

complaint

Mr W complains that The Prudential Assurance Company Limited (“Prudential”) “churned” his pension policies by advising him to set up new policies to make further contributions, instead of increasing his contributions to his existing policies. He says he has spoken to an Independent Financial Advisor (IFA), who says Prudential’s advisor would have done this to generate commission. Mr W says he has lost income as a result of the extra policies being set up.

background

Mr W is receiving income from several annuities provided by Prudential. These annuities pay the benefits from a number of pension policies Mr W holds with Prudential. Some of these policies were taken out over 40 years ago, with final one being taken out in 1991. Mr W says an IFA has told him that Prudential’s representative would have set up additional policies (rather than suggesting Mr W add to his existing one(s)), as the representative would have earned more commission this way.

Prudential upheld Mr W’s complaint in part. It said when Mr W set up the fourth policy he held it would have been possible to increase the premiums he was paying under another policy. So it was prepared to refund all the charges paid under that policy, plus interest. It said all the other policies were necessary as the previous policies had been unpaid for more than 13 months (meaning they couldn’t have further premiums paid into them), or Mr W wanted to contribute through a business, rather than pay policy premiums personally. The charge refund plus interest Prudential offered to pay came to £1067.62. I understand this amount has been paid to Mr W.

Our investigator looked into things, and said she did not think Prudential needed to do anything else. She explained that it was necessary to set up all the policies other than the one Prudential had offered to refund the charges on.

Mr W did not accept the investigator’s view, and asked for an ombudsman’s 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. Having done so, I have reached the same conclusions as the investigator.

The sales of five of the six policies Mr W holds took place before financial services in the UK were regulated – regulation began in April 1988. But Prudential’s advisor still had a general duty of care. So I have considered the sales of those policies with that in mind.

Mr W took out his first policy in 1974, and his second in 1975. Prudential has explained that it was not possible, until 1978, to add additional premiums to existing policies. So I’m satisfied that the second policy would have been necessary, if Mr W wanted to make extra pension contributions at the time.

A third policy was taken out in 1980. At that time, the policies taken out in 1974 and 1975 could not receive further contributions because Mr W had not paid any premiums into them for more than 13 months, and Prudential would not allow further contributions to policies which had not received premiums for over 13 months. So, again, a further policy would have been necessary, if Mr W wanted to make extra pension contributions at the time.

I don't therefore think there is sufficient evidence to say Prudential's representative failed to act with a duty of care in relation to these three policies.

A fourth policy was taken out in 1984. Prudential has explained that, at this time, it would have been possible to pay extra premiums into the third policy, rather than setting up the new one. But it also points out that the fourth policy did include a waiver of premium option which was not available on the third policy. Given the amount of time which has passed, I think it would be very difficult to establish how much importance Mr W attached to the waiver of premium benefit at the time. It might be that he would have been happy to pay the additional charges associated with a new policy in order to enjoy this benefit. Or it might be that, if he had understood the extra charges which would apply, he would have chosen to add to his existing policy. In any event, Prudential has offered to refund the charges, plus interest, paid on this policy. I think that is fair, in the circumstances.

The fifth policy was an executive pension policy. This was set up in 1986 (the exact date is unknown) in the name of a business, rather than Mr W's own name, to allow the business to make contributions to the pension, rather than Mr W. Again, I think it would be very difficult to establish exactly what happened at the time. But I think it likely Mr W did want to make contributions through a business, rather than personally. So I don't think there is sufficient evidence to say Prudential's representative did not act with a duty of care by recommending a policy which would allow this.

The final policy was set up in 1991. This was after financial services regulation had begun, so Prudential's representative would have had additional obligations when giving advice to take this policy out. However, by this time, Mr W did not have any active policies. It was more than 13 months since he had paid premiums into the previous policies he had taken out. So if Mr W wanted to make further contributions, a new policy was necessary to allow this. I do not therefore think it would be fair to say this further policy was unnecessary, even with the additional obligations Prudential had at this time in mind.

In summary, from the available evidence I think only one of the six policies Mr W took out was arguably unnecessary – and whether or not it was depends on how much value Mr W attached to the waiver of premium benefit that policy provided. In the circumstances I am satisfied that Prudential's offer to refund the charges paid on this policy, plus interest, is fair. As it has paid the amount of that offer, it does not now need to do anything else.

my final decision

For the reasons given, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 November 2018.

John Pattinson
ombudsman