

complaint

The late Mrs S's estate has complained that when Mrs S bought an annuity from The Prudential Assurance Company Limited, she wasn't told that there wouldn't be a proportional instalment on her death.

background

Mrs S selected her annuity options with the help of an Independent Financial Adviser (IFA). In July 1997 Prudential wrote confirming the options she'd selected. It paid a tax-free lump sum and set up an annuity annually in arrears with a 5-year guarantee period.

Mrs S then asked in August 1998 whether there would be a final proportional payment if she died after the guarantee period. The quote she'd accepted hadn't confirmed this. Prudential said that a proportional payment wasn't included. Mrs S then asked Prudential again, as she thought there '*must be some mistake*'. Prudential said it had set up the annuity in line with the requested quote, and suggested she speak to the IFA. Mrs S did this and got a response, but didn't take the matter further.

Following Mrs S's death in 2013, Prudential wrote to Mr S (who is now acting for her estate) to tell him that no further annuity payments were due. Mr S then complained that his wife had been misled about the annuity. He argued that despite what the IFA told Mrs S, Prudential had a duty to "spell out" such an important condition of the annuity.

One of our adjudicators reviewed the complaint. As Prudential gave no advice to Mrs S when setting up the annuity, she concluded it wasn't responsible for ensuring that the quote Mrs S selected was appropriate for her circumstances.

Mr S didn't accept this opinion. He thought Prudential should have stated there would be no proportional payment, as it had a binding contract with Mrs S. The annuity was payable 'for life', so it should have been paid over the whole period up to Mrs S's death.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. This is an unusual case because Mrs S had previously queried the same matter that Mr S is now raising as a complaint. So I've already written to Mr S to make some further points, which were as follows:

how Prudential's responsibility compared with Mrs S's IFA

- Mrs S's policy was set up under a 'master trust' arrangement, which wasn't unusual for an annuity. So there wasn't a specific set of terms and conditions for *her* policy. The quote Prudential gave Mrs S forms the basis of the policy.
- Due to the time passed since 1997, Prudential understandably doesn't have any more information about whether the IFA requested quotes with or without proportion.
- But the IFA had admitted not asking for a 'with proportion' quote. In this situation it appeared that the default quote was on a 'without proportion' basis.
- It was normal for monthly quotes, for example, to be given without proportion – and with no specific explanation.
- What happens if Mrs S dies shortly before getting the next payment becomes a key issue when an 'annual in arrears' annuity is recommended. So there was a greater need for caution on the IFA's part here.

- Prudential's annual quotes that had a proportional payment *did* mention this feature. So advisers who were familiar with the product might not have made the same oversight. I noted that Prudential was a leading annuity provider at that time.

Mrs S's own actions in querying the matter with Prudential in 1998

- The former regulator's definition of a 'complaint' in 1998 wasn't so wide as it is today. There was some ambiguity and Prudential could have *chosen* to treat Mrs S's concerns as a complaint. But that doesn't mean it had to do so.
- If Mrs S remained unhappy with either Prudential or her IFA's explanations, and took the matter further, it would likely have been treated as a complaint.
- Mr S was still able to complain now, on behalf of the estate. But the best indication was that during her lifetime, Mrs S didn't want to take the matter further.
- As it turned out, Mrs S's estate lost almost the maximum it could have lost (because she died only shortly before another annual payment was due). But I didn't think Mrs S would have expected the timing to be quite as unfortunate as this.
- Although she learnt there was no proportional payment in 1998, Mrs S may have accepted that she was getting a higher upfront income.

For a combination of all these reasons, I didn't think it would be fair or reasonable for Prudential to pay Mrs S's estate compensation for any part it played in the confusion about a proportional payment.

I also sent a copy of my letter to Prudential. Mr S replied with the following further points:

- My letter had implied that the quotes Prudential issued did state 'without proportion' on them.
- In the case of buying goods and services, there are statutory rights to reject the goods if they aren't as described.
- A few additional words ('without proportion') would have covered an essential part of the quotation. The ordinary citizen should be given jargon-free facts.
- The costs of investigating the complaint were far in excess of the money claimed; so a common sense approach should be taken.
- Because the financial adviser also appeared to be inexperienced, Mrs S was left at the 'mercy of the system'. This was unjust.

I've considered Mr S's further points very carefully. I appreciate that even though Mrs S may have queried the matter before, this was also a troubling matter for him to learn about on her death. But my decision can't be influenced by whether the amount at stake is less than the cost of investigating the complaint properly. We look at complaints where the amounts involved obviously vary, but we're guided by the same principle of reaching a fair and reasonable outcome in all those complaints.

I'm sorry that Mr S read from my letter that Prudential had issued quotes *stating* 'without proportion'. I only meant that the quotes weren't calculated with a final proportional payment. As Mr S is aware, the text of the quote didn't say either way. However I don't agree this is a case of Prudential setting out to misrepresent the annuity. Mr S makes a fair point that there would have been no need to complain if the quote had been clearer. But I'm not able to ignore the IFA's role in this matter, as I explained in my previous letter.

It may have been unfortunate for Mrs S that the IFA didn't have enough experience of Prudential's products. However I went further in my letter to suggest that even without this experience, the IFA might reasonably have exercised more caution. And even though both

those parties could potentially have done things differently, Mrs S did also have the opportunity to pursue the matter as a formal complaint in 1998.

It wouldn't have been fair or reasonable to profit from an error or oversight. So Mrs S might have needed to accept a reduced future annuity if she wanted to include a final proportional payment. As she didn't pursue the matter further, she may have accepted the position as it was. This then remained the case for more than 15 years. Taking all of these points into account, I still consider it wouldn't be fair or reasonable to require Prudential to do anything further now.

my final decision

I do not uphold the complaint by Mrs S's estate. I'm sorry to write in terms that I know will be disappointing for Mr S.

Gideon Moore
ombudsman