

## **complaint**

Mr D complains about the advice he received from The Prudential Assurance Company Limited (Prudential) when he wanted to take the tax free cash from his pension plan to pay off his outstanding debts. He says as a result of Prudential's actions he had to withdraw all of his retirement benefits – so he has no pension provision left – and had to pay around £8,000 in tax. He wants Prudential to compensate him for this loss.

## **background**

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 12 May 2020- a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint shouldn't be upheld and invited both parties to send any additional comments or evidence they wished to make.

Prudential said it didn't have anything further to add and accepted the provisional decision. Mr D said he was disappointed with the outcome. but didn't have anything further to add. Although he asked if would still receive the £100 that the investigator had originally recommended as compensation.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided any further information for me to consider, I see no reason to change the conclusions I came to in my provisional decision.

I know Mr D would still like to be paid the £100 our investigator originally recommended. But as I explained within the provisional decision, I didn't think Prudential was responsible for Mr D encashing his whole pension pot, and I was satisfied that Prudential had made Mr D aware of his other options when he wanted to draw his benefits.

So, I don't think Prudential has done anything wrong here and it wouldn't be fair for me to ask it to pay compensation if I thought it had acted fairly.

## **my final decision**

For the same reasons I've already given in my provisional decision, I don't uphold Mr D's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 September 2020.

Keith Lawrence  
**Ombudsman**

## **Copy of provisional decision**

### **complaint**

Mr D complains about the advice he received from The Prudential Assurance Company Limited (Prudential) when he wanted to take the tax free cash from his pension plan to pay off his outstanding debts. He says as a result of Prudential's actions he had to withdraw all of his retirement benefits – so he has no pension provision left – and had to pay around £8,000 in tax. He wants Prudential to compensate him for this loss.

### **background**

Mr D contacted Prudential in June 2018 as he was approaching 55 years of age and was considering using the benefits from his pension to repay his outstanding debt management plan, which consisted of four separate creditors. He was advised to call back within 30 days of his retirement date which he did on 27 June 2018. On that date Prudential gathered some information from Mr D, highlighted some of his options, and said it would send out an information pack.

Following receipt of the pack Mr D contacted Prudential to discuss the matter further. During the call it was identified that Mr D's plan only permitted an annuity to be taken and didn't allow for the drawdown option he was considering. So Mr D was referred to an adviser – who said that he would have to transfer the pension to a flexi-access drawdown plan and then withdraw his tax free cash to pay off his debts. But in order to do that, and for her to provide advice, the adviser said Mr D would need to provide an accurate settlement figure from the debt management company.

The debt management company said it was unable to confirm whether the individual creditors could make a claim on Mr D's pension and suggested that he spoke with the Citizens Advice Bureau. When Mr D forwarded this information to the adviser she said Mr D needed to resolve the issues with his creditors and get back to her when he'd done so. But by August 2018 Mr D hadn't been able to get a settlement figure from his creditors and decided to take all his pension benefits as cash, as he wasn't required to take financial advice in order to follow that course of action.

In September 2018 the adviser contacted Mr D who confirmed that he'd fully encashed his pension. He said he felt that Prudential had left him in a difficult position and thought its actions were responsible for him having to take all the benefits as cash. He asked the adviser to register a complaint on his behalf. He said he'd paid £7,134.83 in tax which he didn't think he was fair as he'd only originally asked to withdraw the tax free cash sum.

Prudential didn't uphold Mr D's complaint. It said its adviser told Mr D that he would need to obtain confirmation of the amounts outstanding from his creditors before it could pay the tax free sum. It said this was its usual process to ensure it could justify its advice to pay out the funds required, so it thought it had acted correctly in this case. It said it didn't tell Mr D he had to encash the entire fund and – had he contacted it before doing so, could have discussed other alternatives with him. Prudential also explained that Mr D was able to encash his pension because he didn't require advice to do so but in order for him to transfer his funds to a drawdown plan and withdraw his tax free cash he did need to take advice.

Mr D was unhappy with this outcome, so he brought his complaint to us where one of our investigators looked into the matter. She thought that Prudential had provided some unclear information during a telephone call in July 2018, which had influenced Mr D's decision to withdraw his pension as a cash lump sum. She thought it ought to have explained the option for Mr D to transfer his pension to alternative providers and should pay him £100. But she believed he was still likely to have required advice to enter drawdown with another provider so she didn't think Prudential should compensate Mr D for the tax he'd paid.

Both sides disagreed with the investigator's assessment. Mr D said he had a drawdown plan with another provider into which he could have transferred his Prudential plan and withdrawn funds – without taking financial advice. But he says Prudential didn't make him aware of that option.

Prudential said it had made Mr D aware of the option to “shop around” and transfer his fund to other providers before the call of 11 July 2018. And it said it thought it explained the situation clearly in that call too. But the investigator was still of the view that Prudential could have been clearer during that call and that it should pay Mr D £100.

As no resolution has been found the complaint's been passed to me for a review.

### **my provisional findings**

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

#### *Was Prudential responsible for Mr D encashing his whole pension?*

When Mr D asked to withdraw his pension benefits, for the purpose he gave, I would have expected Prudential not to put unnecessary barriers or impose penalties upon his request. But, at the same time, Prudential was providing Mr D with advice on what to do, so it had to ensure this advice was suitable for his circumstances.

Prudential has confirmed that if Mr D simply wanted to encash his pension he could have done so without advice, but if he wanted to withdraw some tax free cash and leave the residual fund, he would have needed to transfer his pension to a drawdown plan – which necessitated him receiving advice.

If Prudential had simply given Mr D any sum of money he requested – without understanding why – this may have led to Mr D receiving unnecessary income and/or tax free cash – an outcome which could have been seen as giving Mr D unsuitable advice.

So it seems reasonable to me that, as a first requirement, Prudential would need to know how much cash Mr D needed, and also that he should provide some evidence of that amount from the creditors concerned. And, in Mr D's case, it was unclear whether the individual creditors – as opposed to his debt management company – might have a further claim on his pension. So I think it's reasonable that Prudential asked for some proof of that position too.

The adviser asked Mr D to contact her when he had the required information, and he did provide her with the information from the debt management company. But it was inconclusive and I think it was reasonable for the adviser to ask Mr D to make further enquiries. I haven't seen any evidence to show that at that time Mr D was advised to encash his entire pension to achieve his objectives with the consequences that entailed.

When the adviser next spoke to Mr D to find out the situation Mr D explained that he'd encashed his pension. He said he felt Prudential had put him in a difficult position whereby he couldn't get the information it requested and therefore he couldn't get the advice he needed to transfer to a drawdown product – which I accept was probably more suitable for his circumstances at that time.

But there isn't any persuasive evidence to show Prudential wouldn't have given him the help and advice he wanted – it simply needed some information first. And there's no evidence to show that Prudential told Mr D that it was in his best interest to encash the entire pension fund. It had explained that was one of his options – which didn't require any advice. But I don't think it suggested that was a course of action Mr D should undertake.

So I don't think Prudential has done anything wrong regarding this matter and I don't think it was responsible for Mr D having to encash his pension fund. That was for Mr D to consider when he realised he may not have been able to get the information about his outstanding debt.

I think it was his decision alone to take that option – without discussing with Prudential what other options there might have been.

Did Prudential make Mr D aware of his other options?

Prudential has provided evidence to show that it spoke to Mr D several times before the call of 9 July 2018, when the various options were discussed following Mr D's receipt of the information pack. I've listened carefully to those calls and heard how Mr D was signposted to call Prudential within 30 days of his retirement date – his 55<sup>th</sup> birthday. During the call of 27 June 2018 Prudential introduced the concept of contacting Pension Wise and offered to give Mr D its details. It also said, *"the next step would be to send out an options pack to you, which would highlight what you need to consider including how to shop around....it's important that you understand all these options available to you"*.

Mr D says he held a drawdown plan with another provider which could have accepted a transfer from his Prudential plan and paid him the tax free cash sum available. He says Prudential didn't make him aware of that option. So I've carefully considered the information Mr D was provided with in the options pack of 9 July 2018. Mr D has confirmed that he received this information and that it was this which led him to contact Prudential on 11 July 2018, so I'm satisfied that Mr D was given the opportunity to consider the information contained within the brochure.

On the second page of one of the brochures, entitled *"decisions decisions"* Prudential confirmed the *"importance of shopping around"* which said *"When you're deciding what you want to do with your pension pot, you should consider all the options and their tax implications. Pension providers offer different products with different features and options, including the product terms, rates, funds or charges that might be appropriate for your individual needs and circumstances. That's why it's important you shop around. So whatever you decide to do - whether that's an annuity, drawdown or something else, it's the right decision for you"*.

And the covering letter enclosed the Money Advice Service guide and Pension Wise flyer, both of which contained sections on *"shopping around and getting advice"*. The letter also confirmed *"It's important to remember that different providers offer different options, some of which may be more appropriate for your individual needs and circumstances. In view of this, you should shop around so that whatever you decide to do, it's the right decision for you"*.

So I don't agree that Prudential didn't make Mr D aware of his other options. Although it didn't specifically tell him to transfer to his drawdown plan with another provider it did set out his alternatives – which included speaking to other providers to see if it could offer an option that was in his best interests. And while Prudential suggested that Mr D did speak to its financial adviser to determine his most suitable option, I haven't seen any evidence which said such advice with Prudential was mandatory. Indeed, during the telephone conversation Mr D had with Prudential on 11 July 2018 Prudential advised *"do you need to take the full policy? Or you can transfer it to another provider that may offer anything else"*.

I know Mr D would like me to conclude that Prudential should have told him to transfer his benefits to the drawdown plan with the other provider, but I don't think that was a reasonable expectation. There's nothing to suggest Prudential was aware of the other drawdown plan and it was only providing information to Mr D at that point, so I wouldn't have expected it to do anything other than provide generic information about *"shopping around"*.

When Mr D decided to encash his pension, Prudential wrote to him enclosing the relevant paperwork. It advised Mr D to approach Pension Wise for impartial information about his retirement options. Mr D ticked a box in his application for the *"return of funds form"* which said *"yes, I have used the pension wise service"*. So I have to conclude that he did consider the information Pension Wise provided including a brochure entitled *"your pension: it's time to choose"* which contained a number of important statements and which confirmed Mr D's alternative options.

One such note said *“Even if you just want to access your tax-free cash for now, you still have to make a decision about what to do with the other 75% of your pension pot. If you don’t then it’s likely it will end up by default in your current provider’s flexi-access drawdown product. Your current provider’s product may be the best one for you, but you won’t know unless you have compared it to other products on the market. To help you shop around we strongly suggest you see a regulated financial adviser.”*

In addition, I’ve seen the cancellation notice that was included with the application and confirmed, within the section headed *“What is the Open Market Option?”*

- *This allows you to transfer your pension fund to another pension company which may mean that you are able to get better rates for setting up your pension, or give you access to a wider range of pension options.*
- *Different pension companies will offer different rates for buying a pension, and different rates depending on the type of pension you choose.*
- *If you buy your pension with a company other than Prudential, the fund will be transferred to the other company.*

Within the paperwork Mr D received there were also a number of other references about transferring the pension to other providers, and several sections allowed for the inputting of the other providers details where required.

So, even at the point Mr D had decided to draw his pension entirely as cash, he was provided with a number of documents which confirmed the other options available to him – one of which was to approach other providers to set up an alternative drawdown plan. I’m satisfied that Mr D was made aware, at various times during this process, of the opportunity to transfer his pension elsewhere – including to his existing drawdown plan – instead of having to use Prudential.

Of course Mr D had initially spoken to an adviser from Prudential, but Mr D didn’t seek any further advice before he encashed his plan. In any case the adviser worked for Prudential, so she wouldn’t have been able to directly advise on the drawdown plan Mr D held with another provider, although I’ve taken into account there’s no evidence to show that the adviser was even aware Mr D held the other plan. But I think the information that was set out within those documents ought to have alerted Mr D to the fact that he could have spoken to other providers before he decided to encash his plan.

I note the calculation that was carried out to confirm how much Mr D would receive when he fully encashed his pension was carried out, as required, on a *“month 1”* basis. So it’s possible, depending on Mr D’s tax position for the rest of the tax year that he may have paid additional tax. He might therefore consider contacting HMRC to see if he can claim a refund.

### **my provisional decision**

For the reasons that I’ve given I’m not currently minded to uphold Mr D’s complaint.

Keith Lawrence  
**ombudsman**