

The complaint

Mr W says The Prudential Assurance Company Limited (Prudential) failed to inform him that he could've applied for an enhanced annuity in 2010 when he took his pension benefits.

Mr W is represented by Rightside Financial Services Ltd (RFS).

What happened

Mr W suffered a heart attack in 2006. RFS said he was made redundant due to his health problems in 2010 and had to retire. Although he was 65, it said he'd planned to work longer. Mr W was a member of The Arc Bath and Portland Pension Scheme - an occupational pension scheme (OPS).

Prudential issued a letter to Mr W in March 2010 in the following terms:

"We are writing to inform you that you are entitled to a pension from the above named scheme, which is administered by Prudential. We have asked the Department of Work and Pensions to assist us by forwarding this letter to you...It is our standard practice to issue a tracing letter via the DWP approximately 2 months prior to your retirement date. This is to ensure the details we have on record are accurate..."

Prudential sought personal details from Mr W so his pension claim could be processed. He responded on 16 April 2010 with the necessary information. On 23 April it then sent him a Notification of Pension Due letter, a quotation pack including a Key Features Document (KFD) and a Claim for Pension Due form.

Prudential explained Mr W should read the information it had sent him prior to completing his pension claim form. As part of the pack it sent, he was presented with two options for taking his pension benefits:

1. An immediate pension of £6,092 per annum with an annual widow's pension of £3,046.
2. A reduced pension of: £4,569 and a Pension Commencement Lump Sum (PCLS) of £28,308.51

Mr W returned his pension claim form to Prudential on 30 April 2010. He chose to take a PCLS and a reduced pension income. On 7 May 2010, Prudential sent Mr W a letter to confirm his selection. It stated his pension payment would commence on 14 May. It also sent him a cheque for his PCLS.

The information provided to Mr W also set out certain important protections that *may* have been a compulsory requirement of his pension arrangements. For example, an annual increase in the benefits payable and a payment guarantee period in the event of his death. It's *possible* these elements were stipulated by the trustees of his OPS to replicate or deliver certain benefits of that scheme.

In May 2020 RFS complained to Prudential on behalf of Mr W about what had happened in 2010. It said he should've been considered for an impaired life or enhanced annuity when he

retired, and he wasn't made aware of this possibility. It also noted that Prudential had been sanctioned by the regulator for its failure to inform some customers about their Open Market Options, during the relevant period.

Prudential rejected Mr W's complaint. It said:

"The Key Features document clearly states enhanced annuities may be available if customers have a serious medical condition...which will shorten their life expectancy. If customers believed they may be eligible for an enhanced annuity, we asked that they get in touch with us...As we did not receive any notification from [Mr W] about his eligibility for an enhanced annuity, we were not made aware of this..."

It also said:

"The FCA asked Prudential along with some other firms, to review certain non-advised annuities that were set up from 1 July 2008 up to 30 September 2017. The review concluded that some of our customers may not have been given sufficient information about the availability of, and their potential eligibility for enhanced annuities.

The review refers specifically to the eligibility for enhanced annuities and was in no way referring to our communications around the option of shopping around on the open market option. Therefore I cannot agree with your additional complaint point. For your information, Mr W's annuity is out of scope for the review as his annuity was set up from funds arising from The Hanson Industrial Pension Scheme [presumably, formerly The Arc Bath and Portland Pension Scheme]."

The Investigator didn't uphold Mr W's complaint. Mr W disagreed and so his case has been passed to me to review and to make a final 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.

I don't have all the information I'd like about Mr W's complaint. For example, there are few details about why and how the trustees of his OPS came to secure a deferred annuity for him with Prudential. I've not been provided with information about when this happened, the circumstances involved or how it communicated with scheme members about this. These are matters Mr W may want to take up with the trustees or his former employer in the first instance. I'm only looking at Prudential's role in the events complained about.

Where's there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr W's complaint. I'll explain why.

Although it's accepted that Prudential didn't provide Mr W with advice about his pension arrangements, it still had to give him information that was clear, fair and not misleading. So, I've reviewed the KFD which he received prior to his signing his pension claim form.

Although the KFD was 25 pages long, it wasn't a dense document and I think it was reasonably clearly written. On page 10, which was titled 'How do you decide my income?', it set out the various factors which would determine how much he would receive, including the size of his fund, his age and gender. It also said:

"If you have a health and/ or lifestyle related condition you may qualify for an Enhanced Annuity rate, please see 'Can I get a higher income if I have a medical condition?' on page 16."

On pages 16 and 17 of the information document it said:

"You could qualify for a higher income if you and/or your dependant (if you've chosen the Joint-Life option) have a medical condition that could reduce your and/or your dependant's life expectancy. This option is known as an Enhanced Annuity. To qualify for an Enhanced Annuity rate your pension fund must be worth at least £10,000 after taking any tax-free cash."

The KFD then went on to list the various health conditions that could qualify someone for a higher pension income. This covered heart conditions including heart attacks, heart bypass, angioplasty, angina and irregular heart-beat.

The guidance covered lifestyle conditions that might also mean an enhanced annuity would be appropriate. It said:

"We will take into consideration conditions associated with your lifestyle such as smoking, high BMI, raised cholesterol and high blood pressure."

The KFD went on to state:

"If you think you may be eligible for an Enhanced Annuity, please call us on the number in your quotation pack or speak to your financial adviser. We'll then ask you to complete our medical questionnaire, which'll help us decide if you qualify. In some cases we may ask your doctor to send us a medical report. Depending on the severity of your condition, your income could typically increase by between 1% and 29%..."

I disagree with Mr W's representative when it says this guidance was vague. And I don't think references to the minimum fund value were misleading, as it argued. It follows that I've concluded Prudential provided Mr W with enough clear information for him to be able to make an informed decision in 2010.

RFS says that Mr W's former employer would've held records about his medical condition and absence from work. It said, had his OPS remained the responsibility of his employer it would've automatically considered his health at retirement.

It was Mr W's employer and/or the trustees of his OPS that used his preserved pension to buy a deferred annuity with Prudential. In doing so these parties would've had certain obligations to fulfil including making arrangements, consultation and communicating effectively with Mr W. These are not matters which Prudential was responsible for as the scheme administrator and later, pension provider.

RFS has also made reference to a form on file which records Mr W was in good health. It's not clear whether this data was collected from him, or if it was an assumption used by Prudential in the generation of the quotation pack it issued. Ultimately, I don't think this is telling evidence for the reasons I've already set out about the information he was provided with about his options prior to deciding how he wanted to proceed.

While I don't have all the information I'd like about Mr W's pension arrangements, I'm mindful we are not dealing with a situation when he'd built up a personal pension plan fund and was then shopping around on the open market to buy an annuity that represented best value and provided all the features he wanted.

Mr W was sent a letter, it seems by the trustees of his pension scheme, dated 29 April 2010. The letter was in response an enquiry he'd made. It explained his preserved pension benefits had been 'bought-out' with Prudential. And that a deferred annuity contract had been put in place for him. It confirmed he would need to deal with Prudential to claim his pension.

As I mentioned earlier, it seems that Mr W's annuity had certain guarantees built in which were probably required by his OPS scheme trustees and/or his employer. If so, *perhaps* this was in order that his deferred annuity contract replicated or delivered certain benefits that were important features of his former pension scheme.

It wouldn't be reasonable for me to uphold Mr W's case against Prudential based on the information available. From what I've seen, it's more likely than not done everything that was required of it at the time of the events complained about.

My final decision

For the reasons I've already set out, I'm not upholding Mr W's 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 2021.

Kevin Williamson

Ombudsman