

## **complaint**

Mr M complains that The Prudential Assurance Company Limited didn't make clear annual commission payments would be made to his Independent Financial Adviser (IFA) from his with-profits annuity. He thinks it was obliged to check that he'd agreed to make the payments before making them.

## **background**

Mr M completed an application for an Income Choice Annuity via his IFA in March 2011. His IFA used an illustration from Prudential in the sales process, which set out the charges payable under the product. It said these included the costs of both initial and annual commission payable to the IFA, which were also displayed.

Prudential sent Mr M a final illustration in April 2011, once his plan had been set up in accordance with the instructions on the original illustration. This confirmed very similar payments but based on the revised value of his plan.

Mr M says that he was aware some commission was payable, but the IFA told him it would come from Prudential directly so he didn't concern himself with it further. And the IFA also didn't mention that it would be paid on an ongoing basis. He says he would've refused the ongoing commission had he been aware of it, because he wasn't expecting an ongoing service from the IFA.

One of our adjudicators didn't uphold Mr M's complaint. She was satisfied the information Prudential supplied to the IFA – and to Mr M directly – outlined the charges. She also accepted that Prudential had acted on the understanding that Mr M had agreed that his IFA could take commission from his policy, and Mr M had sufficient opportunity to query the charges being taken for this if he was unsure.

Mr M didn't agree. He believed Prudential should've told him the payment of an annual commission was optional, and he should've been reminded of this on each policy anniversary date. Instead, he was presented with a 'fait accompli'. Unhappy with the outcome, he's asked for his complaint to be reviewed by an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the regulator's rules, the primary obligation to disclose what commission will be paid falls on Mr M's IFA and not Prudential. I've considered a complaint against Mr M's IFA separately and have concluded that, on balance, the IFA did meet its obligations. My reasoning for that is given in a separate decision, which I won't repeat here.

In Mr M's complaint against Prudential I can consider whether it met the requirements to disclose the product charges (including commission) in a clear, fair and not misleading way; and otherwise in accordance with the regulator's rules. I can also consider Mr M's point about whether Prudential needed to check directly with him what he had agreed to pay.

I've reviewed the illustrations Prudential issued. It wasn't required to send one to Mr M directly until the point the annuity was being set up. But it supplied an initial illustration to the

IFA; and had every reason to expect that the IFA would provide this to Mr M when making his recommendation. The IFA was required to do this under the regulator's rules.

I'm satisfied the illustration meets the regulator's requirements. It sets out the product's charges, and also the commission at the beginning and each year after that. It explains that some of those charges are made in order to pay the commission; and that this affects the initial level of income under Mr M's annuity.

The Key Features Document (KFD) for Mr M's annuity forms part of the material Prudential made available for the IFA to use in the sale. Mr M has noted that some way into the document it suggests there are options in the format of commission that can be taken. Indeed Prudential has suggested in its response to the complaint that these options were open to Mr M. I think this may have led to some confusion.

The IFA was under no obligation to agree with Mr M that they would transact the business on a certain basis (for instance, only initial commission and no annual commission). So they didn't have to set out all the options to Mr M and allow him to choose between them. The IFA was free to choose the level of commission they preferred, as long as they then disclosed it.

Not all providers' KFDs set out the commission options an IFA has. This isn't strictly a regulatory requirement, because it's a matter for the IFA to decide how it wants to structure its business. So I think the information in the KFD here was much for the IFA's benefit as Mr M's. In this case the IFA took up the option to set up the annuity with annual commission. That may well have meant they took less initial commission than they would otherwise have done if there was no annual amount in addition. Either way, the IFA went on to disclose this commission to Mr M – and it was open to him to tell the IFA if he didn't agree to pay it.

In my view Prudential complied with the regulator's rules in issuing the illustrations, both during the sale and then directly to Mr M afterwards. This also gave Mr M the opportunity to query any amount he wasn't expecting to see, if for any reason there had been a misunderstanding in his discussions with the IFA. There wasn't any requirement for Prudential to ask Mr M directly what commission he wanted it to pay, because this was already set out in the illustration Mr M accepted. Nor was there any requirement for it to remind Mr M in subsequent years that payments were still being made.

### **my final decision**

I don't uphold Mr M's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 July 2016.

Gideon Moore  
**ombudsman**