

complaint

Mrs B complains that she did not receive the tax free cash and income the Prudential Assurance Company Limited quoted to her after she transferred her pension to it from HSBC. She believes that Prudential delayed the transfer after HSBC confirmed the value, and led her to believe that she would receive the figures it had quoted to her.

background

Mrs B and her husband met with a Prudential adviser on 15 May 2013 to discuss taking pension benefits, as they needed to raise money to pay an income tax bill. Prudential offered a restricted advice service, limited to its own products. Prudential's Client Agreement described it offering a two stage service: a personal financial review followed by a meeting to present the advice after relevant information had been gathered and a report prepared.

The intention initially was to take benefits from Mr B's pension, which was held with Prudential. However, this pension had important guarantees associated with it which would be lost by taking benefits early. Once this became apparent, Mrs B mentioned to Prudential's advisor that she too had a personal pension, with HSBC.

Prudential's advisor then discussed with Mrs B the possibility of transferring her HSBC pension to it, with a view to taking benefits once the transfer had completed. Following that initial meeting, Prudential obtained the full details of Mrs B's HSBC pension, and formalised its recommendations in a report. Prudential's formal recommendation was then presented to Mrs B at a meeting on 19 June 2013. Mrs B accepted the recommendation, and a finalised copy of Prudential's financial planning report was sent to her on 26 June 2013.

Prudential's recommendation was for Mrs B to transfer her HSBC pension to it, then take benefits using its "Income Choice Annuity", which invested in a with-profits fund, and offered a variable rate of income, dependent on the performance of that fund. Mrs B was advised to set the annuity up on a "maximum income" basis, which meant the highest possible level of income was paid from the outset, but that an annual growth of at least 5% after charges would be required to maintain it. If that growth was not maintained, the income would fall. There was a minimum level to which it could fall.

Mrs B's benefits were paid on 15 July 2013, within the validity period for the Prudential quotation she had been given. However, the fund value on which the annuity and tax free cash was based was significantly lower than that shown in Prudential's quotation and report, meaning Mrs B received a lower lump sum and income than had been quoted.

Our adjudicator partly upheld Mrs B's complaint. She concluded that Prudential had forwarded the transfer documentation to HSBC promptly and correctly once it was signed, and had pro-actively tried to resolve the matter when HSBC requested original documentation in order to complete the transfer.

But she also concluded that there was no evidence Prudential had warned Mrs B during the 15 May 2013 meeting that the value of her HSBC fund could change. And there was no evidence Prudential had suggested Mrs B contact HSBC to determine if she could secure the value of her fund, which would have been fair and reasonable. HSBC had confirmed that Mrs B could have quickly switched into a cash fund on request. The adjudicator suggested that Prudential put Mrs B in the position she would be, had she transferred the HSBC pension to cash following the first meeting.

Prudential did not accept our adjudicator's opinion, saying:

- The documentation suggests Mrs B was aware the fund value of her HSBC pension would not be guaranteed, and it was her decision to determine what she did with her HSBC pension fund.
- The adviser had confirmed that Mrs B was warned verbally at both meetings that the fund value could change.
- The restricted nature of Prudential's advice meant it could not advise Mrs B to transfer her HSBC pension into a cash fund. But it would be usual for an adviser to suggest the individual speak with the provider, and there was nothing to suggest this had not been done in Mrs B's case.
- It was not aware, at the time of the 15 May 2013 meeting, that Mrs B's pension was wholly invested in a FTSE All Share Tracker Fund, or that this could be transferred to a cash fund.

I issued a provisional decision in January 2015. I provisionally concluded that Mrs B's complaint should be upheld, but for different reasons to those given by the adjudicator. I said:

The adjudicator concluded that Mrs B had not been given sufficient warning at the outset of the possibility of her HSBC pension falling in value, and ought to have been advised to contact HSBC to discuss moving it to cash, as she was about to take benefits. However, having carefully considered the circumstances and the nature of the "Income Choice Annuity", I do not think Mrs B should have been advised to transfer her pension at all. There are a number of reasons for this.

Mrs B's priority was to pay her income tax bill – she therefore wanted to secure as high a lump sum from her pension as possible, and release it quickly. Transferring her pension before taking benefits meant that she was not be able to receive her benefits immediately, and also meant she would not be able to 'lock in' the value of her HSBC pension. Whilst Prudential may not have known the full details of the HSBC pension when it was first mentioned, it ought to have known that it was likely that it was at risk, and any delay in taking benefits might result in a lower lump sum being paid.

Prudential was only able to offer the potential of a higher income than that offered by HSBC. On a guaranteed basis, the annuity offered by HSBC was higher than that offered by Prudential. On a level payment, five year guaranteed, single life basis HSBC was able to offer £822.70 a year, whereas Prudential was only able to offer £810.24 a year. Prudential was only able to offer a potentially higher income by introducing risk. The Income Choice Annuity, set up on a maximum income basis, paid £1,167 in the first year. But it only guaranteed to pay a minimum of £544 a year thereafter – any additional amount was dependent on investment returns.

I have not seen sufficient evidence to conclude that Mrs B wanted to take a risk with the income her pension provided once the lump sum had been paid, or fully understood the implications of doing so. Under the "previous investment experience" of Prudential's report the following is recorded:

“Your previous investment experience is limited and consists mainly of the investment of your pension funds with Prudential and HSBC. Consequently, you confirmed that you were not looking to subject any of your capital funds to asset backed investments.

You are a relatively inexperienced investor, with your previous investment experiences being in With Profits, your HSBC fund within the FTSE Tracker Fund and Cash investments. Given your previous experience you are not prepared to put any of your capital at risk and want to retain immediate access to it. You feel this will be the safest and simplest solution moving forward- particularly given that you require immediate access to the majority of your Tax Free Cash at this time.”

Given that Prudential’s advice was restricted to the transfer of the pension only (and that these comments could therefore only relate to that), it’s not clear how it reconciled Mrs B’s desire not to “subject any of your capital funds to asset backed investments” with using 75% of her pension fund to invest in a with-profits fund.

The “capacity for loss” section contradicts what is recorded in the “previous investment experience” section to an extent by saying that Mrs B did have “some capacity for loss”. But that section would not in my view have been easily understood by an inexperienced investor such as Mrs B – it talks about her “being comfortable with the concept that the income from an annuity linked to the with-profits fund could fluctuate in the future”, but I’m not convinced that is a concept that Mrs B fully understood. I have not seen any evidence of an appropriate assessment of Mrs B’s attitude to risk having taken place. So I do not think Prudential could or should have safely concluded that Mrs B was prepared to accept the risk associated with the Income Choice Annuity.

The Income Choice Annuity was a complex product and, given Mrs B’s limited experience, she may have found it difficult to understand. It seems that the focus was on the first year’s income, and an emphasis was placed on that, plus the lump sum, being sufficient to meet the tax bill. But that overlooked the possibility of the HSBC pension falling in value. It also did not make clear that although it was possible that Mrs B might receive more in the short term (assuming the value of the HSBC pension did not fall during the transfer process), she could be worse off in the long term. The maximum income was specified in the report, but the minimum was not. Prudential’s report also does not explain that in the event of a significant fall in the markets, that minimum might be payable for a number of years. This is disclosed in the Key Features, but it ought to have been explained to Mrs B in the report.

The transfer also incurred costs – Prudential’s quotation confirms that (based on the then value of the HSBC pension) there would be a £583.92 set up advisor charge and a £591.78 initial charge. HSBC has confirmed that no charge would have been made, had Mrs B taken benefits with it, so these costs would not have been incurred had the transfer not been made. Also, the Income Choice Annuity is more complex plan than a lifetime annuity, and is therefore likely to require ongoing advice, which may incur additional costs.

Prudential says that a ten year guarantee (which its annuity offered, but only at a certain level) was important to Mrs B, and HSBC only offered a five year guarantee. But Mrs B says she has no recollection of discussing guarantees, and Prudential’s records are somewhat contradictory. Its report says on the one hand that Mr B had “more than sufficient income from his own pension” but on the other that Mrs B would “like to ensure that in the event of your early death within the arrangement, that there would be a continuing income for Mr B and your family for the longest term possible”. I am not persuaded that a ten year guarantee,

in itself, was sufficiently important to Mrs B to justify the transfer, when the costs and risks are taken into account.

So, overall, I do not think Mrs B should not have been advised to transfer her pension to Prudential. The best option in the circumstances for her was to talk to HSBC direct about taking her benefits. Prudential should therefore compare Mrs B's current position to the position she would be in, had she taken benefits from her HSBC pension, rather than transferring to Prudential and buying the Income Choice Annuity, to ascertain whether she has suffered a loss.

To put matters right I said that Prudential should:

Work out whether there had been a loss by comparing:

- The total return (income and tax free lump sum) Mrs B would have received to date had she taken benefits from HSBC and bought a level payment, five year guaranteed, single life annuity.
- To the total return Mrs B has received to date from Prudential.

I said that the return from HSBC should be calculated on the value of the HSBC pension at on 15 May 2013.

I also said that Prudential should change the Income Choice Annuity to a lifetime annuity that pays a fixed amount equivalent to what Mrs B would have received from HSBC, had she taken benefits from it. This was to ensure that, going forward, Mrs B was in the position she would be, had she taken benefits from HSBC.

I also asked Prudential to pay Mrs B £300 compensation for the upset it had caused.

Prudential did not accept my provisional findings. It said, in summary:

- The type of fund Mrs B had been invested in with HSBC suggested she was prepared to take some risk.
- It was possible her HSBC fund could have risen in value over the period she was receiving advice about transferring it.
- It was mandatory for the adviser to talk Mrs B through the Income Choice Annuity's 'Key Features' document, which showed how the product worked.
- A fixed annuity with HSBC offered a lower income than Mrs B had received with Prudential and did not offer a ten year guarantee, which had been noted as being extremely important to Mrs B. Overall, given the higher payments Mrs B had received so far, her loss was minimal and it was unlikely her income payment would fall to the minimum payable under the annuity in one go.
- Charges incurred against the transfer value were built-in costs not payable by Mrs B directly and there would be no on-going advice costs if Mrs B needed to discuss her options with Prudential in future.

- It is not reasonable to calculate compensation against the value of Mrs B's fund as at 15 May 2013, as this was the date of her first meeting with the Prudential adviser. It would not have been possible to secure her fund on that date, or her benefits.

Prudential also expressed concern that, by accepting the compensation I proposed, Mrs B was potentially putting herself in a worse position, as the Income Choice Annuity had been paying a higher level of income that she would otherwise had received, and may continue to do so.

Mrs B accepted my provisional decision. She confirmed that she understood and had considered the implications of accepting the compensation I had proposed.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not been persuaded to depart from my provisional findings.

I am still not persuaded that Mrs B fully understood the nature of the Income Choice Annuity or that its sale was justified. Given the circumstances, the best course of action for Mrs B to take was to ask HSBC to pay her benefits, not to transfer to a complex risk-based product, and take the risk that her HSBC fund might fall in value in the interim.

I accept that not every detail about the product could be included in the report given to Mrs B, but important details, such as the minimum income payable, ought to have been included. I remain of the view that the report would not necessarily have given Mrs B a full understanding of what was a complex product. And I do not think Prudential can reasonably argue that some of what was said in the report in about risk was not relevant to Mrs B's pension. Prudential was only giving advice on Mrs B's pension, so if something was not relevant to that, it should not have been included in the report.

Overall, given Mrs B's comments throughout this complaint, I am not persuaded that she agreed to buy the Income Choice Annuity with a full understanding of its features and risks.

I am also still not persuaded that the annuity was suitable for Mrs B. I have not seen sufficient evidence of an adequate assessment of Mrs B's capacity and tolerance for risk having taken place. Prudential has referred to Mrs B having invested in HSBC's tracker fund, but it does not follow that she was willing to accept risk with her annuity, and we also don't know the circumstances under which that investment was made. Prudential said, when it advised Mrs B, that she had limited experience. It seems her only experience was of her pension fund and a with profits investment.

I can understand why Prudential think hindsight is a consideration in relation to the fall in value of the HSBC fund. But it ought to have known it was a *possibility* the fund value might fall whilst transfer was underway. And, given Mrs B's need to secure funds to pay a tax bill, that was a relevant consideration.

I accept that the charges I referred to in my provisional decision were "built in" costs. But I do not think that, in itself, is sufficient to conclude the advice to transfer and buy the Income Choice Annuity was suitable, given my findings otherwise.

I understand Prudential's concern that Mrs B may not appreciate the implications of moving to a fixed annuity now (although I think this does conflict to some extent with its assertion

that she did fully understand the Income Choice Annuity). Mrs B has confirmed that she understands this means she might be worse off, but would rather have a fixed income than an uncertain one.

my final decision

For the reasons given here and in my provisional decision, I uphold the complaint.

To ascertain whether Mrs B has suffered a loss Prudential should compare:

- The total return (income and tax free lump sum) Mrs B would have received to date had she taken benefits from HSBC and bought a level payment, five year guaranteed, single life annuity.
- To the total return Mrs B has received to date from Prudential.

The return from HSBC should be calculated on the value of the HSBC pension at on 15 May 2013. I accept that it is unlikely Mrs B would have taken her benefits on this exact date, but I think she would have taken them soon after this, and I think using that date is sufficient for comparison purposes.

Mrs B received less tax free cash as a result of the transfer, but a higher level of income (to date). So the loss amount is an amount she has been kept out of since the tax free cash was paid. On that basis, I think it is fair that interest, at 8% simple is added to the loss amount from when Mrs B would have received her tax free cash from HSBC. Again, we don't know for certain exactly when that would have happened, but it is likely to have been soon after 15 May 2013, so that date should be used for the purposes of calculation.

Prudential should also change the Income Choice Annuity to a lifetime annuity that pays a fixed amount equivalent to what Mrs B would have received from HSBC, had she taken benefits from it. This annuity should be established on the same basis as the HSBC one i.e. guaranteed for five years from when it would have been taken, and on a single life basis.

Finally, I remain of the view that Prudential has caused Mrs B some upset. It is clear she expected its recommendation would ensure she was able to pay her tax bill, and that the reduced amount she received as a result of being advised to transfer came as a shock to her. £300 is fair compensation for this, in my view, and I award that amount.

John Pattinson
ombudsman