DRN-3517752

The complaint

Mr and Mrs P's representative, a Claims Management Company (CMC), complains on their behalf that they were given unsuitable investment advice by The Prudential Assurance Company Limited, referred to as "the business" or "Prudential".

In short, the CMC says:

- There was no justification for advising Mr and Mrs P to invest in a risk-based investment.
- They were close to retirement and there's no indication that they understood the risks involved.

What happened

In April 2000, Mr and Mrs P were advised to invest £8,269 in an investment bond. In October 2000, they invested another £7,350 in the same product.

At the time it was recorded that:

- Mr and Mrs P were in their mid to late 50s, married, and had a dependent child.
- They were self-employed and earning £15,000 each. They had a joint monthly outgoings of £900, and a joint net monthly disposable income of £1,100.
- In April 2000, Mr and Mrs P held a £25,000 cash deposit. In July 2000 they held £34,000 in cash and around £16,000 in investments.
- They also had an interest only mortgage with £75,000 outstanding. They had no other liabilities.

In April 2005, Mr and Mrs P surrendered the bond and received £18,705.

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

- Mr and Mrs P had around £34,000 in savings, therefore they had access to cash for emergencies/unplanned expenditure. They were also prepared to invest for at least 10 years. In the circumstances the investment was affordable and didn't interfere with any future/planned spending.
- Mr and Mrs P had a small equity based Personal Equity Plan (PEP), but they held majority of their money in a savings account with another bank. It's fair to say they had limited investment experience.
- Given the passage of time, it's not surprising that there's limited information about their attitude to risk (ATR)/risk assessment. The 2000 fact find shows that Mr and Mrs P had chosen a 'very cautious' level of risk, out of: 'capital security', 'very cautious', 'cautious' and 'adventurous'.
- A risk assessment isn't available/wasn't completed but based on the above it appears that risk level was considered.

- Just because they were inexperienced investors didn't mean that they were precluded from investing/taking a risk.
- Mr and Mrs P were advised to invest for a period of 10 years, although there wasn't a fixed term. They were advised to leave the investment for at least five years to allow it to grow.
- The bond was invested in a With-Profits fund. Prudential's brochure explained the following:
    - *'we invest in a wide spread of investments, including shares in well established major UK companies like BP, Sainsburys and British Telecom, overseas companies, fixed interest securities and property'.*
- There's nothing to say that this investment – also with a cautious risk rating – wasn't in line with Mr and Mrs P's attitude to risk.
- At the time Mr and Mrs P had up to 11 years before they were due to retire. The fact find notes that they wanted to invest in the bond, despite discussing investing in pensions.
- Mr and Mrs P encashed the bond in April 2005 and used the funds towards a house purchase. There's no suggestion that any withdrawals were made prior to this.
- Despite there being other products – that in hindsight might've done better – doesn't mean that the recommendation was unsuitable in this instance.

The CMC disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it said:

- There's no proper discussion regarding risk, so it can't be certain that Mr and Mrs P understood the nature of the recommendation.
- The nature and charges don't seem to have been explained to the them which are likely to have had an impact on the returns.
- What does 'low risk' mean?
- It hasn't seen that the adviser considered other products and given the advantage and disadvantages.

The investigator having considered the additional points wasn't persuaded to change her mind. In summary, she said:

- Just because there's no or limited information about an issue doesn't meant that it didn't happen or that we should uphold the complaint. It would be for the complainant to provide any further evidence they wish us to consider.
- Mr and Mrs P held discussions with the adviser about their personal circumstances and objective which led to the recommendation being made.

In response to the investigator's subsequent view, the CMC made the following points:

- A firm is required to take reasonable steps to ensure that the client understands the nature (including risk) of any investment. If there's no discussion of what a very cautious level of risk is, how can the investigator conclude the recommendation was suitable?
- The business has provided point of sale documentation and hasn't said that anything is missing.
- The current fund fact sheet shows that the With-Profits fund is invested 60% in equities. According to Prudential, it classes the fund as low to medium risk.
- In the circumstances, it's not sure how the investigator has concluded that the recommendation is suitable for Mr and Mrs P.

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 conclusion for much the same reasons, I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what the CMC says, I'm unable to safely say that the recommendation was unsuitable for Mr and Mrs P given their circumstances.

The CMC has provided submissions to support the complaint, which I've read and considered carefully. However, I hope that Mr and Mrs P 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. My role is to consider the evidence presented by the CMC, and Prudential, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice. But it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

I agree with the investigator that given the passage of time it's no surprise that the business doesn't have more information available such as the actual fund fact sheet. Businesses aren't required to retain information indefinitely, so I can't blame Prudential for not having more information available. I'm mindful that this investment was surrendered over 15 years ago. Despite what the CMC says, the business hasn't confirmed that it has provided a complete set of papers, including all discussions and point of sale documentation, from over 20 years ago.

But, on the face of the available evidence, and on balance, I can't safely say that Mr and Mrs P's ATR wasn't considered or discussed properly. The 2000 fact find suggests that they choose 'very cautious' as their level of risk – which is the equivalent of a 'two' – out of the four options available. On balance, I think it's more likely than not that this would've been done after a discussion with the adviser.

Although it's not entirely clear what the business meant by 'very cautious', it could be argued that this was the equivalent of a 'low-risk' in the ordinary sense, and with the first option 'capital security' the equivalent of a no-risk, the third option 'cautious' the equivalent of a balanced risk, and finally the fourth option 'adventurous' the equivalent of a high risk.

In the circumstances, I can't say that their ATR was unreasonable, or that it carried more risk than they were willing to take. I'm satisfied that the recommendation – invested in a With-Profits fund which also had a 'very cautious' risk rating – met their objective for capital growth whilst taking some risk. Despite what the CMC says about the current fund fact sheet, it's no basis for me to uphold this complaint, in the absence of the actual fund fact sheet from 20 years ago.

On the face of the evidence, and on balance, it seems that other options – such as an investment in pensions – were discussed but Mr and Mrs P wanted to invest in the bond.

Despite what the CMC now says, I think it's unlikely that they wouldn't have been sent key documentation that made clear the charges and nature and operation of the bond.

Just because Mr and Mrs P were 'approaching' retirement, didn't mean that they had to retire and/or couldn't invest in a risk-based investment. I note they were self-employed and ran their own business, so could've worked for longer if they wanted to. I also note they were still some years from retirement with Mr P planning to retire at 70 years of age, and Mrs P at 67 years of age.

I also note that at the time they had access to a relatively large sum of cash, and a reasonable net monthly disposable income, so they were in a good position to invest, and continue to grow their savings if they wanted to. In other words, they could afford to invest and take some risk, without it materially affecting their lives.

In the circumstances, and on balance, I'm not persuaded that just because they were 'approaching retirement' or because they were inexperienced investors, meant that they couldn't invest in a (low) risk-based investment over the medium term. Despite having a tendency to hold their money in cash, I note they previously invested in a PEP, so I can't say that they were risk averse or that they didn't want to take any risk at all with this portion of their money. In the circumstances, and on balance, I'm satisfied that they broadly understood the risks involved with the bond.

I note it was recorded that Mr and Mrs P were:

"*prepared to accept a small amount of risk for this element of your investment planning in order to achieve growth over the medium term. Prudential categorises this as a 'very cautious' attitude to risk. Contributions to the Prudential Investment Bond are invested in our with-profits fund which has a 'very cautious' risk rating*".

I note that having invested a lump sum in April 2000, Mr and Mrs P went on to invest another similar amount in the same product just six months later. Their actions don't suggest that they were unhappy with the investment or that they had any concerns about investing in a risk-based investment.

I'm aware that Mr and Mrs P surrendered their investment early after four-and-a-half/five years despite intending to invest for 10 years, for unforeseeable reasons – that neither they nor the business probably could've predicted – and they still made a profit.

If they had plans in the background to purchase a new property but didn't tell the adviser, it's not something I can blame the business for. The adviser can only advise on the information provided.

The CMC says that Mr and Mrs P made an average return of 3% a year. Despite what the CMC says, I note they didn't complain about this at the time, which would suggest it wasn't something they were unhappy about.

I note that Mr and Mrs P might now be unhappy with the returns upon surrender, but I've seen no evidence to suggest that they were given any guarantees about the level of return. Just because they didn't receive a better return doesn't mean the recommendation was unsuitable.

I appreciate Mr and Mrs P will be thoroughly unhappy that I've reached the same conclusion as the investigator. Whilst I appreciate their frustration, I'm not going to ask Prudential to do anything.

On the face of the available evidence, and on balance, I'm unable to uphold this complaint and give Mr and Mrs P what they want.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 28 October 2022.

Dara Islam
Ombudsman