RE: High Court refusal to sanction a Part VII Transfer of annuities from Prudential to Rothesay Life

Thank you for your letter of 21 August 2019. In it you ask if the FCA will be reviewing how it approves the transfer of annuities following the recent decision referenced above. You also ask what the implications of the decision are for: (a) consumer choice and transparency and (b) the costs of purchasing an annuity.

Ultimately it is the Court which determines whether it will approve a Part VII Transfer, not the PRA or the FCA. This is done after consideration of all relevant circumstances and factors, which under Part VII legislation include the views of an independent expert, together with the opinions set out by both the regulators in their reports, and any objections raised by policyholders.

In this case, the High Court refused to sanction the proposed Part VII Transfer of annuities. However, Prudential and Rothesay Life have been granted leave to appeal against this decision, and have until 27 September 2019 to submit papers setting out their reasons for appealing, should they choose to do so.

The High Court’s decision in this case reflects, in essence, that in assessing whether or not it is ‘appropriate’ to sanction a transfer, a judge is entitled to take into account factors that go beyond the actuarial factors that guide the analysis of the independent expert and the statute-based mandate of the regulators (i.e. the FCA and the PRA). Specifically, on the facts of this case, the judge decided that the legitimate interest of the objecting policyholders in maintaining their existing relationship with the insurer of their choice, outweighed the legitimate commercial interests that Prudential sought to achieve by way of the transfer.

Consideration by the Courts of policyholders’ choices in terms of an insurer’s ‘brand’ is a novel issue, and if Prudential or Rothesay choose to pursue an appeal, the Court of Appeal will have to tackle this question in deciding afresh whether or not to sanction the transfer. We think it is unlikely that a decision on any appeal will be reached before October 2019 at the earliest.

We will consider the extent to which it may be desirable for the FCA to provide input in relation to any appeal once we know more about the grounds on which such an appeal may be made.

In the meantime, we will continue to review the potential implications of the judgment on our processes. This is our usual approach when we see any changes in case law which could have an impact on our role. So, for example, we would want any new and current Part VII Transfer applicants who may be affected by this case, to take it into account when preparing their applications for our review, and we will take it into account on a case-by-case basis as appropriate.
Any more fundamental review of our published guidelines on how we review applications – eg Final Guidance 18/4: The FCA’s approach to the review of Part VII insurance business transfers – would likely benefit from taking into account the outcome of any appeal.

As such, we believe that, if the decision is appealed, it would be appropriate to review the important points you have raised, including the potential choice, transparency and cost implications of any decision on annuity customers, also in light of the result of that appeal. I will write to you again when the outcome of any appeal is known to address the important questions you have posed.

I hope that this is helpful.

Yours Sincerely

Andrew Bailey
Chief Executive