

The complaint

Ms W had a pension with a provider which I'll refer to as provider S in my decision. Provider S is now part of The Prudential Assurance Company Limited (Prudential). So Prudential is responsible for this complaint.

Ms W complains that Prudential sent the wrong information to another provider during a pension transfer. And that it refuses to accept that the pension plan she held with it was a Section 32 pension which contained guarantees. She feels she's suffered a financial loss as a result.

Further, Ms W complains that if Prudential continues to insist that her plan wasn't a Section 32 pension, she feels provider S/Prudential fraudulently accepted the transfer of her pension, as it wouldn't have complied with the transfer conditions of her company pension.

Ms W told this service that a previous complaint she'd brought to us had been ruled out of our jurisdiction because of information she is now relying on in this complaint. She therefore expects this service to be consistent in its use of the information supplied. However, I can only comment on this complaint. I won't be making any reference to the previous one.

What happened

Ms W had a pension plan with Prudential.

On 10 July 1992, her company pension provider wrote to Ms W's financial adviser. The letter said it would be prepared to pay a transfer value on Ms W's behalf to either an Occupational Pension Scheme or to a Section 32 policy. The letter said that if these conditions were met, it would be prepared to pay a transfer value (TV) of £19,350, including £5,976 in respect of Protected Rights (PR), on Ms W's behalf. The letter stated that the TV could be subject to revision pending official confirmation of the GMP amounts involved.

The letter went on to state that: "*Payment can also be made into a Personal Pension Plan*". And included estimated values for the GMP.

Ms W said she was then advised by her financial adviser to transfer her company pension to a Section 32 policy to provider S.

Ms W's adviser wrote to her on 10 August 1992 to sum up her benefits in her company pension and what they might be at age 60. He also explained in this letter that Ms W's company pension provider was prepared to pay a TV estimated at £19,350, of which £5,976 was PR.

Ms W said that her company pension was only transferred to provider S on the basis that it would be transferred to a Section 32 policy. I understand that the pension transferred in 1993.

Parts of the original application form have been provided to this service. This showed it was an: "*application to transfer benefits to a personal pension*".

Ms W signed the declaration on the application form on 20 July 1992. The first point in the declaration stated: "*I apply for membership of [provider S] Personal Pension Scheme*". The form itself contained information about the "*Protected Rights Amount*" – it said this was the cash equivalent of the Guaranteed Minimum Pension (GMP) that was included in the transfer value.

Ms W said her policy with provider S was taken over by Prudential. She said it was then transferred to a new provider in 2012.

Ms W said she was contacted by the financial network for her financial adviser – who I'll refer to as business S - in 2015. She said it told her that she may have lost benefits on the transfer of her Prudential pension to her new provider.

When business S was investigating the pension transfer, it asked Prudential for information. Prudential sent business S a letter dated 12 October 2015 which stated: "*guaranteed annuity rate, guaranteed pension and guaranteed cash sum are not applicable to this plan*".

Following completion of the investigation, Ms W questioned the decision. She provided what she felt was evidence that the policy was a Section 32 policy.

Ms W felt that business S has used the information from Prudential in its investigation, despite holding evidence on its own computer systems that her pension did have guarantees.

Ms W said that investigator S's systems confirmed that her policy with Prudential was a Section 32 pension. And that emails and reports she'd received from her adviser also confirmed this. She also said that regulatory review paperwork additionally confirmed the pension as a Section 32 pension.

Ms W said that on 11 October 2021, she asked Prudential to provide her with all of the data it held on her Section 32 policy.

On 13 February 2022, Ms W complained to Prudential about the transfer. She felt it hadn't provided her with all of the data it held on her Section 32 policy. And that the data she'd been sent was incomplete and incorrect. She said that Prudential had sent incorrect information to business S in response to a regulatory pension investigation. Ms W also complained that she'd had problems getting through to Prudential by phone. And felt that it'd taken longer than it should to provide the information she'd requested.

Ms W felt that Prudential should've kept full and correct details about her Section 32 policy. And that its failure to do so had caused her to lose a significant amount of redress following the negligent transfer of her policy. She wanted Prudential to put things right. She said if Prudential still felt that her policy wasn't a Section 32 policy with a GMP, then provider S /Prudential had fraudulently accepted the transfer as it hadn't complied with the transfer conditions of her company pension.

On 4 March 2022, Prudential issued its final response to the complaint. It upheld Ms W's complaint about the service difficulties she'd faced. And offered her £200 as an apology for the distress and inconvenience caused. But it said there was no evidence to suggest that it had been asked to pay the transfer into a Section 32 policy. Prudential said it'd accepted the transfer on the basis it was proposed, which was for a personal pension. It also said there was no GMP. So it didn't agree that it had fraudulently accepted the transfer.

Unhappy with Prudential's response, Ms W further complained on 17 March 2022. She felt she'd provided it with evidence that her company pension was to be paid into a Section 32

policy. And she still felt Prudential hadn't provided all of the information it held on her policy.

Prudential issued a further final response letter on 5 April 2022. It said it'd fully considered all of the information Ms W had provided. And repeated that the pension Ms W had held with it was a personal pension, not a Section 32 policy.

Prudential felt it had responded as fully as it could to Ms W's complaints and referred her to this service if she was still unhappy.

Ms W wrote to Prudential again on 16 June 2022 with a further complaint. She said she'd experienced a number of service issues including receiving correspondence which made no sense, failing to get through by phone in a timely fashion and the inability of internal teams to transfer calls to other departments.

Prudential issued a final response to the complaint on 12 July 2022. It said it had incorrectly issued an internal letter to her on the back of her request for further information about her policy. It apologised for this error. And for the service issues Ms W had faced. And offered her £150 compensation as an apology for the distress and inconvenience caused.

On 5 September 2022, Ms W wrote to Prudential again about her original complaint. She still felt her pension had a GMP and that she had evidence to prove this. She asked it to supply further information about her policy.

Ms W complained to Prudential again on 18 October 2022. She said that she had further evidence showing that it had accepted her pension was a Section 32 policy. This included a Prudential pension statement from July 2004 which said that certain benefits must be used to buy a pension which couldn't be taken before age 60. And that a 50% spouses' benefit would need to be included.

Prudential issued another final response letter on 27 October 2022. It didn't agree that it had provided Ms W with conflicting information about the guarantees on her policy, or that it'd failed to send her all the information she'd requested.

Ms W didn't think Prudential had covered all aspects of her complaint. So she wrote to it again on 7 November 2022. She felt it hadn't provided any evidence to support its reasons for rejecting her complaint.

Prudential wrote to Ms W on 18 November 2022. It said it had done everything it could to respond to her concerns and that it wouldn't engage in any further correspondence with her about her complaint. It also issued its last final response letter on the complaint, confirming the same points, on 21 November 2022.

Ms W first brought her complaint to this service in April 2023.

Our investigator asked Ms W when she'd first become aware that Prudential had provided information about her policy not having a GMP. And what had made her become aware of this.

Ms W said she wasn't aware that her Prudential policy had a GMP until August 2022.

Prudential consented to this service investigating the merits of the complaint. So our investigator went on to do so.

Our investigator didn't feel that the complaint should be upheld. She felt that the evidence showed that Ms W hadn't applied for a Section 32 policy. And that no GMP had been

transferred to Prudential. She felt that Prudential had acted fairly in providing the information about the plan.

Ms W didn't think that our investigator had addressed a number of mistakes Prudential had made during its correspondence with her. And felt that she'd provided evidence which proved her pension had been a Section 32 policy.

Ms W said it seemed fortunate for Prudential that the application form that our investigator had based her decision on was incomplete. She felt it was unfair to assume that Prudential hadn't accepted the liability for GMP on the transfer on this basis.

Ms W felt that her company scheme wouldn't have transferred her pension to another company if the rules for pension transfer hadn't been met. She said it wouldn't have been allowed, under the rules of the scheme, to transfer her company pension to a plan which didn't meet the requirements for the transfer of pension funds. And that this would've meant it needed future assurance on the transfer of her GMP.

Our investigator told Ms W that although she'd considered all of the evidence she'd provided in support of her view that her pension was a Section 32 policy, she'd concluded that it wasn't persuasive in comparison to other available evidence in this case. She also explained that neither she, nor I, could comment on whether the company pension provider had failed to transfer Ms W's company pension correctly, as the complaint was against Prudential.

Ms W felt that Prudential didn't appear to have any information on the terms of accepting her pension transfer apart from the application form. She said that as the form was incomplete, there was no evidence about whether the pension was accepted on these terms or altered.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it. I know this will be disappointing for Ms W. I'll explain the reasons for my decision.

Whilst I may not have responded to each individual point Ms W has raised, I can assure Ms W that I have carefully considered all of them in reaching this decision.

What's in dispute here is whether Ms W's pension with provider S was a Section 32 policy or not. And whether it received a transfer of the GMP from her company pension or not. If I conclude that Ms W's pension was in fact set up as a personal pension policy with no GMP being transferred, I will also conclude that Prudential provided accurate information to business S about Ms W's policy.

I'd first like to acknowledge that there's only a limited amount of information available from the time of the advice and the time the pension policy was set up. So I understand why Ms W is concerned that Prudential didn't provide her with all of the information it had. She felt that around 17 years of data was missing.

But I consider that given how much time has passed since Prudential was responsible for administering the policy, the amount of documentation it retained isn't unusual. I say this because Prudential ceased to be the administrator in 2012. And it wasn't even the original business that set up the policy, although it did take over from that business.

In any event, even if I did have concerns about the data Prudential has provided, I agree with our investigator that this service is unable to investigate such concerns. I also agree with our investigator that since the documentary evidence from the time of the transfer is relatively sparse, I must make my decision on what I think happened on balance of probabilities.

Before I consider the evidence I've been provided with, I'd like to provide some information about Section 32 policies.

Section 32 policies

Section 32 plans were created by transferring the benefits from an existing workplace pension scheme into a personal pension.

Some workplace pensions included GMPs, which would also be transferred to the Section 32 plan. The Section 32 provider would take on the responsibility to pay the GMP when the consumer reached a certain age (60 for females and 65 for males - the GMP age) regardless of how well the pension had performed.

Where the transfer from a workplace pension included a GMP, the Section 32 provider had to pay the same GMP once the member reached the GMP age, regardless of whether the fund value has grown enough to cover the cost of it.

I'd also like to provide some information about how GMPs are treated following a transfer.

How are GMPs treated following a transfer?

GMPs are treated differently depending on the nature of the receiving pension scheme.

As the July 1992 letter stated, it would've been possible for Ms W to transfer her company pension into a new OPS or to a Section 32 policy, as long as the new provider accepted full liability for the transferred GMP.

But the letter also stated that the transfer payment could be made into a Personal Pension Plan. The letter didn't explicitly state that if that were to happen, the transferred GMP would be held within a money purchase structure, rather than maintaining the "defined benefit" promise of the original GMP. But it did state the amount of the TV that would be in respect of PR.

Ms W said she was then advised by her financial adviser to transfer her company pension to a Section 32 policy with provider S. She also said that her company pension was only transferred to provider S on the basis that it would be transferred to a Section 32 policy. But I haven't seen any evidence that this is what was advised, or that Ms W or her adviser had told provider S that the transfer must be to a Section 32 policy. I say this having reviewed the 10 August 1992 letter Ms W's adviser sent to her. In my view, this letter merely explained the information the adviser had received from Ms W's company pension scheme in July 1992. It didn't state that Ms W should set up a Section 32 policy. And I've not been provided with any evidence that provider S was ever asked to set up a Section 32 policy.

Ms W has said that a report from the Pension Review data showed that her pension was a Section 32 policy. And that some screenshots from her financial adviser's computer network system also showed this. She's also noted other places where third parties have referred to her pension with Prudential as a Section 32 policy.

Additionally, Ms W said that she'd received a Prudential pension statement in July 2004

which said that certain benefits must be used to buy a pension which couldn't be taken before age 60. And that a 50% spouses' benefit would need to be included.

I know Ms W won't agree, but I can't reasonably say that the evidence she's provided of other parties referring to her pension with Prudential as a Section 32 policy shows that such a policy had been set up. Or that Prudential had accepted responsibility for her GMP.

I say this because I'm much more persuaded by the actual application form Ms W completed when her personal pension was set up. This showed that she would transfer PR in place of her GMP benefits with her company pension. And although Ms W's July 2004 statement seems to her to reflect GMP benefits, I'd expect to see information like this in respect of the PR part of her benefits. This is because at the time of this statement there were certain requirements on the use of PR benefits. And these were similar to those for GMP.

While I acknowledge that Ms W thinks her company scheme wouldn't have transferred her pension to a personal pension plan, because it wouldn't have been allowed under the rules of that scheme, I don't agree this meant that the policy she set up with provider S would've had to take on her GMP. And I don't agree that a personal pension plan couldn't be used for the transfer.

I'm satisfied that a transfer to a personal pension, rather than a Section 32 policy, was a valid option at the time of the transfer. I say this based on the regulations at the time and the content of the July 1992 letter. I'm also satisfied – for the same reasons - that provider S didn't need to set up a Section 32 policy for Ms W in order to meet her company pension provider's requirements.

I also note that the only application form provided as evidence shows that Ms W applied for a personal pension, not a Section 32 plan. And that there's no evidence that the GMP Ms W had built up in her company scheme was transferred to provider S/Prudential.

Instead, I consider that the evidence shows that almost £6,000 of the value transferred to provider S/Prudential was in respect of PR. The application form itself explained that the PR shown was the cash equivalent of the GMP that had been included in the transfer value. So I think it was relatively clear that Ms W would be exchanging her GMP for PR if she went ahead with the transfer. The adviser's letter of August 1992 also stated: *"If you were to transfer the benefits to [provider S] using the transfer value estimated by [company pension provider], your pension would depend on the performance of the funds in which you invested"*. I think this also makes it clear that the future benefits from Ms W's new plan would depend on the investment performance.

Therefore, I can't fairly say that provider S/Prudential set up the wrong sort of pension for Ms W. Neither can I reasonably conclude that Prudential provided incorrect information to business S.

I can see that Ms W feels very strongly about her complaint and that she's spent a great deal of time and effort trying to get to the bottom of this situation. I hope that she is now satisfied that provider S/Prudential correctly set up the policy she applied for. And that the policy wasn't set up fraudulently, as a transfer to a personal pension was permitted by the company pension.

For the reasons I've outlined above, I don't uphold the complaint.

My final decision

For the reasons explained above, I don't uphold Ms W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 6 December 2023.

Jo Occleshaw
Ombudsman