Financial Ombudsman Service

complaint

Mrs J has complained about how and when The Prudential Assurance Company LimitedPrudential switched her pension funds into its cash fund.

background to complaint

The complaint was investigated by one of our adjudicators, who initially wrote to Mrs J in December 2012 explaining his view that the complaint should not be upheld. He considered overall that Prudential had acted correctly in making the switch, as it was in line with the terms and conditions of the plan. He also explained his view that Prudential had appropriately informed Mrs J of the options open to her in respect of her pension fund as well as the circumstances in which a switch to the cash fund would be made. The adjudicator added that it did not appear that Mrs J had responded to Prudential about switching to another fund.

Mrs J did not agree with the adjudicator's findings. In summary, she said that:

- She felt her funds ought to have been switched to a cash fund in March 2010, and had understood at the time that they had.
- She had received paperwork which was misleading – particularly a leaflet which described the "objectives of the cash fund".
- The paperwork led her to believe that she had been invested in the cash fund in March 2010, and that she would continue to be invested in it.
- She had spoken to Prudential on the phone on several occasions about the issue and it had verbally promoted the Cash Fund during these calls.
- She understood the value of her fund, as quoted in March 2010, was protected. If she had known it was at risk she would have raised concerns.
- She received no confirmation to say that she was not in the fund.
- If she had known what the promotion/advice would lead to in March 2010 she would have chosen to retire at that time and saved several thousand pounds.

The adjudicator responded to say, in summary, that:

- Mrs J's policy was a with-profits plan.
- Any quotes prior to Mrs J's selected retirement date were illustrations only and were not guaranteed.
- The amounts were quoted as at the retirement date when the pension was due to be paid, and this had been explained in the quotation provided.
- He did not consider that Prudential had guaranteed the quote of March 2010.
- In respect of Prudential's administration of the cash switch, the adjudicator reiterated that in his view it had acted correctly in switching Mrs J's benefits for similar reasons as outlined in his assessment letter.

- In his opinion the literature sent to her about the cash fund did not suggest that Mrs J was invested in it at that point.
- In his view, Prudential had provided satisfactory evidence that it had explained the options available to Mrs J and explained what would happen if she did not respond.
- Prudential had not acted inappropriately in switching the funds to cash on Mrs J's selected retirement date.
- Whilst he appreciated Mrs J was disappointed with the performance of the cash fund, this service did not usually look at complaints about investment performance.

Mrs J responded to say that she would like her complaint reviewed by an ombudsman, and explained the reasons why. In summary, she said that:

- She believed that Prudential had been disingenuous with the facts.
- The letters sent by Prudential were ambiguous and/or didn't disclose what fund she was being put into.
- Prudential had not acted early enough in making the transfer and this constituted unfair practice.
- No reference had been made to the telephone conversations which had taken place.
- The calls and letters had not made any reference to the return on the cash fund.
- What Prudential had omitted was material.
- The whole process had been stacked against her, and Mrs J set out the reasons why she considered this was the case.

my findings

Whilst I have only outlined a brief summary of the background to the complaint and the submissions that have been presented by both parties, I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The adjudicator has checked with Prudential and it has confirmed that it doesn't have any records of the phone calls that Mrs J has referred to in her submissions. Clearly, I realise this is frustrating for Mrs J. However, we are an informal service, and unlike a court, I do not have any powers to require parties to provide testimony on oath. I am bound to make a decision on the balance of the evidence that *is* available.

Clearly however, it is difficult to establish exactly what was said in the conversations that Mrs J had with Prudential – particularly in respect to what she was told about when the switch was to be made. Prudential staff would have been able to provide information only, and were not authorised to give advice to Mrs J about a course of action.

Mrs J has said that she understood that her funds had been switched to the cash fund following her conversations with the firm in March 2010. It is ordinarily considered prudent for someone approaching retirement to switch their pension fund to safer assets – this may be a gradual process and start several years before their actual retirement date.

However, it will not necessarily be switched automatically – it will depend on the features of the particular pension plan. Mrs J's plan did not provide for an automatic switch - only under certain conditions, and at retirement date. So I accept that the cash fund was likely to have been discussed with Mrs J in the telephone conversations that she has referred to. But unless
Mrs J specifically instructed the firm to switch her pension to cash it would not do so. So there may have been a misunderstanding which caused Mrs J to expect that the firm was going to arrange the switch to cash before it did.

But, in the circumstances, and on the evidence that is available, I have not been persuaded that I can reasonably conclude either that the firm told Mrs J that it would arrange the switch at that time, or that Mrs J instructed the firm to arrange the switch. And, given the plan's terms and conditions, I am satisfied that it was entitled to switch the funds to cash when it did.

I note that Prudential informed Mrs J in a letter in October 2010 that the switch had been made, and that the option of changing the fund she was invested in was available to her. It also recommended that she seek financial advice about this. I also note that Prudential did explain that the option of taking her pension payments at any point before the age of 75 was still open to her. So it appears that Mrs J was alerted that the funds had been switched to cash at that time, and it seems to me that if she had not wanted to be in cash she would likely have contacted the firm to arrange for it to be switched.

However I note that Mrs J has said that documentation she received about the cash fund was misleading. As I have explained above, although I accept that a switch to the cash fund may have been discussed I have seen no persuasive evidence that Mrs J provided an instruction to switch or the firm said that it would arrange a switch at that time. And the "objectives of the cash fund" leaflet does not provide policyholder-specific information. It is a general information-only leaflet which sets out the aims and objectives of the cash fund. I do not consider that it suggests Mrs J had been switched into the cash fund at that time.

The objective of the cash fund was to provide a return consistent with investing in interest bearing deposits and/or short term UK government bonds. Although this is a safer fund it is not the same as putting money in a high street bank account – the return is not guaranteed and depends on the value of the underlying assets. The returns from the fund may be disappointing. But this is largely due to the general economic and financial backdrop over the relevant period. If Mrs J had not been switched to cash her fund, had it remained invested at risk, may have fallen further in value.

I appreciate Mrs J's position – that she firstly lost money when she understood that she had been moved to cash, and then when she was subsequently switched to cash the return provided was negligible. However, as I have explained above, I am bound to make a decision on the balance of the evidence that is available. And having carefully considered that evidence, I have not been persuaded, on balance, that the firm made an error or failed to act appropriately and that this caused the losses that Mrs J has claimed.

my final decision

Accordingly, for the reasons outlined above, I do not uphold Mrs J's complaint.

David Ashley
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