

complaint

Mr S complains that he did not appoint a financial adviser when he took out a stakeholder pension plan with Scottish Amicable (now part of The Prudential Assurance Company Limited). Mr S wants any commission paid to that adviser to be refunded to his pension plan.

background

A firm of financial advisers (which I shall refer to as "B") sent Scottish Amicable an application form for Mr S's stakeholder pension in August 2001. Mr S was to make monthly contributions and his employer was to match this contribution. Mr S says that B was also engaged as his employer's insurance broker at that time.

Mr S later requested a lump sum payment of £1,500 to be paid into the policy. Again, this request was sent to Scottish Amicable by B (which by then had changed its name). Mr S recalls that there were some problems with allocating the payment to his plan and B assisted with these at that time.

In January 2013 Mr S asked to purchase an enhanced annuity using the proceeds of his plan, and discovered that there was a financial adviser named on the policy. Mr S disputed that he had ever appointed a financial adviser, and wanted to see the evidence showing that he did.

Prudential could confirm from its records that applications and other queries were submitted by B on Mr S's behalf. Due to the time that had elapsed, it no longer had records showing if any commission was originally paid to B. It noted that this information would have been disclosed on the original illustrations provided to Mr S at the point of sale.

Unhappy with Prudential's response, Mr S referred his complaint to the Financial Ombudsman Service. One of our adjudicators did not recommend that the complaint should be upheld. He was satisfied that the evidence showed the policy was sold by B, and this company was acting as an independent financial adviser.

Mr S disputed this. He was under the impression that B was a representative of Scottish Amicable. He also considered that B acted for his employer in setting up the stakeholder pension scheme, but not for him personally. But the adjudicator remained of the view that, to Prudential, it would have appeared that B was Mr S's adviser – and therefore it had done nothing wrong in recording it as such on his policy records.

Mr S did not agree with the adjudicator's assessment and requested for the complaint to be reviewed again by an ombudsman. He wanted to see evidence of the original letter of appointment of B as his financial adviser.

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 not in dispute that Mr S completed a stakeholder application form which was then submitted to Scottish Amicable by B. In his submissions to this service Mr S seems to agree that – irrespective of whether B also undertook other business for his employer – he had agreed it would deal with his own application for the stakeholder plan. The evidence further suggests Mr S turned to B when he had problems with the pension arrangement.

B had been registered as an independent financial adviser with the regulator since 1994, and continues to be to this day. The regulator's records do not show that it ever acted as an appointed representative of Scottish Amicable or Prudential. This would have been apparent to Scottish Amicable when it accepted the business from B, and it would not have needed to see a letter of appointment from Mr S in order to do so. Therefore I have not been able to establish that Prudential has acted wrongly in recording B as Mr S's adviser or agent for this policy.

I realise Mr S is concerned that he might have been given a misleading impression by B regarding the scope of the service it would provide and how it might be remunerated. Whilst I must stress that I have no knowledge of what remuneration B might have received via Scottish Amicable and now Prudential, this does not change the fact that regulatory responsibility for disclosing this rested with B.

Prudential was obliged to set out on the policy illustrations what the charges would be for operating the policy (from which any commission might indirectly be paid). Although the original illustrations are no longer available, businesses were required to present these in a prescribed form – and I have no reason to doubt that the necessary information would have been shown on the illustration for Mr S's policy.

Any arrangement for B to receive commission would have been subject to an agreement directly between Prudential and B, and Mr S was not a party to that agreement. The payment of any commission to which B was entitled will have already have been made to that company. As I have not seen any evidence to suggest Prudential has acted inappropriately in processing Mr S's stakeholder application, there is no basis on which it would be reasonable to require Prudential to refund that payment.

my final decision

I do not uphold this complaint and make no award.

Gideon Moore
ombudsman