

complaint

Mr C complains that The Prudential Assurance Company Limited (Prudential) won't let him transfer his Section 32 pension plan.

background

In 1991 Mr C transferred his company pension funds to a Section 32 pension scheme with Prudential. The Section 32 contract Mr C entered into provided for a guaranteed minimum pension (GMP) at age 65 of £5,324.80 a year. This means Prudential are obliged to pay that sum regardless of the performance of the underlying funds.

In July 2018 Mr C's fund was worth some £58,000, but Prudential said that in order to cover the GMP the fund needed to be some £105,000. However, it was obliged to make up the shortfall at no cost to Mr C. He wanted to move his pension to another provider, but Prudential said that *"the Contracting-out (Transfer and Transfer Payment) Regulations 1996 require that the transfer value must be at least equal to the cash equivalent of the GMP to enable a transfer to take place. If this condition cannot be met, unfortunately, we are unable to proceed with any transfer."*

Mr C brought his complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld. He reviewed the business file and saw that in early 199 Prudential had written to Mr C as part of a review of pensions which it was required to carry out. It had no record of a reply from Mr C and so he said he was unable to consider any complaint as to the advice to take out the pension. This was due to the time which had elapsed and our rules which prevent us from considering matters which occurred more than six years previously, unless there are exceptional circumstances.

He also noted Mr C had written to Prudential in 2002 and though his letter wasn't available the reply indicated he had been asking about a transfer. Prudential had given him details of the fund's value and had explained that any business taking it over would have to accept responsibility for the GMP. The investigator said this indicated that Mr C had some awareness of both performance and the limitations of the pension as regards a transfer.

He appreciated Mr C's circumstances and understood why he felt taking the GMP was unlikely to be in his best interests and/or to represent good value. But he didn't think Prudential had done anything wrong. He said the rules meant that a consumer cannot transfer away from a Section 32 plan if the underlying investment value is not sufficient to meet the GMP liability.

Mr C didn't agree and reiterated his earlier arguments. He added that he had been led to believe only the contracted out element would be used to fund the GMP. He also wondered why the fund hadn't grown more or why such a large sum was needed to fund his GMP.

my findings

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

The world of pensions can be very complex and there have been many changes to what is available over the years. I can appreciate Mr C's frustration, especially in light of the recent pension freedoms, that Prudential has refused to transfer his pension. However, it is obliged

to operate within the rules which apply to Section 32 pensions which were introduced in 1981.

In essence Mr C entered into an agreement to transfer his pension to Prudential and it said we will invest that money and we will pay you a pension at age 65. In addition it said that regardless of how the fund performed it would guarantee a minimum payment. The fund isn't sufficient to meet the GMP and so Prudential has to subsidise the pension fund. It is legally obliged to ensure Mr C is paid the GMP as is any other provider who takes it over.

For this reason Prudential has refused to make the transfer Mr C wants. I appreciate his circumstances have changed and he is concerned that his life expectancy is such that he may not benefit from the GMP. While I have every sympathy with his situation I cannot ask Prudential to break the rules, or the contract it agreed with Mr C.

Mr C has said that the pension was sold to him on the basis that only his contracted out contributions would be used to fund the GMP. I cannot say what was said to him, but the guide provided to Mr C says that: "*In a sense then, you must think of the GMP as a restriction; your choice of benefits on retirement is limited by the requirement to use as much of your total investment as necessary to provide that part of the total Scheme GMP which is referable to your transfer value.*" It is clear that Prudential is entitled to use all the funds in Mr C's pot to contribute to the GMP.

He has also queried the fund performance and wondered why Prudential says it needs such a large fund to cover his GMP. With-profits funds can appear opaque. It can be difficult to know what a plan is worth, how its value had been calculated and whether bonuses have been fairly applied. So I can understand Mr C's concerns.

And with-profits fund providers do have significant discretion about how they operate this type of fund. But they are still accountable to the industry regulator for the way in which they manage their with-profit funds. Prudential has to act in accordance with the Principles and Practices of Financial Management.

Prudential must also have a with-profits actuary. He or she must carry out his or her duties in accordance with the rules set and the guidance provided by the regulator. Prudential also has an independent with-profits committee to protect the interests of its with-profits policyholders such as Mr C and ensure they are treated fairly.

The Conduct of Business Sourcebook sets out how such funds should be run:

COBS 20.2.1 states:

(1) With profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.

COBS 20.2.3 states:

A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.

As far as I'm aware the regulator hasn't identified any concerns with the way Prudential has managed its with-profit fund. I also have no reason to doubt Prudential's calculation of the

sum needed to fund his pension. I understand this will have been calculated in accordance with industry principles. I believe the figures used in Mr C's case are in line with other customer's policies. I am sorry I have to disappoint Mr C, but I am unable to uphold his complaint.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 December 2018.

Ivor Graham
ombudsman