

complaint

Mr M complained to The Prudential Assurance Company Limited (Prudential) about his falling income since his with profit annuity was transferred to Prudential from Equitable Life. Mr M also noted that while his annuity income had decreased the Prudential share price had increased.

background

The complaint was investigated by one of our adjudicators. He wrote to Mr M in March 2014 explaining why he was unable to uphold this complaint. He stated:

- Mr M's with-profits annuity was originally with Equitable Life but was transferred to Prudential following the Equitable Life with-profits policyholders voting at an Extraordinary General Meeting and the UK courts approving the proposed transfer.
- Prudential manages its with-profits fund in line with the document entitled Principles and Practices of Financial Management (PPFM). The booklets are available on the Prudential website.
- Prudential is regulated by the Financial Conduct Authority (FCA). The FCA monitors the way in which it operates its with-profits funds.
- It is the directors at Prudential, acting on the advice of their senior actuaries, who decide what bonuses are to be applied to the with profit policies.
- The performance of the with-profits sub fund where the Equitable Life with profits annuities are held is a key factor in determining the level of income that Mr M receives. When he retired and arranged his annuity with Equitable Life, an anticipated bonus rate of 3.5% was selected. Unfortunately, since this time with-profits bonuses declared by assurance companies have generally fallen.
- The performance of the with-profits fund cannot be directly compared with the rising Prudential share price. One is not dependent on the other. The Prudential share price will be affected by many factors, including company news, mergers, market sentiment, company's earnings and dividends declared. Bonuses declared on the with-profits fund depends on a large number of factors including investment returns and interest rates.

Mr M responded disagreeing with the adjudicator and in summary said:

- The charges on his Prudential plan totalled 1.5 %. Mr M made reference to the Pensions Minister's offices having suggested a basic fee of approximately 0.75% should be sufficient.
- He had retired in 1991, not 2001 which was the year Equitable Life failed.
- He did not buy an annuity from Prudential. He was presented with a fait accompli. In his opinion had the promotional literature he was given at the time of the transfer of the business been part of a sales process, Prudential would now have probably been responsible for mis-selling.

- Mr M considered the adjudicator was wrong in his assumption that Mr M had entered into a contract for life which could not be changed. Mr M knew of no legal barrier to a reverse buy-out, although he acknowledged it may be difficult.

The adjudicator responded to these points in his letter of May 2014 and explained that Mr M had entered into an Equitable Life annuity contract providing income for life. Following the transfer to Prudential, the level of fees applied to Mr M's annuity contract was capped at 1.5%. The performance of the with-profits fund could not be guaranteed and Prudential had to make a commercial judgement on the allocation of bonuses.

Mr M replied disagreeing with the adjudicator's views. Mr M acknowledged that the performance of the Prudential with profit fund be cannot be guaranteed but over the past five years he noted that Prudential's operating profit, basic earnings per share, assets ,ordinary dividends and share price had all risen.

Mr M commented that the promotional literature indicated that 'investment performance has the biggest impact on the income payable'. This being the case the adjudicator had both a right and a duty to examine it since the policy holders were clearly being disadvantaged. He also considered there was no legal barrier which prevented a provider from offering to buy out an annuity contract.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator for broadly the same reasons.

Prudential was not responsible for the sale of Mr M's annuity. His Equitable Life with-profits annuity was transferred to Prudential following the policyholder's majority vote at an Extraordinary General Meeting held on 26 October 2007 and a Court hearing held on 28 November 2007 to allow the transfer.

When Mr M's Equitable Life annuity was arranged an anticipated bonus rate of 3.5% was selected. Mr M's annuity income was not guaranteed and is dependent on bonuses declared by Prudential. If the bonus rate is below 3.5% the income will fall and if it is above 3.5% it will increase.

The level of bonus declared every year is a decision taken by the directors of Prudential acting on the advice of their senior actuaries. The level of bonus declared on a wide range of factors such as mortality and not just on investment returns. The fact that the with profit policyholders are living longer than was originally expected will have reduced the bonus declarations.

Prudential, like other with profits providers, is required to have in place an independent With Profits Committee, The role of this committee is to ensure that the rights of the with profit policyholders are protected. If the committee is unhappy they may raise issues with the regulator.

I am not aware of Prudential failing to meet its obligations and guarantees. The Financial Conduct Authority (FCA) has also confirmed to us that they have no concerns regarding the Prudential Defined Charges Participating Sub Fund in which Mr M's annuity is invested.

The transfer of Mr M's annuity to Prudential coincided with the beginning of a turbulent period for investment returns which affected the with-profits fund returns. It is these returns that affect the level of income Mr M receives and these returns are not dependent on the rise or fall of Prudential's share price.

I am not persuaded that Prudential has made an error for which Mr M should be compensated.

my final decision

I do not uphold this complaint against The Prudential Assurance Company Limited and make no award.

Adrian Hudson
ombudsman