

The complaint

Mr H complained about the advice he received from one of The Prudential Assurance Company Limited's advisers.

What happened

In 1981 Mr H took out a Pure Endowment policy with another company. The sum insured if Mr H survived until 1 March 2014 was £33,571 (with profits). The cost of the policy was £40 a month.

In 1986, upon receiving advice from one of Prudential's advisers, Mr H took out a retirement annuity policy with Prudential. The cost was £45 a month, for a guaranteed annuity of £1,791.71. The quotation gave projections of a total pension payable (ie including bonuses) upon Mr H's retirement of £21,233.25 per year; or a lump sum payment of £42,080 and a pension of £12,146 per year. The paperwork made it clear that bonuses weren't guaranteed. Mr H increased his monthly contribution several times over the years upon the advice of the adviser.

Mr H stopped paying for the endowment policy in 1986 when the new policy started. When it stopped the sum insured if Mr H survived until 1 March 2014 was £5,172 (with profits).

Mr H retired in 2013 and started receiving an annuity. He complained to Prudential in 2019 because he thought the policy had been mis-sold. He said the policy didn't achieve anything near what he was promised and that he'd lost money in comparison to the original policy he held. He also wanted to know how much commission had been paid to the adviser. Prudential looked into the matter but didn't think the policy had been mis-sold. It also said the adviser was a salaried employee, and it didn't know how much commission he received.

Our investigator didn't think the complaint should be upheld. She said the adviser was required to advise with reasonable care and skill and not make negligent statements, and she hadn't seen anything to suggest the adviser didn't do this. She also said the fact the original investment might have performed better over the years didn't automatically mean the advice was inappropriate - the adviser had no way of knowing how either policy would actually perform. Our investigator didn't think the level of commission paid to the adviser affected this.

Mr H disagreed with our investigator. He felt he was conned by the adviser into cancelling his initial policy and taking out the new one. He said he paid around £65,000 into the Prudential policy and the fund value was £117,648; which compared to paying around £2,400 into the original policy and receiving just over £33,000. He also said he receives just over £7,000 a year for his pension, which given that he paid £65,000 into the policy in the first place means he's effectively paying his own pension for the first nine years. Mr H also asked why Prudential wouldn't tell him how much commission it paid to the agent.

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.

I need to decide this complaint taking account of the practices in 1986. This is important because I can't, for example, look at what advisers need to do now and apply those standards to a sale in 1986. I also confirm that I've noted the various points Mr H has made in his submission to us and Prudential. However, I've only concentrated on what I think the important points are in order to decide this complaint.

The regulatory requirements in 1986 were far less stringent than they are now. In essence, an adviser had to:

- not make negligent mis-statements
- where information was given, disclose all material information, and
- where advice was given, advise with reasonable care and skill.

The paperwork available from the time is limited; and apart from what Mr H has said I haven't seen anything specifically detailing what advice was given. However, it seems most likely that Mr H was advised to stop paying into his original policy and to start paying into the Prudential one. But even if I work on that basis, I don't think there's sufficient evidence available either way to show whether or not the adviser made negligent statements, disclosed all material information and/or advised with reasonable care. He might have; but he might not have either.

I accept that might seem unsatisfactory to Mr H. But in order to uphold this complaint I have to be persuaded that it's more likely than not the adviser didn't adhere to the necessary requirements. I can't fairly reach that conclusion when there's insufficient evidence either way - at best, one scenario is *just as likely* as the other; rather than being *more likely* than the other. It's also the case that it was generally seen as being good advice for someone to have a pension, Mr H seemed to be able to afford it, and the Prudential policy looked at the time like the better option. I haven't seen any information to make me think that Mr H shouldn't have taken out the policy.

There is an argument that as the adviser advised Mr H to stop paying into his existing policy he should have checked any potential features that policy had. But Mr H has told us that he gave the adviser copies of the relevant documentation and the adviser took that away with him to work out if the Prudential policy was better. So, given that, I conclude that the adviser most likely checked Mr H's existing arrangements and took them into account in the advice he gave.

Much of Mr H's argument is based on the original policy performing better over the years. That, in my opinion, doesn't in itself automatically mean the advice given was inappropriate. Mr H provided us with a copy of the quote he received in 1986 from the adviser, and the projections detailed in it (outlined above) were favourable compared to the projection for the original policy. I haven't seen anything to show that the quote was inaccurate based on what was known and expected at the time. And of course, it was (and remains) impossible for anyone to predict with any degree of certainty how any investment will perform in the future.

Over the years Mr H was advised by Prudential's adviser to increase the amount he was paying into his pension. At least two of those occasions was when the adviser no longer worked for Prudential, so it isn't responsible for that advice. Nevertheless, the advice to keep paying into a pension doesn't seem unreasonable in order to increase income in retirement.

The pension landscape was different during Mr H's working life to what it is now. At the time, people built up their pension pot by regularly paying into it over their working life. They then used that pot to buy an annuity to provide them with an income for the rest of their life. There's a risk to both parties when an annuity is purchased. Generally, if a person lives a long life the business will probably lose out financially because they will pay more in annuity payments than what they received when the person bought the annuity. On the other hand, if a person dies shortly after buying the annuity the business will probably 'gain' because they will pay out less than what they received. So I'm not persuaded by Mr H's argument about him effectively paying his pension for the first nine years - that happens for everyone when they buy an annuity.

Regarding the commission paid to the adviser, I think this is a case of Prudential simply not having the information rather than it not being open. Prudential told Mr H (in a letter dated 6 August 2019) that it only kept commission records for six years. I think that's reasonable. The sale was nearly 35 years ago and the policy ended in 2013 when Mr H bought the annuity. In any event, the fact the adviser might have received commission payments doesn't mean the advice that was given was flawed.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2020.

Paul Daniel
Ombudsman