

complaint

Mr C has complained about the performance and administration of the with-profits annuity he holds with The Prudential Assurance Company Limited (“Prudential”). He is particularly concerned that the level of payments has fallen even during periods when the underlying fund performance has been positive.

background

The complaint was investigated by one of our adjudicators, who did not recommend that the complaint should be upheld. In summary, the adjudicator said:

- Any aspects of Mr C’s complaint about the sale or the advice given (such as the fund choice) should not be directed towards Prudential, as it did not provide the advice to start the policy.
- Since taking over the business from the original provider it had been Prudential’s responsibility to pay the annuity to Mr C in line with the terms of the original contract (which had not changed since the start of the policy).
- The investment returns – and therefore level of bonus declared - were linked to the performance of Prudential’s with-profits fund and were therefore not guaranteed.
- He understood Mr C’s concerns that his policy was not performing as he would have liked, but he considered this was linked to fluctuations in the world’s financial markets – which Prudential was not in control of.
- Prudential was accountable to the industry regulator, the Financial Conduct Authority (FCA), for the way it managed its with-profits fund in accordance with the Principles and Practices of Financial Management (PPFM).
- Prudential had provided a reasonable explanation for why Mr C’s annuity income had decreased in recent years.

Mr C did not agree with the adjudicator’s findings. He provided two submissions which said, in summary, that:

- His complaint was with Prudential and its actions in respect of his annuity.
- Since Prudential had taken over his pension it had never increased – instead reduced – every year. He did not believe Prudential had been as badly affected by recent poor negative economic conditions as the adjudicator had stated.
- His in-payment annuity should not be invested in risky funds and he did not have any control or say in where his annuity was invested – particularly in respect of the move from bonds to equities. He believed this decision amounted to gross negligence. He said that he was effectively ‘trapped’.
- He did not consider that it was unreasonable for Prudential to have been able to apply increases in line with the original Anticipated Bonus Rate (ABR) of 2%, particularly in light of Prudential’s reported profits in 2011 and 2012. He considered

that Prudential had used the ABR chosen by annuity holders in a highly cynical and harmful way.

- Although the adjudicator had mentioned an independent with-profits committee he had no knowledge or access to such a committee.
- It appeared to him that the process of smoothing applied by Prudential only applied to reduce his pension.
- He considered the whole issue was not fair or reasonable and that the firm had been “...utterly callous and cavalier in its dealings.”

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It is apparent that the operation and workings of the annuity have been explained on previous occasions so I won't go into comprehensive details about the mechanics of the plan. However, I think what is material here is that the plan was set up with an underlying assumed yearly increase in bonuses which meant that the starting amount paid was higher than it would otherwise have been. But that meant that the plan involved some risk - the underlying fund needed to perform in order to pay bonuses of at least the assumed amount just for the annuity to stay at the same level.

I note that Mr C has said that he understood the 'financial mechanism' to mean that he would always get a minimum 2% increase each year. I accept that the workings of this type of annuity are complex, and as I have said above it involves risks. But the responsibility of explaining its operation and the risks it presented rested with the firm that originally advised Mr C to take out the plan – which wasn't Prudential.

The Prudential with-profits fund is invested in a variety of asset classes, such as equities, fixed interest and property. During the 1980's and 90's, returns over a period were generally higher than they are today, and so the 'reasonableness' of the underlying assumption of increase needs to be considered in that context. But unfortunately returns have not been as strong as expected over the period that Mr C has held his annuity.

Mr C has also said that Prudential declares that it has made profits but this has not been reflected in the bonuses added to his policy. I do understand Mr C's suspicions. With-profits funds have attracted criticism for their lack of transparency and I accept that it is very difficult for policyholders to satisfy themselves that they have received what they are entitled to under the terms of their investments. But that does not mean that the business has got something wrong. Mr C has provided fund performance figures for 2007 to 2012 and notes that there was only one year of negative performance. However, there was a significant fall in that particular year, so subsequent percentage increases would be to (at first) a smaller fund. And there was the underlying assumption of performance inherent within the plan required just for the annuity to remain at the same level.

The industry regulator (previously the Financial Services Authority (FSA) and now the Financial Conduct Authority (FCA)), recognises that firms have a considerable amount of discretion about how they operate their with-profits funds. The regulator's Principle 6 requires that regulated firms “...must pay due regard to the interests of its customers and

treat them fairly". And the Conduct of Business Sourcebook (COBS 20) provides specific rules and guidance for firms on the operation of their with-profits funds.

COBS 20.2.1 states:

(1) With profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.

And COBS 20.2.3 states:

A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.

As was noted in the adjudicator's view, Prudential is accountable to the regulator (the FCA) for the way in which it operates its with-profits fund (in accordance with its Principles and Practices of Financial Management document), and the FCA monitors the management of it. Businesses are required to appoint a with-profits actuary and the regulator provides rules and guidance on their duties. Prudential also has an independent With-Profits Committee whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly. I note that Mr C has said that he was unaware of the committee and it has not asked his opinion. However the committee works in the background and would not necessarily provide reports directly to Mr C.

Mr C has suggested that the business is acting in a manner that is unfair and the concerns he has raised may have wider implications for other investors in the same or similar situation as him. In such cases we are able to refer the matter to the FCA. The FCA has confirmed that at this time it does not have any concerns about the management of the fund. Given this finding, I do not consider, on balance, that it would be fair or reasonable for me to uphold the complaint on the basis of Mr C's concerns about the management of the fund and bonuses paid from it.

Clearly, I understand why Mr C is unhappy given that his annuity has fallen in value over a considerable period of time. But as I have said above, the risks of the plan should have been explained to Mr C by the firm that arranged the annuity. And overall, I have seen no persuasive evidence that Prudential has failed to operate Mr C's annuity in accordance with its obligations.

my final decision

Accordingly, my final decision is that I do not uphold Mr C's complaint.

David Ashley
ombudsman