1 in conjunction with R 10.3.

R.3.1 explains that the amount of a regular contribution is specified in the policy schedule, but may be varied subject to the provisions in R 10. And in R 10.3 the policy specifically states that '*any increase in a Regular Contribution, including any increase in terms of the schedule, [...] shall be deemed to be equivalent to the commencement of an Additional Regular Contribution of an amount equal to the excess*'

I think R 10.3 makes it clear that automatic increases are additional regular contributions. And as I explained in my provisional decision the fact that R 4.6 refers to more than one AMC charging period suggests that AMCs also apply to additional regular contributions.

I appreciate that Prudential has given Miss M conflicting information about this which hasn't been helpful. And I understand Miss M thinks the AMCs on automatic increases should be refunded as the policy terms weren't clear enough and therefore unfair. However, I've looked at the policy documents independently and I think the charging structure as explained above is correct. Therefore I'm still satisfied Prudential are allowed to start a 25 year charging period on each automatic increase. And whilst I agree that -like in many older policy documents-the information could have been presented more clearly, I think the relevant information is included and I don't think Miss M has been treated unfairly. So I won't ask Prudential to refund all charges that relate to automatic increases.

Miss M says that even if automatic increases start a new charging period, it would only be the extra amount that is subject to a new charging period. And having re-considered the information I have I agree with her on this point.

R 4.6 in the policy states that 1.8% of A-type units will be cancelled within the AMC charging period and that the AMC charging period is 25 years with respect of each regular contribution. R 10.3 makes it clear that the automatic annual increases '*shall be deemed to be equivalent to the commencement of an Additional Regular Contribution of an amount equal to the excess*'. So while I agree that the policy allows Prudential to charge an AMC for 25 years from the last increase in 2009 (or until Miss M's selected retirement date if earlier), I think once a charging period for a particular contribution has come to an end, the AMC relating to this contribution should end.

For Miss M's complaint this means the AMC charging period for her first contribution on Plan A of £50 per month would have ended on 10 September 2016 and the period for her first automatic increase (£2.50) would have ended on 10 September 2017. Her additional contribution of £40 would have ended in July 2018. So the AMC should have reduced proportionally to the relevant contribution in September 2016, September 2017 and July 2018.

I appreciate Prudential have now cancelled all A type units and the AMCs have stopped altogether from 10 September 2018 for Plan A and 10 February 2018 for Plan B. However, this was a commercial decision which affects all customers and wasn't an offer specifically for Miss M. So on reflection I don't think I can offset the benefits Miss M gained as a result of this commercial decision with any previous overcharges on her individual policy.

I'm satisfied Miss M wasn't overcharged on Plan B.

I've asked Prudential to work out the number of A units Miss M was overcharged on Plan A between September 2016 and 2018, price them on the day of this final decision and add them to her plan. Prudential have agreed to reinstate the amounts deducted in excess charges.

Miss M has commented on the fact that the AMC charging period of her second automatic increase of £2.62 per month would have ended on 10 September 2018 and thinks this must have been overlooked when setting out the excess charges. However, all AMC charges stopped in September 2018 anyway, so I don't think she has been overcharged on this contribution.

bonus rates

In my provisional decision I said:

Miss M says her annual statement in 1995 showed a bonus rate of 7.5%. She says her following statements from 1996-2004 didn't mention a bonus rate at all and so she assumed the rate remained at the same level. She asked Prudential for the rates during these years and was informed that that the rates continuously decreased from 1998.

I don't necessarily agree with Prudential that they didn't have to show the bonus rates on statements for older contracts. If bonus rates were shown on Miss M's statement until 1995, I don't think it would have been fair to stop showing this information going forward.

Having said that, I haven't seen copies of the relevant statements from 1996-2004. Prudential couldn't provide statements from such a long time ago which is understandable and Miss M hasn't provided copies either. So I don't know whether the bonus rates weren't disclosed during these years.

However, even if I assume they weren't disclosed, I wouldn't recommend any compensation here. I'll explain why.

Miss M wants Prudential to apply a bonus rate of 7.5% for the years between 1996-2004. However, Miss M would never have been entitled to a 7.5% bonus rate from Prudential during these years, so I don't think it would be fair to ask Prudential to honour this rate.

I need to decide whether I think Miss M would've done anything differently if she had known about the decreasing bonus rates earlier. Our investigator pointed out that when Miss M received a statement in 2005 which showed a much lower bonus rate it didn't prompt her to do anything differently, for example try to transfer her pension to secure a better bonus rate elsewhere. So he said there wasn't enough evidence to suggest Miss M would have acted differently if she had known about the lower bonus rates earlier.

I agree with the investigator on this point and Miss M conceded that she might not have been able to secure a better rate with another provider without a financial loss due to Prudential's transfer/exit charges.

Miss M later told us that in 2005 she had just changed jobs and her salary substantially reduced. She says she couldn't have increased her pension contributions at that point. However, if she had known about the lower bonus rate between 1996 and 2004-when she was on higher salary-she says she may have chosen to increase her contributions. I appreciate that –in hindsight- Miss M thinks she might have increased her pension contributions. However, there isn't enough information for me to think she actually would have done this. The bonus rates already decreased between 1992 and 1995 (from 9% to 7.5%) and Miss M didn't increase her premiums then or tried to obtain better rates elsewhere. On balance it's more likely Miss M chose her contributions in accordance with what she could afford and I don't think the drop in bonus rates would have automatically made her pay more into her pension.

In response to my provisional decision Miss M says she thought she provided the annual statements to this service and she said she definitely provided them to Prudential. I've looked through our file again and haven't seen any copies. However, as I said in my provisional decision, whether the bonus rates are shown or not doesn't change my outcome on this aspect of Miss M's complaint.

Miss M maintains she would have made further contributions to her plans if she had known the bonus rates had decreased between 1996 and 2004. I said in my decision that Miss M hadn't made any further contributions between 1992 and 1995 when bonus rates had already dropped which of course is incorrect and I apologise for this mistake.

Miss M did make further contributions in July 1993 and February 1994 (as set out earlier in my decision). However, I don't think there's enough evidence to suggest she did this to compensate for falling bonus rates. I say this because the first increase happened before bonus rates dropped from 9%. And Miss M increased her premiums substantially in February 1994 (by another £66.66) although the bonus rate had only dropped by 1% six months earlier. So on balance I think it's more likely that she made a conscious decision to pay more into her pension based on what she could afford, rather than as a reaction to dropping bonus rates.

Miss M also told us she started paying into another pension plan with a different provider in 2003. She says her existing pension arrangements weren't performing as well as she was expecting and she thought she would probably be left with a shortfall if things didn't improve. In March 2003 there had been a drop in the final bonus which made her take action.

Miss M says-at a glance- the increases year on year in the with-profit units appeared ok, but as these included her contributions over the statement period, the actual profits were distorted and so she didn't realise the bonus rates were decreasing. I appreciate that this is the case but from what she has told us it seems until 2003 she didn't have any real concerns

with what she saw on the statements. At least not enough to increase her contributions. So I'm not convinced that even if she had known about falling rates (which happened over eight years) she would have automatically seen the necessity to top up her pension as the performance overall didn't cause her enough concern to make additional contributions until 2003.

I appreciate that Miss M made additional contributions at several points. And it's possible that she had even more additional disposable income she could have paid into her pension before 2003. However, for the reasons given above, I still don't think this means a drop in bonus rates would have automatically made her increase her contributions. So I'm not upholding this part of her complaint.

service issues

In my provisional decision I said:

I can see that Miss M asked Prudential for information about the AMC and bonus rates in July 2017. After she received the information she asked for, she explained that her understanding on the AMC terms was different to Prudential's and complained about the non-disclosure of bonus rates in August 2017. I agree with the investigator that communication from Prudential could have been better and correspondence between them and Miss M was going back and forth for several months.

I can see Prudential's explanations about how AMCs are calculated were incorrect on a couple of occasions (they kept saying the 25 year period would start with the first AMC charge and not from the first contribution date), even though Miss M explained in detail why she believed charges should stop earlier. And in fact until January 2018 Prudential didn't even mention that every increment would start another AMC charging period of 25 years. So I think Prudential's communications on this subject were dissatisfactory.

I understand that Miss M has spent a considerable time writing to Prudential about these issues. As far as I can see this was mainly because Miss M didn't accept Prudential's answers and kept asking them to consider these points again. I think this is understandable given the unsatisfactory answers given by Prudential.

I have no doubt that that this would have been inconvenient and frustrating for Miss M. However, I've also taken into account that Miss M didn't have to engage in extended correspondence with Prudential. I appreciate that she thought she could resolve this with Prudential directly and that is why she kept writing to them. But I think she could've referred her complaint to this service about these issues and the bonus rates earlier than she did.

So in the circumstances I think £150 compensation for Miss M is fair.

Miss M says that it wasn't really until June 2018 that she had an inclination Prudential felt the automatic increases started a new 25 year charging period. And it was only in February this year that Prudential tried to substantiate this in writing. Miss M says that if she had been told in 2017 that this was their interpretation of the policy terms, she would have brought the complaint to this service earlier without the need for so much correspondence. Before June 2018 she thought the disagreement was just about how the 25 year period was calculated.

As I said before, I agree that communications from Prudential on this subject were dissatisfactory and should have been clearer much earlier on and I do understand that this

would have been frustrating. However, I still believe Miss M could have prevented lengthy conversations with Prudential by bringing her complaint to us earlier than she did. And I'm not convinced that she would have referred her complaint earlier if Prudential's reasoning for taking charges for longer had been different.

Miss M has pointed out that by disagreeing with the investigator's assessment Prudential has prolonged the complaints process which caused even more distress and inconvenience. She says there's also now a second complaint against Prudential which wouldn't have been necessary if their service had been acceptable in the first instance.

Both consumers and businesses are entitled to disagree with an investigator's view and ask for an ombudsman to reconsider the complaint. I appreciate that this causes delays to a resolution, however as a service we don't ask businesses to compensate for delays caused by following our complaints process. And whether compensation is due with regards to the second complaint Miss M raised, will be considered separately.

Miss M also referred to a case where the Pensions Ombudsman awarded much higher compensation for ongoing administration issues. However, this service considers every case on its own merits and my decision is based on Miss M's individual complaint and the information I've seen here.

I understand Miss M has been unsatisfied with Prudential's service over many years. However, when she complained to us in February 2018 she specifically asked us to look into two remaining issues, namely the application of AMCs and the non-disclosure of bonus rates. Miss M became concerned about these issues when she asked for some information from Prudential in 2017. I've looked at Prudential's service with regards to these two issues and I still think £150 is fair compensation for the dissatisfactory communication in these circumstances.

my final decision

I uphold Miss M's complaint in part. I request The Prudential Assurance Company Limited to:

- work out the number of A units Miss M was overcharged between September 2016 and September 2018
- price them on the day of the final decision and add them to Miss M's plan
- pay Miss M £150 in compensation for the inconvenience they caused her

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 July 2019.

Nina Walter
ombudsman