

complaint

Mr W complains about the performance of his with profits annuity (WPA) with the Prudential Assurance Company Limited. He thinks its performance, compared with the FTSE 250 for example, has been poor, which has led to him receiving a lower income than he expected.

background

Mr W took out a WPA in 2000. He was advised to do this by a business independent of The Prudential. He agreed an anticipated bonus rate (ABR) of 4% per annum which provided him with a starting yearly income of about £9,900. Early in 2017 Mr W complained to The Prudential about the performance of his WPA and the lack of growth he'd seen in his income. He said the WPA had provided little growth over the last ten years or so, at a time when the FTSE 250 had increased by nearly 10% a year.

Prudential didn't uphold the complaint, explaining the process of 'smoothing' returns from their with profit fund. However, it said that like any investment, performance couldn't be guaranteed.

One of our adjudicators investigated the complaint and said it shouldn't be upheld. He said that, as the plan had been recommended by an unrelated adviser, The Prudential were not responsible for the advice and suitability of the plan. Given that, the complaint appeared to be about poor performance and The Prudential did not guarantee a certain level of return.

He was satisfied that The Prudential hadn't made any promises or guarantees about the WPA's performance and had provided appropriate risk warnings within its literature.

Mr W disagreed. He said that Prudential had not provided him with the level of income he expected and was only "*receiving the crumbs*" after it had taken all its charges and costs from the fund. He wanted the complaint to be passed to an ombudsman as he felt The Prudential needed to be fully investigated.

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 have come to the same conclusion as the adjudicator and for materially the same reasons.

I note that Mr W was advised to take out the WPA by a financial adviser, who was independent of The Prudential. So The Prudential is not responsible for the suitability of the plan for Mr W (whether it was right for him). His adviser should have also informed him about the nature and operation of the WPA, including the fact that returns and income could not be guaranteed. If he has any concerns about those matters then he should refer them to the business that gave him the advice to take out the WPA.

I can, however, consider if the evidence would suggest that The Prudential has done anything wrong with respect to the performance of the WPA.

I have not seen evidence that Prudential gave Mr W any guarantees about the performance of his WPA. And looking at the most recent bonus statement he received I can see it said "*By linking the income from your With- Profits Annuity to the performance of our With-Profits*

Fund, your income has the potential to increase during your retirement, although it could also fall”.

Although Mr W’s adviser should have told him that his income could fall and was not guaranteed, I note that this information is included in the documents that The Prudential gave Mr W when he took out the WPA.

Investment returns will tend to fluctuate between various funds and portfolios, which is the very nature of an investment. Returns less than hoped for does not mean that the fund managers haven’t managed the fund or investment correctly. It just means the investment hasn’t performed as hoped.

I understand Mr W’s concerns that the FTSE 250 has generated a greater return than The Prudential’s with profits fund over the time he has held his plan. But I don’t believe that comparison is fair, because the with profits fund is run on an entirely different basis. It doesn’t only contain FTSE 250 shares nor is it meant to replicate that index. It is run on a more conservative basis and its operation is very different. It is not volatile like an investment linked directly to the FTSE 250 – which would present more risk but potentially a higher return.

The level of income Mr W receives is significantly affected by the ABR he originally chose. If with profits returns are not high enough then this assumed future rate might not be supportable and his income could fall or remain the same. The fact his WPA payments have not increased does not mean The Prudential has not achieved a return – the returns are supporting his ABR. If a lower ABR had been chosen then Mr W would likely see his payment increasing more.

The level of with profits bonuses are set at a level that the business concerned believes are justified and supported by the fund assets. In deciding whether to apply bonuses it will take into account such issues as the bonuses already declared, any benefits that have to be paid under the policies, previous investment returns and what returns may be possible in future. It should be noted that with profits returns are generally expected to be much lower than when Mr W took out his WPA.

Bonuses are not guaranteed and can change. There is no absolute requirement to pay any level of bonus. Similarly the fact that there may have been a positive return on the with profits fund in a particular period does not mean there will be a bonus paid or consequent uplift in bonus. As discussed, this is because there are many factors to consider, not only investment returns.

Bonuses *are* indirectly linked to the performance of with profits assets but it is also as much a matter of its judgement as to what is the right bonus to apportion to each policy bearing in mind the provider of the plan is taking into account a variety of factors to make sure that existing bonuses and other benefits can be supported in the future. It is by no means certain what returns will be. This can be a difficult balance. Therefore the bonuses can be very different in comparison with some earlier level, regardless of the intervening with profits performance.

The Prudential does have a wide discretion in terms of the bonus rates it applies and I cannot say the level of bonuses it has applied to the WPA is unfair or incorrect as is suggested. I do appreciate why Mr W has raised these concerns and it is unfortunate that his

income has not increased significantly and may not be in future. However, that is not evidence of mismanagement or that The Prudential is necessarily acting incorrectly.

The Prudential explains via its PPFM how it approaches with profits investment and as I say it has wide discretion. The fact that it has applied a certain level of bonus, or it is more or less than other stock market investments, is not evidence in itself of mismanagement.

my final decision

I appreciate that Mr W is disappointed with his income but I have not found that The Prudential has done anything wrong. I therefore don't uphold Mr W's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 February 2018.

David Bird
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