

The complaint

Ms M has complained that The Prudential Assurance Company Limited (Prudential) won't allow her to cash in her annuity. This is linked to her unhappiness with the sale of her annuity. Which has recently been subject to a review at the request of the regulator.

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.

The issue I have to decide here is whether Prudential has been unfair or unreasonable in its stance that it will not allow Ms M to cash in her annuity.

Before I go onto discuss that issue in more detail, the start of Ms M's unhappiness can be traced to the sale of her annuity. Ms M complained about delays and mis-information at the time and I can see that Prudential paid Ms M compensation then in 2013.

More recently, Prudential contacted Ms M as it had been asked by the regulator to look into its non-advised annuity sales from the time period in question. Prudential followed the review process and the result was that on one particular aspect it had failed to give Ms M all the relevant information at the time. The failure was that Prudential hadn't asked Ms M to fill in a medical questionnaire. Although she couldn't have an enhanced annuity with it as she took her benefits earlier than usually allowed due to ill health. Prudential says the earliest age it could offer an enhanced annuity was 55. Ms M took her benefits at 47.

Prudential carried out the review to see if its failure would likely have meant Ms M was worse off taking her annuity with Prudential. Ms M filled in a medical questionnaire based on her health conditions at the time. And Prudential used this information and put it through the review process to check if she would've likely received a higher annuity elsewhere. The annuity amount the review produced for her circumstances at the time, was less than the annuity she received from Prudential in reality. So it explained she hadn't suffered a loss.

Ms M remains unhappy with this and has said that had she been given all the information she may have chosen to take an annuity with another provider. However, the evidence shows Ms M at the time had instructed a separate non-advised annuity service to help her with her annuity options. And the initial plan had been to take her annuity on the open market option with a provider linked to that service. This didn't go ahead, possibly because Ms M's policy with Prudential had guarantees attached to it that would be lost on transfer. But this shows Ms M was aware of the open market option – and that she knew customers weren't obliged to take their annuities with their current pension provider.

Ms M argues that had she taken her annuity elsewhere, she might now be able to cash it in. But the evidence shows Ms M was aware she could go to other providers but chose to take her benefits with Prudential. And, in regards to the enhanced annuity, Ms M was too young to take her benefits in that way. Furthermore, the review shows that its unlikely Ms M

would've got a better annuity on the open market or with an enhanced annuity in any event. So I don't think Prudential's mistake changed her position.

As touched on above, Ms M asked Prudential to allow her to take her annuity as a cash lump sum but it hasn't agreed. Ms M has researched the issue and understands that legislation does allow in certain circumstances for annuities to be cashed in.

When Ms M took out her annuity, the option to take the pension benefits as a lump sum wasn't available with the fund value that she had. This was regardless of whether taken early through ill-health or not. This is because pension legislation at the time meant most customers options were restricted to taking their benefits as an annuity.

Legislation subsequently changed but this didn't include annuities already in payment. It was considered but the government decided that the planned legislation to produce a secondary annuity market might not result in a good outcome for customers. So as it stands the rules generally don't allow customers to cash in an annuity and take a lump sum payment instead. However, in instances where the value of that annuity is less than £10,000, it can be cashed in but only if the provider chooses to offer this. So, I can understand why Ms M would want to do this given what she's told us about her situation.

However, Prudential says that it has chosen not to offer this option to its customers. I know that Ms M knows of other providers that have allowed others to do so. But the majority of providers have chosen not to offer this option to their customers. On the occasions it has been offered, a commercial decision has been taken for a group of customers or decisions have been made on an individual basis for those with a particular set of circumstances.

As the legislation is only enabling, i.e. Prudential has a choice, I can't say it's wrong not to offer this to all its customers. However, I have considered Ms M's particular circumstances and whether Prudential has been unfair or unreasonable in its stance that they won't allow her to cash in her annuity.

At the time when Ms M took her annuity, she received documentation explaining the key features of the annuity she was taking out. In this it explained that the annuity could not be cashed in at a later date. And that the annuity was payable for life and this couldn't be changed. So Prudential did explain to Ms M at outset that the annuity would be payable for life and this is the contract she agreed to. She was given 30 days within which to cancel this arrangement but she chose not to.

I appreciate why Ms M would prefer a lump sum now, the amount of annuity she is being paid yearly comes to £274 a year. I know this isn't a huge amount of money but it will still have some material benefit to Ms M. And the main reason the annuity amount is low, is because Ms M took her benefits early. Commonly an annuity is taken at 65 and so the pot is converted into an annuity amount, in part, based on how many years it will likely be paid for.

As Ms M took it at 47, her pot of money has to be spread over potentially many more years than usual and therefore this has negatively affected the annuity amount she receives each year. Furthermore, this means that if Prudential were to offer a cash-in value it would be expensive to provide a sum in replacement of this annuity, as Ms M is still only 54.

Ms M has pointed to the other providers who are allowing annuities to be cashed in. In our experience this has generally been on annuities worth much less in value than Ms M's would cost to provide now. Or the decision has been made for commercial reasons. I know that it may seem unfair that depending on who a customer has their annuity with, their access to

this option differs. But I'm afraid this is a product of the legislation, it allows the providers to make a choice.

We have seen some businesses changing their stance on cashing-in annuities. And if in the future Prudential changes its position on cashing-in annuities or legislation changes, I don't think this decision should stop it from looking into this again afresh for Ms M.

I'm sorry to hear that Ms M is struggling financially and I understand in the current situation those suffering with ill-health are in a very difficult position. But we are not consumer champions, so we have to be fair to both parties. And to do so we have to take into account the relevant rules and legislation. So, I think Ms M's issue largely lies with the legislation in place and the decision not to create a secondary annuity market.

In conclusion, I don't think Prudential has been unfair or unreasonable in not allowing Ms M to cash in her annuity.

My final decision

For the reasons explained above, I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 26 January 2021.

Simon Hollingshead
Ombudsman