

## **The complaint**

Mr D is unhappy that The Prudential Assurance Company Limited won't include cancer as part of his calculations for his enhanced annuity review.

## **Background**

Mr D's annuities were initially set up in January 2010. However, later the industry regulator the Financial Conduct Authority (FCA) had concerns about the information customers had received in non-advised sales of annuities. The particular relevant concerns here centred around whether customers were adequately informed about the ability to take out annuities enhanced for medical or lifestyle conditions.

The FCA asked firms to carry out a review of non-advised annuity sales. The FCA set out the criteria for how this should be carried out and the calculation process.

Prudential asked Mr D to provide information regarding his medical and lifestyle conditions applicable in January 2010. Mr D informed Prudential that he had been diagnosed with BRCA 1 gene in February 2006 as well as other conditions such as diabetes. Mr D also told Prudential that he had later been diagnosed with prostate cancer in early 2013.

Prudential carried out its review calculations and sent Mr D an offer of compensation. For each annuity, cancer had not been included and this was shown on the documentation.

Mr D complained that BRCA 1 should've been taken into account as research shows it can lead to cancer, as it subsequently did for Mr D in 2013.

Prudential didn't uphold Mr D's complaint. It said it could only consider conditions he'd been diagnosed with when he took out the annuity in January 2010. And as his cancer was diagnosed after this, it wouldn't be included in its calculations. It said its underwriters were well aware of what Mr D had told it about the BRCA 1 gene. But it said it had followed the FCA guidelines for the annuity review and for assessing medical and lifestyle conditions.

Mr D remained unhappy and his case was considered by one of our investigators. The investigator concluded that the case shouldn't be upheld. She explained that as Mr D didn't have cancer at the time the annuities were set up it wouldn't be considered as part of his annuity calculation. Mr D responded to say he still disagreed. He said that it's a proven medical fact that those that carry the BRCA 1 gene have a greater likelihood of being diagnosed with certain cancers. And it's irrelevant that he didn't have cancer when he took the annuities out in 2010 as the likelihood of developing cancer is higher than the general population and therefore his life expectancy is reduced.

## **My findings**

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

The matter for me to decide here is whether the BRCA1 gene should have been taken into account in Prudential's review of Mr D's circumstances in 2010 when he took out his annuities.

Mr D has explained and sent information regarding the BRCA1 gene, which shows that carriers are more likely to be diagnosed with cancer than non-carriers of this gene. However, this is not in dispute, I think all parties accept this.

Mr D says this has reduced his life-expectancy and therefore should be reflected in the rate given to him by Prudential for his annuities.

To carry out its calculations for the review, Prudential was given criteria and a calculation model for conditions that qualify for an enhanced rate and the rate that should be applied for those. And it was given instructions on how to carry out these reviews.

Mr D has asked to see a copy of the regulator's criteria for qualifying medical conditions but Prudential has said it cannot give this to him. I appreciate why Mr D would want to see this but this isn't something that the FCA shares. This is because the review model is strictly confidential, the regulator created the model to work as an aggregate across the firms in the market at the time. This takes into account the qualifying medical conditions and the rates applied across the firms in the market. So the model will include sensitive commercial data about other firms. To carry out the review business such as Prudential received instructions on how to carry out the review but it won't have had access to the decision making process about the medical conditions offered by other firms and how the FCA has decided upon which conditions qualify.

So Prudential have to adhere to the terms of the review, it's not for them to decide which conditions should receive an enhanced annuity rate. Prudential has confirmed that its underwriters have considered Mr D's evidence regarding the BRCA1 gene when carrying out the review. But the presence of the BRCA1 gene does not qualify as a form of cancer diagnosis in terms of an enhanced annuity. And on its own, it's not a condition that qualifies for an enhanced annuity.

Prudential has also told us that under its own underwriting terms at no time has the presence of the BRCA1 gene ever qualified for an enhanced annuity. Whilst this isn't directly relevant here, it does suggest that across the market the BRCA1 gene wouldn't qualify as a condition that provides an enhanced annuity.

Whilst I understand the arguments that Mr D has made and the evidence he's provided about the BRCA1 gene – it does not qualify him for an enhanced annuity under the review. And that is all Prudential were required to do, carry out the review as prescribed by the regulator.

So I don't think Prudential has done anything wrong here. I'm not sure it will be of much comfort to Mr D but it does seem that it's an industry wide position that the BRCA1 gene doesn't qualify for an enhanced annuity. And therefore, whether or not Prudential had made him aware of his options sufficiently in 2010, I think it's unlikely he'd have found an annuity provider who would've offered him an enhanced annuity on this basis.

### **My decision**

I do not uphold Mr D's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 April 2020.

Simon Hollingshead  
**Ombudsman**