

complaint

Mr Y says that The Prudential Assurance Company Limited didn't give him enough detail about alternatives to an annuity, so that he could make an informed choice at retirement.

background

Mr Y reached his plan's selected retirement age in October 2014. He'd accumulated a large fund. Prudential gave him details of the benefits he would receive from his plan. He chose to take the guaranteed annuity amount with bonuses that he'd built up.

Prudential had made Mr Y aware of the 'pension freedoms' to be introduced in April 2015. The main change was to be able to access all of the fund as a lump sum, if he wished to do so. Its literature also mentioned that an annuity wasn't the only option for taking regular income. It was also possible to 'draw down' income directly from the fund. (This facility wasn't being introduced by the pensions freedoms, as it had been available for many years.)

Mr Y told us that he tried to find an adviser who would help him make his decision. He was put off by the amount they would charge. However he checked himself whether the annuity rate Prudential was offering was the best he could get, and decided that it was. And he also looked into drawdown; but decided that the high tax rate on the funds he left behind on his death (55%) made it unattractive.

He'd applied for the annuity on 26 September. Three days later the government abolished the 55% tax rate on death before age 75. Mr Y didn't immediately notice the change, but the announcement was repeated in the Chancellor's Autumn statement on 3 December.

By that time Mr Y's cancellation rights had expired, prompting his complaint. He'd like the opportunity now to be able to 'redo' his initial choice. And this time, to seek financial advice.

One of our adjudicators didn't think Mr Y's complaint should succeed. In summary she said:

- Mr Y had asked Prudential to give him annuity quotes, which it did. And it set up his income once that had been chosen.
- There was a window in which Mr Y could have exercised his cancellation rights, when the taxation change was first announced.
- Prudential had told Mr Y that he could choose drawdown as an alternative. And he'd explored that option himself and decided it wasn't for him.
- Prudential couldn't have given him an illustration for income drawdown, because he'd asked for annuity quotes. If it had done, that might have been seen as giving him advice.

Mr Y disagreed. He said that although Prudential had mentioned drawdown, it hadn't told him how it would work. If he'd got an illustration, he would've been able to make an informed choice. He thought he would have delayed his retirement by a few months. And he didn't believe that Prudential giving this information would have amounted to advice.

Mr Y asked for his complaint to be referred to an ombudsman. In particular he asked that I review two points which were important to him:

1. A newspaper article setting out an income drawdown illustration. He wanted to receive that information from Prudential.

2. Everyone should have had to get financial advice before taking their pension in 2014 – as they do now.

Prudential had no further comment to make. It confirmed that it would've required Mr Y to get advice if he wanted to transfer to one of its drawdown products. But Mr Y would have lost any benefit in the annuity rate he was offered, if he transferred to that plan.

my findings

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

I understand Mr Y's strength of feeling about what's happened in his case. The timing of the government announcement is particularly unfortunate. Mr Y has offered to provide any further evidence we might need. But I think the adjudicator has already reached the right outcome; bearing in mind Prudential's role was as Mr Y's plan provider, not his adviser. And I'm satisfied I don't need to get any more evidence in order to reach this conclusion.

Some people who went into drawdown have gone on to regret that decision. This service receives a significant number of complaints each year about that. Often the cause for complaint is not the tax treatment of death benefits, which Mr Y is concerned about. Rather, consumers have sometimes found that the funds they've invested in have performed poorly. And they haven't been able to support the income they wanted to draw in their lifetime.

Perhaps because of this, Prudential was asking consumers who were interested in transferring to one of *its* drawdown plans to seek independent advice first. And it wasn't in a position to discuss other insurers' products. Prudential was entitled to take this approach. Drawdown wasn't an automatic option under the type of plan Mr Y had already taken out, so it would involve transferring to a different product.

Prudential wasn't giving Mr Y financial advice. So I also agree that it had to be careful to ensure that any information it gave him about drawdown wouldn't amount to endorsing that as the best option for him. In this situation it's relevant to consider what information the regulator, the FCA, required all providers to supply to their customers with an annuity quote.

The FCA said that the information should be materially the same as a factsheet published by the Money Advice Service; whether or not the provider supplied the factsheet itself. That factsheet set out that drawdown was an option, and that there could be limits on drawing yearly income. So only a brief reference was made. It didn't discuss the taxation of death benefits at all; and again encouraged consumers to take independent advice.

This doesn't seem to significantly differ from what Prudential told Mr Y. So I can't find Prudential at fault for giving Mr Y no more information than the regulator required.

Mr Y asked to take his benefits directly from his existing plan, which was an older-style plan that provided benefits in the form of an annuity. I'm not aware of any provider at that time which required advice to be taken in this situation. Mr Y was simply accessing the type of benefits he'd originally applied for when he took his plan out. So Prudential wasn't doing anything unusual here.

I note Mr Y has said that the government now requires firms to check consumers have received advice in particular situations. This may apply to a plan like Mr Y's. But in any event, I can't apply this requirement to a time when it didn't apply.

When Mr Y was investigating his options he decided he didn't want to pay for advice. I think it's likely that good independent advice on drawdown would have highlighted the possibility of the tax rate on death being altered in the approach to the 2015 Budget. Mr Y would then have been able to take this into account. He then may or may not have made a different choice.

Unfortunately by proceeding on his own Mr Y may have assumed there was more certainty in the tax rate remaining at 55%. And he wasn't immediately alerted when the government changed this. But as Prudential hadn't been involved in recommending drawdown to Mr Y it wasn't obliged to update him on any changes relating to that product.

Mr Y specifically asked me to comment on the drawdown illustration he saw in a newspaper. This is based on 5% future yearly growth; and takes into account product charges, but not the cost of advice. Nevertheless I can see why Mr Y thinks it would be attractive to have over £150,000 left at the end of a typical life expectancy; after taking the same income as an annuity would have provided.

However those assumptions weren't guaranteed to be borne out in reality, and that's the inherent risk in a drawdown product. If things turned out differently the 'surplus' could be used up during Mr Y's lifetime; particularly if he outlives his life expectancy. Only the annuity he's bought will *guarantee* that he doesn't run out of income in retirement. So I think Mr Y would always have had to consider what risk he was willing to take with his own income. An adviser could have helped him do this.

I appreciate it's frustrating for Mr Y not to have the opportunity to make his choice again. But neither the government nor the regulator have required this, as part of the changes to rules in 2015. And once his cancellation rights for the annuity have expired, Prudential isn't legally obliged to unwind the annuity. So I can't make it do so.

my final decision

I do not uphold Mr Y's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 30 October 2015.

Gideon Moore
ombudsman