

## complaint

Mr and Mrs B complain about The Prudential Assurance Company Limited (“Prudential”). They think Mr B’s annuity was mis-sold on the basis that:

- the consequences of taking out an annuity were never explained
- Mr B was never given alternative annuity options (such as an enhanced annuity) or advised he could get a better deal elsewhere
- he was rushed through the annuity process

## background

On 20 April 2007 Prudential received a letter from Mr B asking for details of the tax free cash lump sum available under his personal pension plan (“PPP”). Prudential sent Mr B a pension quotation on 30 April 2007 along with *Prepare Your Retirement Options* and *Getting Ready to Use Your Pension* brochures.

Several months later Mr B called Prudential requesting an immediate retirement quotation. A retirement pack was issued to Mr B on 6 August 2007. This included quotations, a Key Features Document, a *Getting Ready to Use Your Pension* brochure and Cancellation Substitute and Benefit Instruction forms.

Mr B returned the Benefit Instruction form to Prudential on 14 August 2007 but as it was unsigned Prudential returned it. A signed Benefit Instruction form was received by Prudential on 30 August 2007. Mr B chose to take tax free cash and a joint life annuity with Prudential.

Over a number of years Mr B says he had conversations with friends, colleagues and family about the pension benefits he was receiving. He says that as a result of these conversations it appeared he was receiving a lower level of benefits than he thought he should be. So in 2017 Mr and Mrs B approached our service to raise concerns about Mr B’s annuity with Prudential. Our investigator made Prudential aware of these concerns.

On 18 January 2018 Prudential provided its final response to Mr B’s complaint. In summary it said:

- the retirement pack it issued to Mr B on 6 August 2007 provided information about the features of the annuity he was purchasing and made reference to the Open Market Option (“OMO”)
- the *Prepare Your Retirement Options* brochure sent to Mr B said that if Mr B was in poor health and thought he might qualify for an enhanced annuity he should let it know as soon as possible. There was no record of Mr B ever doing this
- it couldn’t find any evidence to indicate Mr B was rushed through the process of setting up his annuity or that he was ever told he’d retain control over his pension pot
- it didn’t uphold Mr B’s complaint and felt he’d been treated appropriately when his annuity was set up

Unhappy with Prudential’s response Mr B referred his complaint back to our service.

One of our investigators considered the matter and in summary said:

- the information Prudential provided Mr B with outlined the OMO and enhanced annuities

- he thought Prudential should've provided Mr B with more detailed information about enhanced annuities
- however Mr B's Prudential annuity was taken out around the same time as his annuity with another provider which I'll refer to as "Provider S"
- Provider S gave Mr B a copy of the regulator's factsheet which included detailed information about enhanced annuities
- Mr B didn't look into whether he'd qualify for an enhanced annuity with Provider S at the time. So he couldn't reasonably conclude that if Prudential had included further information about enhanced annuities that it would've made a difference to Mr B's decision at the time
- he wouldn't be asking Prudential to do anything further

Mr B disagreed with our investigator so the matter was passed to me for a final decision.

### **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'm not intending to uphold Mr B's complaint. I'll explain why, but before I do, I should emphasise that while I've taken serious note of the correspondence, arguments and comments put forward by both parties, I have limited my response to what I consider to be the issues central to this complaint. That is to say:

- what information Prudential was required to provide Mr B with about the retirement options available to him in 2007
- if Prudential didn't fulfil its obligation with the information it provided to Mr B, whether Mr B has suffered any loss as a result
- whether Mr B's Lifetime Annuity was mis-sold for the reasons he's suggested

The Association of British Insurers ("ABI") issued the *Pensions Maturities: Statement of Good Practice* document in 2001. Although not a regulatory requirement, the document outlined the minimum standards for the industry regarding the handling of pensions on maturity. The guidance was updated in March 2007 and said that when giving customers their retirement options providers should include:

*"A summary of all the benefit options which the consumer will later have to choose between, this should cover:*

*-The option to take an annuity (...)*

*-The availability of the Open Market Option. This should be explained in a manner that conforms to the requirements of Appendix B.*

*-The availability of different types of retirement income product such as (...) enhanced and impaired life annuities and whether these can be purchased from the current provider (...)*

*-A clear reference that the consumer may wish to seek further information or advice (...)"*

Appendix B of the Statement said:

*"This Statement requires Companies to explain the availability of the Open Market Option (...) the requirement will be met when the explanation complies with the following:*

- *it should be explained that the Open Market Option means that the consumer has a choice about who to buy his annuity from (...)*
- *the reason the consumer might want to choose a different annuity provider should be explained. This will involve pointing out that different annuity providers have different rates*
- *it should be explained that this means that by going to a different annuity provider, the consumer may be able to buy an annuity which pays out a higher income than the income paid under the annuity products offered by the pension scheme provider (...)*

In September 2002 the regulator (then the Financial Services Authority) introduced specific rules relating to the OMO. The rules were largely consistent with the ABI's Statement.

Based on the above, I would've expected the information Prudential provided Mr B with in 2007 regarding his retirement options to include:

- reference to the OMO and fact that Mr B could potentially receive a higher income with a different provider
- the fact that one of several different retirement products that might be available was an annuity on an impaired life or enhanced basis
- the fact that he might wish to seek financial advice

I've carefully reviewed the information Prudential provided Mr B with about his retirement options in 2007. Having done so, I can't see that Prudential failed to provide Mr B with the appropriate level of information that was required to at the time. I'll explain why.

I'm satisfied the literature Prudential provided Mr B with would've made him reasonably aware of the OMO option and that he could potentially receive a higher income with a different provider. Prudential's August 2007 correspondence to Mr B specifically said;

*"You can take your benefits from Prudential or use the 'open market option', which allows you to choose another pension provider (...)*

*What is the Open Market Option?*

- *This allows you to transfer your pension fund to another pension company which may mean that you are able to get better rates for setting up your pension, or give you access to a wider range of pension options (...)*

Mr B has said Prudential failed to make him aware of the enhanced annuity option. But I don't agree. Prudential's literature to Mr B said:

*"Do you know what your pension options are?*

- *Pension companies can offer you a wide range of pension options to suit your circumstances*
- **Enhanced annuity rate-** *if you and/or your partner suffer from a serious medical condition you may qualify for a higher than normal retirement income (...)*

**WHAT ARE YOUR PERSONAL CIRCUMSTANCES?**

*You'll want to choose a retirement income that meets your individual needs. For example, you might (...) Be in good health for your age. But if you're not you could be entitled to a higher income than normal because of ill-health(...)*

#### **WHAT IF I'M IN POOR HEALTH?**

*If you or your partner is suffering from a serious medical condition (...) we may be able to pay you a higher than normal retirement income from a Prudential enhanced annuity (...)*

Based on the above I think Prudential provided Mr B with a sufficient amount of information about the enhanced annuity option such that he should've been reasonably aware of it. I'm also mindful of the fact that this information was provided to Mr B around the same time Provider S gave Mr B a copy of the regulator's factsheet which also included information about enhanced annuities.

Having reviewed the documentation Prudential provided Mr B with I'm also satisfied his different retirement options were clearly outlined. This includes the Benefit Instruction form Mr B later completed and ultimately signed to select his retirement benefits. Mr B chose to take tax free cash and a pension with Prudential on a joint life basis.

I note that Prudential also stressed the importance of Mr B seeking financial advice regarding his retirement options if he needed it. So I'm satisfied Prudential met its obligation in this respect also. Specifically Prudential said:

*"(...) We recommend that you get in touch with your financial adviser to help you decide on the most appropriate choices for you (...)*

#### **DECIDING WHAT'S BEST**

*What's best for you will depend on your overall needs and financial circumstances. It's important you understand what options are open to you so you can be sure you have made the right choice. A financial adviser can help you (...) Alternatively, Prudential has an Annuities Advice Team who can talk to you about annuity options with Prudential (...)*

Mr B has said he also thinks his annuity with Prudential was mis-sold on the basis that the consequences of choosing one was never explained to him. He also says Prudential rushed him through the annuity process. I've considered what Mr B has said alongside the available evidence but having done so I haven't seen anything to support Mr B's claims.

I think Prudential clearly outlined the impact and commitment of taking out an annuity with it. Specifically it said:

In the *Cancellation Substitute* form:

#### **"WARNING**

*After you have used your pension plan to buy a pension, you cannot cancel it (...)*

In the *Key Features* document:

#### **"YOUR COMMITMENT (...)**

*You will not be able to exchange your annuity for a different one with us or anyone else (...)*

I've not seen anything to suggest Mr B was put under any pressure by Prudential to decide how he wanted to take his retirement benefits in 2007.

For the reasons I've outlined above I'm unable to conclude that Mr B's Prudential annuity was mis-sold as he's suggested. So I won't be upholding this complaint.

Mr B has made this service aware of the fact that he's recently been diagnosed with terminal cancer. I'm very sorry to hear of the incredibly upsetting and difficult situation Mr B and Mrs B now find themselves in. I know Mr B will be disappointed, but unfortunately this terribly sad news doesn't alter my decision. However Mr B may still wish to contact his pension providers to enquire about what, if any, options are available to him in the circumstances. But I should say that it is only in very rare and limited circumstances that an annuity can be altered in any way once it has been put into payment.

**my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 6 August 2018.

Chillel Williams  
**ombudsman**