

The complaint

Mr H's complaint is about his with profits annuity with The Prudential Assurance Company Limited (Prudential). He's also raised a number of administration or service issues.

What happened

I issued a provisional decision on 21 March 2022. In it I set out in detail what had happened and the issues Mr H had raised. I'm not going to repeat all that here. But, essentially, in 2008 Mr H bought a with profits annuity with Prudential using the proceeds of two (paid up) policies he had with Prudential. He applied for an enhancement for medical/lifestyle conditions but Prudential told him that he didn't qualify. Mr H went ahead with the annuity purchase and he received his first annuity payment in January 2009.

Prudential was later required by the regulator to review some annuity sales, including Mr H's. Prudential wrote to Mr H in on 16 September 2019 saying it had completed its review of the annuity sale. The letter said Mr H hadn't '*suffered financially as a result of [Prudential's] oversight.*' And that no compensation was due to him as, having assessed the medical and lifestyle information he'd provided based on guidance approved by the Financial Conduct Authority (FCA), he wouldn't have been eligible for an enhanced annuity (from Prudential) at the time.

Mr H was unhappy with that and raised a number of concerns. He didn't get a prompt response and a complaint (or rather complaints) developed about a large number of administrative matters. Mr H also raised concerns about the annuity sale itself, including issues arising from the review that had been undertaken. The complaint – about the service issues and the sale of the annuity – came to us. I've summarised very briefly the findings I made in my provisional decision.

My provisional decision dated 21 March 2022

Mr H's complaint about the service issues was detailed and wide ranging and comprised some sixteen or so overall complaints. For the reasons I set out I upheld most of them. Amongst other things, I said there'd been delays on Prudential's part; failures to deal with some of Mr H's complaints; a lack of attention to detail; failures to explain things properly; confusion over deadlines for referral of Mr H's complaints to this service; and the use of incorrect addresses. Prudential had accepted that there'd been some issues, including delays.

I didn't think the administrative and service issues had caused Mr H any financial loss. But they had resulted in distress and inconvenience. I thought £750 was fair and reasonable compensation (and taking into account that Mr H had already received some smaller sums by way of compensation from Prudential).

About the annuity review/sale I didn't think Prudential needed to do any more. In summary I said:

- We could consider a complaint about the annuity sale notwithstanding it had been reviewed as agreed with the FCA. But we couldn't look into how the review was conducted and issues such as the competency of or decisions reached by the skilled person appointed by the FCA. Mr H would need to take up any concerns with the FCA.
- I wasn't bound to reach the same conclusions as the review. But I didn't disagree with the outcome. Prudential had accepted that the sale wasn't compliant. Prudential was unable to demonstrate that Mr H was made fully aware of enhanced annuities and the right to shop around. But, prior to that letter, Prudential's position wasn't clear. It had referred to an '*oversight*' without further explanation. Prudential had acknowledged that its final response letter of 24 December 2019 could've better explained why the review had concluded Mr H hadn't suffered financially. I thought Prudential should've also made it clear in that letter that it accepted the sale wasn't compliant.
- I explained, where a business accepted it had done something wrong, we'd then usually consider what, if any, detriment the consumer had suffered. We'd usually look to see what the consumer's position would've been if the error hadn't happened and if the business had acted as it should've done. If the consumer was worse off financially, we'd award redress aimed at putting the consumer back in the position they'd be in, but for the business' mistake.
- I thought Prudential's approach was similar. Having identified the annuity sale had been non compliant, Prudential then went on to consider what the outcome for Mr H would've been, had Prudential given him all the information it should've done before he bought his annuity with Prudential. I agreed with why it had been concluded that Mr H hadn't suffered any financial loss.
- Mr H didn't buy a conventional annuity with Prudential. He purchased a with profits annuity – a specialist product which isn't offered by all annuity providers. A with profits annuity introduces an element of investment risk and the potential for growth and an increased income. Income can go up or down but will never fall below a minimum amount – the minimum guarantee – and depends on the chosen ABR (anticipated bonus rate).
- The market for enhanced with profits annuities was discussed with the FCA who appointed an actuarial firm who confirmed to Prudential and the FCA in 2017 that there was effectively no external market for enhanced with profits annuities. Other providers offered with profits annuities. But Prudential was the only provider offering such annuities on an enhanced basis, subject to an applicant meeting Prudential's conditions for an enhancement.
- I thought that was significant in terms of what Mr H's options were. If he didn't meet Prudential's underwriting criteria for an enhanced annuity, he wouldn't have been able to have approached another provider for the same product. On that basis no loss flowed from Prudential's failure to make it clear to him that different providers might have different criteria for granting an enhanced with profits annuity – Mr H couldn't have approached another provider anyway. Mr H hadn't chosen a conventional annuity but a with profits annuity. It seemed he wanted the benefits and features that particular product offered. And, if his decision was dependent on getting an enhancement, he knew that hadn't been granted before he went ahead with the annuity purchase.
- Prudential had reviewed its decision not to offer Mr H an enhanced with profits annuity. He'd said he didn't recall completing a (medical/lifestyle) questionnaire but it seems he did. He'd said the information requested wasn't as detailed as that required by other providers, such as the company he dealt with the following year. But Prudential's questionnaire did ask for details of medication which Mr H gave. There wasn't a section specifically dealing with smoking history. But, during the review process, he gave full details of his medical conditions and his lifestyle, including his

status as a previous heavy smoker. And he'd also explained to Prudential during the review why he considered he should've been granted an enhancement.

- Prudential had reviewed all that, both during the review and as part of Mr H's complaint and had confirmed that Mr H's medical and lifestyle conditions wouldn't have qualified him for an enhancement with Prudential at the time.
- As Mr H accepted, Prudential is entitled to set its own criteria. Business decisions that Prudential makes, including the criteria it sets for saying that someone is entitled to an enhanced annuity, aren't within my remit. So I couldn't look into whether Prudential's underwriting criteria was fair or in line with other providers. And who didn't offer enhanced with profits annuities anyway.
- In the circumstances, I agreed with Prudential's review conclusion – that Mr H hadn't suffered any financial detriment even though the annuity sale was non compliant. In awarding redress for the service issues, I took into account Prudential's failings in not explaining properly the review outcome and not dealing with all of Mr H's queries.

Responses to my provisional decision

Prudential didn't agree with all of my provisional findings. In summary it said there were complaint points it had previously been unaware of and hadn't had the chance to investigate and respond to.

It agreed that the complaint acknowledgement and the four week update letters were sent to the wrong address but £50 had been paid to Mr H for that. And an ex gratia payment of £175 had been agreed for the delays in responding to his letter of 10 October 2019.

Prudential also agreed that the two letters dated 24 December 2019 would've caused confusion. But Prudential said it had no evidence that the final response letter of that date may not have been issued until 2 January 2020. It had been correctly addressed and Prudential didn't think any compensation was due.

Prudential did agree that its complaint responses and, in particular, the original response, could've provided more specific answers to Mr H's questions. It accepted that the further letters issued with the incorrect spelling of the town name would've caused more concern, especially if, in the past, Mr H had been a victim of identity theft.

Prudential said the correctly addressed letters of 24 December 2019 and 7 April 2020 had been received by Mr H. Although he'd said he was able to read his personal information through the window of the envelope, the letters were correctly addressed and were in the hands of the post office for that time.

Although Prudential agreed that a further payment was due to Mr H it didn't agree it should amount to £750.

Mr H said he appreciated the effort taken to review the administration/service complaint in such detail. He didn't agree with all of my conclusions but he said I'd offered an acceptable compromise and, provided Prudential also accepted it, he wouldn't make any further observations.

With regard to the annuity review/sale complaint, Mr H said he had great difficulty in agreeing with my conclusions and which I'd reached without a full understanding of the skilled person's reports. He responded in detail about the annuity review/sale complaint. His response was split into ten sections. I've read and considered all Mr H has said. What follows is a very brief summary of each section and some of the main points.

Section 1

Mr H referred to the three call recordings we'd provided to him and which he explained were relevant to his decision making in December 2008. Amongst other things he said there was only one brief disclosure of the OMO (open market option). No details of the OMO options were given and the statement was preceded by the call handler saying that Prudential wanted to keep Mr H as a customer – something the regulator had highlighted as being non compliant. The OMO wasn't later restated over the telephone and further copies of the documentation weren't sent – the telephone calls confirm that Prudential was only required to send them at the outset. Enhanced annuities on medical grounds were discussed, but only in relation to Prudential products. Mr H said he wasn't told other providers may offer enhanced annuities or may have different underwriting criteria, whether for medically enhanced annuities or generally.

During one call the call handler confirmed there were guaranteed annuities or guaranteed annuity rates (GARs) built into Mr H's policies. That contradicted written information Mr H had requested and which, after a delay, he'd just received. Quotations for both standard rates and those provided for in the policy would be issued. But identifying which quotations were which was very confusing. Mr H says comparing quotes was impossible.

Mr H said he then hadn't understood the implications of any guaranteed element. By the time he decided to opt for the with profits annuity he hadn't received the additional quotations he'd requested but he was under pressure to accept a quotation as it seemed there was a pending cut in final bonus rates which would dramatically affect the policy values. Mr H also said what he was told about bonus rates for with profits annuities was misleading.

Section 2

Mr H referred to the regulatory requirements in force at the time, including COBS (Conduct of Business Sourcebook) 19.4 which required Prudential, having chosen not to provide a copy of the relevant FSA (Financial Services Authority)/MAS (Money Advice Service) factsheet, to provide a written statement providing materially the same information. Mr H didn't think Prudential's written information did that.

He also mentioned reviews carried out by the regulator, Prudential's past business review of non advised annuity sales (which had included the sale of his annuity) and the FCA's Final Notice issued to Prudential on 30 September 2019. He cited what he regarded as Prudential's sales focused approach, a lack of training and governance and a dependency on a high customer retention rate. He said the regulator may have accepted that Prudential's written documentation was compliant but Prudential's call handlers had undermined the OMO and enhanced annuities message.

Section 3

Mr H referred to the peer review he'd undertaken and which he said demonstrated that the average consumer wouldn't agree that the KFD (key features document) in use in 2008 was fully compliant.

He'd also undertaken research into historic annuity rates which indicated the annuity rate Prudential had quoted in December 2008 of 6.18% at age 57 was about 78% of the average rate for a 65 year old. In April 2010 Mr H (at age 58) had obtained a rate of 6.29% (on a smaller fund) which was about 95% of the average rates for a 65 year old at the time. Mr H suggested that was in real terms about 18% higher than the Prudential rate. He'd concluded the enhancement (I think that's the rate he got in 2010 from another provider) may not have

been entirely down to medical issues and may have reflected more general underwriting conditions and possibly Prudential not being competitive at the time.

Section 4

Mr H said Prudential accepted (as had I) that it couldn't prove it was compliant regarding the information that should've been provided about enhanced annuities. Mr H said that stemmed back to the decision not to provide a copy of the regulator's fact sheet and then failing to provide a statement that gave materially the same information.

He'd analysed the sales documents he'd received and found five relevant documents – two quotations, the KFD and two fact sheets. Only one covered GARs (the '*Get Ready for Your Pension*' brochure) but he didn't think he'd received a copy. Reference in the KFD to the OMO was limited. It detailed Prudential's own enhanced annuity but didn't link that to the OMO. The quotation didn't include details about the GAR or say that by accepting the quotation Mr H was giving up his rights to a GAR. The '*It's Now Time to Arrange Your Pension*' brochure doesn't mention GARs. Enhanced annuities are mentioned but limited to serious medical conditions and with no link to the OMO.

None of the documents provided up to the end of December 2008 provided him with the required information about enhanced annuities. There were a number of references to the OMO. But what Mr H termed the call handlers' scripted tactics – for example, saying that Prudential has a comprehensive product range and competitive rates – intervened.

And the section headed '*What Must I do Now*' gives a clear option of taking the Prudential annuity without investigating the OMO. Whereas the regulator's fact sheet clearly states the OMO options, including enhanced annuities, should be checked out prior to making any decision. And the OMO disclosure is immediately followed by a page about why the customer should choose Prudential – effectively a list of reasons why the customer shouldn't shop around. The OMO information isn't presented well – the brief mention of the OMO in the introduction directs the customer to the section about choosing Prudential and not to the pages which explain the OMO further. And the customer is directed to call Prudential's advisers – and which raises all the issues of what call handlers had been instructed to say over the telephone in order to retain customers.

Section 5

Mr H referred again to the three telephone calls which he said evidenced multiple non compliant acts, examples of which he set out and which he said had influenced his decision making process. Mr H referred again to Prudential making only one brief comment about the OMO in the calls and then undermining that. And to information about GARs being unclear and contradicting the written information Mr H had received. And to the delay in getting that information which meant that by December 2008 he was under time pressure.

Section 6

Mr H said his decision to buy a with profits annuity was a key issue. He clarified his understanding of the product and how his investment had performed. In general terms his total income had increased but his regular income - despite the performance of the parent with profits fund – had reduced, meaning that every year was more dependent on the one off additional bonus. He said the promised relationship between the regular bonus and the with profit fund bonus rate hadn't materialised. He said other with profits annuity providers had done better and would've been available to him if he'd taken the OMO but Prudential's sales activities had '*kept that door well and truly shut*'.

Section 7

Mr H said Prudential's delay in providing details of his policies had led to what Mr H termed a '*last grasp dash*' to buy an annuity in December 2008. None of the annuity illustrations provided the information required by the regulator and Mr H felt he'd been left to sieve through multiple quotations trying to piece together a picture that should've been made clear by Prudential's documentation. He said it took months to receive a written response saying he wasn't eligible for a GAR and that was then contradicted over the telephone. He hadn't received the document which he thought had been launched sometime in December 2008 which included a section on GARs. And he thought it was ambiguous anyway.

Section 8

Mr H went through his options during the decision making process. He said he'd identified and provided evidence of the non compliant acts: Prudential's failure to provide him with a written OMO statement that provided materially the same as the FSA/MAS fact sheet issued in 2008; Prudential's failure to properly manage its call centre staff and its written documentation – both of which undermined any OMO disclosures Prudential had made during the sales process; Prudential's failure to properly advise him of the impact of the GARs built into his policies and their relevance in using the OMO as well as the benefits of deferring benefits. Mr H said Prudential had given inconsistent information and he wasn't sure when a GAR applies and in what circumstances it could be lost.

Section 9

Mr H set out how he considered Prudential should redress him. He said, during the sales process, he'd been offered the following options: an annuity with a 3% increase (starting income of £1,089 pa); a level annuity (£1,581 pa); the 3% with profits annuity (starting income of £1,449 pa). After buying the with profits annuity he'd then in 2010 taken a level annuity and then a 3% increasing annuity in 2012 (both using the OMO). He suggested that those three annuity types should be considered in calculating any redress. He said he had no allegiance to any particular annuity type and, if properly advised about the OMO, he'd have considered his options and, if to his advantage, taken the OMO.

He pointed out that there were other with profits annuity providers at the time. He suggested other providers' ABR may have been linked more closely to their with profits fund's performance, a matter which he'd raised with Prudential and so would've been a factor in comparing with profits annuities on the open market. His research indicated that other providers' with profits funds had a better performance record and/or that other providers offered more competitive annuity rates generally, whether with or without any enhancement for medical/lifestyle conditions.

Based on extrapolated data he thought he'd make the right decision on the information he had in selecting the with profits annuity rather than the level or increasing annuity options. But his minimum income had been compromised and going forwards his income could fall to below the levels offered by the other two annuity options. And he said that other, open market, annuity options should've been on the table. He set out details of the level annuity he'd purchased in 2010 and the 3% increasing annuity he'd taken in 2012 (he'd used the OMO both times). He said he wouldn't have chosen his current with profits annuity from Prudential. He set out other options which would again have meant he'd have made a different decision or possibly Prudential offering him a revised with profits annuity into account what other providers might have paid.

Section 10

Mr H confirmed he still hadn't received a copy of the skilled person's report from the FCA.

Our further enquiries

We raised some further queries with Prudential. We said that part of Mr H's focus in responding to my provisional decision had been on the three telephone calls, recordings of which had been made available to him. We shared with Prudential what Mr H had said about the calls in section 1 of his response. Amongst other things we asked for a copy of the letter Mr H had said he'd received (only three days before one of his calls with Prudential) saying he didn't benefit from any guaranteed annuity or GARs. We also asked for confirmation of the position about any guaranteed annuity or GARs; if what Mr H had been told over the telephone that guarantees applied was correct; and if his age at the time (57) was relevant.

We also said that Mr H had referred to delays in providing information about any guaranteed annuity or GARs. We asked what Prudential's records showed about when Mr H had first started to enquire about taking his benefits; what enquiries he made; and what responses he'd received about any guaranteed annuities and/or GARs. And we asked about whether what Mr H had been told about changes to bonus rates affecting his fund values was correct.

Prudential responded and provided some brief answers and some further documents, including a copy of its letter of 3 November 2008. But Prudential said the queries Mr H was now raising were new points and not connected to the outcome of the annuity review. Prudential said, if Mr H had concerns about the actual product he bought, information regarding any guaranteed rates, or delays in providing that, those were all new complaint points and would need to be logged as new complaints. Prudential objected to us investigating any points outside of what it had already responded to and relating to the outcome of the annuities thematic review.

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.

Service issues

Prudential doesn't disagree there were service failings and accepts further compensation is due to Mr H. But Prudential doesn't agree it should be as much as the amount I proposed - £750.

In awarding that amount I took into account that there'd been a delay in Prudential issuing its final response letter dated 24 December 2019. My understanding was that Prudential accepted that the letter (although correctly addressed) may not have been dispatched until 2 January 2020. But it seems Prudential doesn't agree there was that delay.

Mr H has said he didn't get the letter promptly and I accept that his receipt of the letter was delayed. But the issue is whether that was due to Prudential not dispatching the letter on the date it was prepared. I can see, given the date of the letter, that there might have been issues such as early closure of Prudential's post room, early collection of mail from Prudential and no collection the following days. But there may also have been other problems outside Prudential's control, such as there being no postal service over the Christmas period. It's probably going to be impossible now to ascertain exactly what happened to the letter, when it came into the post office's hands and if there was delay on Prudential's part in dispatching it.

Against that background I've considered again the award I proposed. But I maintain, taking into account the number of service failures I identified, that it's still in the range we'd award for those sorts of issues. Those include Prudential's admitted failures in responding to Mr H's complaint and providing specific answers to his queries. I think Mr H was caused considerable inconvenience and he's spent much time collating Prudential's responses and explaining to Prudential, more than once, exactly what his concerns were and what information he was seeking. There's also the issue of the incorrectly addressed letters, including Prudential's failure to correct the spelling of the town name and its impact on Mr H, given his previous experience as a victim of identity theft and which had led to court proceedings.

All in all I maintain that £750 is fair and reasonable compensation for the distress and inconvenience Mr H has suffered as a result of Prudential's service failings. He's indicated he's prepared to accept that sum in an effort to draw a line under this aspect of the matter. I don't think either party's interests would be best served by prolonging matters. So I've made an award for £750 below.

New complaint points

As I've set out above, Prudential has objected to us considering, as part of this complaint, some of the concerns raised by Mr H in response to my provisional decision. Prudential says these are new complaint points which would need to be raised with Prudential as new and separate complaints.

I agree with Prudential that some of the points made by Mr H in response to my provisional decision are new issues and fall outside the scope of this complaint.

In saying that, I accept that all of the issues, including the points Mr H has more recently raised, relate to the sale of his annuity. So I can understand why he might say that it's all part of the same overall complaint.

But the complaint we've been considering arose out of the review that Prudential undertook and, in particular, the outcome of that review – that no redress was due. The review looked at whether Mr H had been given all the information that should've been provided about enhanced annuities and the OMO. And that's been Mr H's focus in bringing his complaint about the sale of his annuity.

Mr H is now saying there were other problems. He's concerned about delays in providing information when he first started thinking about taking benefits from his policies; confusion about if his policies had a guaranteed annuity or a GAR; confusion generally with the various quotations; and information given about bonus rate changes which would affect fund values which, coupled with the delay at the start, meant he was pressurised into making a decision quickly.

I think those are all significant new points which can't simply be incorporated into and treated as part of Mr H's existing complaint. Mr H himself has referred to issue about any guaranteed annuity or GARs as a '*new can of worms*'. I'd agree with that. I accept that Prudential should have the opportunity to consider what Mr H is saying about that and each of the other new points and why he considers Prudential didn't deal with those matters as it should've done and how that impacted on him. So I'm not going to try to deal with those new issues as part of this, already extensive, complaint.

If Mr H wants to pursue the further points, he'll need to contact Prudential direct and raise a fresh complaint about those further matters relating to the sale of his annuity.

The annuity review/sale

Mr H has made extensive comments in response to my provisional decision about the annuity. I've read and considered all he's said. And I'm grateful to him for taking the trouble to explain in such detail why he doesn't accept what I've said about this aspect of the matter. But I trust Mr H won't take it as any discourtesy that I'm not going to comment on everything he's said and I've focused instead on what I see as the key considerations. And, despite all Mr H has said, I haven't been persuaded to reach different conclusions from those set out in my provisional decision.

Mr H remains unhappy that the skilled person's reports haven't been disclosed. Prudential has said they're confidential and so won't be made available to Mr H (or to us). Mr H has since requested the reports from the FCA as a FOI (Freedom of Information) request but he hasn't got the reports yet. I'm not sure that the FCA will agree to disclose the reports to him.

But in any event I think I can fairly decide Mr H's complaint without sight of the skilled person's reports. First, as I explained in my provisional decision, I can't consider any concerns such as how the skilled person undertook the review or their competency. And secondly, and more importantly, I don't think there's any dispute about the outcome of the review – that the sale wasn't compliant. Prudential has accepted that it can't demonstrate that it made Mr H fully aware of enhanced annuities and the right to shop around.

Mr H has gone through the written documentation (which he doesn't accept was compliant), the telephone calls and the sales process generally to explain how he considers Prudential fell short and how that impacted on his decision making. I understand his argument that he made his decision to buy any annuity from Prudential without full disclosure of his OMO rights. And, specifically about with profits annuities, that he wasn't made aware that another provider might offer more beneficial underwriting criteria and leaving aside any specific enhancement on medical or lifestyle grounds.

But I don't think it's necessary for me to adopt the approach Mr H has taken. I think it's sufficient to start from the broader base that Prudential accepts the sale wasn't compliant. So I'm not going to set out whether I agree with what Mr H has said about each and every point which he considers demonstrates non compliance. For example, one of his central arguments is, having decided to supply its own information about the OMO, Prudential's literature didn't contain materially the same information as the regulator required. For the record I don't agree with all Mr H has said about alleged deficiencies in Prudential's documentation and notwithstanding the peer review he conducted. But, that aside, I think the essential point is that Prudential accepts, somewhere along the line and possibly in more than one instance, its sales process may have been flawed.

Against that background I think I can focus on whether Mr H has suffered any loss in consequence of Prudential's admitted failure(s). But, before I go on to consider again that central issue, I'll comment briefly on each section of Mr H's response.

Section 1 is largely about the three call recordings and their relevance to Mr H's decision making. But, as I've explained, a lot of the points made are new and I'm not going to consider them in the context of this decision. But I note what Mr H has said about the brief disclosure of the OMO during the first call being undermined by the statement that Prudential wanted to retain him as a customer. And what he's said about a failure to advise that other providers might have different underwriting criteria generally.

With regards to section 2, as I've said above, I'm not going to carry out an assessment of exactly how, where and when there might have been compliance failures on Prudential's part. And, in so far as section 3 is concerned, again as I've already indicated, I'm not

convinced about everything Mr H has said about the KFD in use at the time and its alleged deficiencies. I've also noted what he's said about the possibility that Prudential's annuity rates at the time may not have been competitive. But, as I've said below, I don't think that must have been the case. And, with regard to section 4, I can only repeat that I'm not convinced a line by line, document by document, approach to the written information Prudential provided is warranted. And I'm not considering Mr H's comments about the failure to deal with any guaranteed annuity and/or GARs. Similar comments also apply to section 5.

Turning to section 6, I agree and as I've mentioned further below, that Mr H's decision to buy a with profits annuity is a key issue. But I'm not considering if Mr H was misled about how that product would operate, including what he was told about the relationship of bonus rates for his with profits annuity and the provider's with profits fund. And section 7 focuses on Prudential's alleged delay and which Mr H says led to him having to make a rushed decision. Again that's not something I'm considering as part of this complaint. Nor am I looking at if the information Mr H was given about any guaranteed annuity and/or GARs was clear and correct. The same applies to section 8 to the extent that it concerns any guaranteed annuity and/or GARs.

I've considered section 9 but I don't see it's relevant. Mr H refers to the three annuity options he was considering when he selected the with profits annuity and to the two annuities he went on to purchase in 2010 and 2012 using the OMO. But I'm only considering his decision to buy a with profits annuity with Prudential in 2008. From what I've seen, he wanted that type of annuity. He'd been considering a range of annuity options. It isn't clear exactly when he decided he'd opt for a with profits annuity – he's said it was somewhere between two of the telephone calls he had with Prudential. I don't think his decision was influenced by Prudential – it didn't give Mr H any advice about what type of annuity he should buy.

A with profits annuity isn't comparable to a conventional annuity. So I don't see the logic of Mr H's arguments that he'd have selected a conventional annuity, whether level or increasing, from a different provider instead. Or why redress is due based on a completely different product which might have been offered to him by a different provider. Nor do I see there's any basis to assume that Prudential may have been prepared to offer a better rate for a with profits annuity had he explored options with another provider.

Regarding section 10, I've noted that no copy of the skilled person's report has been produced but I've explained why I consider I can still reach a fair decision. As I've said, I think the central issue is what Prudential needs to do to ascertain if Mr H has suffered any loss in consequence of Prudential's admitted acceptance that it can't show the annuity sale was compliant. I think what Prudential has done – as required by the skilled person's report and in consultation with the regulator – isn't unfair or unreasonable.

It wasn't open to Mr H to have shopped around for an enhanced version of a with profits annuity. At the time there was no open market for enhanced with profit annuities on a non advised basis. Prudential was the only provider offering an enhanced with profits annuity and so Prudential effectively represented the market for that product. On that basis any redress didn't include a shopping around element, only an enhanced annuity component by reference to Prudential's own pricing and underwriting criteria.

Mr H has said that a with profits annuity from another provider may have offered a better rate, even without an enhancement. But that isn't possible to say with certainty. The with profits annuity market was limited anyway and although Mr H has suggested that Prudential's rates may not have been competitive I don't think there's anything to say that was definitely the case and that Mr H would've got a better rate for a with profits annuity on a non enhanced basis from another provider. In any event I still don't think the approach to

redress was unfair or unreasonable, given that enhanced with profits annuities weren't available on the open market anyway.

Prudential has reviewed its decision not to offer Mr H an enhanced with profits annuity. He gave full details of his health/lifestyle at the time but Prudential confirmed he wouldn't have met its criteria at the time. I don't see any reason to think that's wrong or that Prudential hasn't reviewed its earlier decision properly. So I don't think Prudential needs to do any more in respect of the sale of Mr H's annuity.

In reaching my conclusions I'd just make it clear that, for the reasons I've explained above, I'm not considering the further points Mr H has more recently raised about the annuity sale and those issues don't form part of this decision.

My final decision

I uphold Mr H's complaint but only to the extent I've indicated above. The Prudential Assurance Company Limited must pay £750 to Mr H for the distress and inconvenience he's suffered as a result of the failings I've identified.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 July 2022.

Lesley Stead
Ombudsman