

The complaint

Mrs B, on behalf of the estate of Mr B, complains that The Prudential Assurance Company Limited (“Prudential”) mis-sold two annuities to her late husband.

What happened

Mr B secured two annuities with Prudential. Both annuities were secured on a non-advised, level, single life basis and included a 10-year guarantee period, as follows:

Annuity started	Tax-free cash sum paid to Mr B	Annual gross income paid to Mr B
August 2003	£2,088.55	£331.68
March 2012	£22,521.89	£4,637.16

In April and July 2019, Prudential wrote to Mr B about his annuity that started in March 2012. The letters explained that the Financial Conduct Authority (“FCA”) had asked it, along with other pension providers, to review certain non-advised annuity sales from 1 July 2008 onwards to establish if policyholders, like Mr B, could’ve shopped around on the open market and obtained enhanced annuity income due to certain medical or lifestyle conditions. It invited Mr B to provide information to enable it to carry out a review to determine if he had suffered a financial loss. Prudential closed its review at that time because Mr B didn’t respond to its contact.

In July 2021, Mr B passed away. Mrs B contacted Prudential to establish the benefits available under the annuities. Prudential confirmed that both annuities had been set up on a single life basis with no provision for a spouse’s pension. It also confirmed that the 10-year guarantee periods ran from the date the annuities started. This meant that the income provided by the 2003 annuity ceased on Mr B’s death (because the 10-year guarantee period expired in 2013) and that the income provided by the 2012 annuity would only be paid to Mrs B until February 2022 (when the 10-year guarantee period would expire).

Mrs B thought the 10-year guarantee period started from the date of Mr B’s death rather than the start date of the annuities and that the income would therefore continue to be paid until at least July 2031. So she was upset to discover that the income would stop sooner than she thought, especially since she was reliant on it to support her standard of living. This led to her believing that the annuities had been mis-sold to Mr B. She complained to Prudential.

This complaint

In September 2021, Prudential issued its final response letter to this complaint. It didn’t agree that the two annuities had been mis-sold to Mr B. It confirmed that both had been secured on a non-advised basis. And that it was satisfied it had provided sufficient information about the features of the annuities selected by Mr B at the time to enable him to make an informed decision about whether they were right for him. It confirmed that when the

annuities started, Mr B had a 30-day cancellation period to change his mind if he wished. But he didn't cancel, implying that he was content with the arrangements he had put in place. Prudential acknowledged that it had failed to provide a final response to Mrs B's complaint within the eight-week timescale stipulated by the FCA. It apologised for this and paid £200 compensation to her in recognition of the poor level of service provided.

Shortly after issuing its final response letter to this complaint, Prudential issued a further letter to Mrs B. This was in connection with the FCA-instigated review into historic annuity sales from 1 July 2008 onwards. It confirmed it had completed its review into the sale of Mr B's annuity that started in March 2012 and concluded it may not have made him aware he could've obtained enhanced annuity income due to certain medical or lifestyle conditions. However, its calculations indicated that there was no financial loss. The letter stated the assumptions Prudential used to assess financial loss – it invited Mrs B to send additional information if she believed the assumptions used didn't accurately reflect Mr B's medical and lifestyle conditions at the time the annuity was secured.

Mrs B didn't accept the responses received by Prudential. She continued to believe that the annuities had been mis-sold. And she didn't agree with the assumptions used by Prudential in its loss assessment calculation in connection with the FCA-instigated review. This was because the review outcome letter confirmed the underlying calculation assumed that Mr B was a non-smoker and had Type 2 Diabetes but these didn't apply. She referred the matter to this service.

Our investigator's assessment

Our investigator didn't recommend that this complaint should be upheld. She was satisfied that the documentary evidence showed Mr B had selected annuities on a level, single life basis with a 10-year guarantee period. And that Mr B had considered a joint life annuity before making his decision to proceed on a single life basis. The investigator was satisfied that Mr B had been provided adequate information to enable him to make an informed decision. In addition, she noted that Mr B had been provided policy documentation after the annuities had been set up which showed the same information and confirmed there was no provision for a spouse's pension. Since Mr B didn't cancel the annuities within the 30-day cancellation, it was reasonable to conclude that they were set up in line with his intentions.

With regard to the FCA-instigated review, the investigator recommended that Mrs B complete a medical questionnaire about Mr B's medical and lifestyle circumstances in 2012 and provide this to Prudential to enable it to complete a revised loss assessment calculation to determine whether any compensation was payable. She also recommended that Prudential ensure it follows its bereavement procedures when communicating with Mrs B and provide the outcome of the revised review to her as soon as possible.

Mrs B didn't accept our investigator's assessment. She said that there were several inaccuracies in her assessment. She wanted to know why compensation hadn't been offered on the grounds that Prudential staff were incentivised to sell potentially inappropriate annuities to customers which led to the FCA-instigated review. And she remained concerned that Prudential didn't ask Mr B about his medical conditions or tell him to shop around. She subsequently provided medical information about Mr B to Prudential. But this didn't change the 'no loss' outcome. Mrs B wasn't satisfied with this outcome because it was based on information she had provided rather than on Mr B's actual medical records held by his GP.

Our investigator considered Mrs B's comments but wasn't persuaded to change her opinion. Since agreement couldn't be reached, this complaint has been referred to me for 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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Before going into my findings, I'd like to offer my sincere condolences to Mrs B and her family for their loss.

The purpose of this final decision isn't to repeat or address every single point raised by Prudential and Mrs B. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In my view, there's two key questions to this complaint that I need to consider and decide upon, as follows:

- Did Mr B intend to secure single life rather than joint life annuities and was he provided clear, fair and not misleading information before he made his decision?; and
- Is the 'no loss' outcome under the FCA-instigated review correct?

I've considered these points under separate headings below.

Single life annuities

Mr B secured two annuities in 2003 and 2012. Both annuities were sold on a non-advised basis. This meant that Prudential didn't advise Mr B to secure the annuities and it wasn't responsible for assessing the suitability of these or questioning whether he should've included certain options such as a spouse's pension. But Prudential did have a responsibility to provide clear and accurate information to Mr B about the terms of the proposed annuities so that he could make an informed decision before going ahead and securing them.

Having considered the evidence, I've concluded that Mr B intended to secure single life rather than joint life annuities. I'm satisfied that Prudential provided clear and consistent information to Mr B that both annuities would be set up on a level, single life basis and include a 10-year guarantee period. The evidence shows that before securing the annuity in 2012, Mr B had asked for more information about a spouse's pension which Prudential provided. Following receipt of this, he decided to secure the annuity on a single life basis and was provided an illustration on that basis. The reason why Mr B chose single life annuities isn't recorded and I wouldn't expect it to be given these were non-advised sales.

However, generally speaking, a single life annuity pays a higher level of income than a joint life annuity – this is because for joint life annuities the annuity provider will take into account the likelihood that income will continue to be paid to a spouse after the annuitant's death, meaning income would likely need to be paid for a longer period of time. So the higher level of income may have been the reason why Mr B ultimately decided to secure single life annuities. Whatever his reasoning, I'm satisfied that Mr B made an informed decision based on accurate information provided by Prudential.

As for the 10-year guarantee period, this always runs from start date of the annuity. The guarantee is designed to provide a return of some of the money (to beneficiaries) used to secure the annuity in the event the annuitant dies soon after starting the annuity. The

information provided to Mr B made clear that the 10-year guarantee period ran from the start date of the annuities. There's nothing to suggest that he was misled to believe the guarantee periods would start on death.

Based on the above considerations, I don't think it would be fair and reasonable in these circumstances for me to direct Prudential to unwind the annuities and pay compensation to Mrs B on the basis that Mr B had secured joint life annuities when it's clear that he made an informed decision to secure single life annuities. The guarantee periods under both annuities have now expired, in line with the terms of the contracts.

Enhanced annuity terms

Mr B didn't respond to Prudential's contact in 2019 about the FCA-instigated review into certain non-advised annuity sales from 1 July 2008 onwards. Following Mrs B's complaint, it carried out a review and concluded that there was no financial loss. Mrs B subsequently provided medical information about Mr B and provided this to Prudential. But this didn't change the 'no loss' outcome. This is because Prudential calculated that in 2012 Mr B could've secured gross annual annuity income of £4,148.24 taking into account his medical and lifestyle conditions. This compared to the gross annual annuity income of £4,637.16 Mr B secured through Prudential.

Our investigator asked Prudential on what basis was the comparative annual annuity of £4,148.24 was calculated. It confirmed that its calculation took into account the whole of the market when calculating any redress due. Therefore, in other words, had Mr B tried in 2012 to source an alternative annuity provider on the open market, he wouldn't have been able to secure a higher level of annual income than the £4,637.16 he secured through Prudential. I've looked at the detail of Prudential's calculations and am satisfied that the 'no loss' outcome is correct. It's worth noting here that Mr B's Prudential pension plan was set up to provide a minimum guaranteed basic annuity. This is the reason why the level of income provided was higher than could be secured on the open market, even taking into account Mr B's medical and lifestyle conditions.

Mrs B has asked why Prudential hasn't offered compensation on the grounds that its staff were incentivised to sell potentially inappropriate annuities to customers which led to the FCA-instigated review. Compensation would only be payable if it was shown that Mr B had suffered a financial loss. As explained above, it's been established that Mr B didn't suffer a financial loss in connection with the annuity he secured in March 2012.

Other issues

Prudential apologised to Mrs B for the delay in responding to this complaint and, in recognition of this, paid her £200 compensation. I think an apology and payment of £200 compensation seems fair in the circumstances. Because of this, I don't consider it would be fair or reasonable for me to require Prudential to pay additional compensation to Mrs B in connection with its handling of this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and the estate of Mr B to accept or reject my decision before 24 November 2022.

Clint Penfold
Ombudsman