

complaint

Mr C's complaint against The Prudential Assurance Company Limited ("Prudential") is about the benefits available to him from his pension plan. He is unhappy that Prudential is not prepared to honour the benefits quoted in the illustration provided at the time of sale, despite the representative from Prudential telling him that the benefits were guaranteed. In addition, Mr C complains he has been mis-sold the policy.

background

Mr C took out a personal pension plan with Prudential in early 1988. The illustrations provided by Prudential's representative indicated that at retirement Mr C could receive a tax-free cash lump sum of £56,000 and an annual pension of around £15,500. Mr C's 2012 annual statement indicated that he could receive a lump sum of approximately £13,000 and a pension of £1,250 a year. He complained to Prudential, and then referred his complaint to this service.

The adjudicator who considered Mr C's complaint concluded that it could not be upheld. She reviewed the illustrations of projected benefits given to Mr C in 1988 and 2012, and Mr C's personal situation when he took out the pension plan. In summary, she said that:

- the illustrations did not guarantee a particular fund value, and the notes to the illustrations had explained the basis on which the benefits were quoted
- given the passage of time and lack of supporting documentation, she was unable to comment on whether Mr C was verbally assured that the benefits payable from the plan would be no less than those quoted in the illustration given to him in 1988
- because Mr C had received documentation confirming that the benefits were not guaranteed, she was unable to conclude that Mr C had been misled
- as Mr C was not contributing to any other pension at the time, and had invested in what was considered to be a relatively low risk fund (in line with his statement that he was a cautious investor), she was unable to conclude that the advice to start the policy with Prudential was unsuitable

Mr C disagreed with the adjudicator's findings, and asked for the complaint to be referred to an ombudsman. In summary, he said that our service should take into consideration the representative's verbal guarantee. Otherwise, a representative could mislead a customer without consequences, as long as the guarantee was not stated in the written documentation. Also, that it should be borne in mind that most people would trust what they were told by the representative and may not read the accompanying literature fully. Further, that some people may struggle to understand legal documents or may even be illiterate.

my findings

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

I understand Mr C's strength of feeling on the matter – especially in relation to what he and his wife recall was discussed with the representative in 1988. However, I hope that Mr C will be able to appreciate that, in reaching a final decision on his complaint, I can only consider the evidence available to me. In the absence of any further evidence supporting his recollection of the verbal guarantee, I am unable to reach a conclusion that Prudential should be required to honour the original illustration of benefits.

Looking at the illustrations provided in 1988 and 2012, I acknowledge the projected benefits have declined significantly, and I can understand Mr C's disappointment at the performance of his pension plan. However, within the notes of the illustrations and the policy documentation, I cannot find anything to suggest that Prudential guaranteed a certain fund value for Mr C at retirement. I consider that he should have been aware from the policy literature that his pension fund at retirement depended on market performance.

I note that Mr C has said that many people do not read their policy literature fully, as they rely on the information provided by the adviser or sales representative. Whilst I accept that this may be the case, I do not consider that it was reasonable for Mr C to rely solely on the verbal guarantee he says he received. This is particularly so when, over the course of time, Mr C's annual statements will have started to show a fall in the projected benefits. This ought to have brought to Mr C's attention that the benefits shown on the illustration were not in fact guaranteed. I also consider that Mr C has articulately presented his complaint, indicating that in this particular case there are no literacy challenges that I should take into consideration.

The growth rates Prudential was allowed to use in 1988 were significantly higher than those currently prescribed by the regulator. This is one of the key contributory factors in the difference between the benefits and fund value quoted in the 1988 illustration and those quoted now.

Mr C's pension contributions were invested in a with-profits fund. The with-profits fund uses the method of 'smoothing'. This process allows the fund to keep back some of the returns which it has earned in good investment years and uses those returns to help pay bonuses in poorer investment years or to ensure that guarantees are met. Unfortunately this can result in no bonuses being applied and therefore would have affected the performance of the fund.

I do not consider the policy to have been mis-sold, for broadly the same reasons set out by the adjudicator. Mr C was not contributing to a pension at the time the application took place. In addition to this, the funds were invested in a with-profits fund – which was in line with Mr C's attitude to risk. Looking at Mr C's monthly contributions, I am satisfied that there were no affordability issues that would have caused the pension to be unsuitable for him.

I understand why Mr C is extremely unhappy that his policy has not performed to his expectations, based on the illustration he received in 1988. However, for the reasons explained above, I am unable to uphold Mr C's complaint.

my final decision

My final decision is that I do not uphold this complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman