

## **complaint**

Mrs D complains that The Prudential Assurance Company Limited (“Prudential”) failed to adequately consider and inform her about alternative pension income options when it recommended she take out a with-profits annuity (“WPA”).

## **background to this complaint**

Mrs D was a member of the Teachers’ Pension Scheme (“TPS”). While a member of the TPS she contributed into an additional voluntary contribution (“AVC”) policy with Prudential – the purpose of this was to build up additional retirement funds.

In 2014 Mrs D suffered serious ill health. She met an adviser from Prudential to talk through the options regarding her AVC policy. Following two meetings, the adviser issued his suitability report (the “report”) to Mrs D in November 2014 with his recommendations. The report confirmed, amongst other things, that:

- Due to her ill health, Mrs D was in the process of negotiating early retirement from her employed teaching role which paid about £30,000 pa;
- she expected to receive from the TPS a tax-free cash sum of about £50,000 and a pension of about £18,000 pa; and
- she required immediately from her AVC policy, then valued at about £113,200:
  - the maximum tax-free cash to cover the cost of repairs that were then being carried out on her house due to rising damp; and
  - additional, secure income during her lifetime to supplement her TPS pension.

To meet these immediate objectives the adviser recommended Mrs D take 25% (about £28,300) of her AVC policy as tax-free cash and use the balance (about £84,900) to purchase the WPA that is the subject of this complaint.

In 2016 Mrs D complained to Prudential about the recommendation to take out the WPA. She said she doesn’t need the income it provides which is taxed at 40% because she’s a higher rate taxpayer. She said the adviser had failed to adequately consider and inform her about alternative pension income options. She thought income drawdown would have been a more suitable recommendation (because it includes the ability to vary and stop income, meaning it can be drawn more tax-efficiently).

Our adjudicator didn’t think this complaint should be upheld. He thought the recommendation for the WPA was suitable based on Mrs D’s recorded circumstances in November 2014, particularly the reference to her retiring early and the need for secure income to replace her employed income when she retired.

Mrs D disagreed. With the assistance of another adviser she said, in summary, that:

- due to her state of health at the time, most advisers would have waited until things became clearer before giving any recommendation;
- she didn’t have an immediate need for additional, secure income at the time;

- she should have been advised to go elsewhere to seek advice on transferring her AVC policy into a SIPP so that she could access income drawdown; and
- she was, and remains, employed and a higher rate income taxpayer – so the recommendation for secure annuity income that can't be altered doesn't make any sense.

In an attempt to resolve Mrs D's complain, our adjudicator asked Prudential if it would convert the WPA into an income drawdown plan. But it said this wasn't possible. Since agreement couldn't be reached, this complaint has been referred to me to make a final decision.

### **my findings**

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

Firstly, I'm very sorry to hear that Mrs D has suffered serious ill health in recent years.

The question that lies at the heart of this complaint is: "Was the recommendation for the WPA suitable for Mrs D based on her recorded circumstances in November 2014?"

In answering this question, I think it's important to highlight that sometimes there can be more than one suitable pension income option. So I don't usually uphold a complaint just because there could have been other suitable options. In addition, I don't think it would be fair to judge the recommendation for the WPA with the benefit of hindsight and based on what actually happened, rather than what Mrs D's stated requirements were in November 2014.

So, for Mrs D's complaint to succeed, I need to be convinced that the recommendation for the WPA wasn't suitable based on her recorded circumstances at the time. I wasn't present at the meetings between Mrs D and Prudential's adviser. So I can't be sure what was discussed. Therefore I have to rely on the report that Mrs D received before accepting the recommendation for the WPA.

### *The report*

The report sets out the reasons why the adviser concluded the WPA suitable for Mrs D. He confirmed, amongst other things, that:

- he operated on a restricted basis and was only able to advise on and recommend Prudential products – so I'm satisfied Mrs D was placed on notice that the adviser was only able to recommend Prudential products;
- he recommended the WPA (rather than a conventional, guaranteed annuity) because Mrs D had a medium to high attitude to investment risk, meaning she is prepared to accept the risk of loss to achieve her aim of growth over the long term;
- the WPA is an investment-linked product linked to the performance of Prudential's with-profits fund;

- income would initially be set at £3,830.52 pa – this could potentially increase or decrease in future, depending on the performance of Prudential's with-profits fund;
- the secure level of the WPA would be £2,519.88 pa, meaning income can never fall below this amount, regardless of the performance of the with-profits fund or how long Mrs D lives;
- the WPA would be secured on enhanced terms due to Mrs D's ill health – it would include a 10 year guarantee so that income continues in the event of her death during the first 10 years;
- the WPA income would be subject to income tax at Mrs D's marginal rate; and
- once secured, the WPA can't be changed, even if Mrs D's circumstances altered;

#### *Alternative pension income options*

In his report the adviser referred to a number of alternative pension income options including income drawdown, guaranteed annuity income and using the open market option. Credible reasons were given to explain why each of these options was discounted. With regard to income drawdown, the adviser stated that this *"was discounted because you wanted to secure an income for the remainder of your life with no risk of it running out"*.

The adviser also noted that Mrs D could potentially benefit from the impending 'pension freedom' rule changes if she delayed accessing her pension benefits until April 2015. But it was noted she wasn't interested in this due to her immediate need for cash and secure income to meet her recorded objectives.

So I'm satisfied the adviser adequately considered and informed Mrs D about alternative pension income options before he recommended the WPA.

#### *Early retirement*

Mrs D says an income drawdown plan would have been a suitable option given that she is still working and is a higher rate taxpayer. She says the WPA provides income she doesn't need and is taxed at 40%. She thinks income drawdown would have allowed her to take the tax free cash and no income until her health and employment situation was clearer.

But the report said that, due to her ill health, Mrs D was in the process of negotiating early retirement from work at which point her employed income would reduce, bringing her into the basic rate of income tax bracket. There's no reference in the report to Mrs D potentially continuing full-time work. If Mrs D wasn't in the process of negotiating early retirement, then I would have expected her to question reference to this in the report when she received it.

It seems that after securing the WPA, Mrs D decided to continue working – which means her WPA income was and continues to be taxed at 40% because she's a higher rate taxpayer, taking into account her employed income. I don't think it's fair to blame Prudential for this. Based on what I've seen, it wasn't reasonably foreseeable that Mrs D would continue working. On the contrary, in November 2014, everything pointed towards Mrs D retiring imminently due to her ill health. The adviser was clearly working on this basis.

So I think this complaint has been made with the benefit of hindsight and based on what actually happened rather than what Mrs D's stated requirements were in November 2014.

### *Conclusion*

While I understand Mrs D had suffered serious ill health, I haven't seen anything that makes me think her state of health in late 2014 – when she accepted the recommendation for the WPA – was such that it affected her ability to understand the content of the adviser's report.

Based on the information recorded by the adviser, I think the recommendation for the WPA met Mrs D's objectives and was suitable, bearing in mind her circumstances at that time. The WPA provided a minimum level of secured income and the opportunity of a potentially rising income – to reflect her attitude to risk – to cover the shortfall in income she was expecting in retirement. The WPA income also included an enhancement to reflect her state of health and a 10 year guarantee in the event of her death.

I agree that other alternative options might also have been suitable. However that doesn't mean that the WPA wasn't suitable. It's worth noting that income drawdown wouldn't have provided an enhancement of income linked to Mrs D's state of health, unlike the WPA.

In summary, I don't think Prudential has done anything wrong or treated Mrs D unfairly. I think the adviser's recommendation for the WPA was suitable based on what he recorded about Mrs D's circumstances in November 2014. Because of this, I don't consider it would be fair or reasonable in these circumstances for me to require Prudential to pay compensation to Mrs D – or to take any further action in response to this complaint.

### **my final decision**

For the reasons stated above, I've decided not to uphold this complaint. I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 18 December 2017.

Clint Penfold  
**ombudsman**