

complaint

Mr C's complaint is about the level of bonuses declared on his with-profits annuities with The Prudential Assurance Company Limited ('Prudential'). In particular, he is unhappy as he believes the regular bonuses Prudential has declared has been negatively affected by its decision to stop offering such annuities in 2009.

background

In 1998 Mr C was advised by an independent financial adviser to purchase two with-profits annuities with Prudential, both with an Anticipated Bonus Rate ('ABR') of 5%.

In late 2013 Mr C contacted Prudential to complain about his with-profits annuities as he considered it should not have offered contracts with an ABR of 5%. He also said he believed Prudential's decision to stop offering with-profits annuities in 2009 had led to the decrease in the annual regular bonuses since then.

Prudential did not uphold the complaint and Mr C referred the matter to our service.

The adjudicator who did not uphold it stated that:

- He considered that Prudential had not been responsible for the recommended policies and their ABRs being suitable for Mr C. This had been the responsibility of the independent financial adviser who had given Mr C advice.
- He considered Prudential had legitimately exercised its commercial discretion by choosing to offer ABRs of 5% on its with-profits annuities.
- He explained that whilst Prudential had stopped offering With-Profits annuities in 2009, the underlying With-Profits fund had remained open. Customers were now offered a new product known as an 'Income Choice annuity' but backed by the same fund.
- The level and type of bonuses declared was a matter of commercial judgement.
- The fund was managed in line the document known as the Principles and Practices of Financial Management ('PPFM'). He also explained that an independent committee monitored the fund and was in place to protect the interests of the with-profit policyholders.

Mr C did not agree with the adjudicator's opinion and the case has been referred to an ombudsman for a decision.

Mr C did not believe that Prudential was administering his policies in line with their terms and conditions. He also argued that Prudential should have given with-profits annuity policy holders the choice to 'transfer' to Income Choice Annuities in 2009. He also argued that it would have been:

'simpler and fairer if at the time of restricting the annual bonus [Prudential] had fixed the pension payment at the higher level'.

As agreement has not been reached the complaint has been referred to me for a decision.

Prudential had nothing further to add.

my findings

I have 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 conclusions as the adjudicator and for broadly the same reasons.

I consider that it was a reasonable and legitimate exercise of Prudential's commercial discretion for that business to offer an ABR of 5% on its with-profits annuities. The responsibility for whether such annuities with such high ABRs were appropriate rests with the business that sold it; not with Prudential.

As the adjudicator has explained the decision as to the level of bonuses to pay on with-profits policies rests with the Directors of Prudential acting on the advice of their senior actuaries.

The Dispute Resolution rules under which an ombudsman operates states under DISP 3.3.4 that:

The Ombudsman may dismiss a complaint without considering its merits if he considers that:

(11) it is a complaint about the legitimate exercise of a respondent's commercial judgment

As the adjudicator explained, Prudential publishes its PPFM document which sets out how it manages its with-profits fund.

Prudential (and all other with profit providers) is required to have has an independent with-profits committee in place whose role is to protect the interests of the with-profit policyholders. If they are unhappy with the actions of Prudential then they can raise the matter with the regulator.

I have seen no evidence to suggest that Prudential's decision to stop offering with-profits annuities in 2009 has had an impact on its decisions regarding regular bonuses. As the adjudicator explained, the new offering is invested in the same with-profits fund.

I am satisfied that Prudential is administering Mr C's policies in accordance with their terms and conditions.

my final decision

I do not uphold Mr C's complaint against The Prudential Assurance Company Limited and I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 18 May 2015.

Adrian hudson
Ombudsman

