

## **complaint**

Mr C and Mrs O have complained about the issues that arose when The Prudential Assurance Company Limited (Prudential) arranged their joint life annuity. Firstly they've complained about the delays in setting up the annuity and then that they weren't made aware that Prudential would be receiving commission – from their plan – for arranging an annuity. They would like the commission refunded.

## **background**

Mr C held a personal pension with Prudential. He contacted it in October 2017, in advance of his selected retirement date of January 2018. He was told to call back nearer that date. When he did so, he discussed his options and it was agreed that Prudential would obtain an enhanced annuity quote because of Mr C and Mrs O's health.

Prudential used a third party provider to set up an enhanced annuity for Mr C which would be payable to Mrs O after he died. The anticipated start date was Mr C's 65<sup>th</sup> birthday – but arranging the annuity took some time, and it wasn't set up by Mr C's selected retirement date.

The transfer of funds to the annuity provider was confirmed by Prudential on 27 February 2018 and the annuity was eventually set up in March 2018. Mr C complained about the delays and Prudential agreed to complete a loss calculation. It also agreed to pay £75 for any distress and inconvenience caused.

It took some time to carry out the loss calculation – partly due to an error on the annuity provider's part. And during the process Mr C questioned why commission had been paid to Prudential.

Prudential ultimately paid redress for the delay in setting up the annuity, but it said it had disclosed details of the commission it was due for arranging the annuity.

But Mr C wasn't happy with that outcome and brought his complaint to us.

An adjudicator considered the matter and said the complaint should be upheld. He felt that Prudential had fairly compensated Mr C for the initial delays. He accepted that the commission was due, and that it had been disclosed. But he thought, on the balance of probability, that Mr C had been misled regarding commission during a phone call in mid-2018. He recommended that Prudential paid £100 for any distress caused by the incorrect information.

Prudential agreed to pay the compensation but Mr C did not accept the adjudicator's view, which he felt was biased. So he asked for the complaint to be referred to an ombudsman and it's been passed to me for a final decision.

I'm aware that Mr C and Mrs O have a separate complaint against the annuity provider. I won't be considering that complaint here as it will be dealt with separately, but I can assure Mr C and Mrs O that I have also looked at the information on that case to get an overall picture of what has happened.

## my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so I find I'm in agreement with the adjudicators' assessment and for largely the same reasons.

Mr C has explained that his complaint is centred on a number of telephone conversations he had with Prudential and the annuity provider. He says during those calls Prudential said it wouldn't usually charge for this type of business, so he doesn't think it's fair that it did take commission from the annuity provider – without making him aware.

I've listened very carefully to those telephone calls and considered all the other evidence that's been provided. I've set out my findings in relation to Mr C's complaint points below.

### *Delays in setting up the annuity*

There's no dispute that the annuity was set up some months after it should have been. I've seen evidence to show the funds weren't transferred to the annuity provider until 27 February 2018, although the annuity should have been in place by Mr C's selected retirement date of 13 January 2018. It would seem the delay was caused by Mr C being told to contact Prudential one month before his retirement date. But as the various annuity options hadn't been discussed, when it was then confirmed that Mr C and Mrs O might qualify for an enhanced annuity – with the potential additional medical processes that might involve – it wasn't possible to get the annuity set up on time.

But Prudential has acknowledged the delay and carried out a loss calculation – which resulted in a redress payment to Mr C and Mrs O for their joint life annuity plan. The redress covered the missed annuity payments with interest added, the interest lost on the tax free cash sum, and £75 in compensation for the inconvenience caused.

In a telephone call with Prudential about his complaint, I've heard how Mr C said he accepted the amount offered as repayment of what he'd lost due to the delay – although he didn't accept that the commission payment should have been charged. And I've looked at the calculation Prudential carried out, which I think is fair and reasonable in the circumstances of the complaint and broadly in line with what I would have asked it to do. So I think Prudential has acted correctly in acknowledging the delay and in how it's tried to put the resultant financial loss right.

### *Was Prudential right to charge commission?*

In its retirement pack Prudential explained the service it was providing as *“limited to sourcing an annuity provider offering the most competitive terms relevant to your requirements.*

*Advice is not provided in relation to the suitability of an annuity”*

During the conversation Mr C had with Prudential on 13 December 2017 the adviser said he couldn't give Mr C any further ideas of how to take his pension because he was *“non-advised”*. And Mr C himself said *“I know you can't give me any advice unless you know of anything better”*.

And in another call from 18 December 2017 I've heard how another adviser made a number of references to the fact that he wasn't giving advice explaining that *“We no longer offer an annuity so it is on a non-advised basis from external annuity providers, once you select one*

*it then moves over to that provider” and whether Mr C was then “happy to proceed non advised?”*

So I’m satisfied that Prudential explained the basis on which it would be helping Mr C and what he could expect from it on a non-advised level. But Mr C also says that he didn’t request financial advice as he’d already been previously given advice by his adviser. So he doesn’t think he should pay for something that was charged “as advice”

The Financial Conduct Authority – the industry regulator – explains the difference between non-advised and advised sales in its handbook, and confirms what would distinguish one from the other. But that doesn’t mean a provider isn’t able to charge for its non-advised services, typically in the form of commission. And I don’t think it’s unreasonable for Prudential to have done that here, although I would have expected it to confirm that it would be earning commission and to have given some explanation of the work involved to substantiate any charges.

And here I think Prudential did cover those two expectations. In the same December 2017 call the adviser explained that Prudential was going to obtain quotations from its panel of annuity providers which might involve an enhancement due to Mr C’s medical history. And in response Mr C said “you’re going to put me with someone that is ok?” So I think Mr C, who had already said his friend – who was a financial adviser – had given him some initial advice, would have been aware that Prudential was looking into various options for him. And I think it was clear from the conversation that Mr C was likely to have gone with whatever provider Prudential could demonstrate offered him the best annuity.

Prudential also explained the process involved. This included gathering information about Mr C’s personal situation and objectives, looking at what could be offered from its panel of annuity providers, arranging medicals (or at least arranging to discuss Mr C and Mrs O’s medical history) before another discussion with Mr C about the exact figures involved and whether he wanted to go ahead – or make his own arrangements elsewhere. As the adviser said “*We do all the work for you, we’ll arrange an appointment for the medical specialist*”.

So I think it was clear that there was a reasonable amount of work involved in setting up Mr C’s annuity, including obtaining quotations for the highest possible income available in the circumstances. I can’t safely say Prudential shouldn’t have earned commission for its role here and I think Mr C should have been aware that the amount of work involved was likely to involve some costs to him.

I’ve gone on to consider whether Prudential did disclose the costs involved to Mr C. And I’ve heard how, during the conversation where the adviser gathered all of the initial information – before applying for annuity quotes, he said “*the provider will make an one off commission payment to us for our non-advised service and will confirm the amount on our final quote once you’ve chosen an income from a provider*”.

I’ve seen a copy of that “*final quote*” which Aviva provided. It stated “*for arranging your plan, we will make one commission payment to Prudential Distribution Limited of £2,016.72 immediately*”.

And in a subsequent conversation on 12 January 2018 another adviser confirmed to Mr C that “*if you decide to go ahead with the quotation I send out to you in the post, Prudential will receive a one-off commission payment from your chosen provider.....The commission will*

*be detailed on your annuity quotation, but please make sure that you're comfortable with this"*

I've also seen that the application form Prudential used to gather all the relevant information about Mr C's and Mrs O's health had a section for adviser details to be completed. The basis of the sale was "*non- advised*" and the remuneration request was noted as "*commission (only available on non- advised sales) 100% of entitlement*"

So I think Prudential did act reasonably in asking for and receiving commission for its dealings with Mr C, and I think it did confirm, in a number of ways, that it would charge commission. I would have expected Mr C, based on the evidence I've seen, to have queried the references to commission if he didn't think Prudential was entitled to it. I know Mr C will say that he did query the payment – when he saw it within the paperwork. And he's said that Prudential never explicitly said the commission would come from his pension fund.

But I think Prudential did confirm it would receive commission on a number of occasions and I can't say it's done anything wrong there even if Mr C would have liked the explanation to have been clearer. In any case I think Prudential demonstrated to Mr C that it had to do a significant amount of work to provide *enhanced* annuity quotes which then provided him with the highest amount of income it was able to obtain, using the panel of providers. I think Prudential was entitled to charge for the work involved.

*Did Prudential communicate its commission position correctly to Mr C?*

Mr C says the issue of commission payments arose while he was communicating with Prudential about the redress calculation. He says that, over a number of telephone calls, he was told by Prudential that it didn't charge commission for the type of work it had done for him, whereas the annuity provider confirmed Prudential had requested a commission payment.

So, although I think Prudential was entitled to charge commission – and in my view did confirm that it would do so, I have considered whether Prudential communicated this information correctly to Mr C throughout the process. And, having listened very carefully to the phone calls I agree with the adjudicator that, at various times, the adviser wasn't clear in his explanation and may have misled Mr C or at least raised his expectations of what he should have been charged for setting up the annuity.

I've heard how Prudential stated "*we didn't take any of this money from the amount transferred to Aviva*" and confirmed that it didn't usually charge for these type of transactions. I can understand Mr C's frustration at what he was told as the adviser seemed to be denying any commission was paid when it was clear that it had been. In my view, the telephone calls made after Mr C complained that he wasn't made aware commission would be paid, do suggest that Prudential wasn't entirely clear with its explanation for receiving the payment.

Whilst this doesn't support Mr C's claim that commission wasn't due, I agree with the adjudicator that Prudential should have been clearer and that its confusion would have caused Mr C some degree of inconvenience by raising his expectations of what was correct. And I agree that, in all the circumstances, Prudential should pay Mr C a further £100 for the distress and inconvenience caused.

**my final decision**

For the reasons that I've given I uphold Mr C and Mrs O's complaint against The Prudential Assurance Company Limited. I think The Prudential Assurance Company Limited's original offer of redress and £75 for the inconvenience caused over the delay to the annuity payment is fair and reasonable in that circumstance and I'll leave Mr C to liaise with it to decide whether to accept that offer.

But, in addition, The Prudential Assurance Company Limited should pay Mr C and Mrs O another £100 for the distress and inconvenience caused by the lack of clarity in its communication about whether it should have received commission for arranging the annuity.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs O to accept or reject my decision before 21 September 2019.

Keith Lawrence  
**ombudsman**