

complaint

Mr H has complained about his falling with-profit annuity income. He says this is because The Prudential Assurance Company Limited (Prudential) haven't managed the with-profit fund effectively.

background

In 1995, Mr H set up two with-profit annuities with The Equitable Life Assurance Society Limited (ELAS). These annuities and the funds underlying them were transferred to Prudential in 2007.

In 2011, Mr H began to write to Prudential with his concerns about his annuity income which had been reducing since 2008. In 2014, he complained saying that since his plan had been with Prudential, his annuity income had fallen by 28%. However, during this time the FTSE 100 had increased by 65%. The FTSE 250 had increased by 151%. Mr H also said that he was unhappy that Prudential had reduced the fund's investment in equities and increased holdings in fixed rate interest.

Prudential didn't uphold the complaint. They explained how Mr H's annuity operated and said that his diminishing income was due to the returns of the with-profit fund not matching the anticipated bonus rate of 4.5% (ABR) and the Guaranteed Interest Rate (GIR). The ABR was the rate selected by Mr H at the outset of the plan and couldn't now be changed.

One of our adjudicators looked at Mr H's complaint and agreed with Prudential. He said he didn't feel that Prudential had failed to meet its obligations. He said that:

- Mr H's annuities were transferred to Prudential after a vote by the with-profit policy holders at an Extraordinary General Meeting. The proposed transfer was also approved by the courts.
- Prudential is regulated by the Financial Conduct Authority (FCA). This includes the management of its with-profit fund. It manages its with-profit fund in accordance with its Principles and Practices of Financial Management (PPFM).
- Prudential is required to appoint a with-profit actuary. The FCA provides rules and guidance on their duties. Prudential has an independent 'With-Profit Committee'. Its role is to protect the rights and interests of the with-profit policyholders.
- The performance of the with-profit fund was a factor in the income that Mr H received. When Mr H's annuities were set up, the guaranteed basic payments were arranged so that if future bonuses were 4.5% per year, the gross annuity payment would be level throughout. But, if a regular bonus of less than 4.5% is declared Mr H's income would reduce. The amount would be determined based on advice given by an actuary.

Mr H didn't accept the adjudicator's conclusions. He made detailed arguments in support of his complaint for consideration by an ombudsman. In summary, these are:

- Prudential had accepted that his annuity income had fallen year on year. And there have been reduced investments in equities. However, this is at odds with statements made by the then regulator, the FSA, to the High Court in 2007 about its expectations when Prudential took over the plans. These statements suggested that a key

consideration was the potential for higher investment returns on the transfer to Prudential and more investment in equities. Prudential made similar statements in 2007.

- The yearly statements issued by Prudential aren't clear and it's difficult to see whether a profit or loss has been made on investments. There is also a lack of transparency about the fund generally. Senior board members had failed to answer the questions he had posed of them and not complied with their corporate governance standards.
- Prudential had failed to identify the specific clauses which caused his annuity to fall year on year. The percentage gross and net returns for his fund in December 2013 appeared to show that they were more than the minimum required for his annuity to remain level or grow.
- The fact that Prudential had no plans to improve the situation for policy holders showed there was serious maladministration of the fund. Prudential had also failed to demonstrate corporate social responsibility by leaving him and other policy holders in the position they are in without an explanation or apology.

Mr H also requested that a hearing be conducted to resolve his complaint. I've already explained to him why I didn't think a hearing was necessary in order for me to reach a fair and reasonable decision.

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've asked Prudential to send me a copy of Mr H's policy terms and conditions. However, they've been unable to provide a copy as his policy was transferred from ELAS. They've instead confirmed the basic details of his policy provided to them on the transfer. These show that Mr H's chosen ABR was 4.5% and his annuity income isn't guaranteed. I've also looked at the illustration Mr H was provided by ELAS in 1995. This shows that the effect of the 4.5% ABR is that an overall rate of return of 8.1575% is needed for Mr H's annuity to remain level. This is because of the added effect of the GIR.

The lack of an original policy document isn't ideal. However, given the passage of time and the transfer of business from ELAS, I don't think this is surprising. I haven't seen any evidence that Mr H's annuity is being operated in a way which is different to how these contracts are usually operated.

Mr H feels that the statements from Prudential don't clearly set out how their investment returns directly correlate to his falling annuity. These products are complicated. But I do think the statements attempt to explain how his annuity is calculated on a yearly basis.

Mr H says that investment returns for the fund exceeded 8.157% in 2013. But this doesn't mean that bonuses will be awarded to policy holders. This is because Prudential operate the process of "smoothing". This is where returns experienced in years of good performance are held back to offset lower than expected performance in other years. Prudential have said that no regular bonus was being paid at the time of the transfer from ELAS and Prudential

don't expect to add any bonus in the foreseeable future. They've explained that this is because of the high cost of the guaranteed benefits already provided.

With-profits funds have come under some criticism in recent years. The wide discretion given to the providers in deciding how and whether to allocate bonuses can lead to concerns about transparency in how the fund operates. These are clearly concerns that Mr H shares. However, this is why the FCA requires firms to publish a PPFM document, which explains how they operate the fund. Mr H has been provided with a copy of this document.

But the regulatory oversight goes further than this. Prudential's operation of the fund is also supervised by the FCA. If, as Mr H suggests, the fund isn't being managed appropriately, that would be a matter of regulatory concern. I say this because Mr H isn't the only person who might stand to gain, or perhaps lose, from potentially different decisions on how to pay bonuses or otherwise manage his fund. Indeed I can see that Mr H's complaint is often framed in a way that suggests that he is concerned that not only is he being treated unfairly, but that other members are similarly are losing out by the lack of corporate social responsibility he says Prudential are exercising. I can also see that he feels very strongly that the benefits to policy holders were misrepresented when the transfer took place from ELAS to Prudential in 2007.

We regularly pass on concerns consumers have raised about specific with-profit funds to the FCA. And I can confirm we have done this with regard to Mr H's complaint about his fund with Prudential. In general when a matter is reported to the FCA it has certain duties and obligations regarding the confidentiality of the information it holds. So it often isn't able to confirm specifically what action it might take on a particular matter.

If the FCA does consider that any consumer's comments need to be addressed, then it has the power to make Prudential take further steps in managing the fund. Mr H might then hear of any changes taking place from Prudential directly, rather than through the FCA or this service.

I hope Mr H will appreciate that I have no way of knowing whether this is likely to happen. I'm also not aware that the regulators have had particular concerns about the Prudential with-profit fund in the past. So on balance, I think it's unlikely the outlook for his pension plans will significantly change in the near future

Given what I've said, I can't uphold Mr H's complaint as I haven't seen evidence that Prudential have done anything wrong in the management of Mr H's funds. I realise this won't be the outcome Mr H was hoping, but I hope my decision is clear as to why I've reached this conclusion.

my final decision

I don't uphold Mr H's complaint and make no award.

Under our rules, I'm required to ask Mr H to accept or reject my decision by 30 December 2015.

Abdul Hafez
ombudsman