Financial Ombudsman Service

complaint

Mr H has complained that The Prudential Assurance Company Limited wrongly informed him that he would be able to draw further lump sums from his Prudential Income Choice Annuity as well as having an annuity.

background

Mr H met with an adviser from Prudential in October 2012 to review his existing pension plan. He was noted as having a low to medium attitude to risk. The adviser recommended that Mr H take out an Income Choice Annuity. This would provide a tax-free lump sum which Mr H wanted to pay for home improvements. It would also provide an income that could be varied between minimum and maximum limits. The adviser recommended that he take the minimum income until his retirement.

The suitability report stated that income drawdown had been considered but discounted because Mr H did not want the risk of his fund being depleted. It also stated that Mr H's main concern at the time of the recommendation was to release the tax free lump sum from his pension and take the minimum income from the scheme until he retired. At the time of this advice Mr H was in his mid-fifties.

Mr H complained to Prudential in October 2014 after it had told him he wouldn't be able to take any further lump sums. He said that the adviser had told him he would be able to do so. He said that, had he been made aware that he couldn't do so, he wouldn't have purchased the annuity.

Prudential didn't uphold his complaint. It said:

- The Income Choice Annuity had been fully explained. Other options had been discussed.
- The Income Choice Annuity had been chosen because Mr H wanted a low income at the start with the option to increase it later.
- It could not comment on what had been discussed between Mr H and the adviser.
- There was no mention of Mr H being able to draw further lump sums in the supporting documents.

Mr H brought his complaint to this service. It was investigated by one of our adjudicators. She recommended that the complaint shouldn't be upheld. In particular, she said:

- She was satisfied that Mr H had been provided with the necessary documentation. The terms of the annuity had been explained.
- Mr H hadn't raised any concerns relating to the suitability report at the time of the advice.
- She was satisfied that the recommendations that had been made were suitable given Mr H's circumstances at the time of the advice.
- Inland Revenue rules at the time allowed Mr H to take a maximum of 25% of the fund as tax-free cash. Prudential had been bound by this rule. There was no scope for further lump sums to be drawn from the annuity.

Mr H disagreed with the adjudicator's assessment for the following reasons:

- He maintained that the adviser had told him that he would be able to draw further lump sums.
- He was unhappy that the adjudicator had not requested a statement from the adviser.
- He believed that he had been wrongly advised to take minimum income. He referred to an annuity calculator on Prudential's website and stated that he would clearly have been better off taking maximum income.
- He acknowledged that the Key Features Document had stated that the maximum tax-free cash available was 25%. But he pointed out that this had not been stated until page 17.

After the case had been referred to me, I asked a second adjudicator to consider Mr H's point that the adviser should have been asked for a statement, and his points relating to the annuity calculator. The adjudicator spoke with Mr H and wrote to him making the following points:

- The adviser no longer worked for Prudential. It had confirmed that there had been no disciplinary or conduct concerns while he had been an employee.
- Mr H's life expectancy would have been more than the twenty year term used in the annuity calculator. Minimum income, which would increase at a higher rate, could pay more over his lifetime.
- The annuity calculator assumed growth of 7%. It could not be assumed that this would be achieved every year, or therefore that maximum income could be maintained.
- It was impossible to know whether minimum or maximum income would ultimately be more profitable. In any case, minimum income had been selected because Mr H was still working, not because the adviser thought it would be more profitable. Prudential would allow him to increase the income if he wanted.
- On balance, the adviser probably had not stated that further lump sums could be drawn from the annuity.
- The product appeared suitable. Given Mr H's circumstances, there would have been limits on the sums he could have drawn from an income drawdown plan. The level of flexibility Mr H wanted would not have been available to him at the time.

Mr H disagreed with the adjudicator's assessment, so the complaint was passed to me to make a final decision. Prudential made no further comments.

my findings

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

I accept that Mr H and his wife state that they were told that he would be able to take further lump sums. I note his strength of feeling on this point. There is no written evidence to support this. And it has not been possible for us to obtain a statement from the adviser.
I have looked at the 14 page financial planning report which is a written record of the discussions that took place between Mr H and the adviser from Prudential.

That report discusses the advisor's recommendation. It mentions Mr H's need to take the tax free cash now to pay for renovations to a new property and to reduce the income down to a low level but increase it on retirement. At this point Mr H was looking to retire in approximately 10 years' time.

The suitability report does not mention that further lump sums can be taken once the maximum tax free cash sum has been taken. It does discuss the fact that the income from the annuity can be increased.

I have also considered other documents including the Key Features booklet. These documents stated that the annuity would provide a regular income. They did not state that further lump sums would be available after the annuity started.

On page seven of the key features booklet there is a section headed '*your commitment*'. It states:

> *to take any tax-free cash that you're entitled to (and want) when you buy your annuity. You can't take it later.*

There is then more information about this on page 17 (of a 35 page document). There it states:

> '*you need to take your tax free cash at the same time as you buy your annuity, and before you're 75'.*

The booklet sets out that the individual can change their *income* as their needs change but this relates to the regular income provided by the annuity rather than lump sums.

The adviser would have known that further lump sums were not available. On balance, I do not feel I can fairly conclude that the adviser misled Mr H.

I understand Mr H's concerns in relation to the annuity calculator. But we cannot know how long he will live, or what future investment returns will be. So no one can say whether minimum or maximum income will be more profitable.

In any case, Mr H is not committed to taking the minimum income. The adviser recommended that Mr H take the minimum income at the outset because he was still working. It was anticipated that he would take this income until retirement. This does not seem unreasonable, given Mr H's primary desire was to use the tax-free cash to fund home improvements. And he was still working with an intended retirement date approximately ten years in the future.

The difference between the minimum and maximum income has not been lost. Those benefits have effectively been retained within the policy for Mr H's future use.

Mr H has said that he would have preferred a more flexible arrangement. I have considered whether the adviser should have recommended income drawdown instead. The suitability report stated that Mr H didn't want the risk of his fund being depleted. That would seem consistent with the assessment of his attitude to risk as low to medium. His fund would generally have been considered unsuitable for income drawdown. For these reasons, I don't believe income drawdown would have been suitable.

As the adjudicator also pointed out, the rules at the time would have limited the level of income Mr H could take from such a plan. His circumstances were such that full flexibility was not an option available to him.

In summary, I consider that Prudential made a suitable recommendation. I also consider that it explained the reasons for its recommendation clearly. I do not doubt that Mr H regrets his decision, following the introduction of ‘pension freedom’. But I need to look at what was relevant at the time the advice was given. Prudential could not have foreseen those changes at the time it advised Mr H in 2012.

my final decision

I do not uphold Mr H’s complaint against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 21 September 2015.

Emma Ali-Noor
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