DRN-4534578

The complaint

Mr C complains that The Prudential Assurance Company Limited failed to make him aware he could use the 'Open Market Option' or may have been eligible for an enhanced annuity when he purchased two annuities from Prudential in 2007.

What happened

Mr C took out a personal pension policy with Scottish Amicable in 1989 – Prudential took over Scottish Amicable after the policy was sold. The pension policy application listed a selected retirement age of 65 (Mr C turned 65 in 2016).

Prudential's records say that on 18 January 2007, Mr C called Prudential about taking an annuity. On 25 January 2007, Prudential sent Mr C a letter which said Mr C could take his benefits from Prudential or use the 'open market option', which allowed him to choose another pension provider. The letter recommended Mr C get in touch with his financial adviser to help him decide on the most appropriate choice for him, and enclosed a brochure explaining the different options available to him. In it, Prudential said *"we would particularly like to draw your attention to the Cancellation Substitute, which, in line with the rules of our regulator, the Financial Services Authority, should be read before your annuity is taken."* The accompanying 'Cancellation Substitute" included the following statements:

"What is the Open Market Option?

- *This allows you to transfer your pension fund to another pension company which may mean that you are able to get better rates for setting up your pension, or give you access to a wider range of pension options.*
- *Different pension companies will offer different rates for buying a pension, and different rates depending on the type of pension you choose."*

Prudential also included a quote for an annuity on a single and joint life basis, with or without taking tax-free cash along with an annuity quote for his protected rights included within his personal pension. The quote included the following statement

"Open Market Option

When you take your pension you can transfer the fund to another authorised pension provider. You can use this option to get the best terms available for your pension. This is known as the Open Market Option and your financial adviser will be pleased to give you guidance."

Its Key Features document said:

"Can I get a higher income if I have a medical condition?

You could qualify for a higher income if you and/or your dependant (if you've chosen the Joint-Life option) have a medical condition that could reduce your and/or your dependant's *life expectancy. This option is known as an Enhanced Annuity...*

You may be able to get a higher pension income with our Enhanced Annuity if you suffer from, or have suffered from one of the following [listed health and lifestyle conditions]...

We also consider other conditions on an individual basis, but can only offer you an Enhanced Annuity at the time your annuity is purchased, If you think you may be eligible for an Enhanced Annuity, please call us on the number in your quotation pack or speak to your financial adviser….

Mr C returned Prudential's 'benefit instruction form', which listed a number of options including taking tax free cash and to buy a 'pension' (annuity) with Prudential or through the 'Open Market Option' with another provider. The option to take tax free cash and buy a joint life pension with Prudential was ticked. Prudential set up two annuities for Mr C in respect of his protected and non-protected rights. These policies paid £240.96 and £277.08 respectively. Both policies were set up on a joint life basis with Mr C's wife, with each annuity being paid to Mr C until his death. If Mrs C survives Mr C, the benefits would continue to be paid to Mrs C (albeit at a rate of £120.48 annually for one of the annuities).

In 2022, Mr C, through a professional representative, made enquiries to Prudential about his annuities and later complained he was not advised he may be eligible for an enhanced annuity or to review the whole of the market to ensure he was offered the best annuity rate.

Prudential issued its final response to Mr C's complaint on 28 April 2023. Prudential said it followed its standard process when setting up an annuity income policy by sending Mr C a Key Features document that let him know he did not need to buy an annuity with Prudential – known as the 'Open Market Option'. Prudential added its Key Features document also let Mr W know he could get a higher income if he had certain medical conditions. So, Prudential was satisfied it provided sufficient information for Mr C to make an informed choice when purchasing his annuity policy. Unhappy with this response, Mr C referred his complaint to our Service.

One of our Investigators reviewed Mr C's complaint but did not uphold it. He thought Prudential provided Mr C with the relevant information about the open market option and enhanced annuities to allow him to make an informed choice. Mr C did not accept our Investigator's opinion, saying he was not aware of what the open market option was or that he could go elsewhere to buy his annuity. Mr C said Prudential did not ensure he had read and understood the documents sent to him. So, this has come to me for a 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.

Prudential did not provide Mr C with advice about his annuity options or recommend his annuities to him. But at the time the annuities were sold, the Association of British Insurers issued a statement of good practice, which set out it was good practice to send a "wake up" letter a minimum of four months before Mr C's selected retirement date that includes the following information about his pension product, selected retirement date, the option to take an annuity and tax-free cash, the availability of the Open Market Option and the option to defer taking an annuity. The information provided about the Open Market Option must explain:

- Mr C had a choice about who to buy his annuity from;

- different annuity providers will have different annuity products with different annuity rates and choosing which might be the best annuity product for a particular person will depend upon the individual circumstances at the time;
- a different annuity provider may mean Mr C could buy an annuity that pays out a higher income that the annuity offered by Prudential; and
- a general referral to seek independent advice.

Mr C's expected retirement date was in 2016 (when he turned 65), so Prudential was not scheduled to send "wake up" letters to Mr C at the time of his requesting an annuity in 2007, when he was 55 years old. However, I think the information Prudential sent to Mr C, including the quote, Cancellation Substitute and key features information all made it sufficiently clear Mr C was able to explore the open market option. Having reviewed the benefits selection, Mr C was presented with a number of choices, including the option to take the open market option. I cannot, therefore, agree with Mr C that Prudential failed to provide him with sufficiently clear information about the open market option. Whilst Mr C does not recall receiving or reading the information sent to him, Mr C clearly received Prudential's letter. I think Prudential's letter made it clear it was important Mr C read the accompanying documentation and sought advice if he needed it. So, I would have expected Mr C to query any missing information with Prudential at the time and there's no information to suggest he did so. So, I think it's likely Mr C received the information Prudential sent him. I think Prudential took sufficient steps to make Mr C aware of the open market option available to him and I can see no reasonable grounds to uphold this aspect of Mr C's complaint.

I think the key features also made Mr C aware of the option to ask for an enhanced annuity. Whilst I note Mr C says he had a number of health conditions, I have seen nothing in the evidence provided to show Prudential were aware, or ought to have been aware, he had a health condition that may have made him eligible for an enhanced annuity at the time of his annuity application. So, I think Prudential met all is obligations to provide Mr C with sufficiently clear information to make an informed choice about the annuities he chose to buy. I've not upheld this aspect of Mr C's complaint either.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 February 2024.
Victoria Blackwood
Ombudsman