

## The complaint

The estate of Mr H, represented here by Mrs H, complains that a number of annuities that her late husband took out with The Prudential Assurance Company Limited (Prudential) were mis sold. She says they were led to believe the annuities would pay her for five years after Mr H's death but most of them ceased payments after he died in January 2020.

## What happened

The late Mr H held a number of pensions with Prudential. In 1999 he wanted to encash one of his pensions but when he was told this wasn't possible and was provided with a quotation for an annuity, he chose to take the available tax free cash with a single life annuity guaranteed for 10 years. In 2002 a policy which had been set up to accept compensation from the original plan was also annuitised along the same lines.

Mr H made similar decisions in 2011 and 2012 after his other plans 'matured' and he was contacted by Prudential with illustrations – although one of the plans was in respect of 'protected rights' so it had to provide a 50% spouses' pension guaranteed for five years.

Unfortunately, Mr H died 20 January 2020. Mrs H then contacted Prudential to make it aware of his death and to ensure the pensions payments continued as she assumed they would be. However, Mrs H found that she didn't receive anything further from three of the annuities and the remaining annuity paid her around £25 per month.

So on 2 March 2020 Mrs H spoke with Prudential again. She said she believed there was a facility within Mr H's pensions which meant she would continue to be paid after she notified Prudential of his death. She said the policies had been mis sold as she wasn't receiving the benefits they both expected her to get. She said Mr H wouldn't have set up an annuity on a single life basis and she didn't think it was fair for the payments to simply stop on his death.

Prudential said it was unable to uphold Mrs H's complaint about the annuities being mis sold – but it did accept it had provided poor service and paid £75 as compensation. It said that:

- Three of four annuities that Mr H took out were up on a single life basis, so they didn't automatically pay Mrs H when Mr H died.
- The fourth plan was in respect of 'protected rights' benefits which automatically included a joint life option and is now being paid to Mrs H.
- It didn't provide any financial advice to Mr H so there's no evidence to suggest it misled him.
- The three single life annuities did include guarantee payment periods which unfortunately had ended before Mr H passed away.
- The guarantee period started when the annuities began not when Mr H died. There was no evidence to show Prudential had suggested otherwise.
- It had delayed setting up Mrs H's one remaining annuity for which it paid £75 compensation.

But Mrs H wasn't happy with the response, so she brought her complaint to us. One of our investigators looked into the matter but said the complaint shouldn't be upheld. She said that each annuity had been taken out by Mr H as a result of quotes being sent to him by

Prudential setting out his options. So she didn't think Prudential had given Mr H any advice and that he was provided with the necessary information with which to make an informed choice. She also thought that Mr H had been given the option of including Mrs H as a joint life annuitant but hadn't chosen that option – except on the only plan that automatically included a joint life annuity and is now being paid to Mrs H.

She also thought the information that Mr H was provided with – specifically the “*key features document*” confirmed how the guarantee periods worked so she thought Mr H would have been aware of when they ended.

Mrs H didn't agree. She said the annuities were in her husband's name, so she was unsure where the remaining funds had gone following his death. And she said the annuities should have been paid to her for five or ten years after his death. She also questioned why Prudential couldn't pay the only existing annuity as a lump sum instead of a monthly amount – as it was affecting her entitlement to pension credits.

She was also unhappy about the length of time we had taken to provide an outcome and she said she'd had to incur extra expense to provide documents to us that weren't needed. She said this had caused her unnecessary stress and wanted her complaint to be referred to an ombudsman – so it's been passed to me to review.

The investigator did however confirm that Prudential wasn't able to cancel the annuity and pay her a lump sum – which it was entitled to do as a legitimate commercial decision.

### **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.

And having done so I agree with the investigator and for broadly the same reasons. I know this outcome will disappoint Mrs H – so I'll explain my reasons.

#### **Were the annuities mis sold**

I've looked first at the circumstances in which the late Mr H took out the annuities with Prudential. Each were derived from personal type pensions where Mr H had a number of options when he came to draw his benefits. But if Mr H wanted to remain with Prudential, he had to convert the pensions to annuities after he withdrew any tax free cash he wanted.

In each separate transaction I haven't been presented with any evidence to suggest that Prudential gave Mr H any advice. It would seem that, on each occasion, he was sent illustrations which set out all the options available to him and asked him to return acceptance forms which indicated his choice. However, I do note that on the first occasion in 1999 Mr H approached Prudential to ask to encash his pension benefits.

Unfortunately, at that time it wasn't possible to accommodate such a request and Prudential correctly advised Mr H that he needed to take his benefits as an income. However, I note that Mrs H has said that she and her late husband would have preferred to take the benefits as cash, so I can understand the approach Mr H was taking at that time.

But I've looked carefully at each document Prudential sent to Mr H and I'm satisfied that his options were set out clearly.

He was given a number of alternatives around how to draw his income, including tax free cash, and the option to transfer his benefits to another provider under the open market option. One of the other additional benefits was the opportunity to include a joint life option

for a dependent and required him to complete the section to obtain further quotations. This was signposted within the quotation where it said, *“If you want to select a dependent’s pension...please go to the “your further pension options” page of the form of selection.”*

So I think the option of a joint life annuity was highlighted clearly to Mr H and, while I know Mrs H has said he wouldn’t have chosen a single life option under the circumstances, the evidence I’ve seen shows that he did chose single life options in each case. And these options were confirmed by Prudential following Mr H’s response – as for example in 1999 it sent Mr H confirmation that he’d chosen *“option 1, £559.27 tax free cash £96.96 income each year, payable half yearly in advance guaranteed for 10 years.”*

And in February 2012 Mr H’s choice was confirmed as *“£217.44 per annum- £1,090,61 tax free cash- guaranteed payment period 5 years- Dependents total yearly income none...if you die during this period your income will continue to be paid until the end of the guarantee period.”*

Within Prudential’s Key Features Document (KFD) it confirmed one of its aims as being *“to give you the option to also provide a regular income for your spouse or dependents should you die before they do.”* So I think that Mr H was made aware, through references in a variety of literature, of the option of taking out a joint life annuity to ensure further protection for his wife in the event of his death.

Unfortunately, I can’t confirm why Mr H decided to tick the options that gave him single life pension. I note that the pensions were generally quite small, and it could have been that Mr H realised how much smaller a joint life pension would be and decided the better value lie in protecting his pension for a guaranteed period for a much smaller cost. And although I can’t be sure of this, the pension that provided the greatest benefit already included a 50% spouses’ pension as it was derived from a ‘protected rights’ fund.

But even if I am wrong with that thought, I can’t reasonably say Prudential mis sold the policies as it would seem that its involvement was simply to make aware Mr H of his options and set the annuities up on the basis that he indicated in the application and acceptance forms.

But Mrs H says that the complaint about mis selling is also about the way the guarantee payment period worked. She said that it should have started from when Mr H died, not from when the annuity started – and thinks that isn’t fair and that she and Mr H were misled. So I’ve looked at the information that was provided about the guarantee payment period and how it worked.

#### *The guarantee payment periods*

The KFD set out how the guarantee period worked. It said *“your annuity can also include a guarantee that payment will be paid for a minimum period even if you were to die in the early years of the annuity. This can either be the payment of a lump sum or the continuation of your pension payments, following your death in the first 5 or, in some cases 10 years of the start of your annuity.”*

So I think it was clear that, if included in the annuity, the guarantee period began from the date the annuity started. So, in Mr H’s case, five years and in one case 10 years after each different annuity came into force. This meant the end dates for the guarantees were 2009, 2006 and 2016 which unfortunately were all before Mr H sadly died.

So I don’t think Prudential did anything wrong in ceasing payments on Mr H’s death because the guarantees had been included for the length of time Prudential said they would be.

I know Mrs H says that she was led to believe that the guarantee period started at the date of Mr H's death – but I haven't been provided with any persuasive evidence to suggest that was the case. I have some sympathy for Mrs H in expecting payments to continue to be made to her for an extra five years, but I don't think Prudential's literature and general information has led to that expectation and I don't think it should have to extend the payments to Mrs H following her husband's death.

#### Payment of the existing monthly annuity as a lump sum

The KFD also set out how any annuity could be paid. It stated that “*your annuity can be paid monthly, quarterly, half yearly or annually and may be paid in arrears or in advance.*” It also said that “*you can't change your income options after you've chosen them at the start.*” So Prudential paid Mr H according to the instructions he gave it initially and has continued to pay Mrs H on that basis. This was further complicated because the one remaining annuity was based on a 'protected rights' fund, which had different rules for providing a spouses' pension.

Unfortunately, there is no legislation which enforces a provider to substitute monthly payments for a lump sum alternative – no matter how beneficial it may seem for Mrs H in her current situation. So I can't reasonably tell Prudential to pay the remaining annuity to Mrs H as a lump sum – that's for Prudential to decide. I understand that Prudential's position is that it isn't going to substitute the annuity for a lump sum and that's a commercial decision it's entitled to make. We wouldn't usually interfere in such decisions.

#### Concerns with our service and the delays and costs

I'm satisfied that we followed our process to correctly establish eligibility to bring the complaint and eligibility to receive any compensation – if it were due. So, although I can understand Mrs H's frustrations here, I think everything was done to ensure the complaint could be brought correctly and would be accepted by Prudential.

I also note that Prudential has paid Mrs H £75 for the delay in setting up the one remaining annuity that she was entitled to receive payment from. In the circumstances that seems a fair and reasonable solution and within the range of what I'd expect to see paid for a delay like that.

#### **My final decision**

For the reasons given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 5 August 2021.

Keith Lawrence  
**Ombudsman**