

## **The complaint**

The estate of Mr C ('the estate') is represented by its Executor ('E'). Mr C sadly passed away in 2023.

E refers to life assurance policies, an endowment policy and a pension product associated with an annuity plan, all of which belonged to Mr C and were discovered by the estate after his passing. They were also all provided by Scottish Amicable, which The Prudential Assurance Company Limited ('Prudential') acquired in 1997. E says it is more likely (than not) that financial value remains in these policies and pension/annuity, to which the estate is entitled. The estate's complaint is mainly that Prudential has frustrated its efforts to determine and recover that value. It also believes that the pension/annuity possibly resulted from unsuitable advice from Prudential to Mr C, so it could have been mis-sold to him.

This decision is about the pension and associated annuity. The life assurance and endowment policies have been separated into a different complaint and will be addressed in the decision for that complaint. Prudential disputes the complaint's substance, it mainly says the policies and pension/annuity hold no value for the estate to recover and that it did not advise the pension/annuity. However, separately, it has offered E £300 and an apology for its complaint handling.

## **What happened**

For background, the following are the policies and pension/annuity relevant to the estate's overall complaint –

- Two term life assurance policies initiated in late 1976; the end of term for both policies was 28 November 1986.
- An endowment policy; evidence on its details at inception are limited; but there is evidence of bonus declarations for the policy in 1986, 1987, 1988, 1991 and 1993; there is also evidence that the policy was traded/sold by Mr C, in 1995, to a third-party ('the third-party'); the sale related documentation confirms the sale/assignment of the policy to the third-party; it states the policy number, it is signed by Mr C, it is dated 19 September 1995 and it includes a copy of the Notice of Assignment later sent by the third-party to Scottish Amicable confirming that the assignment was completed on 19 December 1995.
- A pension policy that Prudential says was cashed in around May 2005, partly for a lump sum cash payment and partly to fund an annuity that began on 1 May 2005; the estate believes, differently, that the annuity was possibly funded by the encashment of one of the life assurance and/or endowment policies; based on the schedule of annuity payments shared by Prudential, payments to Mr C started from 2005 and ended in 2023 when he passed away.

With regards to the pension/annuity matter, the estate has asked us to note that available documentation for Mr C's 2005 annuity application is limited to only four pages out of the 16 pages application form; Prudential has not proven conclusively that the annuity was funded

by the pension policy it has referred to; and it has not proven conclusively that the annuity was not funded by encashment of one of the life assurance and/or endowment policies.

In relation to the case as a whole, E has also stressed that an outcome from our service that does not uphold the estate's complaint must thoroughly exhaust consideration and determination of all relevant regulatory and legal responsibilities binding on Prudential in the matter, and that it was/is required to discharge. He believes that a non-uphold outcome that does not include this will be inherently flawed.

One of our investigators looked into the case as a whole, over the two separated complaints. In terms of the pension/annuity matter, he concluded that the complaint should not be upheld.

The investigator's main findings were –

- Given the passage of time since 2005, it is not unreasonable that Prudential does not have complete documentation for the annuity application;
- there is no evidence that it is withholding information in this respect;
- it would have been impossible that any of the life assurance and/or endowment policies was used to fund the annuity;
- the life assurance policies expired in 1986, almost 20 years before the annuity was purchased, and the endowment policy was traded in 1995 (10 years before the annuity was purchased) and no longer belonged to Mr C thereafter;
- one of the available pages from the annuity application confirms that a Retirement Annuity Contract ('RAC') was used to fund the annuity;
- RACs were a forerunner of personal pensions, before personal pensions were introduced in 1988, and were used as a retirement savings vehicle, which explains Mr C's use of his to purchase the annuity in 2005;
- there is no evidence that the annuity purchase was advised by Prudential or by anyone else, and given that RACs usually led directly to annuity purchases it is unlikely that advice would have been required for the purchase;
- there is provision for death benefits in the annuity application, specifically related to a person that appears to have been Mr C's wife at the time, but she sadly pre-deceased him so death benefits were not engaged when he passed.

The estate disagreed with this outcome and asked for an Ombudsman's decision.

In the main – it disputes the investigator's finding on the funding for the annuity and it says the source of funding cannot properly be determined without evidence of the entire 16 pages application form; it continues to assert that Mr C was probably unsuitably advised to purchase the annuity with funds from one of the life assurance and/or endowment policies; and it believes our service has conducted our investigation with bias in favour of Prudential, so it expects the Ombudsman's decision to display the same bias.

### **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.

The estate's complaint requires a minimum set of facts to be established, in order to create grounds on which any allegations against Prudential can be considered.

I have taken on board E's demand for treatment of Prudential's regulatory and legal responsibilities in the complaint issues. Ordinarily, our service would take such an approach in the complaints we address. I do not say or suggest that reference to Prudential's regulatory and/or legal responsibilities are irrelevant to a complaint about its regulated activities. However, the estate should appreciate that the precise nature of the wrongdoing(s) Prudential is alleged to have committed must first be clear, before references can be made to any regulatory and/or legal responsibilities relevant to it (or them).

As matters presently stand, the specific wrongdoing(s) Prudential is alleged to have committed in Mr C's pension/annuity arrangement is not clear. Indeed, the complaint seems to be much more about the estate's inability to clarify whether (or not) there has been a wrongdoing, than it is about alleging a wrongdoing. As such, it is equally unclear precisely which, if any, regulatory and/or legal responsibilities to cite and/or address in dealing with the complaint. We are not the industry regulator. If E and the estate have wider or general concerns about Prudential's conduct in comparison to what they consider its conduct ought to have been (as defined by regulations and/or laws), they can identify the regulations and/or laws they deem relevant and present their concerns to the regulator.

In dealing with the complaint before me, I need to be clear on the allegation(s) before I am in a position to refer to and apply regulations and laws relevant to it. The estate believes there could be death related benefits in Mr C's annuity arrangement that it would be entitled to (since his passing). It believes that the annuity could also have been unsuitably advised by Prudential, if so and if its complaint about unsuitable advice is upheld it considers that any redress arising from that would also be the estate's entitlement.

For the former claim, there is a need to first establish that death related benefits existed in the annuity arrangement. I expect that the estate is aware of the basic nature of an annuity arrangement and its primary (and commonly sole) purpose to provide the holder with retirement income until death.

The four pages from the application form are indeed incomplete. Ideally, having sight of the entire application form would have been helpful. However, on balance, the available four pages are enough.

One page confirms, amongst other things, that the application was based on the RAC that Mr C held, that his retirement date was 1 May 2005 and that he applied on a joint life basis (which is the selection he ticked on the form) with reference to a "female dependant" whose description suggests was his wife at the time. The next available page contains his signature (dated 8 April 2005), which appears to be for confirmation of the joint life basis he selected. The next available page confirms his contact details and the details of the bank account into which he wanted the lump sum and the annuity payments made. The last available page contains his signature (also dated 8 April 2005) and daytime telephone number serving as his declaration for the information he completed in the form. This information is enough to evidence the basis on which Mr C applied for the annuity.

We have also been given a schedule of payments, from Prudential, showing the annuity payments made to him for the period between 2005 and 2023.

It does not appear to be disputed that Mr C's wife pre-deceased him. His death certificate confirms he was widowed at the time of his passing. There is no evidence of any other joint life arrangement or death benefits provision associated with the annuity. Even if the joint life survived him, that person – not the estate – would have standing to seek any ongoing benefits from the annuity (if there are grounds to do so).

Overall, there is nothing to show death related benefits from the annuity arrangement that passed to the estate after Mr C's demise, so there appears to be no basis on which to allege that Prudential has done something wrong in this respect or that it has deprived the estate of such benefits.

With regards to the notion of unsuitable advice, there is a need to first establish that Prudential advised Mr C to purchase the annuity in 2005. Given the estate's suspicion that one of his life assurance and/or endowment policies was used for the purchase, and given its view that such funding would also have been unsuitable, evidence of the source of funding for the purchase becomes another matter to establish.

The first available page of the annuity application confirms the source of funding for the annuity. It is stated as Mr C's RAC. As the investigator pointed out, it is inconceivable that any of the life assurance and/or endowment policies could have been used for the purchase, because the life assurance policies ceased to exist almost 20 years before the purchase and Mr C sold the endowment policy around 10 years before the purchase.

In terms of advice, there is no evidence that Prudential advised the annuity purchase. The application form possibly or probably included a section for confirmation of any advice fees associated with the application and/or with the annuity venture. If so, it would have been helpful to see the page containing this section and to verify whether (or not) it was completed. However, the absence of such evidence does not automatically mean advice fees were paid and are being concealed by Prudential.

With the passage of time since 2005, 20 years ago, it is not unreasonable that Prudential's records are so limited. It also does not follow that its ability to produce the available four pages means it must have access to the other pages. It has assured us it has shared the information that exists in its records. I note E doubts this, but I have not seen any independent evidence to call Prudential's assurance in this respect into question.

Additionally, the quote below should be considered. It is related to an HMRC manual originally published in 2016 and recently updated, and it is available at the following link – <https://www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm17024>

*"Retirement annuity contracts (RACs) were the forerunners of personal pension plans. No new RAC could be taken out on or after 4 January 1988. But individuals who entered into these contracts before that date can continue to make contributions.*

*A RAC is an annuity policy between an individual and an insurance company and was originally aimed at the self-employed who did not have access to an occupational pension. In general, the terms of these contracts are far less flexible than for other personal pension policies."*

This supports the conclusion that Mr C's RAC arrangement was probably predestined to culminate in the annuity plan he purchased (with funds from the RAC) in 2005. In which case, it is unlikely that there would have been any cause for advice in the matter. As I emphasised in the quote above, RACs were far less flexible than other personal pensions, so the 2005 annuity plan is likely to have been the pre-determined outcome of his RAC. I make this comment because where advice might be sought to help decide between options, it is unlikely that advice will be needed or sought where there are no options to decide between.

Overall, I am not satisfied that there is any evidence of the 2005 annuity purchase being advised by Prudential, so there is no basis on which to allege that it has given unsuitable advice (or any advice).

The estate could argue that a distinct element of its complaint is its assertion that Prudential is intentionally frustrating its pursuit for information and/or intentionally withholding information that could potentially establish grounds for the above claims. It could also say that this is an alleged wrongdoing that needs no further clarification, that is subject to regulatory and legal responsibilities (with regards to record keeping and disclosure of information, at the very least) and that I must address irrespective of my findings above.

I can understand such an argument. However, there is no available evidence that Prudential is withholding information, so there is also no basis to allege that it has frustrated the estate's pursuit by doing so. I acknowledge that the estate might feel frustrated in the matter, but that is not the same as establishing that Prudential has caused its frustration. Prudential cannot produce documents and/or information it does not have and, as I said above, I have not seen evidence that calls into question its assurance that it has shared all that it has found for Mr C's account(s). If the estate's considerations go a step further into questioning whether (or not) Prudential's operations ought to have done a better job in managing said information over time, that is a matter beyond my remit and beyond the remit of the specific complaints/claims made by the estate.

For all the above reasons, I do not uphold the estate's complaint.

I am mindful that, in a separate respect, Prudential has conceded something it did wrong, specifically in relation to its complaint handling. I can determine complaints about *regulated activities*. Complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity. Sometimes a complaint to a firm and any alleged mishandling of it might form a part of the substantive case. If so, addressing the firm's complaint handling might then be a necessary part of determining the overall complaint. The estate's complaint is not that type of case. The pension/annuity issue pre-dates the complaint and it is wholly distinct from Prudential's complaint handling process. The latter does not form a part of the former. For these reasons I have not considered, and I make no finding on, Prudential's complaint handling.

### **My final decision**

I do not uphold the estate of Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 25 July 2025.

Roy Kuku  
**Ombudsman**