DRN-3153838

The complaint

Mr P is unhappy The Prudential Assurance Company Limited won't agree to review his annuity policy sold in 2005, when they have reviewed a policy sold in 2011. He also thinks he should receive an enhanced annuity as he and his employer made enhanced contributions.

What happened

Mr P purchased an annuity policy (ending *470) from Prudential in May 2005. He also had another policy (ending *420) sold in 2011. Neither were enhanced annuities, where a customer's health or lifestyle factors entitle them to a higher payment based on a likely reduced life expectancy.

In 2016 the Financial Conduct Authority ("FCA") carried out a thematic review of non-advised annuity sales. Following this review it required Prudential to review its annuity policies sold without advice between July 2008 and September 2017. This was due to concerns that the sales process hadn't made it clear enough to customers they may have been better off taking the "open-market" option.

In 2019 Prudential wrote to Mr P to say they'd reviewed policy *420 and found they hadn't been paying him enough. So Mr P received a one-off payment of £1,769 to make up the difference plus interest and going forward he'd receive an additional £188 per year.
Mr P wanted Prudential to review policy *470 and to explain why he wasn't entitled to an enhanced pension when he and his employer had made enhanced contributions. Prudential said his policies had been sold on a non-advised basis, and Mr P hadn't disclosed any health or lifestyle factors to suggest he wished to apply for an enhanced annuity. And it confirmed policy *470 wouldn't be reviewed as it was sold prior to the review period.
Unhappy with this Mr P referred his complaint to this service. One of our investigators looked into things but didn't uphold the complaint. He was satisfied policy *470 didn't fall within the scope of the FCA's thematic review. He explained that making enhanced contributions would boost the size of the pension pot with which the annuity was purchased, but lifestyle and health factors determine eligibility. Having reviewed the sales documentation from 2005 he thought Prudential had made Mr P sufficiently aware of the eligibility criteria for an enhanced annuity, in line with the guidance applicable at the time.

Mr P disagreed, saying his understanding was the thematic review applied to policies sold from 2005 not 2008, so policy *470 was in scope. And he still felt he should've been entitled to an enhanced annuity as the increased contributions he and his employer made were required by Prudential rather than his own choice.
These points didn't change the investigator's mind, so the case has been passed to me to issue 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.

Having done so, I'm not going to uphold it, for the same reasons as the investigator. Let me explain why.

The FCA's thematic review was published in late 2016 and concerned the sale of annuity policies from May 2008, so I'm satisfied Mr P's policy *420 sold in 2011 fell within the scope of the review, whereas the sale of his policy *470 from 2005 did not.

Mr P says Prudential required him and his employer to make enhanced contributions to his plan, so he should have been offered an enhanced annuity. But making additional pension contributions aren't what determines whether a customer is eligible for an enhanced annuity.

The FCA explained the thematic review at the time as follows "*An annuity is a retirement income product that can be bought with a customer's pension pot, and which pays them a regular income in return. A customer requires accurate information when choosing an annuity, because it is a complex financial product and can affect a customer, and their dependants, for life. This is especially so for non-advised sales, where the customer selects the annuity based on factual information and does not receive financial advice. Where customers have health and lifestyle factors which may shorten their life expectancy, they may be eligible for an enhanced annuity. Firms need to provide clear, fair and not misleading information about enhanced annuities to help the customer make an informed decision about which product to buy".*

The value of contributions a member or their employer made would increase the size of the pot available to purchase the annuity. But the level of contributions paid wouldn't determine eligibility to an enhanced annuity, also known as an "impaired life" annuity, as the payments are higher due to the annuitant's health or lifestyle being expected to shorten or "impair" their life expectancy. Determining eligibility would require the customer to disclose information about their health and sometimes their lifestyle.

I've reviewed the documentation relating to the sale of policy *470 from 2005. The policy arose from Mr P's employment with a firm I'll call "R". In February 2005 Prudential sent Mr P a retirement quotations pack for his pension scheme with R, which included a number of quotations for various options. The pack made clear Prudential only sells its own products, and while it would provide information to help Mr P make his decision, Prudential would not give financial advice. Mr P replied on 11 March saying he wanted the maximum tax-free cash he was entitled to, and a standard annuity with a ten-year guarantee and no dependent's pension, payable monthly in arrears. He also provided the documentation (P60, P11D, redundancy notice, birth certificate etc) Prudential had asked for.

Prudential wrote to Mr P on 31 March 2005 with a revised quotation pack, explaining that he could purchase an annuity on the open market, either before or after the tax-free cash was released, and provided any pension purchased was compatible with the scheme rules.

Mr P telephoned to accept the quotation, and provided his acceptance signed by himself and a representative of the pension scheme trustees on 13 April 2005. Prudential sent Mr P a letter dated 27 April 2005 which explained that unless he exercised the right to cancel, the trustees of the employer's scheme had instructed Prudential to pay Mr P a tax-free lump sum of £48,922 and an annual annuity of £6,126 commencing March 2005. As requested it was a level term, single life annuity, with a ten-year guarantee period. This was policy *470, and I've said earlier it didn't fall within the timeframe of the thematic review.

Mr P has since asked why he wasn't given the option of an enhanced annuity. I can see this wasn't offered in the quotation pack, and in response to his complaint Prudential said if Mr P had thought he was eligible for an enhanced annuity he should've asked for one. The explanatory brochure sent to Mr P at the time had a section headed "*What if I'm in poor health*?" which explained that Prudential would consider an enhanced pension for certain health conditions likely to shorten a customer's life (some cancers, diabetes or diseases of the kidneys, heart or lungs). If Mr P thought he qualified he was invited to complete the enclosed questionnaire, which would then be assessed. And another document which explained the retirement pack and the process for making a decision, also said that the "*other options*" form could be used if the customer wanted different quotations than had been provided, otherwise it could be ignored. But that the customer should phone Prudential if they wished to consider "*an enhanced annuity for people with serious medical conditions*".

Mr P didn't phone Prudential to ask about enhanced annuities at the time, and he hasn't said he suffers from a serious medical condition which may shorten his life expectancy. As well as serious illnesses, lifestyle factors such as weight and smoking also impact life expectancy. But considering these when assessing eligibility was only applicable from November 2007, with greater detail about the type of illnesses and lifestyle factors required to be included in questionnaires from 2013, so they didn't apply at the time Mr P set up his annuity.

It's not clear why Mr P or his employer were required to make higher contributions to his pension, but I don't think doing so disadvantaged him. Pension contributions attract tax relief as well as investment returns, which would have boosted Mr P's available pension funds with which to purchase the annuity. Prudential wasn't required to review the sale of policy *470 as part of the thematic review, and I think the information it provided to Mr P in 2005 was clear enough to explain how to apply if he thought his health might have made him eligible for an enhanced annuity.

So while I understand this will be disappointing for Mr P I don't uphold his complaint and make no award.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 July 2022.

Sarah Milne
Ombudsman