

The complaint

Mr R is unhappy that The Prudential Assurance Company Limited's review of his annuity found he wasn't due any redress.

Background

In December 2009 Mr R called Prudential, the conversation started with Mr R saying that he'd not received an annual statement and a short discussion about this. Mr R asked about the current value of the plan and then whether he could take his benefits now. The call handler said that he could and confirmed that Mr R could take 25% of this as a tax free lump sum and the remainder as an annuity. The call-handler said they would send Mr R a retirement pack.

A retirement pack was sent including Mr R's quotation and a Key Features Document outlining his options.

The quotation that Mr R received said on page 2 under a bolded title.

'ENHANCED ANNUITIES

This illustration is based on standard annuity terms This is because we don't offer a higher annuity income based on any health or lifestyle factors that affect how long you or your partner (if joint life) might live, such as medication, occupation and smoking. This is known as an enhanced annuity and if you are eligible for this type of annuity, other providers could offer you a much higher level of income

If you have a serious health condition and your life expectancy is significantly reduced, you may be able to get all of your pension paid out tax-free If this is the case, please contact us as soon as possible

For annuities, it's important to shop around so you can get the highest possible income If you or your partner (if joint life) have or have had health and/or lifestyle conditions this can increase the amount of income you can get It's important for you to know different providers may use different criteria to assess health and/or lifestyle conditions which could result in you getting a higher income That's why it is very important that you shop around If you don't shop around, you could lose out on a higher income'

The Key Features Document made several other references to there being an option to take an enhanced annuity.

Mr R chose to take his benefits with Prudential, he selected to take a cash lump sum and an annuity with a five year guaranteed period.

More recently Prudential wrote to Mr R to say that it had looked at his annuity sale as part of an industry review carried out for non-advised sales of annuities. The purpose of this review was to look at whether customers had been given adequate information about their choices at the time. A big part of the review focused on situations where customers had a health

condition that may have qualified them for an enhanced annuity but they chose not to take up this option.

Prudential contacted Mr R and he confirmed he'd made his choices based on the documentation he'd received at the time of taking the annuity. Prudential wrote to Mr R to say it had found that it had provided enough information for Mr R to make an informed choice about his annuity. And the outcome of the review was that there was no action needed.

Mr R was unhappy with this and raised a complaint. Prudential looked into it and explained in more detail why it had reached that outcome. It said that it had complied with the terms of the review it was asked to carry out by the Financial Conduct Authority (FCA). It said Mr R had confirmed that he had relied on the documentation he had received when making his choices. And Prudential confirmed that the FCA had determined that its standard retirement packs were compliant and contained enough information about the enhanced annuity option.

Prudential referred to the telephone call prior to Mr R taking his benefits but it said it had done nothing wrong here. As the conversation was only about providing Mr R with a quote rather than discussing his options.

However, it did uphold Mr R's complaint about the standard of service he'd received in dealing with his complaint and it paid Mr R £100 in recognition of this.

Mr R contacted this service as he remained unhappy with the result of the review. Our investigator looked into the case but he didn't recommend that it be upheld. His view was that Prudential had given Mr R enough information about the enhanced annuities in the retirement pack to make an informed choice. And he agreed with Prudential that the telephone call was just a request for a quotation rather than a time when his annuity options should have been discussed.

Mr R remained unhappy with this; he still felt that Prudential should've told him at the time of the call that there were other options available. Mr R also felt that the written documentation didn't make the enhanced annuity option clear or prominent enough. Mr R says he had a condition that would've qualified him for an enhanced annuity and he thinks Prudential should have done more to notify him of this. Mr R referred to the final notice issued against Prudential which explained its failings with regards to non-advised sales. He says the FCA review and the final report notice show that Prudential were miss-selling annuities at the time he took his out. And that he firmly believes he should've been told in the call about the enhanced annuity option.

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 issues for me to decide is whether Prudential should've told Mr R about the enhanced annuity options in its telephone call with him prior to sending him his retirement options. And more widely has Prudential carried out its review of Mr R's annuity sale fairly and in accordance with the instructions given by the regulator.

I've considered the arguments put forward by Mr R with reference to the thematic review document published by the FCA.

Prudential says it has carried out its review in line with the guidelines given by the FCA in this review. It's also said that its standard documentation has been deemed compliant by the

FCA. Having looked at the review guidelines and the final notice which explained Prudential's failings, I'm satisfied that Prudential has met the standard required in terms of the written documentation sent to Mr R. It did send Mr R its retirement pack that was deemed complaint. This made the option of the enhanced annuity clear. The quotation, as discussed above, prominently mentions the option of enhanced annuities. And the retirement pack included the Key Features Document that also had a number of sections where the enhanced annuity option was discussed. So I don't think any further discussion of the written documentation Mr R was provided with is necessary here.

However, as Mr R has pointed out the review guidelines also require firms to have adequately outlined customer's options verbally if a conversation about this occurred.

Prudential say that as Mr R has confirmed that he relied only on the written documentation when making his choices, the review outcome is a non-uphold. It says that the call wasn't relevant as it wasn't about his retirement options.

However, Mr R has argued with reference to the final notice and the review guidelines that he should've been made aware in this call.

Looking at the FCA review it focuses and refers mostly to cases where a customer has received a warm-up pack before retirement and any significant communication that follows this. However, Mr R's circumstances are somewhat different, he called Prudential to request a quotation rather than receiving a warm-up pack which prompted further contact.

In the review's overall conclusions it says:

'The majority of our concerns arising from the review published here relate to significant oral communications (usually in the form of a telephone conversation) in which firms discussed with customers their annuity options, but did not mention enhanced annuities or the customer's option to shop around on the open market for a higher income'

The review says that in significant oral communications firms should've made customers aware of their options and specifically the enhanced annuity options available. It also explained that in its review, it found that often that firms were relying on their wake-up packs (sent by firms when customers were coming up to retirement) and not reinforcing these messages in subsequent calls.

So I do think it is important to take into account that this wasn't a call Mr R made after receiving his options as part of a proactive wake-up pack or a retirement pack that he'd previously requested. At this point Mr R hadn't yet received any documentation about his options.

In Mr R's call the only reference to Mr R's annuity options was whether he could take a lump sum when he asked whether he could take his benefits now. The call handler said that he could and that they would organise for Mr R to receive a retirement pack – as I said above, this retirement pack outlined all of his options including enhanced annuities. No further discussion occurred about Mr R's annuity options after this.

The option to take a tax-free cash sum would've been available whether taking an annuity with Prudential or an enhanced annuity/open market option available elsewhere. So I don't think the call-handler would've thought it necessary to qualify this in terms of there being other options available and to go on to discuss these. This question was at a very basic level and was a question tagged onto the purpose of the call, Mr R enquiring about his annual statement and requesting a retirement quotation. The call-handler dealt with this call as a

matter of a request being made and actioning this request – which they did as Mr R did then receive his quotation.

After listening to the call and considering the context around it, I don't think this qualifies as a significant communication as outlined in the review guidelines. The call wasn't a call about discussing Mr R's annuity options, it was a call about his annual statement not being received and it progressed to Mr R requesting a retirement quotation. Mr R had not yet received any current documentation about his options at retirement. Whilst he did ask about whether he could take tax-free cash I don't think this constitutes a discussion about his annuity options and I don't think it reasonably should've led to one. I say this because Mr R wouldn't yet have known his annuity options and I think it would've been somewhat premature in this context for the call-handler to lead a discussion about all the options Mr R could have. Especially, as they would've known that shortly after Mr R would receive written documentation with the options outlined.

The review guidelines say that firms should consider all the significant communications as part of its assessment. However, it says conversations that were purely administrative can be discounted and for the reasons explained above, I do think Mr R's call falls into this category. So I think Prudential was correct in discounting this call from its review and focusing on the written documentation he received.

So my conclusion is that Prudential has complied with the review guidelines. I appreciate that Mr R will be disappointed with my decision.

My final decision

For the reasons explained above I don't uphold and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 April 2020.

Simon Hollingshead
Ombudsman