DRN-4913040

The complaint

Mr P has complained that The Prudential Assurance Company Limited didn't make it sufficiently clear, when he reached his normal retirement date of 60, that he could begin taking the guaranteed minimum pension (GMP) without a deduction for taking it before age 65. It also caused delays when he sought to transfer his pension benefits elsewhere, Mr P has said.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr P had a pension plan with Prudential. The plan had a GMP which became eligible for payment at the normal retirement age of 60, as set by the previous scheme. In December 2017, a few months before Mr P turned 60, Prudential wrote to him about the pension. The letter said the following:

"You're close to your normal retirement date so it's time to make some important decisions. This is one of the most important decisions you are likely to make, so we recommend you get guidance or advice to help you with this decision. Pension Wise is a government service that offers free and impartial guidance. We have included a letter to you from the government explaining what the service offers. Find out how to access this by visiting www.pensionwise.gov.uk."

The letter went on to explain that Mr P's pension contained a GMP valued at £2,307 pa and a further fund of £51,888 which could be used to buy additional benefits. There was also a phone number for Mr P to call with any questions.

A separate letter was sent to Mr P's financial adviser in February 2018 after he requested details about the policy. Regarding the GMP, the letter said there was a pension of £2,307 each year calculated to age 65. Under additional information, it was noted that the normal retirement date for the pension was 2 February 2018. An illustration was also provided. It noted that current estimates showed that the fund would only be sufficient to cover the cost of providing the GMP at age 65. However, Prudential also said that if Mr P wished to begin taking his benefits at the normal retirement age of 60, it would cover the shortfall.

The letter further said that it was including an estimate of benefits to age 65, as requested by the financial adviser.

Prudential wrote to Mr P again in March 2018, saying that he had now passed his normal retirement date. It said that the value of his fund on 11 March 2018, including final bonus, was £61,465. It added that Mr P could access this whenever he was ready, and that to do so he should contact Prudential. It did say that the figure was approximate and could change, and the letter included the Prudential contact details along with those for Pension Wise.

Prudential's records indicated that Mr P contacted it by phone on 2 December 2018, and the call notes said that Mr P called because he was seeking advice from his financial adviser – who in turn would contact it when they were ready. The notes also said that Mr P had been told that the pension plan payments wouldn't be backdated once he'd gone past his normal retirement date (2 February 2018). It was recorded that Mr P understood this.

Further calls took place on 25 January 2018. The call notes said that Mr P was undecided about what he wanted to do - but that he wanted quotes for the GMP along with cash withdrawals and also requested annuity quotes with a 5 year guarantee and 3% indexation.

Prudential wrote to Mr P's adviser in December 2022 after the adviser asked for up to date details about the pension plan. The letter provided an updated policy value and details about the GMP once more. Prudential provided further details at the adviser's request, including an estimate of benefits, but this time to age 75.

Prudential wrote to Mr P on 4 May 2023. The letter confirmed that his annuity had been set up in line with the GMP's conditions using his fund value of £10,961 and that the remaining fund value of £69,544 had been transferred to a new provider. Mr P's adviser wrote to Prudential on 9 May 2023 as the transfer value was lower than he was expecting. Mr P also expected the annuity payments to be backdated to his 65th birthday.

Prudential explained the total value of £80,505 was based on a value from 2 May 2023 as Prudential had caused a slight delay and not sent the funds until 5 May 2023. The value was still lower than Mr P's adviser was expecting because the level of final bonus had decreased since the last quote.

Mr P's adviser contacted Prudential on 29 June 2023, having realised that he could in fact have taken the GMP at age 60, and asking whether the GMP could therefore be backdated to that age. Mr P's adviser was informed that the GMP could indeed have been claimed at age 60, but couldn't be backdated now.

A complaint was raised with Prudential about the service it had provided. The complaint alleged that Mr P had lost out on five years' pension income as Prudential's communication had led him to believe that the GMP began at age 65 and not age 60.

Prudential partially upheld the complaint. It said that it should have actually made the pension transfer payments on 13 April 2023. This delay had led to a loss of £3,601 according to Prudential. It said it would check with the annuity provider to see if this delay had impacted on the annuity payments. Prudential also offered Mr P £250 for the trouble and upset he'd been caused by this. A later update from Prudential also indicated that it should take into consideration the delay in sending the non-GMP fund as well.

But Prudential didn't uphold the complaint about the GMP payments since 2017. Prudential said that its letters made it clear that Mr P could have taken retirement benefits from age 60.

Dissatisfied with the response, Mr P brought the complaint to this service. He felt he had lost out on five years' worth of GMP payments because of Prudential's poor communication and wanted those payments backdated.

Having assessed the matter, the investigator didn't think that it should be upheld, saying the following in summary:

- When Prudential wrote to Mr P in December 2017, he would have been aware that his normal retirement date was in February 2018, when he turned 60. That letter made no mention of benefits being payable at age 65, and so there was nothing misleading in that communication.

- Prudential then wrote to Mr P’s adviser in February 2018 in response to the request for policy information. It included an estimate of benefits to age 65, but this was in response to the specific request from Mr P’s adviser to project on that basis.

- That letter also didn’t suggest that the GMP was only payable from age 65, and it wouldn’t have negated the information which Prudential had previously provided in December 2017.

- Prudential then wrote to Mr P again in March 2018 telling him that, as the retirement date had passed, he could take his pension benefits at any time. So if there was any doubt as to the date at which Mr P was able to take benefits, this would have resolved it.

- There were also notes from a call Mr P made to Prudential in late 2018, presumably because he was considering taking his pension benefits, but nothing was said by Prudential which implied that he could only take the GMP at age 65.

- In order to uphold the complaint, the investigator said that he’d need to see evidence of Prudential misleading Mr P or his adviser about when the GMP would be payable, but there was no such evidence here. Although the adviser considered that he’d been told over the phone in 2018 that the GMP began at age 65, Prudential had no record of this contact.

- In respect of the delays in transferring, Prudential had confirmed that it would compensate Mr P for this, and had also offered him £250 for the trouble and upset caused.

In response, Mr P’s representative requested an extension to reply in full as they needed more time to gather further information, including a subject data access request for the period from December 2017 to March 2018. But in the interim, they said the following in summary:

- Whilst some documentation from Prudential was in response to the adviser’s request for illustrations to 65, there were plenty of references to the GMP being secured at 65 which appeared totally out of context to the illustration and were misleading.

- For example, the note from the document dated 26 February 2018 on page two had a section entitled “Guaranteed Minimum Pension (GMP)” which outlined a GMP of 65 before any mention of the requested illustration.

- Further, on page four there was a section entitled “Important information about the With Profits II Fund” which outlined that the sole aim of the fund was to secure the GMP at age 65.

- Mr P felt that it ought to have been more clearly set out in this documentation that, where age 65 was mentioned, this was in response to the adviser’s request for the illustration to age 65.

- There were further documents produced between 2018 and 2023 in which the GMP was consistently referred to as 65 and so Mr P felt that he had been continually misled. Mr P was therefore keen to understand whether Prudential had pushed back his retirement age to 65 as a result of him not taking his benefits at his 60th birthday.

- Mr P was disappointed at what appeared to be Prudential's failure to take responsibility for its obvious error and queried as to whether it had taken reasonable efforts to contact him, given how serious the financial implications were.

- Mr P felt that the investigator's view had been informed mostly by written correspondence which Mr P never understood – hence him seeking financial advice. Mr P therefore requested that further consideration be given to the contact between Prudential and his adviser, and not least the crucial gap in its notes relating to the follow up call to try to avoid any such errors.

In response, the investigator said the following:

- As a SAR request could take up to 90 days to respond to, he had sent the representative all of the documentation provided Prudential on the matter, which he presumed would be the same which Prudential would send in response to the SAR. However, Prudential had confirmed that it was unable to locate the phone call in which the adviser had said he was told that the GMP could only be taken at age 65.

- Prudential had made reasonable efforts to contact Mr P about his retirement options, notably the communication in the run up to his 60th birthday.

The investigator said that he would seek further information from Prudential on the other points raised by the representative and would respond in due course.

Prudential then responded as follows:

- As to the first point raised by the representative, it seemed that Mr P's adviser had misunderstood the literature and policy terms. The GMP was set to 65 as this was the age to which the income guarantee had been calculated. The same document referred to by Mr P's representative contained the below section which confirmed what would happen if Mr P wished to claim the GMP prior to the state GMP age. The normal retirement age of 60 had been agreed at the outset of the policy and the correspondence it issued referenced this:

  "Current estimates show that this fund will only be sufficient to cover the cost of providing the guaranteed minimum pension (GMP) of £2,307.76 each year at age 65. GMP is the minimum amount of pension income paid as a condition of previously contracting out of the second state pension.

  We will meet the shortfall of the fund at the normal retirement date (NRD) and the With Profits I Fund of £52,558.85 will be used to provide benefits in addition to the GMP. If benefits are taken before the NRD we reserve the right to use some of the With Profits I Fund to secure the cost of the GMP and we will not meet any shortfall.

  We enclose an estimate of the benefits to age 65, as requested. The yearly pensions shown are based only on the value of the With Profits I Fund and exclude the GMP of £2,307.76 each year.

  These figures are not guaranteed and are only provided to give you an estimate of what [Mr P] may receive."

- There was no change of Mr P's retirement age to 65 after he'd gone beyond his normal retirement age of 60. This was always the agreed age at which the GMP would have become payable and the fact that Mr P could claim his benefits at any time after age 60 was set out in the annual statement issued for the policy. Prudential provided the part of the statement in which this was referenced.

The investigator conveyed this information to Mr P's representative, who requested a further extension for Mr P to be able to process it. But it also said the following in summary:

- Mr P was stressed by the notion that there were suggestions that his financial adviser of the time was to blame, which could leave him vulnerable to separate providers not admitting liability.

- Mr P was also frustrated that a crucial piece of the evidence – the call in which the adviser had said that Prudential had confirmed that the GMP was payable from age 65 – was being discounted.

- In the absence of the information from Prudential regarding this, his financial adviser had been able to search the outgoing calls with their telecoms provider, which confirmed that the call took place at the time and date suggested in the file note – of 28 March 2018 - which could be provided should the investigator like to add this to the file.

- The representative enquired as to whether the investigator would take the "time stamped" file note to be confirmation that the conversation took place and that this be taken more seriously.

- Mr P's assertion was that this was the best opportunity throughout the process for Prudential to have clarified the confusion around the GMP being able to be paid. There were clear examples of conflicting statements within the documentation issued by Prudential which would have made it difficult for a financial adviser to finalise an opinion without making further enquiries.

- Mr P had further said that the correspondence sent to him by Prudential was something which he was always going to seek financial advice about and that there had been no attempt by Prudential to contact him with clear information about when the GMP would be payable.

- The representative also asked the investigator to revisit his view on the document dated 26 February 2018, which it said was an example of miscommunication as the requested illustration had its own section which was unconnected to other references to age 65 in the same document. The clearest example of this was the following quote within the document:

  "as the sole aim of the fund is to secure the guaranteed minimum pension (GMP) liability at age 65"

- Mr P was of the view that Prudential had no examples of communication around his 60th birthday which described the GMP being payable from his normal retirement date as clearly as it had in the example statement issued in 2021.

The investigator responded to say that there was some potential for confusion around the GMP being available before age 65, and that the true situation was that the fund was designed to provide the GMP at that age. But, he said, Prudential had an obligation to make up any shortfall to ensure the GMP could be payable from the normal retirement date of 60.

The quote about the aim of the fund being to secure the GMP at age 65 wasn't therefore incorrect, but the specifics of this case, and as set out in the documentation, meant that Mr P's GMP could be payable from his normal retirement date of 60.

As to the phone call of 28 March 2018, he confirmed that this would be added to the file notes, but that it would be difficult to draw any specific conclusions relating to the content of the call in the absence of a recording of that call. And this in any case needed to be considered in the context of the other documentation which had been issued.

He remained of the view that Prudential hadn't done anything wrong in this case.

Mr P then responded on his own behalf as follows:

- It seemed that they were both in agreement that there was always the potential for confusion given the reference to separate dates within Prudential's documentation.

- He was always going to seek financial advice on the matter, and it was reasonable that his adviser sought clarification over the phone to ensure that they were giving him accurate advice. It was immensely disappointing that a record of the call in question couldn't be found to help settle the matter.

- That conversation was pivotal in deciding which was at fault in this process, and regardless of there being a recording, this was a missed opportunity for Prudential to clarify the very important point.

- He couldn't imagine that his adviser would have ignored this information as it involved retaining a scheme rather than transferring it over for the adviser to manage.

As agreement couldn't be reached on the matter, it's been referred to me for review.

What I've decided – and why

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

And having done so, whilst I'm sorry to disappoint Mr P, I've reached the same overall conclusions as the investigator and for broadly the same reasons.

At the outset I would say that the investigator has made several further enquiries of both parties regarding predominantly the disputed call of March 2018, which I reference where appropriate below.

As such, and whilst I appreciate that Mr P's representative may consider that further enquiries could be made (and I've noted the more recent mention of a SAR request, which Mr P or his representative is in any case entitled to undertake), I'm satisfied that appropriate enquiries have been made and that I now have sufficient information to reach fair and reasonable conclusions on this case. I should also reiterate that this is an informal dispute resolution service, and I'm keen to provide an outcome to both parties without any further delay.

Both Mr P and his representative have said that the disputed conversation, of which Prudential has confirmed it has no record, was the best opportunity for Prudential to clarify the confusion around when the GMP would be payable. But I don't think Prudential was under the impression that such confusion existed, as it had set out in its written communication that, whilst the GMP would ordinarily be secured at age 65, it would cover the shortfall of paying this at the normal retirement date of 60.

And so if there existed any confusion, the available (corroborated) evidence doesn't indicate that Prudential was aware of this.

As to the assertion that Prudential didn't contact Mr P himself with clear information about when the GMP would be payable, as with the investigator, I note that the correspondence in advance of his 60th birthday set out what would be payable, with no mention of the GMP benefits being deferred to age 65. It was only when the adviser requested the projection to age 65 that this later age was introduced.

Regarding then the document sent on 26 February 2018, I think it's fair to say that the initial wording was that the GMP liability was calculated to 65, with the split between pre and post 1988 GMP being set out accordingly. However, the letter then confirmed that the normal retirement date on the policy was 2 February 2018, and in the "illustration" section, it then clearly set out that, although the fund would only be sufficient to cover the cost of the GMP at age 65, Prudential would meet the shortfall of providing this from the normal retirement date.

And so if there had been any ambiguity preceding that latter statement, then I think it would have been clarified by the above wording. The weight of this, combined with the fact that the documentation issued before Mr P's normal retirement date made no mention of the GMP not being paid before age 65, in my view means that Prudential made the meaning in its correspondence sufficiently clear, in that the GMP would be payable from Mr P's normal retirement date. And this was then reinforced by the later letter on 14 March 2018 confirming that Mr P could begin taking his benefits at any time.

Focus must then therefore naturally turn to the disputed phone call which Mr P's representative said took place and in which it has said that Prudential told the adviser that the GMP wouldn't be payable until age 65. Mr P's representative has asked that, in view of the outgoing call record and the time stamped file note of the same date, this matter be taken more seriously. I do certainly acknowledge this evidence, although as I've conveyed through the investigator, I would say that, if it's always been available, it's unclear to me as to why this seemingly important time stamped document (rather than simply mention of the call) has only been specifically referenced in the latter stages of the complaint, rather than perhaps, as might be expected, in response to the investigator's assessment.

Mr P's representative has said that it thought that the call note had been submitted at the outset, but according to our file there's no record of this being received by this service. Nor can I find any specific reference to this call note prior to April 2024 (the complaint having been submitted in November 2023). I also note that, as set out above, when the call note was referenced in April 2024, the representative asked whether the investigator would like a copy of it to add to the file, rather than asking that the investigator refer to the already submitted document.

And if a time stamped file note of that call has previously been available, it might reasonably be expected that Prudential would have been asked to search its call records for that specific time on that specific date, either directly or through the investigator. This would in my view have surely afforded Prudential the best opportunity to locate it and, as noted by both Mr P and his representative, to settle the matter of whether Mr P's adviser was indeed misled.

I think this might therefore reasonably be characterised as new evidence, but evidence which I have nevertheless taken into account in my consideration of the complaint. And so, at my request, the investigator has again asked Prudential to search for a call on that date, using all the details contained within the file note.

However, it's said that it cannot locate the call (although it did find a call which it initially said was from 4 April 2018, but upon further questioning, confirmed was from 4 April 2023 and so has little relevance here). The investigator has also enquired of Prudential as to the process for call logging and whether this is something which might have been missed by the call handler involved. Prudential has said that all calls should be recorded (without the discretion of the call handler) and the calls are then able to be located by reference to the call handler's name, date of the call, originating telephone number and the number called.

I do also need to take into account the fact that Prudential has been able to provide the call notes, if not the recordings themselves, of other calls made regarding Mr P's plan in 2018, and so it seems to be standard practice that such calls would at the very least be logged and notes input. And so, on the basis of the available evidence, I don't think I can reasonably conclude that it's more likely than not that Prudential told Mr P's adviser that the GMP wouldn't be available until age 65. To be clear, neither am I concluding that the call in question didn't take place, but on the basis that it did, it's of course possible that there was a degree of miscommunication, rather than an instance of Mr P's adviser being misled by Prudential on this matter.

But for the reasons given, I don't think I can fairly or reasonably conclude, again on the basis of the available evidence, that Prudential gave Mr P's adviser incorrect information about when the GMP would be payable. The essential aspect is that I simply can't know what was discussed in the call.

What I am satisfied of, though, is the existence of the documentary evidence which indicates that Prudential set out that the GMP could be taken at the normal retirement date rather than Mr P needing to wait until age 65.

Overall therefore, on an assessment of the available evidence, I don't think the complaint can fairly and reasonably be upheld.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 December 2024.

Philip Miller
Ombudsman