

## **complaint**

Mr M has complained about the level of income he's been receiving from his with-profits annuity (WPA) with Prudential Assurance Company Limited ('Prudential').

## **background**

Mr M has said that in the last five or six years the income from his WPA with Prudential has fallen far behind the income he's been getting from another WPA with another provider.

One of our adjudicators investigated the complaint. He didn't uphold it. In summary he didn't think that Prudential had done anything wrong in the way that it had operated Mr M's WPA.

Specifically, the adjudicator said that Prudential had reasonably applied its commercial judgement in managing the with-profits fund that Mr M was invested in. The adjudicator considered that Prudential's decision, in the last few years, to switch some of the with-profits fund out of equities to asset classes seen as less volatile, such as fixed interest securities, had led to lower investment growth. And that had impacted on Mr M's income from his WPA.

But Prudential didn't appear to have acted outside the parameters of what could reasonably be regarded as the make up of a with-profits fund. The management of Prudential's with-profits fund was overseen by the industry regulator and an independent committee and no concerns had been raised.

The adjudicator was also satisfied that the cost of operating Mr M's WPA hadn't increased. But he explained that Prudential's costs of managing its with-profits fund could change.

Mr M didn't accept the adjudicator's findings. In summary he said:

- It wasn't appropriate for the adjudicator to take responsibility for Prudential's dismal performance.
- Instead it was the responsibility of the adjudicator to make Prudential reply to those questions Mr M considered were reasonable to ask.
- What the adjudicator had concluded may not be correct. Only Prudential can know all the facts and it should be made to answer his questions in greater detail.

## **my findings**

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

Having done so, I've reached the same conclusions as the adjudicator and largely for the same reasons.

I do understand Mr M's concerns. I can see that he feels very strongly that Prudential has failed to answer his questions and should be compelled to do so. But I have to consider the complaint that Mr M had made and decide if it should be upheld or not. I think that I've enough information to do that and to decide the matter fairly.

I note Mr M's comments about other policyholders in the same position as him. But we deal with individual complaints. We aim to resolve cases fairly and reasonably, taking into account the particular circumstances of the complaint. But, where the crux of the complaint concerns how a particular business has managed a particular investment – or if it concerns the legitimate exercise of a business' commercial judgment - we probably won't be able to uphold the complaint.

With-profits fund providers have significant discretion about how they operate this type of fund. But they are still accountable to the industry regulator for the way in which with-profit funds are managed. The adjudicator has already explained this to Mr M and referred him to the Principles and Practices of Financial Management (PPFM). Prudential has to act in accordance with the PPFM.

Prudential must also have a with-profits actuary. He or she must carry out his or her duties in accordance with the rules set and the guidance provided by the regulator. Prudential also has an independent with-profits committee to protect the interests of policyholders such as Mr M.

I sympathise with Mr M. I can of course understand his point about being able to compare the performance of his two WPAs taken out at the same time with similar investment amounts but with different providers.

But even his other WPA has performed better it doesn't mean that Prudential must have done something wrong. Two different providers will make their own investment decisions and it's probably inevitable that results will vary.

It might be that for a number of years Prudential and the other provider followed relatively similar strategies. There was then a divergence between the two, perhaps when faced with the turbulent investment climate of 2008/09.

I can see that the adjudicator has examined to some degree the investment strategy of Prudential. This was following questions that the adjudicator asked of Prudential. Prudential has also had sight of the adjudicator's assessment and hasn't said that any of the adjudicator's conclusions were incorrect. I think the adjudicator has made sound and reasonable deductions based on what has happened in the last five years.

I know Mr M is likely to remain dissatisfied but I don't think that Prudential has done anything wrong.

### **my final decision**

I don't uphold Mr M's complaint and I don't make any award.

Lesley Stead  
**ombudsman**