

## **complaint**

Mrs W complains that The Prudential Assurance Company Limited (Prudential) gave her the impression, in its marketing material, that an anticipated bonus rate (ABR) of 5% was an appropriate choice for the starting income of her with-profits annuity (WPA). She wants Prudential to compensate her for the losses she has suffered because her annuity income has fallen.

Mrs W also complains about the performance of her WPA.

## **background**

Mrs W approached an advisory firm, who she said recommended she take a WPA with an ABR of 5%. She has also brought a complaint against this advisory firm.

She took out a WPA with a 5% ABR with Prudential in 2000. This gave her a starting annuity income of around £3,500. Since then because of the bonus rates declared by Prudential, her annuity income has reduced.

Mrs W referred her complaint to Prudential who did not uphold it, so, she referred it to us. One of our adjudicators looked into it and didn't uphold it. He said, in summary:

- that Prudential hadn't given her any advice when she chose her ABR;
- he hadn't seen anything to show that Prudential promoted a particular ABR to customers in its marketing literature. The literature said "*if you need to maximise your income from day one, you might consider a higher anticipated bonus rate, if you don't you'll probably choose a lower one*"; and
- the performance of Prudential's with profits fund involved the exercise of its commercial judgement.

Mr W responded on his wife's behalf, making the following points, in summary:

- Prudential provided the material to the adviser and paid commission to them. It should be responsible for the content of this material;
- the material gently pushed his wife towards a 5% ABR;
- the material was confusing and used archaic language, using an ABR of 5% in one example;
- the information Prudential produced in 2003 was much clearer than the material available in 2000. His wife could have made a more informed choice if she'd had this.

The adjudicator remained of the same view. As Mrs W didn't agree with our adjudicator's view her complaint has been passed to me to consider.

## **my findings**

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator, and for broadly the same reasons.

*did Prudential give Mrs W any advice?*

Mrs W didn't approach Prudential directly. It was unaware of her individual circumstances.

The advisory firm told Mrs W:

*“If you choose an anticipated bonus rate of 5%, the maximum of many of the providers, the with-profits annuity would give you an adequate starting pension, together with the opportunity for your income to increase in the future. With many companies predicting bonuses of 7-8% in the near future, the 5% anticipated bonus rate would be a sensible starting level”.*

The advisory firm gave her Prudential’s marketing and product information. She says this gently pushed her towards choosing an ABR of 5%, which was inappropriate. I don’t think Prudential did anything that amounted to giving advice.

*information that is clear, fair and not misleading*

I can’t see that it was obviously wrong for Prudential to provide the option of an ABR at 5%. The advisory firm told her many of the providers were offering the same, and many companies were predicting bonus rates of 7-8% in the near future. So, based on the information available at the time, I don’t share Mrs W’s view that offering an ABR of 5% was inappropriate.

Prudential’s literature about the ABR said *“your income is likely to change each year, depending on the bonuses that are declared...the higher the anticipated bonus rate you select the greater the risk that your pension could fall in value”.*

Having looked at this literature I can’t see that it pushed a consumer towards a 5% ABR, or was unclear, unfair or misleading in any way.

It may be the case that the material produced by Prudential in 2003 would have led Mrs W to make a different decision about her ABR. But, that doesn’t mean that the material available in 2000 was inadequate; markets had moved on.

*performance of the WPA*

I can understand that Mrs W is disappointed by the reductions in bonus rates and some changes to the way the bonuses were calculated. However, I haven’t seen any evidence of mismanagement by Prudential. Or that it has acted unfairly in how it has awarded bonuses on Mrs W’s policy.

Prudential is accountable to the industry regulator for the way in which it operates its with-profits fund (in accordance with its Principles and Practices of Financial Management document). And the regulator monitors the management of it. Firms are required to appoint a with-profits actuary and the regulator provides rules and guidance on their duties. Prudential also has an independent With-Profits Committee, to protect the interests of the with-profits policyholders and ensure that they are treated fairly.

The Conduct of Business Sourcebook sets out how such funds should be run: COBS 20.2.1 states:

*(1) With profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.*

COBS 20.2.3 states:

*A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.*

We have not been told that the regulator has any concerns with the way Prudential has managed its with-profit fund.

Therefore I see no reason to interfere in Prudential's commercial decision about the bonuses paid on Mrs W's WPA.

**my final decision**

I do not uphold Mrs W's complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 26 November 2015

Kim Parsons  
**ombudsman**