

The complaint

Mr D complains that The Prudential Assurance Company Limited (Prudential) mis-sold him an annuity in 2009, resulting in a missed opportunity to purchase an enhanced annuity.

What happened

Towards the end of 2008, Mr D requested a retirement pack from Prudential. Although Mr D doesn't recall requesting this, Prudential have provided a copy of the documentation sent at the time. For reasons unknown, no action was taken at this stage by Mr D.

In June 2009 Mr D requested another retirement pack. Prudential sent Mr D his benefits package. This included:

- Cancellation Substitute;
- Quotation;
- Key Features; and
- Benefit Instructions Form

Mr D completed the relevant forms and returned them to Prudential and consequently took out an annuity with them.

In 2016 The Financial Conduct Authority (FCA) published findings of a thematic review they'd carried out. The review was of non-advised annuity purchases. The FCA contacted Prudential and asked that they reviewed their non-advised annuity sales. Specifically, in 2019 Prudential carried out a review of Mr D's annuity sale. They asked Mr D if he was aware that if he:

had certain medical conditions or lifestyle conditions (such as overweight, smoked or previously smoked) at the time the annuity was purchased on 1 June 2009 that [he] may have been eligible for an enhanced annuity.

Mr D complained to Prudential as he felt he hadn't been made aware of this. He stated that at the time (2009) both he and his wife had certain lifestyle conditions that he would have notified Prudential of.

Prudential reviewed the documents they sent to Mr D at the time and the information he'd provided in response. They concluded that they had provided Mr D with all the relevant information they were required to at the time. Therefore, they explained Mr D should have informed them of his lifestyle conditions in 2009.

Unhappy with this, Mr D brought his complaint to us in October 2019. Mr D maintained that the information Prudential provided didn't specify lifestyle conditions. Our investigator reviewed the documentation Mr D said he'd received. And the documentation Prudential said they'd sent. Concluding that Mr D was referring to the wrong documentation, our investigator explained that Prudential had provided the correct information at the time of the annuity purchase. Pointing out that Prudential had shown us copies of documentation sent to Mr D in

2008 and 2009. Our investigator explained that the documentation Mr D had been referring to was that sent to him in 2008.

Our investigator also stated that even if Mr D had provided details of his lifestyle conditions to Prudential, it wasn't a guarantee that he'd have been able to purchase an enhanced annuity. It would have merely been a trigger to Prudential to gather more information from Mr D. Further it was unlikely that he would have been able to purchase an enhanced annuity in any event, given the specific nature of his lifestyle conditions.

As Mr D disagreed with our investigator's findings, this has been passed to me for a final decision. Mr D states he has no recollection of documentation being sent to him in 2008. Concluding that the documentation he is relying on must have been sent to him in 2009. And has asked, that his annual annuity payment be reviewed and increased. He also questioned why Prudential hadn't stated that he wouldn't have been able to purchase an enhanced annuity in any event, if that was the case.

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.

Mr D says he doesn't recall asking for a retirement pack or *Key Features* leaflet prior to 2009. However, Prudential have provided copies of documentation sent in 2008, which included a *Key Features* leaflet. It would seem the *Key Features* leaflet provided in 2008 is the leaflet Mr D has been referring to. Having seen copies of the documentation Prudential sent to Mr D in 2008 and in 2009, I am satisfied that the version I am relying on (W515 05/09) was the version issued to Mr D in 2009, after Prudential had updated it.

Rules about annuities in 2009

Mr D has said he wasn't aware that certain medical or lifestyle conditions could have made him eligible for an enhanced annuity. The specific conditions relevant in this case are being overweight, a current smoker or having smoked previously.

The rules at the time stated the pension provider had to either provide their client with the FSA's factsheet titled *Your pension: it's time to choose* or a written statement *that gives materially the same information*.

I've reviewed the benefits pack Prudential sent to Mr D in 2009. And I can see Prudential provided *materially the same information* to Mr D. The cover letter stated:

Before you take your Annuity, you should read the Cancellation Substitute as it tells you important information you need to know about your pension income options ... You can take your benefits from Prudential or use the 'open market option', which allows you to choose another pension income provider. We recommend that you get in touch with your financial adviser to help you decide on the most suitable choices for you.

Prudential made Mr D aware of the open market options and advised him to get financial advice. They also advised him to read the *Cancellation Substitute* which provided further information about options available to Mr D. I'm therefore satisfied that Prudential met the requirements regarding selling annuities at the time.

Should Mr D have known to inform Prudential about his conditions?

Both the cover letter accompanying Mr D's retirement pack and the *Cancellation Substitute* (part of the retirement pack), stated he should read the *Key Features* leaflet. This leaflet set out his options including enhanced annuities. Page 16 said:

You could qualify for a higher income if you and/ or your dependent ... have a medical condition that could reduce your and/ or your dependent's life expectancy. This option is known as an Enhanced Annuity.

On page 17 it then says:

Lifestyle conditions – We will take into consideration conditions associated with your lifestyle such as smoking, high BMI, raised cholesterol and high blood pressure. We also consider other conditions on an individual basis.

I therefore cannot agree that the possibility of an enhanced annuity wasn't shared with Mr D. Based on the information shared with him at the time, it would be fair to say Mr D had enough information to decide whether a more detailed conversation (at the very least) regarding his conditions would be helpful. Further, he always had the option to seek independent advice from a financial advisor. And this was specifically pointed out to Mr D by Prudential prior to him purchasing the annuity.

Purpose of the Prudential review in 2019

The FCA asked Prudential to look into whether certain clients who'd purchased a non-advised annuity from 1 July 2008 onwards were aware that:

- *If they had certain medical conditions or lifestyle conditions at the time the annuity was purchased (in Mr D's case June 2009) ... that they may have been eligible for an enhanced annuity;*
- *They could have potentially received a higher income by shopping around for an enhanced annuity with another provider.*

Mr D maintains this wasn't communicated to him. He believes the fair and reasonable approach would be that Prudential under the circumstances, acknowledge that Mr D did have certain lifestyle conditions at the time of his annuity purchase, and consequently increase his annual annuity payment amount.

I do not agree that Prudential failed to provide the relevant information required of them to Mr D at the time. As I have already explained the *Key Features* leaflet contained the necessary information regarding the possibility of an enhanced annuity. Further the cover letter stated:

You can take your benefits from Prudential or use the 'open market option', which allows you to choose another pension income provider. We recommend that you get in touch with your financial adviser to help you decide on the most suitable choices for you.

This combined with the *Key Features* leaflet, show Prudential had covered the points raised by the FCA, at the time of the annuity being purchased. The fact that Mr D didn't share information regarding lifestyle conditions he/ his wife had at the time, isn't something I can hold Prudential responsible for.

The purpose of the review was to make sure Mr D had the information needed in order to make an informed choice. Not to provide an enhanced annuity retrospectively, which seems to be what Mr D is arguing, at least in part.

Further, Prudential's *Key Features* leaflet clearly states Prudential can only offer an enhanced annuity *at the time* of the annuity purchase. It then goes on to invite the client to call if they think they may be eligible. This further demonstrates that Prudential made Mr D aware of next steps to take if he thought he may be eligible for an enhanced annuity.

Would Prudential have offered an enhanced annuity anyway?

Taking the above into consideration, whether or not Prudential would have offered Mr D an enhanced annuity in 2009 is immaterial. Having reviewed the content of the documentation provided in 2009, I can see Mr D was provided with sufficient information, explaining an enhanced annuity may be an option available to him. I am satisfied therefore that Mr D was made aware of this at the time, but he didn't notify Prudential of his/ his wife's conditions. Therefore, this needn't be considered any further.

Is there any loss?

Mr D has explained that he'd like his annual annuity payments to be increased as he feels he would have been able to purchase an enhanced annuity in 2009. However, Prudential provided all the information they were required to in 2009. This information clearly explained that certain lifestyle and medical conditions may make an enhanced annuity an option. Mr D missed the opportunity to purchase an enhanced annuity, but this was by his own actions, not due to Prudential.

In summary, I understand Mr D is likely to be disappointed by my decision. But with the evidence provided, and having seen he was made aware that certain lifestyle conditions would be a factor for considering an enhanced annuity, I cannot say that Prudential have failed to review his annuity purchase fairly. Nor can I say that Mr D wasn't made aware of enhanced annuities and the possible criteria in 2009. I therefore will not be asking Prudential to do anything further.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 March 2021.

Chantelle Findlow
Ombudsman