

## **complaint**

Mrs A's late husband, Mr A, was advised to purchase an annuity by The Prudential Assurance Company Limited in 1998. Mrs A is unhappy that Mr A was not advised to include a larger spouse's pension which would become payable to her on his death.

## **background**

Mr A purchased an annuity in 1998 following advice he received from a representative of Prudential. The quotations available from the time all set out illustrated benefits on a single life basis and stated that a spouse's pension would only be payable at 50% of the amount of the annuity purchased by the protected rights portion of the fund. The majority of the fund was non-protected rights and the quotations stated clearly that no spouse's pension would apply to this portion. There is no copy of any recommendation report or fact find from the time of sale.

Mrs A has complained to Prudential that Mr A should have been advised to include a spouse's pension on the entire fund and not just the Protected Rights fund. One of our adjudicators considered the complaint. He did not recommend that it should be upheld for the following summarised reasons:

- Upon receipt of the quotations Mr A would have been aware that a spouse's pension wouldn't be due on his death for the non-protected rights element of his annuity. He could have queried whether he could provide further spouse's pension benefit if he was unhappy with what had been quoted.
- Mrs A had her own pension provision in place, which led the adjudicator to conclude that, on balance, Mr A would likely have been happy with purchasing the annuity on the basis he did in order to maximise his income.

Mrs A is being assisted by a representative, who made the following summarised comments in response to the adjudicator's opinion:

- It is known that the representative of Prudential was acting in an advisory position and therefore had an explicit responsibility to ensure his advice was appropriate.
- There is no evidence to so much as imply that the representative considered, discussed or commented on the option of a spouse's pension or drew any attention to the fact that the illustrations he was putting forward failed to provide adequately for Mrs A. The representative didn't provide illustrations incorporating greater cover for Mrs A or in any way communicate the availability of such an option.
- Mr A's focus, at the time of purchasing the annuity, had been distracted by administrative errors between the two businesses.
- The adjudicator did not ascertain the financial circumstances of Mr and Mrs A at the time of advice and instead conjectured that because Mrs A had some pension provision of her own, Mr A might have felt that she was sufficiently catered for.
- Mr and Mrs A were informed by family history. They harboured concerns about their old age and in particular what might happen if one or other (or both) required residential care.
- Over time Mr and Mrs A had accumulated £100,000 in capital and tax-free cash. However, this sum was not needed or used to support their domestic budget.
- By virtue of the fact that Mr and Mrs A were concerned to save towards potential future care needs during the early years of retirement, it is demonstrable that Mr A was not in need of maximising initial retirement income.

- The capital sum held by Mr and Mrs A can be disregarded because it was being carefully husbanded for care needs in later retirement.
- The structure of annuity recommended by the adviser meant that if Mr A was the survivor, net pension income would decrease by about one quarter whereas if Mrs A was the survivor it would decrease by more than half.
- There is nothing to suggest that Mr A intended for his wife to suffer financial hardship in the event of his death and it is reasonable to suppose that he would have wished for there to be equality of quality of life regardless of who was the survivor.
- Had the adviser worked through the fact find process Mr A could have become aware not only of the disparity that a single life annuity would result in but that the survivor position could be equalised at very modest cost.
- It is reasonable to suppose that Mr A wouldn't have wanted his widow to face a lower standard of living than if he was the survivor.
- It is an essential part of the role of a representative making a recommendation involving annuity purchase to bring the question of whether to include a spouse's pension to the very forefront of discussion.
- Prudential's complaint reviewer and the adjudicator appear to expect Mr A to have exhibited greater financial planning expertise than the adviser.
- Mr A was entitled to appropriate guidance and advice but it seems that the onus is being placed on him to have undertaken an analysis of their financial position, to have projected forward the position of the survivor, to have been aware of alternative options the adviser had omitted to mention, costed the differential and then pointed out the shortcomings in the adviser's recommendation.
- Had the adviser met the most basic standards expected of him or if Prudential had mitigated his failings by establishing the true financial situation of this couple, it would have become apparent that the advice was inappropriate.
- The adviser's recommendation was demonstrably inappropriate because it created a divergence of financial provision between survivors. There is every reason to suppose that Mr A would have desired parity.

As agreement was not reached, the case has been referred to an ombudsman.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Whilst I have considered and taken into account all the points raised in the submissions provided I have limited my response to those issues that are material to reaching a fair outcome.

Given the circumstances of this complaint, it's impossible to know now what discussion about including a spouse's pension happened between the representative and Mr A. There is a lack of documentation from the time of sale that would prove what was discussed. But in my view the absence of documentation doesn't automatically mean that the advice to set up the annuities in the way that they were was unsuitable or that the joint life option had not been discussed.

I have seen copies of the quotations that Mr A was sent by Prudential. These all included only a spouse's pension on the protected rights element of his fund. All of the quotations showed that the non-protected rights fund was used to provide a single life annuity with no spouse's pension.

The illustrations showed:

*Member's Pension The initial amount provided is £xxxx p.a. together with a Protected Rights Pension of £ 2,000 p.a.*

*Spouse's Pension The initial pension to be provided is £0.00 p.a. together with a Protected Rights Pension of £1,000 p.a.*

(the figures here are for illustration only)

In my opinion it would have been clear to Mr A that he was purchasing an annuity on the basis of that which was quoted. I note Mrs A's representatives comments on this matter. I acknowledge that Mr A was not the expert in the transaction. But I don't consider it unreasonable to suggest that Mr A ought to have noted the basis on which the annuity was being set up and that he would have queried whether further spouse's pension could be included if that is what he desired.

The policy documents would also have made it clear how Mr A's pension was to be paid.

There is no evidence that Mr A on receipt of the quotations or on acceptance of the quotation queried the lower level of spouse's benefits being provided.. I therefore have to conclude that he was happy with the quotation that he received.

I have also noted the circumstances of Mrs A at the time that the annuities were taken out. It is evident that she was not fully reliant on Mr A to provide her with an income in retirement.

I am aware that with the benefit of hindsight Mr A would have benefitted from securing a greater spouse's pension. However I do not consider that taking out an annuity on the basis that Mr A did was necessarily unsuitable. It provided him with a higher initial level of income than would have been payable had additional spouse's pension benefit been included. I am afraid that it is the case that many men do decide to purchase a single life annuity and do not make a provision for their spouse.

I am unable to conclude that the annuity was mis-sold to Mr A or that the more suitable advice, without the benefit of hindsight, would have been to include further spouse's pension.

### **my final decision**

I do not uphold this complaint against The Prudential Assurance Company Limited and I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 29 June 2015.

Adrian Hudson  
Ombudsman