

## The complaint

Mr A complains that his with-profit annuity income with The Prudential Assurance Company Limited (Prudential) has been falling since it was transferred to it from another provider (provider E) on 31 December 2007. He isn't happy with how Prudential has managed the with-profit fund.

Mr A has also raised general customer service and administration issues.

Mr A made a wider complaint about provider E, the regulatory authorities and the Government.

## What happened

Mr A originally took out two compulsory purchase annuities with provider E. I understand that the first policy was taken out in August 1995 and the second in August 1998. The policies were both with-profits annuities. The first was subject to an Anticipated Bonus Rate (ABR) of 6.84% and with-profits bonus. The second was subject to a 6% ABR and with-profits bonus.

The application form for the larger of the two policies stated the following on the first page:

*“This illustration is based on the guaranteed basic payments being arranged so that, if the future overall rate of return increases the guaranteed benefits by 6.84% p.a., the gross annuity will be level throughout.”*

On page 2 of the application, which Mr A signed, it stated:

*“The guaranteed basic payments are determined at the outset. These payments will emerge as a series of payments decreasing at an annual rate of the overall rate of return anticipated. The guaranteed basic payments are increased by the addition of declared reversionary bonus. A final bonus may also be payable.”*

The policies were transferred to Prudential as part of a bulk transfer after a vote by the with-profit policy holders at an Extraordinary General Meeting. The proposed transfer was also approved by independent actuarial experts, the regulator, and the courts.

Prudential produced a guide to how it would manage the with-profits fund for former policyholders of provider E who'd transferred. This was effective from 1 January 2008. It stated similar information to the original application form for how the policy would be increased or decreased over time. And said the following about the ABR:

*“You might have decided to anticipate a rate of future bonus addition. This will have the effect of increasing your immediate income but reducing the potential for future increases through the addition of bonuses. If you have selected a high level of ABR, there's a significant risk that your income might go down over the longer term.”*

Prudential said that the terms and conditions which applied to the annuities whilst with provider E remained unchanged after the transfer. But that bonuses were then based on the performance of its with-profits fund. It also said that no changes could be made to the

annuities transferred from provider E. And that there was no facility to change ABR or the option to switch to a guaranteed pension annuity.

Prudential has provided this service with copies of the bonus declaration letters it sent to Mr A from 2018 to 2023. It has also provided us with copies of the yearly statements it sent to him in July each year between 2018 and 2023.

Mr A complained to Prudential in April 2023 about the annuity payments he'd received. He said that his payments had reduced each year from £24,014 in 2008 to £19,464 in 2023. And that he'd been receiving over £40K each year in 2000 before his policies had been transferred from provider E. He felt that the reductions were due to the fact that Prudential constantly reduced his payments by 6.84%, the original ABR attached to one of his original policies with provider E. Mr A felt he'd been misled by Prudential as he'd been told he wouldn't be any worse off after the transfer.

Mr A felt that the money that had been transferred from provider E in his name shouldn't have been subjected to the original rules of the provider E policies. He said that his standard of living had been badly affected by the reduced payments.

Prudential sent Mr A information about how his policies worked on 5 July 2023. It said that the terms and conditions which had originally applied to his policies remained unchanged. But that bonuses were now based upon the performance of its With-Profits Fund. It explained in detail how the three separate types of bonus affected Mr A's yearly income. And confirmed that the calculation methodology remained unchanged from that used by provider E, and that this couldn't be changed.

Prudential further explained that increases or decreases in income depended on the relationship between the bonuses declared and the ABR selected at the start. It said that the effect of the ABR was to enhance or uplift the starting income.

Prudential issued its final response to the complaint on 12 July 2023. It felt it had followed its processes correctly and in line with the terms and conditions of Mr A's policies. Therefore it couldn't support his complaint about his falling income. But it acknowledged that it had provided Mr A with poor service. It apologised. And arranged to send £150 compensation for the distress and inconvenience the poor service had caused Mr A.

Prudential sent Mr A his yearly statement for his policies on 27 July 2023. The letter included: "*a detailed breakdown of the calculations we have used to determine your new yearly income.*" It showed the calculations in steps leading to the new income amount. The letter also stated that it wasn't possible to cash in the policies.

Mr A raised further concerns about the poor service Prudential had provided in August 2023. He said he'd had difficulties contacting Prudential and that it hadn't phoned him back when it had promised to. He also said he'd experienced difficulties with undelivered emails and with accessing bonus information. Mr A also provided more background to his complaint about the falling annuity payments.

Mr A was unhappy with Prudential's initial response and how long it was taking it to respond to his follow up complaint. So he brought his complaint to this service in October 2023.

Prudential issued a further final response letter on 13 October 2023. It upheld Mr A's complaints about the poor service he'd received. It apologised for the poor service and said it had arranged to send a further £200 compensation.

Prudential said Mr A couldn't take his funds out of Prudential and then invest them with

another company. It explained that Mr A had purchased annuities which, once purchased, didn't have an attributable individual fund value.

Mr A provided further background information to this service in November 2023. He explained how when he'd retired, the best annuities had appeared to be with provider E, which is why he'd decided to go with it. He further explained how he felt the adviser at the time had persuaded him to have an anticipated bonus rate of around 7%. He felt this was the biggest mistake of his life as he'd been duped by the adviser.

Mr A said he'd repeatedly pointed out to Prudential that it should know how much had been transferred to it on his behalf from provider E, and therefore what the balance remaining on his fund was. He still felt that his policies with provider E must've been invalidated when they were reduced. Therefore he felt that the terms of those policies should no longer apply to his new policy with Prudential.

Mr A said he wanted Prudential to compensate him for the shortfall in the payments he'd received compared with what he felt he should've been paid since 2008.

Prudential issued a further final response letter to Mr A on 19 December 2023. It upheld his further complaints about the poor service he was continuing to receive. And offered to pay him a further £150 for the distress and inconvenience this had caused.

Our investigator felt that Prudential had managed the policies correctly and in line with its terms and conditions. And that the fall in income wasn't due to any errors on its part. She also felt that the total compensation of £500 Prudential had paid Mr A for poor service was reasonable under the circumstances. She made the following points:

- in respect of Mr A's point that he felt the terms of his policies with provider E became obsolete when they were transferred to Prudential, so he didn't feel it was fair for Prudential to apply the same ABR he'd selected when the policies commenced, she said that Prudential had only taken over the administration of the policies. And that the original terms and conditions remained in place after the transfer. She said that only the bonuses changed going forwards, as they were now based on the performance of Prudential's with-profits fund. She also said that it wasn't possible to change the annuities at all, so the ABR couldn't be changed. Our investigator therefore felt that the ABR was fair.
- Our investigator considered the fall in income Mr A had suffered. She acknowledged that it must've been difficult to cope with. But said that the annual statements and bonus leaflets which Prudential had sent to Mr A every year had explained how the with-profits bonuses worked, and how their relationship with the ABR determined the income. She felt that provider E had set what would now be considered high ABRs. And that this therefore meant that high levels of bonuses were required to maintain the same level of income. But this hadn't actually happened since the transfer to Prudential, as there'd been volatile investment returns since the transfer, and people had generally been living longer. Our investigator felt that the combination of with-profits returns and the high ABR had led to a reduction in the annuity payments. She was therefore satisfied that the fall in income wasn't due to anything Prudential had done wrong.
- Our investigator considered Mr A's complaint about whether or not an individual fund had been transferred in his name, or as part of the whole transfer of policies. She acknowledged that the with-profits fund guide contained wording which had led to this part of Mr A's complaint. While she felt the wording was factually correct, she could understand why it had caused some confusion. She explained that once an

annuity was purchased, the fund value was no longer relevant, because those funds had been used to purchase an annuity instead.

Mr A didn't agree with our investigator. He provided historical letters about the original transfer to Prudential from both it and provider E. He also made the following points:

- He understood that this service could only look at what had happened with Prudential in the last six years.
- He was very upset at the further losses he felt he'd suffered since his funds moved over to Prudential at the end of 2007. His main issues were with the ABR, which he felt didn't exist after the transfer. And the fact that Prudential continued to deny that his fund value wasn't transferred over.
- Mr A said he'd never asked Prudential for compensation for the customer service issues he'd faced.
- He said that he'd saved throughout his working life so he could enjoy a comfortable retirement. But that the fall in his annuity income had led to no more holidays, a very old car and having to generally economise.

As agreement couldn't be reached, the complaint has come to me for a 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'm not going to uphold it, for largely the same reasons as our investigator. I know this will be disappointing for Mr A. I'll explain the reasons for my decision.

In her view, our investigator explained that this service can't look at what happened with provider E. She also explained that we could only look at events in the last six years in respect of Prudential, although she noted that she didn't consider that this limit impacted on the outcome she'd reached.

I first want to say that I agree with our investigator – and for the same reasons she provided - that we can't investigate what happened with provider E or the regulatory authorities. I understand that Mr A accepts this.

Mr A also considers that it is well past the time that the Government should do something about the compensation payments scheme, as he doesn't feel that affected with-profits annuitants have received compensation in full. Unfortunately, this service can't consider this point.

I first considered the information Mr A was provided with at the time of his original purchase and the time of the transfer.

#### *The original purchase and the transfer*

The information I've been provided with shows that Mr A's chosen ABR was 6.84% on one of his policies and 6% on the other. It also shows that his annuity income wasn't guaranteed.

The illustration provided at the time of the purchase, which Mr A signed, effectively explained that the guaranteed basic payment would reduce if the chosen ABR wasn't met in any year.

The transfer from provider E was highly regulated and independently approved.

Prudential's guide to how it would manage the with-profits fund for former policyholders of provider E who'd transferred to it explained that there was a significant risk that Mr A's income could reduce if he'd: "*selected a high level of ABR*". I think this shows that Mr A's annuity income wasn't guaranteed.

In his April 2023 complaint to Prudential, Mr A himself acknowledged that at the time of his original annuity purchase, no other company was issuing bonuses anywhere near to provider E. He also said it wouldn't have been possible to have an ABR of the amount he had with any other provider. I think Mr A therefore understands that provider E effectively gave him over-generous payments in the initial years of his policy. And that these payments led to provider E being underfunded, then its eventual collapse.

Mr E has provided historical letters about the original transfer from both Prudential and provider E. A March 2007 news release from Prudential stated:

*"The proposed transfer to Prudential will substantially improve both bonus earning prospects and investment flexibility for [provider E's] with-profit annuitants."*

And a letter from provider E around the same time also stated:

*"We believe that this proposal will benefit all our policyholders and we will be asking members to vote on the proposal later in the year."*

Having reviewed these letters, I do understand why Mr A feels that Prudential misrepresented the benefits he might receive after the transfer. As our investigator noted, similar concerns have been highlighted to our service historically, and these concerns have been passed on to the Financial Conduct Authority (FCA). But that doesn't mean that Prudential did anything wrong.

I say this because the performance of the Prudential with-profit fund was a factor in the income that Mr A would receive. This was expected to be better in the long run than what provider E might provide at the time of the transfer. But I understand that Prudential wasn't paying any regular bonus at the time of the transfer from provider E. And that it didn't expect to add any bonus in the foreseeable future because of the high cost of the guaranteed benefits already provided. I'm also satisfied that Prudential's guide explained the details of what a transferred policyholder could expect.

When Mr A's annuities were first set up – and after the transfer took place - the guaranteed basic payments were arranged so that if future bonuses were 6.84%/6% each year, the gross annuity payment would be level throughout. But, if a regular bonus of less than 6.84%/6% was declared, Mr A's income would reduce. This is what has happened here.

I appreciate that Mr A has had difficulties understanding the explanation Prudential has provided about how his policies are administered. These products are complicated. But I'm satisfied that the statements reasonably attempt to explain how his annuity is calculated on a yearly basis.

I've also considered Mr A's point that the ABR shouldn't still apply to him, as he felt it didn't exist after the transfer.

As I noted above, the terms and conditions which applied to the annuities remained unchanged after the transfer, apart from the fact that bonuses would be based on the performance of Prudential's with-profits fund, rather than provider E's. I'm therefore satisfied

that the ABR has correctly been applied in this case.

Overall, I haven't seen any evidence that Mr A's annuity is being operated in a way which is different to how these contracts are usually operated. I'm also not aware that the regulators have had particular concerns about the Prudential with-profit fund in the past.

Given what I've said, I can't fairly uphold Mr A's complaint about his falling income as I haven't seen evidence that Prudential has done anything wrong in the management of his funds.

I next considered Mr A's point that Prudential continued to deny that his fund value wasn't transferred over, when he has paperwork stating that it was.

*Does Mr A have a fund value with Prudential?*

Mr A felt that Prudential must've been advised of the sum transferred, or it wouldn't have been able to work out his initial bonus.

Mr A also noted that Prudential's with-profits guide had stated, under the section: "**How do we work out bonuses?:**

*"We set bonus rates after considering the unsmoothed values of plans, the annuity rates then available and how we expect investments to perform in the following period.*

*The unsmoothed value depends on:*

- *how much Equitable Life transferred to us in respect of your Plan..."*

Prudential said in its October 2023 final response letter that Mr A's fund had been converted to a guaranteed future lifetime income when he purchased his annuities with provider A. And that once he'd bought them, there was no longer an attributable individual fund value.

Our investigator agreed with this explanation. And so do I. As soon as Mr A purchased the annuities, he no longer had a specific fund value as he'd used that money to buy his annuities. Therefore I can't see that Prudential has done anything wrong here.

I finally considered Mr A's complaints about poor service. And therefore whether the £500 total compensation Prudential has offered him is reasonable under the circumstances.

*Distress and inconvenience*

Although Mr A said he'd never asked Prudential for compensation for the poor service he's clearly received, I understand that it has made the following payments to him:

- £150 on 12 July 2023,
- £200 on 13 October 2023, and
- £150 on 19 December 2023.

Our investigator noted that although Mr A was unhappy that he couldn't view documents online, this was because his communication preferences on his online account with Prudential were set to receive documentation by post. And Prudential's system didn't allow for the documentation to be both posted and viewed online. Therefore, although Mr A could change his preference to paperless, Prudential then wouldn't be able to send him hard

copies of the documents by post.

I agree with our investigator that although it would be better if Prudential's systems allowed it to provide both hard copies and online access to documentation, I can't reasonably ask it to amend its system to allow both.

I've also considered the customer services issued Mr A has faced. It's clear that he's had a poor customer experience. It's not always been easy to get through to Prudential, and it hasn't always called Mr A back when it said it would. Some of the documentation Prudential has sent Mr A has been difficult for him to fully understand. And some of the emails Mr A has sent to Prudential haven't got through, despite the email address being correct.

I can see that the customer service Mr A has received has caused him a considerable amount of distress and inconvenience. But I agree with our investigator that the £500 Prudential has already sent to Mr A is reasonable under the circumstances, and in line with what I would've otherwise recommended. Therefore I'm not going to require it to do more.

Although I've not been able to uphold this complaint, I acknowledge the difficulties and suffering the reduced income has caused Mr A. I don't doubt that the reduction in income has led to a worsening standard of living. And I'm very sorry this has happened to Mr A. But, as I noted above, I've not found that Prudential has done anything wrong here. Therefore I can't reasonably ask it to compensate Mr A for the financial loss he feels he's suffered. And I don't uphold the complaint.

### **My final decision**

For the reasons explained above, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 July 2024.

Jo Occleshaw  
**Ombudsman**