DRN-2213456

Financial Ombudsman Service

The complaint

Mr W complains that The Prudential Assurance Company Limited changed his flexible lifetime annuity ("FLA") from self-managed to a guaranteed income stream and said it wasn't paying him the correct amount of pension.

What happened

Mr W said he had a self-managed FLA. He had objected to the conversion to a Guaranteed Income Stream (GIS). He eventually said he would accept a conversion provided that his pension payments were not lower than the values quoted to him. He queried the amount of pension he was being paid compared to the quotes provided and the value of the underlying assets that were in his FLA.

The Prudential said Mr W had chosen an FLA which automatically converted from the FLA on the plan anniversary following his 89th birthday. The conversion was mandatory. Following the conversion, he was entitled to a fixed income so the value of the underlying investments held prior to the conversion were no longer relevant as they had now been replaced by a guaranteed income from an annuity.

The investigator said he'd considered the policy terms and was satisfied the Prudential had acted in accordance with them and wouldn't be asking them to take any further action. He said the terms should've been explained to him by the financial adviser that advised him to take out the policy. It should've warned him that he couldn't remain invested in the FLA after his 90th birthday when the policy would convert to provide a guaranteed income.

Mr W said he accepted the adjudicator's findings about the conversion of the FLA to fixed annuity income. However he questioned: -

1. timing -he said that under the FLA scheme a pension payment was due on 2 January 2020 of around £70,000. He quoted a fund value and a figure for the ratio of income to fund value quoted in the Prudential letter sent to him in January 2019.

2. the value of the funds relative to the fixed annual pension in the fixed guaranteed income (FGI). Since 2 June 2019 none of the quotations issued to him had taken into account the value of individual funds so he couldn't check the value of the total fund on the date it was converted to the Fived Guaranteed Income ("FGI") in August 2019.

3. He produced his own figures to show why he had rejected the quotations provided by the Prudential. He also said the quotations provided didn't include the amount of around £70,000 due in January 2020. Based on published fund prices he estimated the fund value should've increased between June and August 2019.

4. He also said a further amount was due from with profits. He wanted to know the actual value of each fund and with profits fund at the date of conversion so that this could be compared with the valuation and his conclusions and the resulting pension payable.

Mr W later said he was concerned the switch was a cost cutting exercise. He said the value of the funds would've increased up to the date of conversion and yet the pension illustrated falls by 16.5%, where as he estimated a gain in fund value of around 6.5%. He therefore felt the change had reduced costs considerably.

Mr W also referred to a letter from the Prudential dated 23 January 2019 which he took to show they accepted his objection to the conversion, and this had been accepted before the "Trigger Date".

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.

For the reasons below I am not upholding this complaint. There are several issues to consider.

Conversion from the FLA

The Prudential said the FLA had been due to be converted on the anniversary of Mr W's policy after his 89th birthday. That was in early 2019. However Mr W had asked for the conversion to be delayed to his 90th birthday and it agreed to allow the deferral to take place so that it would happen in August 2019.

I have considered the provisions of the Members booklet. In particular the section on conversion. Mr W refers to the relevant parts which in summary says

3.4 Mandatory conversion to a guaranteed income stream (by reason of age)
If your FLA has not been converted to a Fixed Guaranteed Income in accordance with section 3.1, 3.2 and 3.3 above by your 90th birthday (the Trigger Date) then the following provisions shall apply.

We will at the Trigger Date unless you notify us to the contrary before the Trigger Date in accordance with the options notified to you:

(1) Cancel all of those units credited to your FLA which are invested in the Unit Linked Funds and apply the amount raised to provide you with a Fixed Guarantee Income in accordance with, and subject to the restrictions in, Section 4,

Section 4 sets out how the FLA is converted it says "*You will have the option when converting to a Fixed Guarantee Income to choose a level or increasing pension.*

Mr W says these provisions should be interpreted to mean that unless you tell us to the contrary before the Trigger Date, we will at the Trigger Date and in accordance with the options notified to you apply the following provisions i.e. the conversion can be deferred and no option applied.

But I don't agree. I say that because taking the booklet as a whole and reading the heading to this section it is clear that this is a mandatory switch not an optional one. Secondly the booklet lists the other situations in which a conversion will take place. It is clearly an exhaustive list meaning that if nothing else has triggered the conversion then age will. In the light of this I think it is reasonably clear that the "unless you notify us" refers to what will happen at the Trigger Date to the funds, not that Mr W had the option to defer the conversion.

In November 2018 Mr W was sent various letters about the conversion to a Guarantee Income Stream (GIS) on the plan anniversary after his 89th birthday. This confirmed the conversion to a GIS and with profits income stream would happen in February 2019, which was the plan anniversary prior to his 90th birthday in August 2019. A final FLA payment of around £72,000 would be made in January 2019 and thereafter income payments would be made in February each year.

At that time Mr W queried the Trigger Date. He called in mid-December 2018 and said he wanted to delay conversion as funds were dropping. Mr W believed that the provisions of his booklet meant that "if you notify us differently" meant that he didn't have to convert to a GIS.

In early January 2019 Prudential confirmed it would agree to delay the conversion date to the day before his 90th birthday and the plan would remain invested as currently until then. At this point there is no suggestions from the Prudential that any further delay is possible. The deferral of the conversion to August 2019 affects when the annual payment date will be.

In May 2019 the Prudential wrote again to confirm the final conversion date would be the day before his 90th birthday in August 2019 and to ask if he wished to convert his plan fully into the Guaranteed Income Stream or Guaranteed Income Stream with With-Profits Income Stream. Illustrations were attached. This request reflects the options outlined in the booklet.

On 31 July 2019 the Prudential wrote again. The Letter again asked if he wished to convert to a full GIS or GIS and With-Profits Income Stream. It said if it did not hear from him it would convert his plan to the GIS and With Profits Income Stream.

Mr W called at the start of August to say he still thought the conversion was optional and not mandatory. The Prudential replied and said it had already deferred conversion from January to August 2019 and the conversion was mandatory.

On 9th August 2019 Mr W again says he objects to the switch to the GIS and said he also did this in his letter to them in early November. He didn't think they were allowing him the alternative which he says is to reject the move from FLA to GIS if notice given before the Trigger Date.

Given the exchanges between the parties I think it should've been clear to Mr W in January 2019 and certainly by August 2019 that there was no option to remain in the FLA and the conversion will happen.

Mr W also referred to a letter from the Prudential 23 January 2019 which he said he took to show they accepted his objection to the transfer had been accepted before the Trigger Date as per clause 3.4. But I don't agree. I think the letter refers to his request to change some funds. At that time because the Prudential had agreed to defer the conversion to August 2019, he remained invested in the FLA and therefore the letter reflected requested changes in the funds he selected not that it accepted that he could avoid the conversion to a GIS.

January 2020 payment

I have seen a unit allocation statement for the FLA which as Mr W says refers to the next regular payment as 2 January 2020. But I am satisfied that under the policy terms the FLA and underlying investments were replaced by the GIS and are no longer relevant following the conversion such that no payment was due in January 2020 in addition to the amount payable because the FLA has been converted to a GIS.

Mr W refers to section 1.3.3 of his booklet re duration of pension payments. This says that pension instalments from his FLA are payable for life. But it then goes onto say that in

certain circumstances outlined in section 3 some or all of the units in his FLA will be cancelled and used to provide an FGI. It is clear that one of those circumstances is age and consequently all the FLA units have been converted to FGI. This section further supports my conclusions about the conversion from FLA to FGI and the cessation of future payments (such as in January 2020) under the FLA. So for those reasons I don't think any further FLA pension payment was due in early 2020.

With profits increases

As I have noted above in various letters, Mr W was asked whether to opt for a GIS or part GIS and part With Profits Income Stream. He was told if he didn't make a choice he would be allocated to the GIS and With Profits Income stream. In particular these options and illustrations of the amounts were set out in the letter to Mr W of 31 July 2019 and attached papers.

Mr W referred to provisions in the booklet (1.3.1 (e)) which said that

"If your FLA has to be switched to a guaranteed income by reason of age or underperformance in accordance with Section 3 of this Appendix and the units credited to you FLA (or the appropriate part) are not cancelled to provide a Fixed Guarantee Income in accordance with Section 4 but are instead retained as or switched into units invested in the With-Profits Fund, your pension instalments will be paid at the maximum level which we will recalculate and tell you about every year".

He also referred to a section 1.2.2.(b) on Lifetime Bonuses and the basis of their calculation at the Trigger Date in respect of the With-Profits Fund

As set out below Mr W opted for the option that was GIS only so the FLA investments have been cancelled and converted to a FGI. Consequently there is no annual recalculation as there would've been under the FGI and With-Profits option.

I also say that because, the letter of 31 July 2019 said

"*Please let us know your preferred option-*
1 Convert your plan fully into the Guaranteed Income Stream
2 Convert your plan into the Guaranteed Income Stream and With Profits Income Stream.

If we do not hear from you we will convert your plan to the Guaranteed Income Stream and With Profits income stream"

The July letter attached three quotes. Their references and type are listed in the covering letter. So I think it's clear there are several options and which quote relates to which option.

In August 2019 Mr W replies. He does not say expressly whether he wants to take the GIS or GIS and with profits option. Instead he says he will accept a conversion in August provided the fund value and guaranteed annual income payable in August each year is not less than the amounts he quotes in his letter. These figures are the ones from the GIS only illustration sent to him with the 31 July letter and this is what has been implemented by Prudential in response to his request. The illustration says that it was produced on 31 July 2019 and is for illustration purposes only so the amounts were never guaranteed to be the ones that would be used on conversion. Mr W has since reconfirmed the reference number of the quote he intended to accept. It matches the reference number for GIS only.

It seems clear to me Prudential have done as Mr W asked. I think it was reasonable for them to follow the instruction issued by Mr W even though the amount paid wouldn't be at the level

in the quote. I say that because the figures he quotes matched the GIS only option. I also think it was clear the amount wasn't fixed at that point in time. So Mr W's condition about value at conversion wasn't appropriate and couldn't ever have fixed the level of income but his reply did effectively indicate his preferred option..

This explains why the amount of pension put into payment doesn't match that in the illustration and why he is now receiving a GIS only rather than GIS and with profits..

Impact of underlying asset values on the income paid on conversion to the GIS.

Mr W referred to the regular income paid under the FLA and the value in June 2019. Whereas in the past the income was based on the fund value each year that is no longer the case. The fund value at the conversion date and the applicable annuity rate will have determined the level of future fixed income payable for the remainder of Mr W's life.

In the light of Mr W's comments that the value of the funds would've increased up to the conversion date I questioned the Prudential. It provided details of the fund value on 31 July 2019 and the settlement value with details of the value of each underlying fund. This showed the fund value fell in value at conversion. Mr W has seen this information.

The Prudential said the change was due to a fall in the unit prices of the underlying funds, so the final annual pension payable was lower. Mr W has noted the value of the fund fell between the quotation date and the conversion date by 5.5%. But, he says the pension fell by just over 10%. He felt the resulting pension should therefore have fallen by only 5.5% from the previous around £72,000 meaning the pension would've been around £68,000.

For the reasons already given I don't agree as the pension is determined by the annuity rate in place at that time and the settlement value applicable at that time.

Mr W also said the July letter suggested they would convert to include with profits and he felt that was what he accepted in his fax. But I don't agree for the reasons given above.

Mr W said his preferred annual payment date would've meant the fund value recovered before his pension was paid. But whether the fund would have recovered is not relevant as once the conversion took place the underlying investments were no longer relevant. As the conversion had to take place by his 90th birthday he couldn't prevent the conversion happening and allow more time for a recovery.

Having seen this information I am satisfied the Prudential has provided a reasonable explanation why there was a lower value and explained why the amount now payable is lower than it would've been had he accepted the conversion earlier in 2019.

So in summary I don't think Mr W had any choice whether to convert by his 90th birthday. Mr W's correspondence meant he opted for the GIS rather than GIS and with profits. The conversion and his choice meant the underlying FLA investment including with profits are no longer used to determine the amount of his pension each year. Instead a fixed annual payment is made based on the value at conversion and the annuity rate at that time. I am satisfied with the evidence provided to show the value of assets at the conversion date. Following the conversion no further pension is due under the FLA and no FLA payment was due in January 2020.

So for the reasons given I don't uphold this complaint.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 30 December 2020.

Colette Bewley
Ombudsman