DRN-4227533

The complaint

Mrs W complains The Prudential Assurance Company Limited (Prudential) made her aware of the Open Market Option when she arranged her Prudential Teachers AVC annuity but wasn't provided with confirmation, that by continuing with the quote from Prudential she may have been better off by taking a market-leading annuity from a different provider. She says she has suffered a financial loss as a result.

Legal representation brought the complaint on Mrs W's behalf but for ease, I will address my decision to Mrs C directly.

What happened

Mrs W was a member of the Teachers Superannuation Scheme. She contributed to the Prudential Teachers AVC option in addition to her occupational scheme. She decided to stop her additional monthly contribution to this scheme on 1 June 2004.

In October 2011, Mrs W wanted to take benefits from her AVC, and Prudential wrote to her detailing the options available.

Mrs W completed the Prudential claim form stating she wished to take a tax-free cash sum and the remaining fund as an annuity which provided just over £100 per annum.
On 1 November 2011. Prudential confirmed receipt of her instruction. It provided the fund value, confirmation of the issue of the tax-free cash lump sum and that the remaining balance would be used to purchase an annuity as per her instruction.
On 15 December 2022, Mrs W's legal representatives complained to Prudential on her behalf about the sale of the annuity.

On 14 January 2023 Prudential issues its final response. It said the annuity was provided on a non-advised basis. Mrs W was given the required information regarding the open market option to allow her to make an informed decision and signposted to a financial adviser if she wanted to receive advice. She was also given the standard cancellation rights at the time and so it did not uphold the complaint.

Disappointed with the outcome, the legal representatives referred Mrs W's complaint to this service on 3 March 2023.

An investigator looked into matters for Mrs W. He firstly considered whether this service had the jurisdiction to consider Mrs W's complaint. This was because the events occurred in 2011, which is more than 6 years ago. This would normally mean Mrs W had until 2017 to complain. However, even though Mrs W complained more than six years after the events she's now complaining about, this isn't the end of the matter, as long as she complains within three years of when she was aware, or he ought reasonably to have been aware, she had cause to. The investigator found on balance that Mrs W had complained within three years of when she said she had reasonably become aware she had cause to complain and went onto consider the merits of the complaint.

In his view, he found that Prudential had met its regulatory obligation to provide Mrs W with sufficient information regarding the Open Market Option to allow her to make an informed decision and so he didn't uphold the complaint.

Mrs W disagreed. Her legal representatives argued that:

- The information provided would not be sufficiently clear to a retail client such as Mrs W
- The term open market option and the statement *"It is your right to compare what we can offer you with what other pension companies can provide* " does not provide enough detail or confirm she could get a better rate from another provider.
- The fact that the client was told she could compare what Prudential can offer does not tell them they could get a higher income if they shopped around.

It asked for an ombudsman 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.

Having done so, I have independently reached the same outcome as that of our investigator. I appreciate Mrs W will be disappointed, I'll explain why.

Before I considered the merits of this complaint it is incumbent upon me to ensure the complaint has been brought to this service within the timescales set out in the rules by the Financial Conduct Authority (FCA).

The relevant time limits

When looking at a complaint, the time limits I must consider and which I have to apply are those set out in DISP 2 of the Financial Conduct Authority ("FCA") Handbook.
The particular rule that's relevant here is DISP 2.8.
DISP 2.8 says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:
(2) more than:
(a) six years after the event complained of; or (if later)
(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.
unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:
(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances: or
(4) the Ombudsman is required to do so by the Ombudsman Transitional Order; or
(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired.

The six-year period and what this means for Mrs W's complaint
In this matter the '*event complained of*' is sale of an annuity in 2011. So, for the purpose of these rules, Mrs W had six years from November 2011 to complain. She didn't complain until

December 2022. So, it’s clear that is more than six years after the event Mrs W now complains about took place.

The three-year period - Does this provide Mrs W with longer than six years from when the advice was provided in order to complain?

Even though Mrs W complained more than six years after the events she’s now complaining about, this isn’t the end of the matter. This is because the DISP rules can potentially provide her with longer than six years to complain, as long as she complains within three years of when she was aware, or he ought reasonably to have been aware, she had cause to. So, I’ve considered whether she was aware, or he ought reasonably to have been aware, she had cause to complain.

When did Mrs W become aware, she had cause for complaint?

Mrs W has said that she contacted Prudential to query the income from the annuity. I can see from the information provided by Prudential this was in October 2017, but she says she wasn’t aware she could complain about the sale of the annuity itself. She says she saw an advertisement and contacted the company, who now represent her in 2022 and at this point she became aware she could make a complaint. I have no reason to doubt the information provided by Mrs W, she has complained about another matter, and I find it more likely than not if she had been aware she could raise a complaint about the sale of the annuity she would have done so. For this reason, I am satisfied that when she brought her complaint to Prudential and then this service in March 2023, she did so within three years of when she ought reasonably to have been aware she had cause to complain and as such I can go on to consider the merits of her complaint.

From what I have seen the crux of Mrs W’s complaint centres on what she believes to be the failure of Prudential to provide her with confirmation, that by continuing with the quote from Prudential she may have been better off by taking an annuity from a different provider. She says has been financially disadvantaged as a result.

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 having been good industry practice at the time.

As our investigator explained on 1 November 2007, the FSA updated its rules for regulating the conduct of the business of authorised persons carrying on designated investment business by introducing COBS – the Conduct of Business Sourcebook.

The rules about explaining the open market option (OMO) were moved from COB 6 to COBS 19.4.1 R (3). This says the provider has to issue an open market option statement to the consumer, which it defines as either:

(a) the FSA's "Your pension: it's time to choose" factsheet, together with a written summary of the retail client's open market option, which is sufficient for the client to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or

(b) a written statement that gives materially the same information.

Mrs W's annuity was arranged on a non-advised basis so what I have to decide it was she provided with sufficient information to meet the regulatory requirements to make an informed decision when she decided to take her annuity with Prudential.

I have carefully considered the information within the options letter sent to Mrs W dated 24 October 2011. On page 6 it is headed 'Open Market Option' says:

'This option enables you to buy an annuity from another provider. It is your right to compare what we, can offer you with what other pension companies can provide. If you wish to take the Open Market Option, you may want to seek guidance through a Financial Adviser, who may charge for any advice given. The fund available for this option is shown on the covering letter.

Please note that this option is not a transfer of benefits. The AVC fund must be used to buy an immediately commencing lifetime annuity. Please be aware that if you buy an annuity from Prudential, your scheme regulations provide a government-backed guarantee to pay your full pension income in the unlikely event that Prudential is unable to. If you use the Open Market Option, you will lose this guarantee. However, 90% of your claim should still be covered by the Financial Services Compensation Scheme (FSCS). If you require more information on this, please refer to the FSCS's website at www.fscs.org.uk or the Key Features Document provided with your annuity quote.

If you wish to take an Open Market Option, please indicate on the Claim Form whether tax-free cash (up to 25% of your available AVC fund) is to be paid. Any tax-free cash sum must be paid by Prudential, it cannot be paid by your chosen provider. The remaining fund will then be sent to your chosen provider to buy an immediately commencing lifetime annuity.'

I'm satisfied that this statement within the options letter does meet the regulatory requirements as detailed in COBS 19.4.1 R (3) in that it explains an open market option is available and goes on to provide information on whether to exercise, or to decline to exercise, an open market option. It also states that Mrs W, if she wants to exercise her Open Market Option may want to seek the guidance of a financial adviser.

I've then considered the Key Features document which was sent to Mrs W after Prudential acknowledged her claim form along with an illustration. With this document it says:

'This illustration is based on standard annuity terms. This is because we don't offer a higher annuity income based on any health or lifestyle factors that affect how long you or your partner (if joint life) might live, such as medication, occupation, and smoking. This is known as an enhanced annuity and if you are eligible for this type of annuity, other providers could offer you a much higher level of income.

If you have a serious health condition and your life expectancy is significantly reduced, you may be able to get all of your pension paid out tax-free. If this is the case, please contact us as soon as possible.

For annuities, it's important to shop around so you can get the highest possible income. If you or your partner (if Joint life) have or have had health and/or lifestyle conditions this can increase the amount of income you can get It's important for you to know different providers may use different criteria to assess health and/or lifestyle conditions which could result in, you are getting a higher income. That's why it is very important that you shop around. If you don't shop around, you could lose out on a higher income.'

This makes it very clear that the annuity Mrs W is taking is on standard terms. Prudential provided the annuity on a non-advised basis and so made it clear that other factors can affect the terms and other providers may off a much higher income. Although it refers to health and lifestyle factors it makes it very clear that it is important to shop around for the highest possible income.

When Mrs W signed the claim form and received the Key Features and an illustration, she still had 30 days to change her mind. This would have allowed plenty of opportunity for her to gain quotes from other providers if she wanted to.

Based on the information available I don't agree that the information provided was unclear or ambiguous. I'm satisfied Prudential provided Mrs W with sufficient information about the Open Market Option to make an informed decision and it did so on both the options letter and the Key Features document. It also suggested she may need to seek guidance from a financial adviser. So, whilst, I appreciate Mrs W will be disappointed I don't uphold her complaint.

My final decision

For the reasons I have given I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 August 2023.

Wendy Steele
Ombudsman