

complaint

Mrs C, on behalf of the estate of Mr T, says The Prudential Assurance Company Limited failed to follow regulations and acted unfairly when it sold the late Mr T annuities in 1999 and 2003.

background

Mr T was a member of an occupational pension scheme. He decided to transfer his pot to a personal pension plan with, the then, Britannia Life. Several years later, it wrote to Mr T to let him know his fund was approaching maturity and about how he could take his benefits.

As part of this process, Mr T was informed about the open market option (OMO) - his ability to use his fund to purchase pension benefits from other companies. He did this, entering into a contract with Prudential for an annuity and taking tax free cash (TFC).

Important context in this case is the Pensions Review, which was established in 1994 by the then regulator, the Securities and Investment Board. It was an industry-wide look at the practices of certain firms between April 1988 and June 1994.

The regulator was concerned some consumers may've been given inappropriate advice to transfer deferred pension benefits from employers' occupational schemes to personal pension plans. Mr T's transfer happened during this period and so he qualified for a review.

In 2003, Britannia Life wrote to Mr T informing him about the audit it had conducted. This used economic and financial assumptions laid down by the regulator to model whether he'd been disadvantaged by moving from his occupational pension scheme. Britannia Life concluded Mr T had suffered a loss and it offered him compensation to put things right.

Part of the compensation package offered by Britannia Life was the purchase of a 'top-up' to the annuity he'd bought in 1999. Again, this was arranged with Prudential.

Mrs C, the late Mr T's sister-in-law, has several concerns about what happened. For example, she says:

- Prudential ignored regulations about the sale of annuities both in 1999 and 2003. No questions were asked about Mr T's health, nor his wife's. And she thinks it should've made him aware of the possibility of enhanced annuities.
- It set-up Mr T's additional annuity in 2003 without his signature.
- Prudential also ignored client money regulations when dealing with the redress payment it received from Britannia Life.

Prudential noted Mrs C was a member of its direct sales force team for nearly a decade and was present at the sale of Mr T's annuity in 1999. It said she'd received commission on the sale.

Prudential said Mr T originally held a pension plan with Britannia Life. Rather than take his pension benefits through that firm, he used flexibilities available to him under the OMO to transfer his benefits. It says it didn't offer enhanced annuities. And it wasn't responsible for providing guidance or advice about what other products other companies could offer.

Prudential says it acted on instructions from Britannia Life in putting Mr T's 'top-up' annuity in place in 2003. This was part of the redress from Britannia Life following the pension review to make good the loss he'd suffered, at that time, from the transfer of his occupational pension scheme to a personal pension plan.

Prudential refuted various allegations raised by Mrs C about its non-compliance with processes, for example she asserts it breached client money handling regulations.

The investigator didn't uphold this case. Mrs C disagreed and so her complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I'm not upholding Mrs C's complaint. I'll explain why.

I'm grateful to Mrs C for her detailed testimony, which has been helpful to me in understanding the context, chronology and detail of her complaint. I hope she will forgive me in not providing a detailed response to all the points she's raised. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers.

I'll concentrate my comments on what I think is relevant and at the heart of her complaint. So, if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome.

The sale of Mr T's annuity in 1999

From the mid-1990s until August 2001, there weren't regulatory requirements or industry codes saying providers had to disclose the existence of the OMO. But most did, as was the case here. Buying an annuity was an irreversible decision, and in many cases the possibility of the OMO was set out in the consumer's plan – providers usually reminded people about this.

When Britannia Life wrote to Mr T in June 1999 to let him know about his pension fund it set out how he could use his pot to buy certain benefits from it. And it alerted him to his right to move to another provider. It said:

"The full cash fund under the policy ...is available as a transfer to another insurance company for the provision of pension benefits. If you wish to investigate this option, please contact an Independent Financial Adviser [IFA]..."

I don't know whether Mr T contacted an IFA, but we do know he decided to buy his annuity with a different provider. Mrs C told us he chose the Prudential because its annuity rates were in the upper quartile of the market. And because she'd worked at the firm for several years. So, I think it's reasonable to conclude Mr T was aware he had options about how he could proceed with his fund.

Mrs C is adamant that Prudential should've made Mr T aware of the possibility of shopping around for an enhanced annuity. She said he'd been a smoker and suffered from asthma and chronic obstructive pulmonary disease. While I understand her argument, I think it's important to bear in mind the circumstances at the time of the sale.

The main responsibility for informing Mr T about what options he had for using his pension pot rested with Britannia Life. It told him about OMO. And it suggested he seek the advice of an IFA.

The requirements businesses are required to operate to nowadays are different. For example, they must make clear the availability of enhanced annuities. But it's also important to note that at the time of the sale of Mr T's annuity in 1999, providers weren't required to outline what things other firms might take into account to improve the annuity rate, such as ill health.

Mr T chose Prudential as the company he wanted to buy an annuity from. And at that time, it didn't offer enhanced annuity products. Prudential's advice was provided on a restricted basis. It couldn't give recommendations on the products other businesses had. This was confirmed in the terms of business letter that Mr T would've received at the point of sale:

“Regulator’s statement. Those who advise on life assurance, pension or unit trust products are EITHER representatives of one company OR independent advisers”

“...your adviser represents the Prudential Assurance Company Limited...and acts on its behalf. Your adviser can only give you advice on the life assurance, pensions and unit trust products of the Prudential...Because your adviser is not independent, he or she cannot advise you on products of this type available from companies other than the Prudential...”

Mrs C says Prudential never asked about Mr T's health. Given my prior findings, the significance of her argument here isn't telling. Nevertheless, I've looked at the paperwork that was completed for the sale of his initial annuity.

The Personal Financial Review (PFR) took place in June 1999 and captured Mr T's details, financial circumstances and attitude to risk. It provided a framework for discussion about his pension benefit options, set out recommendations and his choices.

Mr T opted for a joint-life annuity payable monthly in advance, on a level (non-revalorised) basis. So, his wife would've received 100% of this income in the event of his passing.

I can see a question on the form which asks if Mr T and his spouse enjoy good health. A box is ticked to say they do. I've no reason to doubt that Mrs C genuinely believes Prudential didn't ask any questions about Mr T's health during the meeting. But Prudential says its representatives were trained and compliant in how PFR's were completed.

I must consider that memories can and do fade. I also have to give some weight to contemporaneous information that suggests Mr T's health was discussed, albeit I suspect only briefly.

So, taking all these matters into account, I don't think Prudential acted unreasonably in the way it sold Mr T his annuity in 1999.

Establishing the 'top-up' to his original annuity in 2003

In 2003, Britannia Life wrote to Mr T informing him about the audit it had conducted into the transfer of his occupational pension scheme into a personal pension plan. Using a methodology laid down by the regulator it concluded that he'd lost out as a result of what had happened. It was required to make good the loss calculated.

There were various elements to the redress Britannia Life provided Mr T in 2003. It worked out:

- The TFC Mr T should've received in 1999 and made up the difference between this and what he actually received and added interest to it.
- What his pension payments to date should've been from 1999 and made up the difference between this and what he'd been receiving and added interest to this.
- What Mr T's future pension payments should be and funded a 'top-up' to his original annuity to deliver the difference between what he'd been receiving and what he should've been getting paid.

Regarding the annuity set-up in 2003, Mrs C says Prudential failed to take into account Mr T's circumstances. In particular, his wife's health had deteriorated since 1999. She says, for example, that this made another joint-life annuity inappropriate because his partner had a serious condition which she couldn't have known she'd survive.

I understand the point Mrs C is making, but I disagree with her.

The supplementary annuity established in 2003 was part of a compensation package Britannia Life offered Mr T. This was because it had found he'd suffered a loss when comparing the benefits he could've had from his former occupational pension scheme, to those he could reasonably have anticipated from his personal pension plan, at the time of the pension review.

The total additional pension payment Mr T was due from 2003 onwards, flowing from the pension review, was a calculated sum. Part of this was to be delivered through the purchase of a 'top-up' annuity, established on the same basis as the original. The point of the pension review was to make good the loss which had crystallised in 1999.

Had that original annuity been taken with a different provider and on an enhanced basis, then the 'top-up' flowing from the pension review redress would've been established on the same basis. But we know that wasn't the case. And I won't rehearse the arguments about the 1999 sale again.

So, I can't see that Prudential has been responsible for any financial loss to the late Mr T or his wife as a result of the 'top-up' to his original annuity that was put in place from 2003.

Matters of proper administration and process

Mrs C has raised several concerns about Prudential not fulfilling its regulatory obligations in the administration and handling of Mr T's annuities. For example, she says it didn't obtain his signature in 2003 in order to set-up the new annuity.

Mrs C's arguments aren't without basis. I can see for example that Mr and Mrs T signed an application for the 'top-up' annuity in August 2003 (and in the wrong part of that form). But by the time funds had been received a new quotation was necessary and there doesn't appear to be a signed application associated with that.

But I've seen enough evidence of Mr T's wish to proceed with the arrangements. For example, in its letter to him at the beginning of August 2003, Britannia Life notes that Mr T had indicated he wanted the additional annuity to be bought from Prudential. And I can see a

return slip associated with the final quote issued by Prudential has been signed by Mr T in October 2003 to say he accepted the supplementary annuity.

Mrs C says Prudential breached client money regulations when dealing with the redress payment. She says this was received in September 2003, but it wasn't until over a month later it set-up Mr T's annuity.

I think the main obligation on Prudential here was to make sure Mr T received the compensatory top-up to his annuity, the amount and timing of which was determined by the pension review outcome. I note initial payments weren't quite right, for example there was a delay. But I can also see matters were put right by Prudential and Britannia Life.

I'm not going to explore every technical matter of process or administration that Prudential may or may not have got wrong according to Mrs C. I'm mindful that when she brought her complaint to this Service, we asked how she would like matters put right. She said:

"I would like Prudential to admit that they failed in their duty of care towards my brother [and sister]-in law, both in 1999 and 2003. And put them (their estate) back in the position they should have been in had the sales been compliant."

I've already set-out my main findings in relation to the sale of Mr T's annuity in 1999, and the basis for the supplementary annuity established in 2003.

While Mrs C may be able to point to certain aspects of Prudential's handling and processes that went wrong, even if these had been conducted perfectly, I don't think it would've resulted in any material change in terms of the annuities Mr T ended up with.

Mrs C notes Prudential were fined last year for breaches of FCA principles on management and control, and having due regard to its customers' interests, specifically in relation to its annuities business.

While these findings were in relation to failings between 2008 and 2015, the reason for her raising this complaint stemmed from the regulator's suggestion that where people had concerns about sales in prior years, they should approach their providers for information and answers.

I understand the argument Mrs C is making. It is of course a matter for the regulator to address any systemic failings across the industry or within certain businesses. This Service is concerned with the circumstances and merits of individual complaints.

Mrs C's approached Prudential for an answer in relation to the sale of annuities to Mr T. She was dissatisfied with its response and exercised her right to bring the matter to this Service. And in that regard, I've set out why I don't think Prudential acted unreasonably or unfairly in this case.

my final decision

For the reasons I've explained, I'm not upholding Mrs C complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 April 2020.

Kevin Williamson
Ombudsman