Ombudsman's Determination

Applicant	Mr N
Scheme	Prudential Personal Policy (**the Policy**)
Respondent	Prudential

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Prudential.

Complaint summary

2. Mr N has complained about the low investment return on his funds within the Policy. Mr N argued that the excessive charges deducted from the Policy were a factor in the low return and wanted these charges refunded. In addition, Mr N stated that Prudential has breached the terms of the Policy by no longer offering him an annuity.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.

4. Mr N previously held deferred pension benefits in another pension scheme that he wanted to transfer to Prudential. He employed the services of an independent financial adviser (**IFA**) to assist him.

5. In August 1991, the IFA obtained a retirement projection from Prudential based on transferring in a value of £3,194.10 (**the Retirement Projection**). Prudential provided two possible benefit projections for when Mr N reached age 65, in 2025, based on two different annual investment growths. It projected:-

   - A total fund value of £42,500. This would provide a lump sum of £10,600 and an annual pension of £3,670, based on an annual investment growth of 8.5%.

   - A total fund value of £169,000. This would provide a lump sum of £42,200 and an annual pension of £16,400, based on an annual investment growth of 13%.

6. The notes said:-

- “These two amounts do not represent the upper and lower limits of the possible amount of the benefit. What is actually paid will depend, for the with profits fund, on the bonuses added to the policy and, for the linked funds, the future movement in unit prices for the relevant funds (which can go down as well as up) and the effect of the charging structure.”
- “Pension benefits will also depend on the terms ruling at the date of retirement for converting into annuity”.

7. In December 1991, based on the advice of the IFA, Mr N established the Policy, transferring in an amount of £3,265.96 to be invested solely in the With-Profits fund. The notes on the application form said to read the Policy document for more information.

8. The Policy document confirmed that a recurring Policy Charge would be payable:-

    - “A recurring management charge shall be made in respect of each investment-linked fund.”
    - “A single Policy Charge shall be due in respect of all FlexiPension and IndePension policies on the life of the Investor and such other policies on the life of the Investors as are specified in the Society’s Policy Charge conditions.”
    - “The Policy Charge shall be due yearly.”

9. In October 1997, following a request from the IFA, Prudential sent an updated fund valuation. The total fund value was £5,172.58. Prudential said that, in addition, a terminal bonus may be payable. Prudential also provided the IFA with details of the most recent Policy Charge.

10. In July 1998, following a request from the IFA, Prudential sent an updated fund valuation. The total fund value was £5,802.75. Prudential also included details of the annual Policy Charges between 1991 and 1997.

11. In 2003, upon receipt of a cash equivalent transfer value (**CETV**) illustration, Mr N queried the investment return. In response, Prudential said that:-

    - Between 2000 and 2002, there had been considerable drops in the Financial Times Stock Exchange 100 (**FTSE 100**) which affected fund performance.
    - Mr N’s With-Profits fund could attract a terminal bonus on death, transfer or maturity. As it was not a guaranteed bonus, a lower investment performance had reduced the terminal bonus amount. This led to a reduced CETV illustration.

12. In June 2009, Prudential sent Mr N his requested CETV illustration. The CETV was £13,148, which included the terminal bonus and was not guaranteed. The fund value, not including the terminal bonus, was £9,564.27.

13. Prudential also provided various fund projections at age 62 based on investment growth rates of between 5% and 9%. The lowest projection was £22,400 and the highest projection was £36,400. The notes on the projections said:-

> "These figures are only examples and are not guaranteed - they are not minimum or maximum amounts. What you will get back depends on how your investments grow."

14. In July 2009, Prudential sent Mr N an updated fund valuation. The total fund value was £9,083.05. It confirmed that the terminal bonus was excluded from this amount.

15. In December 2009, Prudential sent the IFA a requested CETV illustration. The CETV was £13,148, which included the terminal bonus and was not guaranteed.

16. As at March 2015, Mr N's fund value was £12,002.03. Mr N's CETV illustration, which included all bonuses, was £18,264.

17. As at November 2016, Mr N's fund value was £12,799.85. Mr N's CETV illustration, which included all bonuses, was £20,247.00.

18. In August 2019, Mr N complained about the low fund performance and the resulting estimated annual pension amount. Mr N argued that, based on the Retirement Projection he received in 1991, the current valuation should be a lot higher.

19. In response, Prudential told Mr N to speak to the IFA as it gave him the appropriate financial advice. Prudential confirmed it only implemented requests received from the IFA and Mr N.

20. As at March 2020, Mr N's fund value was £14,620.26. Mr N's CETV illustration, which included all bonuses, was £25,154.81.

Mr N's position

21. He relied on the figures in the Retirement Projection and expected to receive at least the minimum projection that was highlighted in the 1991 Illustration.

22. Prudential is responsible for the performance of the fund, and it should have informed him, or the IFA, if the minimum value illustrated in the Retirement Projection was not going to be met.

Prudential's position

23. Between 1991 and 2000, it deducted the Policy Charge from Mr N's fund value. From 2001, the Policy Charge was removed from the Policy following a repricing exercise and the annual management charge was then deducted directly from the With-Profits fund.

24. All charges were taken in line with the Policy Conditions.

25. Section R.9.4 of the Policy document confirmed that the annuity option was not guaranteed:-

"If the retirement fund is applied, in whole or in part, to purchase an annuity from the Society then, subject to these forms of annuity being available from the Society on the Pension Date, the investor may elect the annuity be payable."

Adjudicator's Opinion

26. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised below:-

- As part of his financial planning, Mr N received the Retirement Projection which illustrated the possible benefits he might have received based on different investment growth rates. The Retirement Projection did not guarantee that the Policy would provide a minimum amount. Prudential stated that the amount payable would depend on the performance of the fund. As Prudential did not provide Mr N with any guaranteed returns when the Policy commenced, the Adjudicator considered that Mr N's reliance on the Retirement Projection was unreasonable.

- In addition, since the commencement of the Policy, Mr N received numerous valuations which illustrated the fund value at various times. Mr N would have been able to see his fund performance through the years. In 1998, the fund value was around £5,800, in 2009 it was around £9,000 and in 2015 it was around £12,500. If Mr N was initially expecting a minimum return of around £42,500, it is reasonable to assume that at least by 2015 he, or his IFA, would have been aware that the initial projected return in 1991 would not be met. However, apart from complaining to Prudential about the performance, Mr N has not done anything else to attempt to mitigate the lower return. Mr N could have switched funds or transferred his benefits to a new pension provider in order to meet the investment return he desired.

- Mr N argued that the number of charges deducted from his fund value was a factor in the poor performance. When Mr N commenced the Policy, the notes in the confirmation letter stated that he should read the Policy document for more information. In this, Prudential stated that there would a Policy Charge. In July 1998, Prudential provided the IFA with details of all the annual Policy Charges that had been deducted from the fund. Prudential deducted the last Policy Charge directly from Mr N's fund value in 2000. After this date, Prudential changed the charging structure, so the annual management charges would be deducted from the With-Profits fund.

- As Mr N agreed to the terms of the Policy when it commenced, it follows that he agreed to the deduction of the Policy Charges. In the Adjudicator's view, Prudential had correctly deducted the charges in accordance with the Policy document and here was no evidence that Prudential had done anything wrong.

- Finally, Mr N has complained that Prudential has refused to offer him an annuity option. The Policy document stated that an annuity would only be payable if Prudential was offering it on the date of retirement. This is re-enforced by the Retirement Projection which stated that an annuity would depend on the terms in place at retirement. So, whilst Prudential may have offered an annuity option at the commencement of the Policy, it is within its right not to offer one now. This does not mean that an annuity is not available to Mr N, as he still has the option to seek his own annuity provider with Prudential's assistance.

27. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N. Mr N remained dissatisfied on two points. He said that:-

- No consideration had been given to the guaranteed minimum pension (**GMP**) element of his pension that he transferred into Prudential in December 1991. Mr N cited the recent High Court judgment regarding GMP Equalisation; Lloyds Bank Group Trustees and Lloyds Bank PLC [2020] EWHc 3135 (Ch). So, based on this judgment, Prudential must equalise his previously accrued GMP benefits.

- Prudential is in breach of contract if it does not offer him an annuity option. Mr N quoted section G.1.4 of the Policy document (see the Appendix) and said the terms in this are binding.

Ombudsman's decision

28. The High Court judgment referenced by Mr N is in relation to accrued GMP benefits between 17 May 1990 and 5 April 1997. The period of service that Mr N wants equalised is between 21 May 1984 and November 1989. So, this ruling does not apply to Mr N and no further consideration is needed in relation to this point.

29. Mr N contends that Prudential is in breach of contract by not offering him an annuity. Mr N has based his argument on section G.1.4 of the Policy Document. However, Mr N must also consider section R.9.4 of the same document, which states that an annuity would only be available if Prudential offered it at the time of retirement. Prudential has exercised its right to no longer offer annuities on this type of policy. To have done so is not in breach of its contract with Mr N, nor does it amount to maladministration. Mr N is not prevented from purchasing an annuity with a another pension provider should he so wish.

30. I do not uphold Mr N's complaint.

Anthony Arter
Pensions Ombudsman

20 October 2021

Appendix

G.1.4 Application of Policy Proceeds

> "The Society, in its capacity as scheme administrator, shall deal with the Policy in accordance with the provisions of the Rules and shall apply the proceeds of the Policy to provide such lump sums or purchase such annuities, for the Investor or his widow or dependants, as the Rules require. In the event of any inconsistencies between the Rules of the Scheme and any other provisions, the Rules are over-riding. Such annuities will be purchased from the Society or from any other insurer as provided for in the Rules and, if purchased from the Society, shall be based on the Society's then current annuity rates for pensions business."