complaint

Mr A is dissatisfied with the way in which The Prudential Assurance Company Limited ("Prudential") responded to his request for information about how his with-profits annuity worked and its performance.

background

Our adjudicator wrote to Mr A on 26 July 2013 setting out his reasons for not upholding the complaint. In summary he said:

- In an email, Mr A contacted Prudential querying the performance of his annuity.
- Prudential had taken Mr A's request for information as a complaint and decided to respond accordingly. The adjudicator considered that the reply was satisfactory, whilst noting that Prudential's policy was not to acknowledge emails on the same day, which had caused Mr A dissatisfaction.
- The adjudicator said that it would have been the responsibility of the adviser who provided the initial advice to explain how the contract worked (and its suitability for Mr A) whereas Prudential was the administrator of the policy. So any concerns as to the suitability of the plan and how it was structured should be directed to the business that had provided the initial advice to purchase the annuity.
- That said, the adjudicator had identified that the business that provided the original advice had ceased trading – but Mr A could consider contacting the Financial Services Compensation Scheme (FSCS) if he wanted to.
- A direct contact at Prudential was provided if Mr A had any further specific technical queries in respect of the annuity.

Mr A rejected our adjudicator's assessment. He referred to the delays he had experienced in his complaint being considered and then the time it would take for an ombudsman to make a decision. He was also concerned that the adjudicator had reached a decision without discussing the complaint with him.

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 conclusion as the adjudicator, and for broadly the same reasons.

I do understand why Mr A feels it would have been preferable for the adjudicator to discuss the complaint and his findings before reaching his conclusions. But it will not always be necessary for the adjudicator dealing with the complaint to discuss it, prior to concluding his assessment, with either party.

In this particular case Mr A provided a detailed file about the events that led him to complain and containing his correspondence with Prudential. Having also been given sufficient information from Prudential, the adjudicator was able to give his view of the complaint based on the detailed information he had been presented with.

I can also understand Mr A's disappointment with his with-profits annuity and his concern that despite the with-profits fund's performance his annuity income has reduced.

As the adjudicator has explained, I do not consider here the original advice that Mr A was given (by another business) to purchase his with-profits annuity with Prudential. So I am unable to look at whether a with-profits annuity was suitable for Mr A or whether what he was told about how the with-profits annuity would work was correct and not misleading.

So in considering Mr A's complaint against Prudential I have focused on Mr A's central concern, the year on year (leaving aside the first year when there was a small increase) reduction in his income.

The level and type of bonuses declared by Prudential on its with-profits fund is a commercial decision taken by the directors of Prudential acting on the advice of their senior actuaries.

With-profits funds have historically attracted criticism for their complexity and perceived lack of transparency – it can be very difficult for policyholders to understand often complex and lengthy documentation and to be satisfied that they are receiving their proper entitlement under the terms and conditions of the particular product. But those difficulties do not necessarily mean that the provider of the with-profits fund has done something wrong or is not acting in accordance with its regulatory obligations.

As Mr A understands and accepts, the bonuses that attach to his with-profits annuity are linked to the performance of Prudential's with-profits fund. Due to the long term nature of with-profits investment funds and the requirement to treat all policyholders fairly, bonus rates may not immediately reflect the prevailing investment climate. In particular, the process of smoothing, whereby profits in good years are held back to compensate for lower returns in other years, can lead to an apparent significant mis-match between bonus rates and investment returns when looked at on an annual basis only.

The industry regulator (previously the Financial Services Authority (FSA) and now the Financial Conduct Authority (FCA)) recognises that with-profits fund providers have a considerable amount of discretion about how they operate their with-profits funds. That said providers are accountable to the regulator for the way in which these funds are managed.

The regulator's Principle 6 requires that regulated firms *"…must pay due regard to the interests of its customers and treat them fairly".* Furthermore, the Conduct of Business Sourcebook (COBS), and specifically COBS 20, contains specific rules and guidance for businesses 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 polices are fair.*

Prudential is accountable to the regulator for the way in which it operates its with-profits fund (in accordance with its Principles and Practices of Financial Management (PPFM) document which is published on its website) and the regulator monitors the management of with-profits funds. Businesses are required to appoint a with-profits actuary and the regulator provides rules and guidance on their duties. An independent with-profits committee is also required – its remit is to protect the interests of the with-profits policyholders and to ensure that they are treated fairly. I am not aware of the regulator having any concerns about the operation of this fund.

The bonus rate to be applied is an exercise of Prudential's legitimate commercial judgement, in line with its PPFM. The regulator has not raised any concerns about Prudential's management of its with-profits fund or about the level of bonuses applied.

In the circumstances I am unable to say that the reduction in Mr A's annuity income has resulted from other than investment performance and the legitimate exercise by Prudential of its commercial judgment in setting bonus rates.

my final decision

I do not uphold Mr A's complaint and make no award.

Lesley Stead
ombudsman