

The complaint

Mr K is unhappy about the maturity value of his with-profits endowment plan, managed by Prudential Assurance Company Ltd.

He says it's over £900 below what he expected and therefore Prudential should pay the difference. He didn't think it'd be affected by short-term market fluctuations.

What happened

In April 1980, Mr K took out the plan with a £3,900 guaranteed sum assured. He paid £4,563 in premiums – £117 a year over 39 years.

The £24,300 policy maturity value was made up of the £3,900 sum assured, £8,012 annual bonus, and a £12,388 terminal bonus.

But Mr K is unhappy that the maturity value dropped from £25,226 to £24,300 in a relatively short period between 20 March and 1 May 2019.

Prudential hasn't upheld the complaint. In summary, it said:

- It's sorry the plan failed to meet Mr K's expectation, but the reason why the value of his investment decreased was due to a reduction in the terminal bonus figure.
- Bonuses are a way it allocates the investor's share of the fund. It pays regular bonuses annually and a final bonus referred to as terminal bonus.
- Terminal bonuses while quoted, are not guaranteed, and can change at any time, and are only actually applied on the date the funds are taken from the policy.
- A drop in the investment markets has affected the whole industry, not just Prudential. And 2018 was a difficult year for financial markets, in which it made a net loss of 2.2%.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- The way a provider chooses to manage its investments (and review bonuses) is a matter for its own commercial judgement. It's not something our service can get involved in.

- He can't comment on whether it would've been fair for Prudential to account for poor market performance by adjusting interim bonuses for all policy holders, as opposed to terminal bonuses, which affected Mr K.
- Activities of this nature are subject to oversight by the Financial Conduct Authority (FCA), so if Mr K is worried about Prudential's approach he's free to raise an issue with the FCA.
- Because Prudential paid the guaranteed amount, it kept to its commitment, and he's unable to say it misled Mr K.
- He can't comment on the performance of other businesses that have supposedly done better with similar investments.
- He appreciates that Mr K is disappointed about the terminal bonus. But having listened to the call of 20 March 2019 he could see the agent was clear that the sum of £25,226.53 wasn't final, and could change on a daily basis. Therefore he can't say that Mr K was misled.

Mr K remains disappointed with the investigator's view, but having initially accepted it, has asked for an ombudsman's decision.

He's provided details of documents that he says he didn't have at the outset, but would now like to be considered by an ombudsman. In summary, he made the following key points:

- Prudential is denying his claim so that it won't have to pay hundreds of other claims similar to his.
- Just because a business says it can't guarantee returns, doesn't mean that our service shouldn't be involved.
- Prudential would rather be fined for non-compliance of rules, than uphold a complaint, and then have to pay out millions in compensation.
- He hasn't been notified of the bonuses added but has recently been furnished with this information, including the workings of the with profits plan.
- The investigator said there was a 2% loss in Prudential funds in 2018, justifying a lower bonus rate, before smoothing. But his investment was invested in an independent sub fund – Scottish Amicable Investment Fund (SAIF), which experienced a 2.8% loss.
- The Scottish Amicable Insurance Fund Chairman's statement said:
 - *"the funds remain in a strong financial condition"* and
 - *"over the forthcoming bonus year, the majority of bonuses will see similar or slightly higher bonus rates compared to last year"*, and
 - *"With-profits policies will typically see changes in policy value ranging from small reduction of 0.5% to an increase of up to 1.5%."*
- His overall policy value was reduced by 3.7% as a consequence of a fall in terminal bonus of 8%. This isn't smoothing as he understands it, and he's unhappy he wasn't given an opportunity to reconsider his options.
- It's wrong for the business to penalize a single cohort of plans, which amounts to a surcharge rather than a moderated reduction in the gain.
- He's unhappy that our service can't challenge a company to justify the actuarial considerations that cause it to abandon its own principles and practice, set aside the expectations of the fund chairman, and betray its customers by pillaging their returns.
- He feels let down by our service.

The investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached the matter has been passed to me for review.

What I've decided – and why

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 agree with the investigator's conclusions for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr K says, I'm unable to say that Prudential has behaved unreasonably by awarding a terminal bonus that was lower than what Mr K expected, given that he was made no guarantees.

But before I explain why this is the case, I think it's important for me to recognise the strength of feeling Mr K has about this matter.

He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading – it's not what I'm required to do – in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

My role is to consider the evidence presented by him and Prudential, and reach what I think is an independent, fair and reasonable decision based on the facts of the case, rather than take any sides.

I appreciate Mr K feels frustrated about the points that we can and can't consider. But it's not my role to regulate or punish Prudential for any alleged breaches, that's the role of the industry regulator, the FCA. My role is to consider whether or not Prudential has done anything wrong.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but perhaps unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I'm aware Mr K has questions about the technical calculations, but I'm not required to answer these, and my inability to answer particular questions doesn't prevent me from reaching a decision in this case either.

I understand that Mr K is unhappy about the maturity value he's recently received from his plan, under a Scottish Amicable legacy policy, managed by Prudential. He's particularly unhappy that the surrender value is around £900 lower than what he was told just a few

weeks before. Mr K feels that he wasn't given an indication of the likely value to help him decide whether or not to cash in the plan or extend it.

I understand that the surrender value has always been subject to change, and that Prudential provided a value which it felt fairly represented Mr K's share of the fund for the time the plan has been in place.

I don't think prior to this there was any reliable way of knowing what that final figure might be, because it's subject to change, dependent on the terminal bonus. And other than the guaranteed sum assured I don't think Prudential could've given Mr K any kind of guarantees as to the final value.

So the decision about whether (or not) to extend the plan or cash-in was solely Mr K's, based on the information he was given. I'm unable to say the Prudential is now to blame for his decision to cash his plan. I note Mr K says he was given the usual caveats, but the point is he wasn't given a guaranteed final figure, and quite rightly so given that terminal bonuses are only attached on the date the funds are taken from the plan.

I appreciate the points made by Mr K about why he disagrees with Prudential's calculations, but I'm conscious that if the smoothing process leaves a surplus in the fund, the policy can receive a terminal bonus (although it's not guaranteed) – as a distribution of that surplus – and that's what has happened here resulting in Mr K receiving a terminal bonus, albeit a figure that he's unhappy with.

This way, despite what Mr K says, I think it's likely that he received the value of the gains accrued by the fund whilst the plan was in force. However, I note both the annual and terminal bonuses are at Prudential's commercial discretion, and it's not something this service can interfere with. In other words, Prudential is entitled to decide – based upon recommendations from its actuaries – how much annual and terminal bonus it applies.

And notwithstanding the above, it doesn't mean from what I can see that Prudential has deliberately tried to cheat Mr K out of his gains, or that it has deliberately targeted him unfairly because he was cashing in the plan.

It was made clear to Mr K – six weeks before he surrendered that plan – that the end value will depend on market forces, so the value given at the time wasn't guaranteed.

Anyway, I appreciate the points made by Mr K and his frustration about what we can and can't consider, but any question of how the funds are managed and operated is a question for the industry regulator, the FCA, which – unlike our service – supervises the management of funds and any question over whether Prudential has properly managed the with-profits fund is an issue for it to consider in its regulatory capacity.

Our service doesn't have a regulatory role. And so when we receive a complaint involving concerns about whether a fund has been managed appropriately, it means we're not generally in a position to carry out an investigation.

We can make the FCA aware of potential issues that are brought to us, but we don't represent individual customers before the FCA. If it was the case that the FCA had concerns about the fund and its management, it has the powers to investigate and take any action it considers appropriate. In the event the FCA did identify issues and take action, it's unlikely it would contact individual(s) directly. Instead, it would be more likely to instruct the business to take action and contact policyholders itself.

If Mr K wishes, he could also contact the FCA himself with details of his concerns. But as I've said above, it's unlikely he'll receive a response setting out any action it may decide to take.

I appreciate Mr K will be disappointed I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I'm not persuaded to require Prudential to do anything.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 April 2020.

Dara Islam
Ombudsman