

## **The complaint**

Mr A and Mr A complain that when The Prudential Assurance Company Limited ('Prudential') reviewed their existing annuity it didn't fairly take into account the medical information supplied when it decided that the annuity payment was correct.

Mr A also complains that having to produce this medical information, long after the annuity was set up, has caused him distress and inconvenience, which Prudential has not recognised.

## **What happened**

In 1987, Mr A transferred his personal pension into a Prudential Bond. For ease of reference I'll refer to this Bond as 'the plan'. Mr A didn't take any financial advice before transferring. He was working in the financial services sector at the time.

In October 2011, Mr A took his benefits, having reached the plan vesting age (65). The plan had to provide Mr A with a Guaranteed Minimum Pension (GMP). This was a minimum amount of pension income payable as a condition of having contracted out of the State Earnings Related Pension Scheme through his original personal pension. When Prudential accepted the transfer from his personal pension, it agreed to meet this GMP.

In October 2011, Prudential wrote to Mr A explaining that the value of his plan was £8,014.60. It went on to say that Mr A would need a fund value of £9,348.03 for a pension at the level required by the GMP. Prudential told Mr A it would make up the shortfall as it had assumed responsibility for the GMP.

Later in October 2011, Mr A signed Prudential's paperwork to accept the quotation for the immediate payment of the GMP benefit.

In September 2018, Prudential contacted Mr A as part of the pensions review into annuity sales. The purpose of this review was to establish if the annuity received back in 2011 was fair in all the circumstances.

In June 2019, as part of the review process, Prudential contacted Mr A again to obtain further information.

In September 2019, Prudential wrote to Mr A to ask for medical and lifestyle information in relation to his wife as it had failed to ask for this previously and it was relevant in terms of deciding whether the annuity was fair. Mr A provided this information to Prudential.

In October 2019, Prudential requested additional information. Mr A provided this information.

In November 2019, Prudential wrote to Mr A. It accepted that it had not provided sufficient information about the availability of enhanced annuities at the time he took out the annuity in 2011. This was because relevant medical and/or lifestyle information had not been discussed at the time of the annuity purchase.

However, Prudential went on to say that it didn't consider that there had been any financial loss as a result of this. This was because even if this information had been considered in 2011, gross yearly annuity income on an enhanced basis at the time of purchase would have been £413.26 per annum. It said as a gross yearly annuity income at the time of purchase of £440.52 per annum was paid to meet the GMP obligation, more was received in any event.

Our investigator considered Mrs and Mr A's complaint. He did not uphold it. He concluded in summary that Prudential had dealt with the review of the annuity in a fair and reasonable way and that there had been no financial loss. He also concluded that it was not appropriate to make any award for distress and inconvenience arising from the review.

Mrs A and Mr A didn't agree with our investigator's view. In summary, their points were:

- There was a requirement on Prudential to pay what the fund originally guaranteed; this being a legacy annuity.
- The matter to be considered was whether there should've been an enhancement to the annuity for health reasons and this was unconnected to the legacy annuity.
- Mr A was medically retired in his early 50s from a successful career. He never fully recovered and this all happened a long time before his annuity was put into payment in 2011. Mrs A also had health issues. The health and lifestyle information wasn't properly and fairly considered when deciding if the annuity payable should be enhanced.
- It took a considerable amount of time and effort to put the health and lifestyle information together that Prudential asked for and this had impacted on Mr A's wellbeing.
- They think they should be paid compensation for the duress and that they should receive a joint enhanced annuity.

As agreement couldn't be reached Mrs and Mr A's complaint comes to me for a 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.

To decide this complaint, firstly I'll look at whether the review that Prudential carried out was carried out fairly and reasonably given the wider context of the pensions review. Secondly, I'll consider whether Mrs and Mr A have suffered any financial loss as a result of what Prudential did wrong. Thirdly, I will look at whether Mrs and Mr A have suffered any non-financial loss as a result of what Prudential has accepted it did wrong, for example whether they have been caused distress and inconvenience by its actions.

### **Was the review carried out fairly?**

Prudential's letter of October 2011 showed that Mr A's fund value at the time was £8,014.60 and £9,700.49 was required to meet the GMP. Prudential told Mr A it would make up the shortfall, so he received the GMP.

The illustration confirmed the guaranteed pension income of £440.52 per annum plus a dependent's pension of £220.32 per annum.

Prudential accepts that insufficient information was given to Mr A about enhanced

annuities given his and his wife's medical and lifestyle considerations. It conducted a review on this basis.

As far as I can see the annuity review was carried out in accordance with the Financial Conduct Authority guidelines that apply to these types of reviews. It looks to me that Prudential took into account the additional information provided about Mrs and Mr A's health and lifestyle when calculating the enhanced annuity income figure.

### **Have Mrs and Mr A lost out financially?**

The outcome of the review was that the annuity already in payment was greater than what they would've received from an enhanced annuity in 2011. The review calculator showed they would've received an annuity of £413.26 per annum, compared to the annuity they were receiving of £440.52 per annum.

The FCA calculator was used to calculate the enhanced annuity likely they would've been entitled to. Prudential said the calculator was used because it had received assurances from the Financial Conduct Authority (FCA), and the independent firm carrying out loss assessments, that this was a reliable way to calculate loss. I think it was fair and reasonable for Prudential to use this tool, in these circumstances.

Mrs and Mr A consider that the uplift received to bring their annuity to the level of the GMP was irrelevant when assessing whether they were entitled to an uplift on health and lifestyle grounds. I don't agree. Had the enhanced annuity been higher than the GMP, Prudential wouldn't have been contractually bound to pay the annuity at the GMP rate. But, it wasn't, so the GMP applied.

Overall, therefore, my conclusion is that Prudential approached this review in a fair and reasonable way and that Mrs and Mr A have not suffered any financial loss as the annuity they were receiving was greater than the annuity they would otherwise have received if there was no GMP in place and they had been given sufficient information about enhanced annuities back in 2011.

### **Non-financial loss**

Had Mrs and Mr A been given correct information in 2011 about the availability of an enhanced annuity they would've had to provide health and lifestyle information for this to be considered. So, in effect, as part of this review, they were being asked to provide information that they would've had to provide some years before.

I accept there was a delay in asking for this, and that Mrs and Mr A didn't derive a financial benefit from providing it, in the end. But that doesn't mean that Prudential did anything wrong by asking them to provide this information.

Mr A said that having to provide this information had an impact on his health and wellbeing. Whilst I am sorry to hear that, I don't consider that I can hold Prudential responsible for that upset. His health issues were long standing ones in 2011 at the time the annuity was taken out. So, I think that having to share this necessary information in 2011, would've likely been upsetting then too. I therefore don't consider that I can fairly hold Prudential responsible for causing that upset.

In terms of inconvenience, as this was information Mrs and Mr A would've had to provide earlier in the process if everything had been done right, I don't consider it fair or appropriate to make an award, taking into account the overall circumstances.

## **My final decision**

For the reasons explained above, overall, I do not uphold Mr A's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 11 November 2021.

Kim Parsons  
**Ombudsman**