

complaint

Mr Y is the late Mr Y's son. He's brought a complaint on behalf of his father's estate that, following his father's death, his mother didn't receive any benefits from his father's pension. Mr Y says his father wouldn't have neglected to make some provision for his mother in the event of his death. He wants The Prudential Assurance Company Limited (Prudential) to make the payments he thinks are due.

Mr Y also thinks the pension was mis sold. He's referred to recent press coverage of Prudential "*mis selling annuities*" as evidence of that fact.

background

The late Mr Y held pension plans with Prudential. In September 2008 he applied to draw his benefits and two separate annuities were set up. From one annuity he received tax-free cash of £1,528.84 and a pension, paid quarterly in advance, of £298.32. The other paid tax-free cash of £5,369.78 with an annual pension of £1,072.20 paid monthly in advance. The late Mr Y wasn't married but had been with his partner, who I'll refer to as Mrs B, for nearly 50 years.

Unfortunately, the late Mr Y passed away in 2019. So Mr Y contacted Prudential to sort out a number of issues with the pension on his mother's behalf. But Mr Y says he was given various reasons for why his mother should (or shouldn't) receive further payment from the late Mr Y's pension, so Mr Y complained about the conflicting information he'd been given. He said his mother's state benefits had been stopped because of the late Mr Y's pension so he needed to provide correct information to the relevant authorities.

Prudential apologised for what it described as "*wrong and inaccurate information when making contact with our customer service centre*". It offered a payment of £300 for the distress and inconvenience this had caused. But it confirmed that the annuity had been set up solely in the late Mr Y's name and there was no provision made for any beneficiaries following his death. It said there wasn't a fund value remaining that could be paid out as lump sum.

Mr Y wasn't happy with the outcome, so he brought his complaint to us where one of our investigators looked into the matter. She didn't think the complaint should be upheld. She said the annuities had been set up on a single life basis – according to information provided in the application forms – and therefore there was nothing further to be paid after the late Mr Y died. But she did think that Prudential had provided Mr Y with poor service during the time he was trying to resolve matters and thought the £300 Prudential had offered as compensation was fair in the circumstances.

Mr Y didn't agree. He said he didn't think that his father would have set his annuity up so that payment ceased on his death. He thought his father's wish would have been to make provision for Mrs B and then Mr Y and his brother. He was also concerned that Prudential didn't have a recording of the call it had with his father and as a result asked us to consider whether the plan had been mis sold. He said he'd read recently how Prudential had been fined by the regulator because of "*the mis selling of annuities*" during the time that his father had applied for his.

The investigator considered the matter of the suitability of the sale – but didn't think there was any evidence to support that part of the complaint. She also noted that the late Mr Y had been given plenty of time to return the annuity application forms when he'd received them through the post, so she didn't think it was likely that he'd been pressurised into completing them.

Mr Y didn't accept this outcome and asked for the complaint to be referred to an ombudsman, so it's been passed to me for review.

Sadly, Mrs B also passed away in March 2020.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so I agree with the investigator and for largely the same reasons.

Should the annuity have been paid out to Mrs B following the late Mr Y's death?

Looking at the first application form Mr Y completed I can see the choice he made to take a single life pension alongside his tax-free cash. But page four of the form was entitled "*your further pension options*" and allowed for further quotations to be provided. One of the options was "*please send me quotations for a pension payable throughout my lifetime and which continues after my death for the remaining lifetime of...*" and invited details of a spouse, or financially dependent male or female to be supplied for consideration.

There's no evidence that this section was completed on the form – which was signed by the late Mr Y, so I can't say that Prudential made any error in how it set up that annuity. I think it did what it was asked to do by the late Mr Y. And I think he was made aware from the application form that further quotations could be requested – which would have allowed him to add provision for Mrs B following his death.

The second annuity was in respect of 'protected rights' benefits and had different rules around joint life provision. The application form noted "*I understand that if I am married when the pension is taken, I must select a joint life pension but if I am single I am able to select a higher single life pension*". The late Mr Y confirmed "*I am not married*" within the form and therefore chose a higher single life pension amount.

So in respect of the application forms I think Prudential set things up as requested and I don't think it didn't anything wrong.

I've also considered the pension quotation the late Mr Y was given, which stated that "*Under current pension legislation, the only pension we must provide you with is a pension which is payable for your lifetime and then for your surviving widow/er or civil partner If you should die without leaving a surviving widow/er or civil partner, we will make no further pension payments. However, if you are unmarried at the date of your retirement, we are able to provide you with a pension for your lifetime only which will stop on your death - this benefit will be higher than those quoted for a joint life You should note that no benefit will be payable to your widow/er or civil partner if you subsequently marry.*"

You have advised us that you are unmarried and not in a civil partnership Therefore, we have prepared this quote on a single life basis."

So again, I can't safely say Prudential has made an error based on this evidence. It wasn't the late Mr Y's financial adviser, it was simply acting as the product provider and had a duty of care to set up the plan as requested through the application form and in line with the information it provided.

When the late Mr Y asked to take his pension benefits Prudential responded by providing the relevant forms and authority request. The relevant forms also confirmed that the late Mr Y could seek financial advice before making his decision and the form noted his open market option, which allowed him to transfer his fund to another provider if he wanted to 'shop around'. So I think the late Mr Y was made aware of the various options which would have allowed him to further consider making some provision for Mrs B.

I've also seen a copy of the key features document the late Mr Y would have been provided with when he asked to take his pension benefits. And I note there was an entire section devoted to "*what is the joint-life option?*" and this was explained as "*if you have a spouse or civil partner or another person who depends on you for financial support choosing this option means they'll get an income from your pension annuity, after you die – provided they survive you. If you want this option you must choose it at the start, you cannot add it later.*"

I think the information about the joint life option was clear and I think the late Mr Y ought to have known that this option would have made some provision for Mrs B in the event of his death. It's not now possible to know what considerations the late Mr Y made when he decided what type of annuity to choose, but by not including any joint life option there was no obligation for Prudential to make any further payments from the plan after the late Mr Y passed away.

I can't rule out that the late Mr Y simply didn't see the options to request further quotations for a joint life annuity. And it follows that he might just have thought he had to choose between the options available in the main body of the pack. But I think the information was available to the late Mr Y and I can't blame Prudential if he simply failed to notice it and request further illustrations. As I've already said Prudential didn't give the late Mr Y advice – and it did suggest to him that he should seek independent advice if he was unsure of his choices.

Were the policies mis sold?

Mr Y says he doesn't believe his father would have agreed to single life annuities and would have wanted to provide for his family. So he thinks his father must have been "*pressured*" into signing the forms without talking to Mrs B or to other providers. He thinks the plans were mis sold.

And I am aware of the recent coverage of historic problems with the process Prudential used to make its clients aware of the open market option (OMO) available to them when considering their retirement benefits. The OMO gives consumers the opportunity to transfer their pension fund to other providers who might be able to provide a higher level of income. But that wasn't the issue here – as there's no evidence that the late Mr Y wanted to 'shop around' for his annuity.

But I've seen the "*pension selection and authority*" papers that the late Mr Y completed and returned to Prudential. The document contained a section entitled "*your further pension options*" and allowed the late Mr Y to request further quotations to include a spouse or persons who were financially dependent on him as well as the option to transfer the benefits to another scheme (the OMO).

So, I think the late Mr Y was made aware of all of his options around drawing his pension benefits and I think he was given the time to consider them – and discuss them if necessary, before he returned the forms. The late Mr Y was sent the forms and asked to complete them and return them himself. That would suggest that he wasn't pressured into completing them as Prudential wouldn't have been able to pay the proceeds until it received all the necessary documentation and authority.

So I don't think the annuities were mis sold to Mr Y. I think he was provided with all the necessary options, and I haven't seen any evidence to show that he was "*pressured*" during the process or indeed that Prudential gave any advice or guidance about what particular annuity Mr Y should select. I'm satisfied the late Mr Y made that choice himself.

Prudential's errors and compensation payment

There's no dispute however that Prudential didn't provide Mr Y with the sort of service he should have expected at a difficult time for him and his family.

He was given a number of conflicting answers about whether Mrs B was entitled to a residual pension and ultimately her state pension benefits were stopped until the matter was resolved. Prudential did acknowledge that it had given incorrect information and provided a poor level of service. It sent Mr Y a cheque for £300 as compensation for the distress and inconvenience its mis information caused. And overall, when considering the impact this information had on Mr Y in difficult circumstances, I think the sum offered (and paid to Mr Y) is within the range of what I'd expect to see for a matter such as this. So I'm not going to ask Prudential to do any more.

I know Mr Y has referred to the telephone call between the late Mr Y and Prudential in August 2008. He said it was a concern that it's not available to confirm the necessary information was sent to the late Mr Y.

But I've seen the letter that was sent out afterwards – enclosing the "*pack*" that the late Mr Y requested, and this letter referred to that call. But I don't think it's unreasonable that Prudential no longer has a recording of a 12-year-old call, and I'm satisfied that the letter, and an accompanying call note from the time, are confirmation that the pack was sent out.

Summary

Ultimately, I'm satisfied that Prudential didn't provide the late Mr Y with advice on how to draw his pension benefits and what annuity he should consider. I think the late Mr Y made this choice himself. And I do think the application forms and information Prudential provided ought to have made the late Mr Y aware that he could have chosen other options which would have made some provision for Mrs B. There's no persuasive evidence to suggest that the plans were mis sold or that Prudential did anything wrong when it set up the plans. It was only obliged to set up annuities based on the information the late Mr Y provided it with.

my final decision

My decision is that the compensation The Prudential Assurance Company Limited has already paid of £300 is fair. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 2 October 2020.

Keith Lawrence
ombudsman