

complaint

Mr C complains that The Prudential Assurance Company Limited will not allow him to take his pension in two parts. Although it is agreed that there is only one policy, Mr C considers that the benefits should be treated as two separate segments following a ruling in his favour by the Personal Investment Authority Ombudsman in 1998.

Background

One of our adjudicators sent his assessment of the complaint to Mr C in June 2012. The background and circumstances to it were set out in that assessment. But in brief, in 1998 the PIA Ombudsman upheld a complaint Mr C brought against Prudential about the policy being sold on the basis of it providing certain guarantees at retirement date.

Our adjudicator did not uphold Mr C's complaint. His view was that the only thing that had been amended to the policy was to provide the guaranteed element, this, he concluded, did not allow Mr C to disregard all the terms and conditions of the standard policy. Further, he did not consider there was evidence to suggest that the policy was able to be separated at payment.

Mr C disagreed with the adjudicator's findings. He said, in summary, that:

- Although it was acknowledged that there was only one policy, it was no longer a standard policy in that it had been split into two separate sections.
- The guarantee clearly stated that if the £20 premium was paid the guarantee applied – the PIA had stated that this part of the policy did not form part of the standard contract – if it was not part of the standard contract it could be operated independently.
- There was no correspondence to say that the sections operated together – the opposite was the case.
- By being forced to take the two sections together he was being financially disadvantaged – he wanted to take the £80 per month section but leave the £20 per month section until age 65.
- The standard policy terms and conditions were set up for a single element as it was not envisaged that the policy would be split. The terms in the original policy document do not cover a split policy – various terms could not therefore cover the guaranteed portion – it was not logically possible.
- It was for Prudential to clearly set out the terms and conditions when the policy was split.
- The guarantee stated that there were two specific dates on which he could draw the pension, but the standard terms *"...gives a wide choice of dates on which I can draw a pension so how can this work? As you state I have to take the two individual sections at the same time then I have to take the second portion on either of those two dates or the guarantee fails."*
- It was totally wrong to deny him the freedom to operate the pension on a fair basis – he was basically been penalised for having a guaranteed element but a standard contract.

my findings

I have considered all the evidence and arguments that have been provided from the outset in order to decide what is fair and reasonable in the circumstances of this complaint. Whilst I

have read and taken into account all the submissions provided by both parties I have limited my findings to those issues that I consider are material to reaching a fair outcome.

It is not in dispute that this was originally intended to be a single policy, and there was no provision in the terms to take benefits from it in separate tranches. As a result of the PIAOB investigation into Mr C's complaint in 1998, Prudential provided the guarantee that now applies to the £20 per month premium. However the original policy did not intend to provide such a guarantee – it was added because of the misleading information about a guarantee that was given to Mr C at the time of the sale.

I understand the logic of the arguments made by Mr C in saying that as benefits cannot be taken separately he will be disadvantaged. But I think it should be considered in the context of the starting position, which was that Mr C was sold a pension that did not provide for benefits to be taken at different times, but that as a result of the misrepresentation about the guarantees applying to the £20 premium, a guarantee was added to address that misrepresentation.

I note that the guarantee stated that if benefits weren't taken on the specified dates the guarantees would not apply. So the guarantee was, in effect, treated as providing an *additional* feature to the plan – that if benefits were taken on the specified dates the guarantee would apply to that part of the fund derived from the £20 premiums. Mr C still has the option of taking his benefits at the range of ages that were originally intended, but in addition has the option that if he takes them at either of two specific ages the part relating to the £20 premium will be subject to the guarantees. Although the guarantees won't apply if benefits are taken at other ages, it does not prevent Mr C from taking his pension at these ages – he has the opportunity of weighing up the options available and deciding on the advantages and disadvantages of doing so.

Clearly, I accept that the policy's standard terms and conditions did not provide for the situation where the policy was "split" and a part of it was subject to a guarantee. So I have to decide whether, once the guarantee was added to the policy in 1998, Prudential was obliged to allow Mr C to take the benefits separately because there were some disadvantages if it did not do so.

Overall, having carefully considered the matter, I have not been persuaded that it was. For the reasons outlined above, I consider the guarantee was effectively an additional feature of the policy that could apply if Mr C decided to take his benefits on the specified dates. I do not consider that Mr C is being penalised for having a guaranteed element – he still has that option available. And he is still able to take benefits at the same range of ages that originally applied – albeit he will not benefit from the guarantee that applies at all ages.

my final decision

Accordingly, my final decision is that I do not uphold this complaint.

David Ashley
ombudsman