

## **complaint**

Mr S's complaint concerns the way that The Prudential Assurance Company Limited calculate the income available from his Flexible Lifetime Annuity (FLA) at each triennial review. Mr S says that The Prudential literature which he was provided with when he took out the annuity said his income at each review would only be determined by his age and fund value. He has now been informed that another material factor is the annuity rate at the point of each review. His understanding when taking out the annuity was that the annuity rate would stay the same. Because of this Mr S says that the value of his investment could rise significantly and his income could still fall.

## **background**

I issued a provisional decision on 18 June 2018. A copy is attached and forms part of this final decision. I said in the provisional decision that I was not intending to uphold the complaint.

The Prudential responded and said it accepted that provisional decision and had no further comments to make.

Mr S responded and reiterated that The Prudential literature stated that two of the main drivers for determining income were age and fund value. He provided figures which showed that his fund value had increased (as of course his age had done) over the years but his income had not increased at a similar rate. He said that the difference can only have been caused by the annuity rate and this should have been highlighted by The Prudential.

## **my findings**

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

I agree with Mr S that his income has not increased in line with fund growth or his age. And as discussed in the provisional decision, one of the material factors that could have caused this is annuity rates. If that is so then, as also mentioned in the provisional decision, I do not see why The Prudential could not have set that out in its literature.

But what I have to consider then is what difference that more likely would have made to Mr S's decision to take out the FLA. In the provisional decision I explained that I did not think it more likely that this would have affected that decision. Whilst I do understand Mr S's comments that he did not receive all the information he should have done, my decision remains the same.

## **my final decision**

I do understand Mr S's unhappiness about the information he was given, especially as it may well be that the factor that was not mentioned has had a marked effect on his income going forward. But for the reasons in this decision and my provisional decision, I do not uphold the complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 August 2018.

David Bird  
ombudsman

copy provisional decision

### **complaint**

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### **background**

Mr S complained to The Prudential but it did not uphold his complaint. It said that it monitored the 'maximum income level' on a monthly basis to determine the 'current maximum income'. If the current maximum income fell below 55% of the initial maximum income then it would write to Mr S and set out his options if the current maximum fell lower. If the current maximum income fell to 50% it would look to convert the FLA to a guaranteed income.

It said the maximum income calculated is based on various factors and assumptions. It said that minimum and maximum limits are reviewed every three years and then the plan holder will be advised of the revised amounts. It confirmed that annuity rates were used in the calculations and they also include growth rates, mortality age and the original fund value. It said one factor cannot be picked out as a 'key element'.

Mr S referred his complaint to this service and it was considered by an investigator. She said it was clear from The Prudential literature that the income could fluctuate and that she would not expect every factor that could affect that to be made clear. The Prudential did not say that age and the performance of the investments were the only factors that would be applied. She did not think that Mr S had been disadvantaged because the income level was never guaranteed and was always likely to vary.

Mr S did not agree. He said he was aware his income would fluctuate but it wasn't made clear to him that a material factor at each review was annuity rates then he would have made a different decision. He was only aware that it was fund performance and age that made a difference and therefore if the performance of his investment increased as his age increased he would receive a higher income. His investment increased by about 36% in eight years whereas his income increased by only 5%.

### **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.

The Prudential literature does not say that the income provided by the FLA was guaranteed and explains it was dependent on a variety of factors, including age, value of funds, investment strategy and The Prudential's assumptions as to what annuity would be prudent to pay which was sustainable in future. Mr S says he was aware that his income could rise or fall - so he was aware the income could fluctuate.

However what he says is that it was not made clear that annuity rates were a factor when The Prudential carried out its three yearly reviews. I agree that it is not clear from the literature I have seen that annuity rates will be a factor at each review.

The Prudential says that it would be wrong to single out any particular factor but that doesn't explain why it did explain that mortality and fund value would, for example, be factors but didn't mention

annuity rates. It didn't have to single out annuity rates to do that or supply commercially sensitive information to do that.

Having said that, if I found that The Prudential was at fault for not providing that information, I would also have to consider what Mr S more likely would have done. Mr S says he would have more likely chosen pension drawdown and a reason he gives is that it could support his dependents.

It should be taken into account that Mr S opted for this FLA in 2009, before pension simplification, which may well have made drawdown more attractive to certain individuals. The situation should not be viewed with hindsight but bearing in mind the situation that applied in 2009.

Pension drawdown was still available in 2009 and Mr S could have opted for that. However he did not do so and chose the FLA. The factor that Mr S says would have made a difference to that decision was that annuity rates would be included in The Prudential's assumptions. Having considered this carefully my view is that, on balance, it is not more likely that Mr S would have chosen another type of pension contract if informed of the annuity application to the three yearly reviews.

Mr S knew that his income could fluctuate up or down and was not guaranteed. If The Prudential had said that annuity rates would be taken into account then this is just one more factor that could affect the uncertain income level – positively or negatively. It would not necessarily have a negative effect and could just have easily have boosted his income. *If* the fall in annuity rates since 2009 has had a marked impact on income, then that would not be known in 2009, it could only be speculated on. As I say the situation should not be based on hindsight that annuity rates have now fallen (if annuity rates have been a material factor in the setting of Mr S's income).

The material factor is that the income level could alter based on The Prudential's view of what was suitable and the literature *did* set that out. Mr S was aware that his income was not guaranteed. If death benefits were a factor then I don't tend to the view that, at the time, the annuity rate issue would have affected this. Materially the death benefits under either route would be same whether annuity rates were an issue or not. That is a distinct issue from the application of annuity rates at reviews.

In my view, although the effect of annuity rates is not made clear, The Prudential did not say in its literature that, as Mr S assumed, the annuity rate would stay the same. I don't think that assumption could necessarily be drawn. And I don't think an assumption could necessarily be made that the income would follow in a linear way the path of fund performance and mortality because The Prudential said the income level would, in any event, be set based on what it thought was supportable in the future.

I would comment that Mr S is taking the risk that his income might fall through this method but he is benefiting from the potential for his income to increase significantly if the factors move his way – say fund performance increases and annuity rates improve. This would not be available to a traditional annuity holder. The risk he takes of a decrease is balanced by the benefit of an increase – that is the product and the risk he accepted.

#### **my provisional decision**

I realise that Mr S will be disappointed with my decision, especially as the literature did not mention annuity rates being a factor. But I do not currently believe that Mr S would have acted differently, so I do not intend to uphold the complaint or make any award.

David Bird  
ombudsman