

complaint

Mr C's complaint is against The Prudential Assurance Company Limited. He says that it advised him to buy an annuity that was unsuitable as it carried a degree of risk that his income could fall.

background

Prudential didn't uphold the complaint. It said that Mr C had bought the annuity without advice being provided.

One of our adjudicators investigated the complaint. He concluded that Prudential had not advised Mr C and didn't recommend that the complaint should be upheld.

In summary he said:

- Considering that Mr C had previously bought annuities directly from Prudential without advice, it was likely that he had followed the same process on this occasion.
- Prudential provided Mr C with key facts documents and brochures describing different types of annuities.
- The application form signed by Mr C clearly showed he was applying for an annuity and not an income drawdown plan.
- It was reasonable for Mr C to choose an annuity with the potential for growing income as he already had two annuities paying a level income.
- There was insufficient evidence to conclude that Prudential had advised Mr C.
- It was a regulatory requirement for advice to be presented in a format often referred to as a 'reasons why' or 'suitability letter'. Mr C hadn't provided evidence of the advice he claimed to have received.

Mr C's representative didn't agree with the adjudicator's findings. He said, in summary, that:

- If Mr C had two basic annuities, why would he possibly want anything different to what he already had?
- The adjudicator said he considered it likely that Mr C had followed the same process as with the previous two annuities. If he had, then he would have had the same product.
- Mr C wasn't given the choice of a basic annuity; he was sold the annuity that was most profitable for Prudential.
- Mr C didn't know whether he could have had a better income from a basic annuity or from a drawdown arrangement.
- It was impossible for Mr C to have known about the product unless he was advised by the Prudential representative. So it followed advice must have been given.
- It was not up to a consumer to keep papers such as 'reasons why' or 'suitability letters'. It was a legal requirement and a rule of the regulator for a provider to keep those records and provide them to this service.
- The adjudicator had said that Mr C would have been interested in an income that offered the potential to grow. He questioned whether the adjudicator was an adviser or able to look into people's minds and know what they wanted four years ago?

The adjudicator wasn't persuaded to change his opinion of the complaint. He said, in summary:

- In his view he thought it reasonable that with two other annuities on a level basis Mr C would be interested in an income with the potential to grow.
- He considered it was likely that Mr C followed the same process he had undertaken previously of purchasing the third annuity directly from Prudential without receiving advice.
- Prudential provided copies of the documents it sent to Mr C. Those included the key facts and brochures for both the Income Choice (with-profits) annuity and a Guaranteed (basic) annuity. Therefore he considered Mr C was given a choice.
- In order for Mr C to assess whether he could have had more income from an alternative arrangement he would have needed to have taken advice. It remained his view that no advice was given and Mr C chose the annuity from the information provided to him.
- Prudential confirmed it sent Mr C information on the Income Choice annuity along with information on Guaranteed annuities.
- The requirement for the provider to keep copies of suitability letters was applicable if advice had been given. If Mr C were to provide copies of the advice he claims he received it would support his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator, and for largely the same reasons.

Although it's clear that Mr C and his representative feel strongly that Mr C was given advice to buy the Income Choice annuity, I am bound to make a decision on the balance of the evidence that is available to me.

Prudential sent out documentation to Mr C when he was taking his benefits that included information and quotations on both a guaranteed annuity and also the Informed Choice. Mr C had already arranged two guaranteed annuities and so he was clearly aware of this option. The adjudicator obtained the documentation from Prudential that was available – which didn't include a suitability letter or evidence suggesting that it had provided advice. He also confirmed with Prudential that it didn't have any recordings of telephone conversations that Mr C may have had with it at the time (where he may have been given advice).

The information sent to Mr C included a document entitled "A guide to choosing your income for life". That document gave a step by step guide to help choosing the type of annuity. So I'm satisfied that Mr C was alerted to the options available. And like the adjudicator, I consider that as Mr C already had two annuities paying him a level income, it would not be unreasonable for him to be interested in the option of having an income with the potential to grow. So I don't think the circumstantial evidence suggests that the decision would have been irrational or that it's clear that this type of annuity was unsuitable for him.

Overall, therefore, whilst I understand that Mr C and his representative will be very disappointed with my findings, I haven't been persuaded that Prudential has done anything wrong on the balance of the evidence available.

my final decision

Accordingly, my final decision is that I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 September 2015.

David Ashley
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