

complaint

Mrs S has made this complaint on behalf of her late husband, Mr S. She is unhappy that The Prudential Assurance Company Limited will pay only a 50 per cent spouse annuity after Mr S died. She says this is a mistake and it should pay 100 per cent.

background

The background to this complaint is set out in my provisional decision and an extract of that decision is attached below.

In that decision I said that I wasn't minded to uphold this complaint and I explained why. I said, in summary, that I was satisfied that the annuity that was arranged was consistent with the application that was made. It was the quotation for the 50 per cent spouse benefit that was completed and returned. The telephone record for the call on 8 November 2016 records that the new figures were relayed to the financial adviser, but these were only the figures for the 50 per cent spouse benefit. No figures were apparently requested or provided for a full spouse benefit.

Whilst I could understand if there may have been a mistake by Mr S (or his adviser) in respect of the original application completed. That doesn't explain why the updated quotes were only requested for the 50 per cent spouse benefit or why only these figures were discussed in the telephone call on 8 November.

The contemporaneous evidence suggests that Mr S wished to secure an annuity with a 50 per cent spouse benefit. That was the annuity he appears to have requested. There is no contemporaneous documentary evidence to suggest otherwise. And I wasn't satisfied that if Prudential had provided further information, including the key-facts, once the annuity was in place, that this would have made any difference. That's because I wasn't persuaded that the 'wrong' annuity was arranged.

Mrs S responded and said that she didn't agree. She said that she had no new evidence but the crux of the complaint was that the key-facts were not received. Without these they weren't to know which application had been made. Mistakes may have been made by both parties but no compromise has been offered.

Prudential didn't respond to the provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I note what Mrs S has said but that doesn't cause me to change my view.

As I said, it may be possible that the 'wrong' application was submitted but I don't believe that is the most likely explanation. That doesn't explain why the 50 per cent option was the one that was updated and not the 100 per cent option. Or why it was the 50 per cent option that was discussed directly with the adviser.

So I've not changed my mind and my final decision is that I don't uphold this complaint. I appreciate that this decision will disappoint Mrs S and I do realise that the pension will have been very important to her. It's not a decision that I've reached easily, and I must have regard to all of the evidence in deciding what is most likely to have happened.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 5 April 2020.

Keith Taylor
ombudsman

COPY OF THE PROVISIONAL DECISION

complaint

Mrs S has made this complaint on behalf of her late husband, Mr S. She is unhappy that The Prudential Assurance Company Limited will pay only a 50 per cent spouse annuity after Mr S died. She says this is a mistake and it should pay 100 per cent.

background

Mr S held a pension with Prudential. The pension was payable in late 2016. In July 2016 Mr S's financial adviser (IFA) contacted Prudential and asked for annuity quotes based on a spouse pension of both 50 per cent and 100 per cent.

On 28 July 2016 Prudential issued the quotations as requested. The quotation with a 100 per cent spouse pension, after payment of a cash lump sum, provided an annual pension of £4133.08 and said that the full pension would be payable after Mr S's death.

The quotation based on a 50 per cent spouse pension provided for a pension of £4,607.88 and said that half this amount would be payable after Mr S's death.

Mr S, apparently on the advice of his IFA, who completed an advice certificate, returned the quotation which provided for a 50 per cent spouse pension. The pension amount was circled and marked with an asterisk.

The quotation was returned outside the three month guarantee period. There were telephone calls between Prudential and the IFA in November 2016 and up to date figures were prepared ready for payment to begin in December 2016. The new figures were based on a 50 per cent spouse pension only and provided for a starting pension of £4,729.80. The figures were, according to Prudential's file, confirmed to the IFA in a call on 8 November 2016.

On 14 November 2016 Prudential wrote to confirm the pension was being arranged. Its file records that this letter was sent to Mr S and to the IFA. The letter sets out the tax free lump sum that's been paid, but doesn't detail the pension amount or the spouse's pension.

There is then a key facts/quotation dated 15 November 2016 which set out the pension amounts including the starting pension and the surviving spouse pension. The spouse pension quoted is 50 per cent of the starting pension.

Sadly, Mr S dies in February 2017. Mrs S notified Prudential a few weeks later and Prudential took steps to adjust the pension and address the overpayments that had been made.

Mrs S complained. Her complaint is, in essence, that the annuity arranged wasn't the one that was intended. Mr S was in poor health. He'd wanted the annuity which provided the higher spouse pension. She said that the key facts document from 15 November 2016 which set out the spouse pension hadn't been received. Had it been received the error would've been spotted and steps could have been taken then to correct it.

Prudential didn't uphold the complaint. It said the annuity had been arranged as requested with a 50 per cent spouse pension. The key facts document did set out the details of the spouse pension payable.

The complaint was referred to this service where it was considered by an investigator. He didn't think the complaint should be upheld. His view was that the annuity arranged was consistent with the application that was completed. This provided for a 50 per cent spouse payment.

Mrs S didn't agree. She said, in summary, the key-facts and post-sale documents were not sent. Had they been sent, the error would have been noticed. The documents she held confirmed the full pension would be payable throughout her lifetime.

The investigator didn't change his view. He restated that the annuity had been arranged in line with the application that was made. A financial adviser had been involved and the key-facts had been sent to the adviser. There was correspondence from 15 November 2016 which set out the reduced spouse pension.

Mrs S responded and said that the adviser was not heavily involved in the application. They didn't want to pay fees for this work. Also, they had discovered that there were two documents dated 15 November 2016, one did refer to the reduced pension but the second, the one they'd received, didn't.

As no agreement has been reached the case has been referred to me for a final decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've provisionally reached the same conclusions as the investigator. I'm not currently minded to uphold this complaint.

I'm satisfied that Prudential were asked to provide quotations for two pension annuity arrangements. One would provide a full spouse pension, the other a 50 per cent spouse pension. These quotations appear to have been issued to Mr S's financial adviser.

The quotation that was returned was the one which provided for a 50 per cent spouse pension. It was returned outside the original time for acceptance and so a new quotation was prepared. The new quotation was discussed with the financial adviser on 8 November 2016 and the annuity was arranged. It went into payment soon afterwards.

Having considered the available evidence, I'm satisfied that the annuity that was arranged was consistent with the application that was made. It was the quotation for the 50 per cent spouse benefit that was completed and returned. The telephone record for the call on 8 November 2016 records that the new figures were relayed to the financial adviser, but these were only the figures for the 50 per cent spouse benefit. No figures were apparently requested or provided for a full spouse benefit.

Mrs S has pointed to a document that sets out the lifetime spouse benefit, but this would have been included with the quotation for the full spouse benefit. But a different quotation was completed and returned to Prudential.

I can understand if there may have been a mistake by Mr S (or his adviser) in respect of the original application completed. But that doesn't explain why the updated quotes were only requested for the 50 per cent spouse benefit or why only these figures were discussed in the telephone call on 8 November.

The contemporaneous evidence suggests that Mr S wished to secure an annuity with a 50 per cent spouse benefit. That was the annuity he appears to have requested. There is no contemporaneous documentary evidence to suggest otherwise. I do note Mrs S's evidence about his wishes and I accept that it's possible that a mistake has been made. But I'm not currently satisfied that Prudential made any mistake when the annuity was arranged. And I'm not currently satisfied that if it had provided further information, including the key-facts, once the annuity was in place, that this would have made any difference. That's because I'm not currently persuaded that the 'wrong' annuity was arranged.

I have taken into account the fact that Mr S appears to have received advice during this process. Quotations were requested by, and provided to, his adviser. The adviser spoke directly with Prudential and completed an adviser certificate. So there was apparently some professional oversight to the transaction.

And there were at least three separate points in the transaction when the annuity with 50 per cent spouse benefit was selected or identified instead of the annuity with full spouse benefit. These were when the application was made, when new quotations were requested, and in the call on 8 November 2016. So if a mistake was made in the application, it was then repeated consistently on two further occasions which doesn't seem highly likely.

Prudential has confirmed that key-facts were sent to the financial adviser in July with the quotations. But it's unable to confirm that a further set of key-facts from November 2016 were sent out.

The documents sent to Mr S dated 15 November set out the pension payable but didn't detail the specific provisions for any spouse benefit. The further key-facts document did set out the spouse benefit but, as I've said, Prudential can't confirm that this was sent.

I have some sympathy with Mrs S's point that had new key-facts been sent out, then the 'mistake' would have been identified. But, based upon the evidence that is available, I'm not minded to conclude that there was a mistake by Prudential in setting up the pension. That's because the annuity that was arranged was consistent with the application it received, the new quotations requested, and it's also consistent with the information relayed to the financial adviser in the call on 8 November 2016.

my provisional decision

For the reasons given above, I'm not currently minded to uphold this complaint. I'll consider any responses before making my final decision.