

complaint

Mrs R is unhappy that The Prudential Assurance Company Limited ("Prudential") has refused to pay her a spouse's pension from her late husband's annuity.

background

In April 2007, Prudential sent quotations to Mr R, showing various annuity options. Mr R selected an annuity that included a spouse's pension. In a letter that accompanied his application, Mr R said that he was suffering from a degenerative illness. He also said that he wanted his partner to benefit upon his death. Mr R was then aged 54. His partner, later Mrs R, was 50. An enduring power of attorney had been completed earlier that month, appointing Mrs R to act on behalf of Mr R, but Prudential was not made aware of its existence.

As Mr R had informed Prudential of his illness, he was sent a medical questionnaire to complete and return, which he did. During a telephone call on 8 June 2007, Prudential told Mr R that he was eligible for an ill-health enhancement to his annuity. Prudential explained to Mr R the implications of including a spouse's pension, having established that he was not then married or in a civil partnership.

Prudential told Mr R that his annuity would be higher from the outset if a spouse's pension was not included. Mr R chose to receive new quotations without a spouse's pension being included, but with a five year guarantee attached to the annuity. Prudential sent him new quotations that showed revised annuity options without a spouse's pension.

Mr R completed the application form, selecting an annuity that would be paid for his lifetime only. He also entered his and his partner's details on the form. Prudential spoke with Mr R again on 28 June 2007 in order to clarify the annuity he wanted. Prudential's file note of that call records that Mr R chose to stick with the 'single life' option he had selected as this provided the highest benefit upfront.

Prudential set up the annuity in accordance with Mr R's instruction, with the annuity payable for his lifetime only, with a five year guarantee, and no spouse's pension.

Mr and Mrs R married in December 2009, having been together for over 15 years.

Following Mr R's death in June 2012, Prudential explained to Mrs R that there was one final payment due under the guarantee period, but no spouse's pension payable. Mrs R complained to Prudential. She had said Mr R had been of the opinion that the annuity had been set up with a spouse's pension, as requested in April 2007. Mrs R explained that her husband had been suffering from a degenerative brain disease. She said that he would have been confused by not only the amount of paperwork and the variety of quotations produced by Prudential but also by the telephone conversations. Mrs R considered that her husband's intention to include a spouse's pension had been clear from his initial instruction.

In its response to her complaint, Prudential said that it had set up the annuity based on the quotation option that Mr R had selected.

One of our adjudicators considered this complaint. She concluded that she was unable to recommend that it be upheld because:

- Prudential had explained all of the options that were available to Mr R at the time
- Mr R would have been aware that an annuity with a spouse's pension was an option
- Mr R selected an annuity that did not include a spouse's pension because it provided a higher income

Mrs R did not agree with the adjudicator's conclusions. She said that neither Prudential nor this service had paid due regard to her husband's mental capacity in 2007. She said that Prudential did not contact his doctors in 2007 and did not ask about the enduring power of attorney that was in place at that time. She said that Prudential should have realised, through her husband's responses during the telephone conversations, that he did not understand what was being said.

Prudential has told this service that it would have corresponded with the appointed attorney had it been made aware that one had been appointed.

Mrs R requested a final decision from an ombudsman. While her complaint was awaiting allocation to me, another adjudicator contacted Mrs R to answer some outstanding queries raised in her earlier correspondence. Mrs R responded to the adjudicator to say that she was still concerned that Prudential knew from its telephone calls and the paperwork from Mr R that something was wrong (with Mr R's mental capacity), but it went ahead with setting up the annuity anyway.

my findings

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

This is clearly a very distressing situation for Mrs R, and I can understand why she feels so strongly about the matter. She considers that Mr R would never have *intentionally* left her without a spouse's pension, and that he was confused by all the options and information provided to him by Prudential.

However, in reaching a decision about Mrs R's complaint against Prudential, what I must decide is whether I consider that Prudential did anything wrong. In other words, as there is no dispute that Mr R completed the forms to choose an annuity without a spouse's pension, the issue is whether Prudential is at fault for proceeding with the annuity, without challenging Mr R's mental capacity (including by requesting a medical report).

When he returned the initial application form, Mr R said that he wanted to include a spouse's pension (although he was not married to Mrs R at the time). Because of his declared state of health, Prudential decided to send out new quotations offering a substantial increase in Mr R's annuity. That enhancement reflected his shortened life expectancy. Before sending out the new quotations, a Prudential representative had a long telephone conversation with Mr R, explaining the various options available to him. That included a discussion about Mr R's marital status (including whether he intended to marry his partner in the future), and therefore whether to include a spouse's pension in the quotes. Mr R chose to receive quotes based on not including a spouse's pension, and instead receiving a higher annuity income.

Having listened to the recording of the key telephone conversation between Prudential and Mr R, I consider that Mr R did not fully understand a number of the points covered, although he did appear to understand the discussion about his marital status and the option to include or opt out of having a spouse's pension. It is fairly common for people who are unfamiliar

with pensions to struggle to understand the different options available to them, when they are first explained. I am not persuaded that Prudential should have had doubts about Mr R's mental capacity on the basis that he did not fully understand the options available to him. I also consider that the Prudential representative made reasonable attempts to explain the options, and to ensure that Mr R understood them. It was left that the representative would send out the quotes and other paperwork for Mr R to consider and discuss with Mrs R. Also, that Mr R could call if he had any questions on the information provided or on the application form. Mr R had fetched a pen and paper to note down the representative's contact details.

Having carefully considered the matter, I am not persuaded that Prudential ought to have challenged Mr R's mental capacity, based either on the telephone conversations or the way he had completed the paperwork to set up the annuity. When Mr R's application form was received requesting payment of the enhanced annuity without a spouse's pension, Prudential had called to confirm that this was what he wanted. Mrs R says that this shows that Prudential was aware that Mr R was confused. I disagree. I consider that it was good practice for Prudential to call to confirm the option chosen, given that Mr R had initially said he wanted a spouse's pension set up. I do not consider that Mr R's change of mind should have alerted Prudential to Mr R being confused about the options or lacking mental capacity.

In the circumstances, whilst I am very sympathetic to Mrs R's understandable distress, I have seen no grounds for saying that Prudential acted wrongly by not questioning Mr R's mental capacity. Mrs R spoke with the Prudential representative on at least one occasion, so she was aware that Mr R was setting up his annuity. Mrs R therefore had the opportunity to make Prudential aware of her enduring power of attorney, if she felt that Mr R was not capable of making decisions about his annuity at that time.

my final decision

I am unable to uphold this complaint, and therefore I make no award.

Venetia Trayhurn
ombudsman