

Ombudsman's Determination

Applicant	Mr K
Scheme	The Fabrics EPP (the Scheme)
Respondents	Prudential

Outcome

1. I do not uphold Mr K's complaint and no further action is required by Prudential
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K and his adviser have complained that Prudential did not inform them that Guaranteed Annuity Rates (**GARs**) are not available after age 70.
4. Mr K claims financial loss due to the lower annuity rates now available to him as he is over 70 years old.
5. Mr K's adviser states that the rules do not say that the GARs do not apply after age 70.

Background information, including submissions from the parties

6. On 13 May 2015, while Mr K was age 71, Mr K's representative requested three retirement illustrations from Prudential. He requested that the illustrations were all based on based on GARs, and a five year guarantee with 0%, 50% and 100% spouses' pensions. None of illustrations were to include a tax free cash lump sum.
7. On 1 July 2015, Prudential provided the three annuity illustrations, all with a five year guarantee. One with no spouse's pension, one with a 50% spouse's pension and one with a 100% spouse's pension. None of the illustrations were based on GARs.
8. While none of the illustrations were based on GARs, there was a document enclosed with the illustrations titled "Important Information". This document details the GARs in a table and provides notes on when they apply. The table is laid out according to age and for males there are annuity rates shown from age 60 to age 70 at yearly increments. While the table stops at age 70 the attached terms do not state that the

GARs are not applicable to a member after age 70. It is stated that GARs will be lost upon transfer or when purchasing an annuity on the open market.

9. The "Important Information" document confirms that the GARs at age 70 for a male is £12.15 for every £100 for a single life annuity. Mr K's fund value is quoted as £33,840.66. The 0% spouse's pension quoted on 1 July 2015 not using GARs is £2,382.96 per annum.
10. On 10 July 2015, Mr K's representative telephoned Prudential to question the illustrations provided. He asked why the GARs had not been used. Prudential confirmed that GARs do not apply to Mr K as he is over the age of 70. Mr K's representative raised a complaint and requested that Prudential honour the GARs due to the following reasons.
 - Neither Mr K nor his representative had been told that GARs would not apply past the age of 70.
 - None of the documentation, including annual statements, confirms that GARs are not available past the age of 70.
 - That Prudential have a duty to inform the member that in order to benefit from GARs, a member needs to retire before 70.
 - Mr K's representative had been told in the previous telephone call that GARs would apply.
 - Documentation issued after Mr R turned 71 still refers to GARs.
11. On 18 August 2015 Prudential responded to the complaint. The complaint was not upheld because:
 - Members would have been made aware upon joining the Scheme by the Trustees that GARs ended at 70.
 - GARs are not referenced in annual statements, however, Mr R was made aware of the availability of GARs and the applicable rates in correspondence issued on 23 June 2004, 23 July 2009 and 29 March 2011. Some of this correspondence was transfer quotations, which confirm that GARs are lost upon a transfer.
 - In the letter issued on 1 July 2015, and all previous correspondence including a GARs table, the table only goes up to age 70.
 - No correspondence was issued that confirms that GARs are available past the age of 70.
12. On 4 March 2016, Prudential submitted copies of the above mentioned correspondence to this office along with a copy of the rules. The rules contain a table similar to that in the "Important Information" document, which details GARs and confirms that it is applicable as detailed in Schedule 2. This does not confirm what

annuity rates are applicable after age 70. However the rules do state that Normal Retirement Age (**NRA**) for males is between age 60 and age 70 and for females is between age 55 and 70.

Adjudicator's Opinion

13. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised briefly below.
 - Prudential state that the Trustees would have made members aware of the age limits of applying GARs and it is reasonable for Prudential to assume that Mr K would have been provided with this information when Mr K joined the Scheme.
 - The rules clearly state that NRA for males is between age 60 to 70. No GARs are shown for either males, or females before their respective NRAs and after age 70.
 - There is no evidence available that either Mr K, or his representative, contacted Prudential to obtain confirmation of GARs at any age past age 70. Further Mr K had decided to defer his retirement past age 70, it would be prudent for him to enquire with Prudential what the impact of retiring after 70 would be, in relation to the GARs.
 - Despite this, the documentation that Prudential issued on 1 July 2015 is slightly misleading. Mr K was age 71 at the time and the GARs table in this documentation also only goes up to age 70, its inclusion may have led to some confusion. However, the value of the quotations made it clear that they were not based on GARs.
14. Mr K's representative did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K's representative provided his further comments which are summarised below.
 - This was a directors' Executive Pension Plan where the employer was the Trustee and the plan was sold to Mr K as a director of the company. Mr K confirms that Prudential did not discuss the GARs with him when setting up the Scheme, he only became aware of them when it was pointed out by his representative in recent years.
 - Schedule 2 does not state that the GARs cease at age 71. The wording "'Age' means the age of the Member on the anniversary of birth on or last preceding the date on which the annuity first becomes payable." means that from age 70 onwards the rate at age 70 will apply.

- While the NRA is between age 60 and 70 late retirement is allowed under legislation and the policy documentation does not state that late retirement is not allowed or will affect the benefits provided. If this was the case then Prudential should have written to Mr K before age 71 to inform him that he would lose the benefit of GARs.
- He did contact Prudential prior to Mr K turning 70 and it was confirmed verbally that GARs would apply.
- Prudential have now changed their documentation since this complaint was submitted to clearly state that GARs only apply to age 70, this indicates that they are aware that the information previously provided was unclear and misleading.

15. Prudential have responded to these points as below.

- Due to the length of time that has elapsed, Prudential cannot say whether GARs were discussed, but they have said that as Mr K would have been a director and Trustee he should have familiarised himself with the Scheme rules.
- Had Mr K retired while age 65 he would have received an annuity based on age 65 GARs. Had he retired while age 70, likewise he would have received GARs based at 70. However if he retired in 73, there are no GARs available for this age and they are unable to apply the GARs as of 70, as 70 is not the last birthday before his retirement age.
- Where no GARs are mentioned in relation to a specific age, no GARs apply at that age.
- Correct statements were supplied that did not include GARs and Prudential are unable to locate any records of the conversation that the representative is relying on.

16. The points summarised above do not change the outcome. I agree with the Adjudicator's Opinion, as summarised above, and I will therefore only respond to the key points made by Mr K's representative for completeness.

Ombudsman's decision

17. The Scheme commenced in 1979 and I would expect Mr K would have had the opportunity to read the documents in full, either before signing it or shortly after. In any event considering the time elapsed, I am not persuaded that any events of 1979 would have a bearing to the outcome as neither party can accurately recollect what was discussed.
18. The question before me is, whether the Scheme pays a GARs to members who retire after 70. After reviewing the GAR table, I cannot interpret it to mean that GARs are

available for members who retire after age 70. I cannot see how a member who retires at 74 should receive a pension based on GARs of age 70.

19. The fact that Prudential have corrected their literature, leads me to conclude that their position is correct but was not set out clearly. However, I do not think that Mr K should have interpreted the literature he received in the manner he did. GARs apply to male members, in this case Mr K, from age 60 to 70 – it was for Mr K to retire during this period in order to benefit from the GARs. The fact he has applied after 70, does not mean that Prudential should alter the application of the GARs to suit Mr K.
20. Also, as a director of the company which was the trustee of the Scheme I would have expected Mr K to have a clear understanding of the benefits provided and the restrictions which applied.
21. Prudential are not preventing Mr K from retiring late but only that GARs do not apply as he is now older than age 70.
22. There is no evidence which would support the contention that Mr K's representative was verbally informed by Prudential that the GARs would apply after age 70. I am unable to agree with him that as a result GAR at 70 should apply to Mr K regardless of the fact that he is over 70.
23. Therefore, I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
31 January 2017