

complaint

Mr A has complained that The Prudential Assurance Company Limited (“Prudential”) is taking away the guarantee it gave him when he was advised to start the with-profits personal pension plan in 1981.

background

Upon approaching his retirement date, Mr A asked Prudential to provide him with details of the pension benefits to which he would be entitled at retirement. Prudential provided Mr A with this information which showed that the anticipated income from the fund value accrued by Mr A was substantially lower than he believed he was entitled to.

Mr A subsequently sent Prudential a document provided to him by its representative in 1981. Mr A said that it showed he was guaranteed, on his retirement, to receive:

- ‘A pension guaranteed for 10 years certain and, then for life £10,861’
- ‘You get a guaranteed 10 years payment of £146,235’

Our adjudicator wrote to Mr A with her assessment of the complaint. The background and circumstances to it were set out in that assessment. The adjudicator did not recommend that the complaint should succeed.

The adjudicator explained that the document Mr A provided appeared to be an illustration of possible future investment returns and income; the illustrated figures were based on assumptions for investment growth which were significantly higher than those actually achieved over the duration of the policy.

The word ‘*guaranteed*’ on the document only referred to a guarantee ‘*payment period*’ for ten years and not to the *amounts* of either income or fund value. The adjudicator also said that the annual statements would have shown Mr A that his policy value and guaranteed basic annuity or pension was significantly different from that illustrated in the document provided to him in 1981.

Mr A did not agree with the adjudicator’s findings. In summary, he said that the document did not say that it was an illustration. At the time the adviser had clearly told him, at his home, that the amounts were guaranteed and were the minimum he could expect to receive on retirement. The bonus statements initially confirmed what the adviser had said. He was not provided with advice once the policy started and it was not explained to him about the different types of bonuses and how they would be applied to his policy.

Prudential made no further submissions.

my findings

I have considered all the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator and for the same reasons.

I appreciate that Mr A has said that the retirement benefits were verbally guaranteed by the adviser. Although I do not doubt what Mr A now recalls, I am not persuaded that verbal assurances amount to a guarantee. In any event, it would be neither fair or reasonable to

rely on an uncorroborated recollection of events that took place more than thirty years ago to hold Prudential to account.

Whilst I understand that Mr A is disappointed with the returns on his pension fund investment and that these may not have matched those mentioned to him at the time of advice and certainly do not match the written illustration provided to him in 1981, I do not consider that a binding guarantee was provided by Prudential.

Where there is no definitive evidence to support either parties' assertions, I base my decision on the balance of probabilities. In other words, taking account of all the circumstances, what do I consider is most likely to have happened. In this case, although illustrations in 1981 applied growth rates that with hindsight can now be seen to have been overly optimistic, Prudential did not offer guarantees of the illustrated possible income or fund values. Even where annuity *rates* were guaranteed, such a guarantee was not extended to either income or fund value. Accordingly, on the balance of probability, I am not persuaded that guarantees of either income or fund value would have been offered to Mr A by Prudential.

I note that Mr A has said that the document also stated the guarantee which he now relies upon did not say that it was an illustration only. By not naming the document confusion has been created, but I am satisfied that the document was an illustration, providing an example of retirement benefits rather than a guarantee these would be achieved.

However, I fully understand Mr A's frustration that what he took to be a guarantee has now, some 30 years later, transpired to be no such thing; the wording in the document is clumsy and not to the standard of clarity that is now demanded. It is the case though that the regulatory standards applying to such documentation in 1981 were substantially less rigorous than applies today.

However, whilst I acknowledge the ambiguity of the document's wording, it does not lead me to conclude that the document provided a guarantee of the benefits to be paid at retirement. I am satisfied that the guarantee applied to the minimum number of years when the pension would be paid, in this case ten years, and not to the specific amount Mr A would receive at retirement.

At the time of advice and once a policy had commenced, it was not usual practice for an adviser to initiate further meetings with their client. Thereafter, Mr A would have needed to seek advice or information about the bonuses applied to his policy. The policy information provided during the term of the policy would have shown Mr A the policy value and would have provided an opportunity to discuss his policy with the business. Specifically, the annual statements sent to Mr A clearly set out that the guaranteed annuity or pension was substantially less than on the illustration provided to him in 1981. The higher pension figure on the annual statements are described as '*Assumed Pension on retirement at specified date*'. In addition, I note the bonus notices, which specified '*Amount payable each year for life, excluding any further bonuses*' also clearly set out that this amount was again significantly below that which the 1981 illustration showed.

Whilst I understand that Mr A was throughout this period under the misapprehension that his income and fund value were both guaranteed, it is unfortunate that none of these documents prompted Mr A to seek further advice or clarification as to their meaning.

Having considered the document he provided in support of his complaint, on balance, I am unable to conclude that Mr A was given a guarantee that at retirement he would be paid the specific amounts illustrated.

my final decision

I do not uphold Mr A's complaint.

Terry Connor
ombudsman