

complaint

Mr E is being represented by a Claims Management Company (“CMC”). The CMC made a complaint to The Prudential Assurance Company Limited (“Prudential”) about Mr E’s personal pension with another provider being switched to it in 1993. The CMC said:

- There is no evidence to indicate that Mr E was made aware of the benefits he would be giving up by transferring away from his existing pension arrangement.
- There is no evidence of the comparative costs and benefits of the advice given.
- There is no evidence to indicate that Mr E was made aware of the level of risk that he was exposing himself to by moving away from his existing arrangement.

The CMC said a comparison should be conducted between the benefits Mr E has accrued to date with Prudential’s policy and those that he would have accrued had he retained his existing pension arrangement. If this showed Mr E is worse off, Prudential should compensate him.

background

Mr E holds a personal pension policy with Prudential. It was established in 1993 when he switched the value of another personal pension policy to the Prudential policy, and began making monthly contributions to the Prudential policy of £60 a month.

In response to Mr E’s complaint, Prudential said its records showed it had not given any advice on the policy he took out with it. It said there was no evidence to show the policy was unsuitable for Mr E, in any event, and that an explanation of the policy features would have been given to Mr E when he took the policy out.

Our investigator did not think the complaint should be upheld. She said the evidence showed the sale of the policy was “non advised” and that there wasn’t any evidence to show Mr E was worse off as a result of taking out the policy.

The CMC did not accept the investigator’s view. It said it wasn’t credible to say no advice had been given and that it thought there must have been some “double charging”.

my findings

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 reached the same overall conclusions as the investigator.

The notes of Prudential’s representative from the time of the sale record that no advice was given. If no advice was given, Prudential did not have any responsibility to ensure the switch to its policy was suitable for Mr E. In those circumstances it would not be fair hold Prudential responsible for the suitability of the switch to its policy.

But the evidence is mixed. Mr E did meet with Prudential’s representative and it appears there may have been a discussion about the merits of switching to its policy. That is not consistent with the “no advice” record – such a discussion would amount to advice. So I have considered whether there is sufficient evidence for it to be fair to say any advice

Prudential gave was not suitable, and that it should therefore carry out the comparison mentioned by the CMC and pay compensation for any difference between Prudential's policy and Mr E's previous policy.

I do not think it would be fair, in the circumstances, to find that Prudential gave unsuitable advice and should carry out the comparison mentioned by the CMC. The CMC's complaint seems to be based largely on speculation. It hasn't provided any details of Mr E's previous policy – it hasn't shown that the previous policy was cheaper or guaranteed to offer better benefits. It hasn't provided any evidence to show that the move to Prudential's policy entailed an increase in risk.

Given that the policy was taken out 25 years ago, it is understandable that there is limited evidence available. But it does not follow that it is fair to find any advice given was unsuitable, simply because Prudential isn't able to demonstrate the things the CMC has listed. I think the fair thing to do in these circumstances is to make a decision on what is most likely.

It seems that the switch was between similar schemes offered by large life companies. Prudential's policy was invested in a with-profits fund and I think it likely the previous scheme was invested in a similar fund, with similar risks. It seems unlikely there would be a significant difference between costs between the policies, given their likely similarities. And I've seen no evidence of there having been any guaranteed benefits associated with the previous policy.

In these circumstances, I do not think it would be fair to ask Prudential to carry out a comparison between the performance of its scheme and the return that would have been provided by Mr E's previous scheme, on the basis of the advice being unsuitable. I think it more likely than not that any advice given was suitable. So I don't think it would be fair to ask Prudential to do anything now.

my final decision

For the reasons given, 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 July 2018.

John Pattinson
ombudsman