

Complaint

Mr D has complained that The Prudential Assurance Company Limited mis-sold his annuity as it failed to let him know he could've received an enhanced annuity from another provider.

Background

The Prudential Assurance Company Limited ('Prudential') sold Mr D an annuity in 2008. In 2017 Mr D complained that his annuity had been mis-sold. He said he should've been sold an enhanced annuity due to an underlying medical condition which had caused him serious ill-health in 2013.

Prudential said it couldn't have offered Mr D an enhanced annuity at the time, but agreed it should've made him aware he may have been able to obtain an enhanced annuity from another provider. It said it was awaiting guidance from the Financial Conduct Authority ('FCA') which it would use to ascertain whether or not Mr D could've obtained a higher income from another provider at the time.

In April 2018 Mr D was informed that Prudential had carried out a calculation using the FCA's guidance, but that he hadn't lost out financially. This was because the FCA's calculator indicated he wouldn't have been able to achieve an enhanced annuity elsewhere. Mr D complained again as he couldn't understand how his medical condition didn't satisfy the requirements for an enhanced annuity. He wanted further information about how the calculation had been completed and the underlying data used.

Prudential explained that it couldn't offer Mr D an enhanced annuity at the time because he was only taking one medication to control his condition. It said the firm who put together the calculator tool, 'W', had been chosen by the FCA to undertake this task – it couldn't provide him with any further information about the underlying data as this was commercially sensitive. It however offered Mr D £100 for some service issues.

Mr H remained unhappy and referred his complaint to our service. He said it was unreasonable for Prudential not to give him the underlying data used in the calculation. He also said having undertaken his own research he'd found a number of business connections linking W and Prudential, so he believed there was a conflict of interest.

Our investigator didn't uphold the complaint. He said Prudential had done what he would've expected it to do by carrying out a comparison using the FCA's guidance and calculator. He said if Mr D had concerns with firm used to put the calculator together this would need to be directed towards the FCA.

Mr D didn't agree so the complaint was passed to me to make a final decision. Mr D maintained W wasn't independent in the matter and that the calculator favoured Prudential.

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'm not upholding it.

I realise this will be a disappointment to Mr D, as he feels strongly that Prudential has treated him unfairly. He says the calculator hasn't taken into account every provider on the market at the time, so it doesn't actually show that he couldn't have achieved a higher income.

I appreciate why he feels this way – I agree it isn't possible to know with certainty what position he'd have been in if he'd been able to make an informed choice in 2008. But it's because of his uncertainty that the FCA developed a tool to help businesses like Prudential ascertain, as far as possible, whether it's likely a customer could've achieved a higher income elsewhere at the time of sale.

In the absence of being able to conduct a full search of the market at the time the annuity was sold, I think it was fair for Prudential to use the FCA's calculator to determine whether or not Mr D could've achieved a higher income in 2008. I think the calculator provides a fair indication of what was available in the market at that time. And Mr D hasn't provided any other evidence to support that he could've obtained an enhanced annuity from any specific providers.

Prudential completed the calculation in April 2018. This showed Mr D wouldn't have been eligible for an enhanced annuity based on his circumstances and health at the time, and he wouldn't have likely been able to receive a higher income elsewhere. For this reason, I don't think Prudential needs to make any adjustments to his annuity income going forwards.

Mr D believes that he ought to have been eligible for an enhanced annuity because of his health condition, which caused severe ill-health in 2013. I'm satisfied Prudential couldn't offer him this at the time. And I can't interfere with this decision as it is based on Prudential's commercial judgment. I've reviewed a copy of a key facts document which accompanied Prudential's calculation relating to other products on the market at the time. This shows that the FCA's guidance told it which medical groups to consider and the specific medical conditions to enter when completing the calculation – Mr D's medical condition didn't qualify him for an enhanced annuity. So, while I understand Mr D's belief that he ought to have been eligible for an enhanced annuity from another provider, I haven't seen enough evidence to say that was most likely the case.

Mr D asked to see the underlying data used to complete the calculation. Prudential said this information was commercially sensitive as it contained information about how competitors price their products. So, this information was only made available to W, who used it to build the calculator. The research and analysis that W used to build the calculator was approved by the FCA, so I don't think Prudential is required to provide any further information about the calculation.

I'm aware Mr D has raised concerns about the FCA's use of W to build the calculator because of potential bias towards Prudential. After complaining to our service, he complained to the FCA about this. Mr D wasn't satisfied with FCA's response, so he then referred his concerns to the complaint's commissioner. But it isn't within my remit to say whether or not the FCA's decision to use W to build the calculator was reasonable. My role is limited to deciding whether Prudential has treated Mr D fairly.

Overall, I think it has, having used the regulator's approved redress method to determine whether he'd lost out as a result of the mis-sale. The calculations show he hasn't. While I understand Mr D's frustration with this, I haven't seen enough to say he is worse off financially due to Prudential's actions in 2008.

My final decision

For the reasons set out above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 May 2020.

Hannah Wise
Ombudsman