

The complaint

Mr E complains that the income payments from his with profit annuity with HBOS Investment Managers Limited (HBOS) have declined despite only requiring a 5% annual investment return to remain level. He also says it repeatedly fails to issue P60's and annual statements causing him inconvenience. He wants his annuity income increased to its original level.

What happened

Mr E purchased a Clerical Medical with profit annuity with HBOS in 2001. The initial income level was £1,932.04 per month (£23,184.48 per annum). He says he understood that the basic annuity payments would decrease each year by 5%, but if the with profit fund achieved an average 5% investment return, then no reduction would occur.

Mr E says the income payments had reduced progressively to around £17,000 by September 2023. He complained to HBOS saying the income should be increased back up to £23,000. He also complained about the failure to provide P60 he required to complete his tax return and annual statements for the plan, issues he'd already complained about on several occasions.

HBOS upheld the complaint about failing to provide the P60's and annual statements. It said it had requested that it's back-office team set up an automatic reminder to issue these documents. It paid Mr E £100 for the distress and inconvenience caused. It didn't uphold the complaint about the annuity income, which it said wasn't guaranteed and provided an explanation of how the plan operated.

Mr E said HBOS had misunderstood his complaint about the annuity and that he understood how the plan worked and the various explanations it had provided about this. But he said the HBOS adviser he dealt with when he took the plan out had said that a future 5% annual return would be the least that could be expected. Mr B said HBOS should have achieved at least this level of return over the previous 20 years or so and if it had his income wouldn't have fallen. HBOS said it considered this was a complaint about the mis-selling of the annuity which it would look into separately.

Mr E decided to refer his existing complaints to our service and our investigator looked into them. But he didn't uphold them.

Our investigator said he couldn't consider any aspect of the mis-selling complaint that had been made but depending on HBOS response Mr E could refer that to our service if needed. He said he agreed the issues over the P60's and annual statements had caused Mr E inconvenience, but HBOS had taken steps it hoped would address this going forward. He said he felt the total of £400 it had paid Mr E in compensation for these problems over his various complaints was fair in the circumstances.

In terms of the annuity income our investigator said the only guarantee applying was the basic monthly payment which the original illustration from 2001 showed reducing each year by 5% and Mr E had signed to accept this. He said any bonus paid would be added to this reducing basic amount. He said the bonus paid were partly based on the returns of the

underlying investments due to the smoothing process used to even out the fluctuations in investment markets. He said the Financial Conduct Authority (FCA) monitors the way with profit funds are operated which must be in line with the Principles and Practices of Financial Management, details of which would be on HBOS's website.

Mr E didn't agree. He said HBOS had one of the best performing with profit funds but was now amongst the worst. He said he'd agreed to proceed with the plan based on,

"their not unrealistic ability to maintain over 20+ years at least a 5% return on investments. I appreciate the stated 5% does not represent a guarantee and I never expected guarantees."

Mr E said the figures didn't add up and it was the "very poor" investment performance that was responsible for the fall in annuity income. Our investigator said returns weren't guaranteed and investment markets had been challenging in recent years and he didn't think lower returns were due to poor management of the with profits fund but due to lower investment returns in general.

As Mr E doesn't agree it has come to me to decide.

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 am not upholding the complaint.

I can understand Mr E's frustration at both issues he complains about. Hopefully the process HBOS says it has now put in place will mean he receives both his P60 and statements when he should. As he mentions it is a HMRC requirement that a P60 is issued, and I note he has referred issues with how HBOS operates PAYE to HMRC previously. But I think the compensation it has paid here is reasonable in the circumstances and should problems continue he can raise a further complaint.

In terms of the annuity Mr E has confirmed he knew the income wasn't guaranteed and could reduce but that unacceptably poor performance is to blame for the falling income. But HBOS it isn't in control of how underlying investment markets perform and there isn't any evidence it has mismanaged the with profit fund. So, I don't think it's reasonable to say it should have performed better than it has. The exception to this would be where the investment itself was advised and was unsuitable for the investor, perhaps because it was too risky. That issue might be a factor in the other complaint Mr E has raised, so I can't consider that here.

Mr E is an investment professional, and he'll be aware that both future investment returns are unknown, and that returns in general have been lower over the last 25 years or so than they were previously. With profits bonus rates in particular have reduced markedly since the early 2000's for a variety of reasons in addition to weaker investment returns. This includes the need to keep reserves to meet future guarantees and historical bonuses already added to existing plans. As our investigator noted with profits funds are subject to significant regulatory oversight to ensure fairness.

There is a lot of information on Clerical Medical's website about the underlying performance of the with profits fund, how it is invested and how it is run in terms of smoothing returns. To 31 December 2023 the fund returned 8% for the year and the average annual return over five years was 4.0%. That's before charges and costs associated with the guarantees in the

with profit fund, which when taken into account, reduced the return for pension policies to 2.4% per annum to February 2024. That return is less than Mr E hoped for but comparison with other providers with profit funds shows they have achieved similar returns (before charges) both in 2023 and on average over five years. The average Managed pension fund which invests in similar assets produced returns broadly in line with this. So, there's no evidence the Clerical Medical with profits fund is being mismanaged, given its objectives.

It's clear from the original illustration that both future returns and bonus rates weren't guaranteed, and that the income payable would reduce if the future return was below a certain level. HBOS doesn't appear to be operating the annuity incorrectly and I'm not aware that the FCA has raised concerns about how the Clerical Medical with profit fund is run. So, whilst it's unfortunate that returns have been lower than expected and insufficient to prevent Mr E's income from reducing, as neither were guaranteed, I can't reasonably uphold this complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 27 August 2024.

Nigel Bracken
Ombudsman