DRN-4178232

The complaint

Ms S complains that The Prudential Assurance Company Limited (Prudential) mis-sold and mismanaged her personal pension plan.

What happened

In 1994, Ms S took out a personal pension plan with Prudential (then Scottish Amicable, but who I'll refer to as Prudential throughout). And, in January 2023, a few months after receiving her annual statement, Ms S complained to Prudential that her policy had lost 10% of its value, equating to around £2,000. Ms S said Prudential hasn't managed her funds, as it hasn't attempted to mitigate the adverse market effects. But that Prudential continued to take annual fees, despite her also not making any contributions for years. Ms S said Prudential mis-sold her plan, as it marketed her fund with abnormally high commission to incentivise disreputable advisers who were acting illegally, resulting in her cautious risk profile being ignored and her plan being placed in a volatile investment.

Prudential sent Ms S its final response letter. It said, in summary, that it isn't responsible for the advice Ms S was given and the sale of her plan, as this was sold by an independent financial adviser. And that Ms S' investment return depended on performance, which the policy literature she would have received makes clear wasn't guaranteed. It said that the Annual Management Charge (AMC) is deducted even in times of poor performance and covers the cost of running the plan, including management, marketing and administration. Prudential also provided a breakdown of the commission it paid Ms S' adviser in respect of her plan, showing initial commission of £1,373.62 with a monthly payment thereafter averaging just over £11 per month until early 1998. And it offered Ms S £50 in compensation for the few months delay it took to provide her with that information from its archive.

Unhappy with this, Ms S brought her complaint to our Service. One of our Investigators looked into it and said Prudential wasn't responsible for the sale of Ms S' plan. He said Prudential followed the agreed investment approach, which included lifestyling, and that it wasn't responsible for the fall in value which is outside its control. And it had suggested Ms S seek advice if she wasn't happy with her investments. He also said Prudential made the charges clear in the plan terms and conditions and Ms S' statements. And that she had the option to move funds or transfer her policy elsewhere if she was unhappy.

Ms S didn't agree. She added, in summary, that Prudential didn't properly manage the underlying assets of her funds but still charged fees. She said she had no financial awareness when she took out her plan and that Prudential hasn't sent her information over the years to allow her to make an informed decision. Ms S also said that existing policyholders couldn't switch funds due to a known limitation with Prudential's computer system. And that the Investigator's comments about lifestyling didn't apply, as no changes have been made to her investments and she hasn't received any notifications of this. Ms S also said Prudential committed fraud, as it paid her adviser significant initial commission in breach of regulations in order to create new business, which has been recovered from her.

So the complaint has been passed to me for 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.

Having done so, I'm not asking Prudential to do anything further for largely the same reasons as the Investigator. I'll explain why.

Ms S has said Prudential acted fraudulently, so I'll explain at the outset that it isn't the role of our Service to say whether it has acted unlawfully or not – that's a matter for the Courts. And I'd like to clarify it is the Financial Conduct Authority (FCA) that is responsible for regulating the conduct of financial businesses and setting the rules they must follow and it's their role to punish or fine businesses – not ours. Our role is to look at the individual circumstances of Ms S' complaint and, taking into account relevant law, regulations and industry practice at the time amongst other things, decide whether Prudential has acted fairly and reasonably in all the circumstances.

Evidence shows that the advice Ms S was given to invest in her plan and chosen funds was provided by an independent financial adviser. I haven't seen anything to suggest Prudential provided Ms S with any advice or that it was responsible for doing so. This means it isn't responsible for whether or not her plan and investment funds are suitable for her. Prudential is responsible for administering Ms S' plan, providing her with clear, fair and not mis-leading information about it and ensuring it followed the selected investment strategies. And it's for Ms S to monitor the performance of her investments and ensure these are suitable for her.

When Ms S took out her plan I can see she selected that this should be 100% invested in Prudential's Managed fund and she also chose to apply a lifestyle strategy to it. And I think Ms S is likely to have been provided with information about this at the time including, for example, fund information, the plan term and conditions and schedule.

I recognise Ms S is disappointed with the performance of Prudential's Managed fund, but it doesn't necessarily follow that it has been mismanaged. While the fund aims to provide growth, this is by investing in a range of funds and asset types. And I haven't seen anything to suggest the fund hasn't been managed in line with its strategy. I can see it is diversified and that it appears to have achieved similar returns to the sector benchmark it tracks, indicating this performed in line with comparable funds. Investments such as this aren't guaranteed, the amount invested can fall as well as rise. This is the very nature of investments as performance is dependent on many external factors which can't be controlled by Prudential. And, as I've said, Ms S and any financial adviser she had, was responsible for monitoring its performance and deciding whether or not this fund was suitable for her.

Turning to the lifestyle strategy in place for Ms S' plan, I think that whether or not Prudential followed this strategy in Ms S' case is relevant given she's said it mismanaged her plan. And that it provides relevant context as to the drop in value Ms S is disappointed with.

Lifestyle strategies usually seek to manage investment risks as someone's selected retirement age (SRA) approaches, by gradually and automatically making certain fund changes which involve moving investments out of equity type investments and into fixed interest investments, such as gilts and bonds. These usually exhibit lower volatility than equity assets over the long term. Prudential reminded Ms S in her statements that her plan included lifestyling. And I can see from Ms S' 2019 statement that Prudential had started to make switches as part of this into fixed interest investments in the way the plan conditions set out that it would, with the aim of being mostly invested in these by her SRA. So evidence supports that Prudential has correctly followed the lifestyle strategy set out.

It is understandable Ms S is disappointed her plan value dropped by around £2,000 in her 2022 statement, especially when it's moving towards being largely made up of fixed interest investments. But, while lifestyle strategies usually seek to manage investment risks, these don't eliminate it. In certain situations this type of investment can still sharply fall in value. This was the case here, as I can see the value of Ms S' investment in the M&G Gilt and Fixed Interest Income fund in particular fell sharply in around October 2022. I understand this was due to unforeseeable events impacting the market at the time though, which isn't something Prudential could control. This fund also appears to have achieved similar returns to the benchmark it tracks, indicating it performed in line with comparable funds. And I think that Ms S was made reasonably aware of the risks involved, as Prudential explained in her statements that the amounts shown aren't guaranteed and that the value of Ms S' plan could go down as well as up and fall below the amounts paid in.

Ms S said Prudential didn't send her performance information to allow her to make an informed decision about her funds. But I think it made enough information available for her to be able to do so. For example, the statements Prudential sent Ms S from at least 2018 onwards – to her current address and which she doesn't seem to dispute receiving – clearly set out her investments and said that she should review whether her pension was on track. As well as explaining how she could access its fund guides and that she should seek financial advice if needed. Ms S' statements also clearly said she didn't have to stay with Prudential and could switch funds. And I haven't seen anything to suggest Ms S provided it with alternative investment instructions but was prevented from switching due to, for example, the system limitations she's mentioned.

Ms S strongly feels that Prudential paid her adviser excessive initial commission for it to recommend the funds it did. I think it's helpful to explain by way of background though that there was no regulatory limit on what could be paid to an adviser in 1994 when Ms S took out her plan. In 2012 the Financial Conduct Authority completed a review the commission commonly paid to advisers for introducing new business to a pension provider. And I recognise that the changes made following this highlight a lack of transparency and clear agreement to payment of commission prior to 2012. But it's only for policies set up after 2012 that commission can no longer be charged, as the changes had no retrospective effect.

I haven't seen anything to suggest the commission was directly paid from Ms S' plan by Prudential. While it's possible Ms S indirectly paid this from it, Prudential isn't responsible for Ms S' adviser's decision to recommend the funds it did or for whether or not her adviser gave her sufficient information about any commission. And, in any case, the changes to commission didn't have retrospective effect on policies, like Ms S', that were already in place. So I can't fairly say Prudential has done anything wrong here. Prudential has offered Ms S £50 in compensation for the time it took to provide her with information on what it paid though. And I think this is a fair amount in the circumstances to make up for this, when bearing in mind it had to retrieve this from its archive due to the age of Ms S' plan.

Ms S has also said that Prudential shouldn't have continued to charge the AMC when she stopped making pension contributions a number of years ago. I think Prudential has reasonably explained though that the AMC continues to be charged regardless, as it reflects the continued costs involved in running Ms S' plan. And I don't think Prudential has done anything wrong by charging this, as I can see from the plan schedule that Ms S agreed to the AMC when she took her plan out.

My final decision

For the reasons I've given, my final decision is that The Prudential Assurance Company Limited should pay Ms S £50 in compensation, if it hasn't already. I'm not asking it to do anything further.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms S to accept or reject my decision before 13 September 2023.

Holly Jackson
Ombudsman