

The complaint

Ms P complains that The Prudential Assurance Company Limited (Prudential) failed to clearly explain the medical conditions that may have made her eligible for an enhanced annuity when she took her pension benefits in 2008.

What happened

Ms P took her pension benefits from Prudential in late 2008 in the form of a standard annuity.

In September 2020 Prudential wrote to Ms P as they were conducting a review of non-advised annuity sales. They said the aim was to establish if they'd made Ms P aware, during the sale of her annuity, that she may be eligible for an enhanced annuity. The letter included 'frequently asked questions' which highlighted several medical conditions – including 'blood pressure requiring medication' – that may have made people eligible for an enhanced annuity.

Ms P responded to Prudential, asking them to review the sale of her annuity and completed a questionnaire, highlighting that she was being medicated for high blood pressure at the time of the sale.

Prudential reviewed the sale and concluded that they were satisfied the documentation they provided Ms P at the time of the sale contained sufficient information about the availability of enhanced annuities.

Ms P was unhappy with Prudential's review. There were various communications between Ms P and Prudential in late 2020 and early 2021 during which time Ms P made a complaint to Prudential. Ms P said she felt misled and let down by Prudential as the health questions on the original 2008 form differed greatly to those in 2020. She said she wasn't asked about her health conditions in 2008 which could have increased her annuity.

In response to Ms P's complaint, Prudential said that their review had concluded Ms P had been given sufficient information about enhanced annuities when they sold her the annuity in 2008. They went on to say that the documents supplied only provided examples of health and lifestyle conditions which may qualify for an enhanced annuity, rather than a full list of potentially qualifying conditions.

Ms P was unhappy with Prudential's response as the 2008 documents only listed three medical conditions but the review documents in 2020 listed 13 conditions. And one of those was a medical condition she suffered from in 2008. She also pointed out that Prudential said that they were 'able' to support Ms P's complaint when responding to her.

Prudential reiterated their stance that they'd sent Ms P sufficient information regarding annuities in 2008. But they said they'd made a typing error when they said they were 'able' to support her complaint as their letter was meant to say they were 'unable' to support her complaint. They paid Ms P £150 for any distress or inconvenience their typographical error caused.

Ms P remained unhappy with Prudential's responses and so brought her complaint to our Service. Ms P said if Prudential had explained that high blood pressure was an eligible condition in 2008, she would have followed the matter up with them. But Prudential failed to make it clear her condition may have made her eligible for an enhanced annuity, so she wasn't given adequate information.

I sent Ms P and Prudential my provisional decision on this complaint. In it I explained that I didn't think Prudential had treated Ms P fairly. I said I didn't think the documents Prudential sent Ms P were clear enough that she may be eligible for an enhanced annuity from Prudential or another provider.

I've copied the findings from my provisional decision below.

My provisional decision

In my provisional decision I said;

When Prudential contacted Ms P in 2020 they asked her what information she relied upon to help her choose her annuity in 2008. Ms P selected the option of 'Documents only'.

I'm therefore satisfied that Ms P bought her annuity on a non-advised basis. Meaning Prudential didn't recommend which annuity Ms P should buy. But that meant it was Prudential's responsibility to provide Ms P with information about her options in a clear way so that she could make an informed choice.

So, the issue for me to determine here is whether Prudential provided Ms P with enough clear information about enhanced annuities in 2008 for her to make an informed decision. My decision is based on what I think is fair and reasonable in all the circumstances of the case. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

The Association of British Insurers (ABI) which Prudential were a member of at the time, published in July 2008 a 'Good Practice Guide' to "Improving customers' retirement experiences". The Guide stressed the importance of providing adequate information to customers in relation to enhanced annuities, encouraging providers to draw the customer's attention to product features and terms and conditions that may significantly affect benefits.

Under the Guide the provider should "In quoting all available options draw the customer's attention in good time to particular options that may be to their advantage." The Guide also provided a template cover letter for insurers to use in their packs. The suggested wording in relation to enhanced annuities was:

'Do you have a recognised medical condition? Are you a smoker? If so, you may be able to buy an annuity that pays more because of these factors. They are known as 'enhanced' or 'impaired' annuities.'

The regulator at the time the Financial Services Authority (FSA) also published a fact sheet entitled 'Your pension – it's your time to choose'.

The fact sheet gave some detail on enhanced or impaired life annuities. It said, 'You may also be able to benefit from an enhanced annuity or an Impaired life annuity, which pays a higher income, depending on your state of health or lifestyle.'

It went on to explain factors that affect the income customers may receive from their annuity.

It said 'Your health or lifestyle – some companies will pay higher annuities to people who are overweight, have high cholesterol, are smokers or are in poor health. Your occupation or where you live might also affect your annuity'. It went on to say in a highlighted box; 'You may be able to get a higher annuity if your health is poor, if you are a smoker, are overweight or have followed certain occupations – so shop around!'.

There was also a requirement under the conduct of business sourcebook (COBS) to provide the FSA's factsheet or 'a written statement that gives materially the same information' (COBS 19.4.1).

Prudential haven't said that Ms P was sent the fact sheet in 2008. But they didn't have to. As long as the information they sent Ms P provided the equivalent information in a clear way.

Prudential sent us a copy of the letter they sent Ms P in 2008. Under the section entitled 'Important Information' the letter said;

'ENHANCED ANNUITY'

You could qualify for a higher than normal income from an 'enhanced' pension annuity if:

- *Your AVC fund is £20,000 or more, and*
- *You have a serious medical condition such as cancer, kidney, heart or lung disease, which will shorten your life expectancy. If you buy a joint-life annuity, we can take your partner's health into account even if your health is fine.*

If you think you are eligible, please tell us. We will then ask you to complete our medical questionnaire so that we can decide if you qualify for an enhanced income. In some cases, we may ask your doctor to send us a medical report.

Ms P says the examples given by Prudential were very serious health conditions such as cancer or heart disease which are clearly life limiting conditions. But she couldn't have known that a less serious condition like high blood pressure, could have made her eligible for an enhanced annuity. And I'm minded to agree with her.

Prudential's letter put a clear emphasis on the eligibility of an enhanced annuity being someone with a 'serious illness'. So, I don't think Ms P, with a less serious illness that she was being treated for, would have necessarily thought that she'd be eligible for an enhanced annuity by reading the letter from Prudential.

While the letter mentioned the open market option, it failed to say that Ms P may be able to get a higher rate on the open market. Or that other companies may offer enhanced annuities for other less serious health or lifestyle conditions.

Prudential also sent us the key features document that was likely to have been sent to Ms P at the time.

So, I've considered whether that would have given Ms P clearer information to show she may have been eligible for an enhanced annuity.

Page 6 of the brochure explained that the amount of income Ms P would receive was dependant on several factors. Amongst other things it said;

- *Your health – if you have a serious illness you may qualify for an enhanced annuity*

rate. See 'Can I get an enhanced annuity rate if I am in poor health' for more information.

- Your lifestyle – health related factors such as whether you smoke may also be taken into account.

This description given of enhanced annuities only refers to having a 'serious illness'. And although the page mentions lifestyle conditions such as smoking, the information is very limited. I don't think the wording 'taken into account' clearly gives the information that someone's lifestyle factors could provide them with a higher income. And it doesn't directly link back to the eligibility of enhanced annuities - it appears to be a distinctly different point. Even if Ms P had read on to the further information on page 11, I don't think that would have clarified things for her either.

The information on page 11 under the title 'Can I get an enhanced annuity rate if I am in poor health' gave examples of people who may qualify for an enhance pension annuity. It said;

- You have a serious medical condition such as a stroke, some cancers, diabetes or disease of the kidney, heart or lung which could shorten your life expectancy.

I don't think someone in Ms P's circumstances, having read Prudential documentation, would have spent long thinking about whether she was eligible for an enhanced annuity when her circumstances didn't seem to fit Prudential's description of an eligible person.

There was also no direct reference in any of the paperwork I've seen from Prudential that Ms P may be eligible for an enhance annuity elsewhere. That was a key piece of information that should have been shared with Ms P. Because even if Prudential didn't offer an enhanced annuity for less serious health or lifestyle conditions, another provider may have done.

As I've said, Prudential didn't have to follow the FSA's fact sheet's wording, but they needed to convey materially the same information in a clear way. And for someone in Ms P's circumstances, I don't think they did. She was misled into thinking that, with a less serious illness, she wasn't potentially eligible for an enhanced annuity.

Ms P says she was taking medication for a health condition at the time of the sale. So, had Prudential used clearer explanations I think it's likely to have caused Ms P to wonder if her medical condition would have made her eligible for an enhanced annuity either with Prudential or elsewhere on the open market. And so, on balance, I think it's likely she would have made enquiries to see if she was eligible for an enhanced annuity with Prudential or elsewhere. Therefore, I'm minded to say Prudential must compensate Ms P by establishing if she could have qualified for a higher annuity rate.

For completeness, I also agree with our investigator that our service is unable to investigate or comment on Prudential's payment to Ms P of £150 as that solely relates to a typographical error in their complaint response. And that isn't a regulated activity that this service has the jurisdiction to investigate.

The responses to my provisional decision

Ms P accepted my provisional decision. She reiterated that she didn't consider that her controlled medical condition was in the same category as the serious conditions listed in Prudential's paperwork.

Prudential disagreed with my provisional decision. They said the FCA had found their documentation to be fully compliant with the requirements at the time. They said their documents only provided examples of some of the health and lifestyle conditions that could qualify for an enhancement. Prudential also sent a call recording from 2008 in which they said Ms P confirmed she had looked into the open market option. She was also asked if she was in good health and failed to tell them about her high blood pressure.

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, Prudential's latest submission doesn't cause me to change my mind on the findings I've already reached in my provisional decision. I'll explain why.

I appreciate Prudential feel their documentation met the required standard at the time. But my role is to look at the individual merits of this complaint and as I explained in my provisional decision, Prudential's documentation made Ms P feel that someone in her circumstances, with a less serious medical condition, wasn't eligible to qualify for an enhanced annuity. So, it treated Ms P unfairly.

The call recording Prudential sent was from a call made after Ms P had received her initial quotations from Prudential. It appears from the call Ms P had already read the previous quotes which included the documentation I referred to in my provisional decision. But she was requesting an additional quote to be sent to her.

As I said in my provisional decision, I think the documented information sent to Ms P didn't provide clear enough information to make her think that her medical condition might qualify her for an enhanced annuity. But I've considered whether the information she was given in the phone call gave her enough information to make her reconsider her eligibility.

Regarding the open market option Prudential's call handler explained that the open market option allowed Ms P to draw an income from a different provider. But he didn't explain that enhanced annuities may be available from those providers or that they may take into account different health or lifestyle conditions than Prudential. So, I don't think that demonstrates Ms P was aware that she could be eligible for an enhanced annuity on the open market.

The call handler then went on to say;

"...if yourself or your husband were to have any kind of medical ailment that might shorten life expectancy we can sometimes include that on the quote. But are you both in good health, ok?"

To which Ms P answered;

"At the moment, yes"

Prudential say that Ms P had a chance to disclose her high blood pressure during this call. And I agree she could have. But as I've explained, I think it's likely Ms P had already made up her mind that she didn't qualify for an enhanced annuity because her medical condition wasn't as serious as Prudential's documentation suggested it needed to be.

Although Prudential's call handler didn't use the words 'serious illness' as the documentation did, I don't think his comments went far enough to alter Ms P's perception of her eligibility for

an enhanced annuity. I say that because the call handler didn't say Ms P was likely to get an enhanced annuity or higher income if she had a medical ailment – only that it would be 'included in the quote'. So, they didn't do enough to explain why it was important for Ms P to disclose her less serious medical condition to see if she was eligible for an enhanced annuity.

Ms P says her condition was medicated and under control at that time. It doesn't appear that Ms P considered it a condition that was likely to shorten her life expectancy. So, I can understand why Ms P didn't disclose her condition when asked if she was in good health. Especially as Prudential didn't explain in the call that health or lifestyle factors could mean Ms P received a higher income.

Overall, I'm satisfied that Ms P, in her circumstances at the time of choosing her annuity, wasn't provided with clear enough information by Prudential to make her aware of her potential to qualify for an enhanced annuity. So, Prudential must now establish if Ms P was eligible for an enhanced annuity rate and compensate her for her past and future losses if she was.

Putting things right

Prudential should establish whether Ms P would have qualified for a higher annuity rate via the open market. If this is the case, Prudential should put Ms P back to the position she would have been in, had she been provided with the full information as per the relevant regulatory rules or guidance at the time.

So, Prudential should do the following to put things right:

Past loss

- Prudential should calculate the net annuity Ms P would have received from the open market enhanced annuity rates based on her circumstances. This should be the same format (any spouse's pension, escalation etc) as the existing annuity.
- Prudential should compare this with what she is receiving each month. If there is a loss, it should pay the differences in the amounts each month to the date of settlement, together with 8% simple interest per year from the date each payment would have been made to settlement and

Any interest payable should be subject to a deduction for income tax payable.

Future loss

- Prudential should rewrite the annuity, increasing payments payable if Ms P qualified for a higher annuity rate through the open market option. If Prudential can't do this then they should work out what it would cost Ms P now to buy an annuity equal to the difference between the income being paid and the correct level of income. This amount should be paid directly to Ms P.

Where interest is being added at 8% simple per annum, this is likely to be subject to tax applied by HM Revenue & Customs. If Prudential deducts tax, it should tell Ms P how much it has taken off. It should also give Ms P a certificate showing this, if requested by Ms P so they may reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct The Prudential Assurance Company Limited to pay Ms P the amount as calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 3 February 2023.

Timothy Wilkes
Ombudsman