

complaint

The late Mr L's representative complains about the annuity that he took out with The Prudential Assurance Company Limited (Prudential). It is submitted that he was not provided with sufficient information at the time about annuity options and the Prudential had a duty of care to ask whether he had any medical conditions that were considered terminal or would reduce his life expectancy. It should have said in its literature that better rates were available for people in ill health and it should have also discussed leaving that pension as it was – so that the fund value could be paid on death.

background

I issued a provisional decision on 9 March 2018. A copy is attached and forms part of this final decision. In the provisional decision I explained that I did not intend to uphold the complaint.

In response to the provisional decision Mr L's representative said that:

- The actions of the Prudential were those of a seller and to a lesser extent adviser and it is unreasonable to expect a customer to know which information sent to them is correct or incorrect.
- It is reasonable to expect to have enhanced annuities as an option to make it clearer this is available. Failure to do so makes it look like insurance companies do not wish to offer this option as they will profit from the early death of a customer.

A copy of the annuity quotation pack was also requested which was sent to Mr L's representative.

Mr L's representative then also said that:

- Zurich should have been aware of his father's health condition when he took out the policy. And a financial adviser visited his father on an annual basis so should have been aware of his deteriorating health.
- The pension options and risks of each should have been reiterated at each stage of the process and once the late Mr L had been passed on to the Prudential.
- He will be raising annuity partnership agreements with the FCA.

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 have considered carefully the response to the provisional decision. I would say that:

- As discussed in the provisional decision – the Prudential wasn't giving the late Mr L financial advice. It was providing him with information so that he could make his own choice as to what route to take. The option was open to Mr L to obtain financial advice about his pension options if he wished to. So the Prudential is not responsible for making sure that Mr L took the most appropriate or suitable route.

- This is also relevant as to Mr L's health – because it was not under any duty to obtain that kind of information as it was not giving him financial advice. It is not clear whether Mr L's adviser was or wasn't aware of his health but even so, if the suggestion is that he should have been aware, and therefore Zurich should have taken this into account and passed on that information to the Prudential, then that would be a complaint that should be raised with Zurich. I have not seen any evidence that Prudential was aware of Mr L's health.
- In terms of making Mr L aware that he could obtain enhanced annuities, potentially better annuity rates, and the fact that he could 'shop around' for annuities, as discussed in the provisional decision, this was made clear in Zurich's quotation pack. So Mr L was provided with that information.
- I did discuss the booklets and information provided by the Prudential and Zurich and that I could not find reference to medically enhanced annuities. But, as mentioned, it was in the quotation pack issued specifically for Mr L. So regardless of which booklet or what information was issued elsewhere, the material issue is that it was clearly disclosed to Mr L.

So, for the reasons discussed in the provisional decision and this final decision I cannot find that Prudential should be liable for Mr L not choosing a medically enhanced annuity or not taking some other annuity option.

my final decision

I do not uphold this complaint or make any award. The £200 the Prudential has already offered is a reasonable resolution to the complaint. Mr L's representative can contact the Prudential if he wishes to accept that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L's representative to accept or reject my decision before 25 July 2018.

David Bird
ombudsman

copy provisional decision

complaint

The late Mr L's representative complains about the annuity that he took out with The Prudential Assurance Company Limited (Prudential). It is submitted that he was not provided with sufficient information at the time about annuity options and the Prudential had a duty of care to ask whether he had any medical conditions that were considered terminal or would reduce his life expectancy. It should have said in its literature that better rates were available for people in ill health and it should have also discussed leaving that pension as it was – so that the fund value could be paid on death.

background

The late Mr L held an Allied Dunbar policy (now trading as Zurich Assurance Limited).

Mr L was provided with an annuity quotation in May 2010. This stated that it was produced with the details provided by Zurich and that Prudential would pay Zurich a commission for introducing Mr L.

At the time, Prudential provided a Key Features Document. The document that the late Mr L's representative says they hold did not explain that if Mr L had a medical condition he may get a higher income. Prudential say that the Key Features that should have been supplied did say that.

Mr L took the open market option with Zurich and purchased an annuity with Prudential. Subsequently, Zurich received commission for arranging the annuity.

Mr L's estate complained about the annuity.

Prudential says that at the time, it had a 'partnership deal' with Zurich. Under the 'relationship matrix' it had, which outlined what information each party was required to send out, it was Zurich's responsibility to have provided Mr L with detailed information about the other options he had available.

Prudential says it did not provide any advice and was satisfied that it had provided the documentation it was supposed to under the relationship matrix.

An adjudicator at this service looked into the complaint and concluded that the complaint should not be upheld because:

- Prudential did not provide Mr L with advice on the sale of the annuity. Therefore, it did not have to ask him directly if he had any medical conditions.
- It was a Zurich policy. Zurich had a partnership deal with Prudential, which meant that the Zurich policyholders would get preferential rates, if they purchased an annuity with Prudential.
- Zurich and Prudential had a relationship matrix, which outlined what information each party was required to send out for these partnership deals.
- Prudential was required to provide the Income for Life brochure, Key Features document, terms and conditions of the policy and '10 good reasons'.
- Prudential fulfilled its obligations under the relationship matrix.
- Prudential offered £200 for not making Mr L's estate aware that the annuity was set up under a 'partnership deal'. The offer is fair and reasonable in the circumstances of the complaint.

Mr L's estate did not agree and said:

- Prudential sent a Key Features document which did not refer to the enhanced annuity options or serious medical conditions. Had the documentation included this, then Mr L would have discussed taking an enhanced annuity.
- It is not fair or reasonable to expect the customer to have knowledge of a partnership arrangement which dealt with differing responsibilities.
- The communication from Prudential was not clear.
- The documentation referred to by Prudential was not sent and the version that was sent did not refer to enhanced annuities. Therefore, Prudential's response to the complaint was wrong.
- Prudential cannot now argue it did not need to send the documentation and reject the complaint. It should take responsibility for not mentioning enhanced annuities or serious medical conditions in its documentation.
- The offer made by Prudential is derisory.

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.

It is my understanding that Prudential has now confirmed that Mr L received the Key Facts booklet that the representative says he did. That is dated June 2009 and has the code ANN56398. It does not mention that Mr L might get better annuity terms if he was seriously ill or had certain medical conditions.

It had originally said that Mr L received a different booklet that did mention medical enhancements (its final response to the complaint said this). However it subsequently discovered that this annuity was set up as part of a partnership agreement with Zurich and ANN56398 would have been supplied.

So I agree on that basis that the response to the complaint originally made was incorrect and probably led to significant inconvenience. But Prudential has offered £200 in this respect which I believe is fair in the circumstances.

I have not seen that Prudential explained that medical enhancements could be available. However this does not necessarily mean Prudential is liable for Mr L not having such an annuity. What needs to be considered is the process that led to Mr L buying the annuity and the parties involved and their responsibilities.

Prudential was not giving Mr L financial advice – it was only providing information. Information about the options available does not amount to financial advice. That information need to be clear, fair and not misleading but it did not have to include every pension related issue that might apply to Mr L. If Mr L required advice related to his personal situation then he would need to seek financial advice. It did not have to proactively advise him of every factor that might apply to him or advise which annuity would be best for him.

It is apparent that Prudential and Zurich were acting together in this annuity process via their partnership agreement. So I would expect that one of these parties would provide information about the existence of medically enhanced annuities. I would clarify however that it would normally be the party issuing the annuity quotes (which was Zurich) that would have a duty to inform about such enhanced annuities.

Zurich has been asked for the information it would have provided to Mr L. It has provided two booklets. One is a Prudential booklet and has the code ANNB6401 05/2010 and is called "Income for Life". This does not contain any information about enhanced annuities. The other is also a Prudential booklet, called "Key Facts" with the code ANNS6398 06/2009 (this appears to be the same as that referred to earlier and supplied by the Prudential). This also does not mention enhanced annuities.

So the booklets describing annuity options and Prudential's' services do not appear to mention enhanced annuities.

However I have seen reference to enhanced annuities in the 'quotation pack' issued by Zurich to Mr L in May 2010 – which contains annuity quotes and the documentation necessary to take pension benefits. Under "Claims options available to you" it is explained that Mr L could go to a different annuity provider for his annuity and different annuity providers offer different types of annuities. It explains that an option might be an enhanced lifetime annuity or an impaired lifetime annuity. It is said that "these types of annuity give a higher than usual income and may be offered to you if the provider considers your lifestyle of state of health has reduced the likely period of payment to below life expectancy."

So the option of an enhanced annuity was disclosed to Mr L. And Prudential was not giving financial advice to Mr L so it did not have a duty to find out about his personal circumstances, including his health (which it was not aware of). Bearing that in mind I cannot reach a finding that Prudential acted incorrectly during the annuity process or that Mr L was not informed of medically enhanced annuities. I therefore do not intend to uphold the complaint.

my provisional decision

I do not intend to uphold the complaint or make any award. The £200 the Prudential has offered is a reasonable resolution to the complaint.

David Bird
ombudsman