

complaint

Mr L's complaint is about his with-profits annuities. He says his income has fallen over 40% since 2007. And this is due to The Prudential Assurance Company Limited's decisions on allocating bonuses. He also says Prudential doesn't provide a clear explanation of how bonuses are calculated. And there is a lack of transparency about the content and performance of its with-profits fund.

background

One of our adjudicators investigated Mr L's complaint. He noted that the documents from when the annuities were arranged showed that the selected Anticipated Bonus Rate (ABR) was 4.5%. And the annuity income wasn't guaranteed. It was dependent on the bonuses declared. This meant the guaranteed basic payments would stay the same as long as bonuses were 4.5% per year. But if they were less the income would reduce.

The adjudicator said the annuities were set up in the 1990's when interest rates were significantly higher. And also, generally, so were investment returns. He said the income was reducing because the returns on the fund weren't matching the ABR of 4.5%. And as Mr L had selected this ABR he had effectively accepted an increased risk.

The adjudicator thought Prudential was administering the annuity in the same way that the original provider had before. The adjudicator accepted the provider had a wide discretion in deciding how to allocate bonuses. But said the regulator required firms to publish a Principles and Practices of Financial Management (PPFM) document. And this set out how it operated the fund. The regulator also supervised the operation of the fund and we weren't aware it had any concerns it had been managed inappropriately.

Overall, the adjudicator didn't find any evidence that Prudential was acting unfairly.

Mr L didn't accept all of the adjudicator's findings. He said, in summary, that since taking over the annuities Prudential had said little or nothing about the effects of the declared annual bonuses. He said the bonus rates notices were bland. And didn't give a breakdown of the asset categories in which they were invested.

When he had asked for the formulae used for the annual bonus calculations it had been unintelligible to the layman. And on two occasions even Prudential's own staff couldn't explain the way parts of the calculations were worked out. He still didn't know if others had made similar complaints? And he thought the fact Prudential had a wide discretion on how to allocate bonuses was significant. He said this meant, in other words, that it could "*...do pretty much as they please.*"

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 conclusions as the investigator, and largely for the same reasons.

It's apparent that the workings of the annuity have been explained previously, so I won't go into further detail about the mechanics of the plan. However, I think what's material here is that the plan was set up with an underlying assumed yearly increase in bonuses. And this meant that the starting amount paid was higher than it would have been otherwise. However

it also meant that the plan involved some risk; the underlying fund needed to perform in order to pay bonuses of at least the assumed amount just for the annuity to stay at the same level.

The Prudential with-profits fund is invested in a variety of asset classes, such as equities, fixed interest and property. During the 1980's and 90's returns were generally higher than they are today. And so the 'reasonableness' of the underlying assumption of increase needs to be considered in that context.

The adjudicator acknowledged that with-profits funds have attracted criticism for their lack of transparency. And this has translated into concerns about these types of annuities. I accept that it's very difficult for Mr L (and other policyholders who have expressed concern) to satisfy themselves that they have received what they are entitled to under the terms of their plan. But that doesn't mean that the firm has got something wrong.

The regulator recognises that firms have a considerable amount of discretion about how they operate their with-profits funds. The regulator's Principle 6 requires that firms "*...must pay due regard to the interests of its customers and treat them fairly*". And the Conduct of Business Sourcebook (COBS 20) provides specific rules and guidance for firms on the operation of these funds. Although I understand Mr L's suspicions, I don't agree Prudential can effectively do as it pleases. The regulator has oversight of their operation. And I'm not aware it has any concerns about Prudential's management of the fund or how it operates it with-profits annuities.

Clearly, I understand why Mr L is unhappy given that his income has fallen in value over a long period of time. But overall, I haven't seen any persuasive evidence that Prudential has failed to operate Mr L's annuities in line with its obligations.

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 L to accept or reject my decision before 3 April 2017.

David Ashley
ombudsman