DRN-5139119

Financial Ombudsman Service

The complaint

Mr T complains about the manner in which The Prudential Assurance Company Limited has administered his with-profits bond. Specifically, he submits that it misled him about the nature of the bonus declaration in February 2023, which has caused him to suffer a financial loss.

What happened

Mr T is now represented by his independent financial adviser (hereafter the 'adviser') in bringing this complaint. His Prudence Initial Charge Bond was taken out in January 1997 and is invested across five segments of Prudential's With Profits Optimum Return fund. Mr T has made capital investments into the fund in 1997, 1999, 2000 and 2002.

Mr T complained – and this was followed up by his adviser. He said he was shocked to discover the value of his bond had dropped by £37,852.54 effective of 1 March 2023 – that being the day after the annual bonus rates are applied by Prudential. He therefore made a complaint to Prudential. He explained that had if Prudential hadn't said in its communication about the forthcoming likely increase in his bond's value, he'd have made a withdrawal before the bonus declaration – as his adviser had recommended.

Mr T explained that on 28 February 2023, the value of his bond was £875,149.27. The recommendation he'd received was to withdraw £243,361- the most he could withdraw without triggering a chargeable event - and place them into a new Prudential investment policy. However, Mr T had been sceptical, and decided to wait until he received Prudential's bonus declaration. On 1 March 2023, the value of the fund was reduced by £37,852.54. So, if Mr T had followed the advice and not been swayed by the bonus declaration, he would have saved 27.8% of his losses (£10,515.50).

A complaint response was issued to Mr T on 23 March 2023. Prudential rejected the complaint. It said that whilst it understood Mr T's disappointment that his policy had not grown as expected, growth was not guaranteed. The value of his policy could go up or down at any time. Prudential was otherwise satisfied that the values Mr T had been quoted were correct in line with the performance of the fund and the bonuses declared.

Prudential also did not agree that its bonus declaration was misleading. The declaration stated how "*Annual Bonus rates have either increased or been maintained at the same level as declared last year*". This statement was true, as Mr T's current Annual Bonus rate was 1.75%, whereas last year, it was 1.25%. The declaration went on to say, "*most of our customers will see small decreases in Final Bonus rates, but due to Annual Bonus additions will see small increases to their plan values*". This was also true; Mr T's final bonus had reduced, however, over the course of the year, his policy value had increased.

Prudential explained that although the reduction to final bonuses is made on one day, it reflected the investment performance of the whole year. Looking at the drop in isolation makes it appear large; however, performance should be reviewed over the course of a year.

The adviser replied on Mr T's behalf, noting that Prudential hadn't properly understood or addressed the complaint. Prudential apologised on 2 May 2023. It noted that its final response was a reply to both Mr T's complaint and the adviser's later complaint – which it had treated as one and the same.

Thereafter the adviser sent a number of emails over several months to Prudential, to explain the complaint had not been dealt with. Mr T hadn't used technical language, when the adviser had. The adviser said he had expanded on Mr T's complaint, noting how Mr T had not acted on his financial advice, because of the information issued by Prudential. In October 2023, Prudential reviewed the complaint again, and added two grounds of complaint – the adviser's concern about delays, and the fact it had failed to identify the complaint was pursued separately by the adviser on Mr T's behalf.

In a final response letter dated 14 November 2023, Prudential said that the substantive complaint about the bonus declaration was still not upheld. It explained that the 2023 bonus declaration was not intended to provide a basis for action. It said that the announcement referred to 'most' customers, but no individual customer could be certain of the impact of the bonus rates upon their individual policy. As it was, Mr T's policy had shown a small increase in value (of £8,478) between 1 March 2022 and 1 March 2023.

Prudential also explained that though the final bonus reduction was made over one day (28 February to 1 March), it reflected the annual performance of its with-profits fund. The loss therefore ought to be seen on that annual basis.

Prudential did, however, send Mr T a cheque for £300 for it failing to recognise that the adviser had raised a new complaint, and the delay in making a further response.

Mr T and his representative thereafter referred the complaint to this service, regarding the outstanding bonus declaration issue. Mr T also mentioned that he hadn't cashed in the cheque for the customer service failings identified by Prudential. The adviser said that Prudential's defence for the misleading wording relating to the bonus was ambiguous– and he and Mr T felt this did not stand up to scrutiny. He also mentioned that the information quoted by Prudential in the November 2023 letter differed from the wording published on its website; this showed Prudential was being dishonest.

An investigator then reviewed the complaint, but he did not believe it should succeed. He felt the £300 payment had been appropriate for the delay and customer service issues around multiple complaints, and he didn't recommend that anything further be paid to Mr T.

In respect of the wording used for the bonus declaration, the investigator explained that he wasn't able to tell Prudential what it could and could not say. He did sympathise with Mr T in recognising that Prudential might not have gone far enough with its tone in the letter warning him that the bonus was not guaranteed. However, he did not believe the wording was sufficiently misleading such that Prudential ought to be liable for the loss Mr T claims now.

Mr T said he disagreed with the investigator. The adviser set out three principal arguments as to why he could not accept the outcome:

1. Mr T agrees that the Financial Ombudsman Service is not responsible for Prudential's choice of publications. However, Prudential did make several mistakes in issuing ambiguous and misleading correspondence – and this service can make an assessment as to whether the correspondence was clear or fair.
2. The investigator also relied on the wording used by Prudential where it said *most* of our customers will see small decreases in the final bonus rates but due to annual bonus additions will see small increases overall – and he therefore inferred that

some customers would not see increases overall. However, the true position is that a large number of customers suffered losses. To that end, the adviser had undertaken a breakdown showing the considerable overall losses for affected customers.

3. The adviser also believed he ought to explain how traditional (conventional) with-profits policies worked. I have read this in full, though I won't repeat it verbatim here. He set out how the policies were incredibly confusing for clients to follow and Prudential's use of misleading language, obscurity and unclear publications should be called out by the Financial Ombudsman Service. Failure to do that suggest we condone unfair practices, with businesses using smoke and mirrors to operate with-profits investments.

In a further call to our investigator, Mr T made some additional points:

- Prudential had been entirely obstructive throughout his complaint, and £300 was an entirely unreasonable amount of compensation for a matter that has dragged on for several months.
- Though he is in receipt of the £300 cheque, he has never cashed it.
- He feels that the fees he has paid to his IFA should be reimbursed to him.
- He questions how he isn't one of 'most' customers, given he has held his policy for some 32 years.
- Prudential gave no indication in the year to 28 February 2023 that the policy would drop by so much on 1 March.
- It hadn't increased or maintained bonuses, and for instead cut all the yields across each segment of his investment.
- Prudential has acted unfairly and deceitfully – and its misleading information has cost him over £10,000.
- Prudential left the adviser a voicemail message on 13 July 2023 where it said it was awaiting manual calculations and thereafter it would settle the complaint – but this never happened and the offer was never mentioned again.

Our investigator then reconsidered his view on the complaint, in light of the additional points made by Mr T and the adviser. A separate complaint was set up about the sale of the policy.

In respect of this complaint, our investigator was not minded to change his view that it shouldn't be upheld. Though he felt Prudential might have chosen more emphatic language, it had remained clear that the bonus did not have a guarantee. He also did not believe that the voicemail message left by Prudential meant that it intended to uphold the entire complaint – rather, it was a holding message from a staff member notifying Mr T's adviser that the complaint handler was on holiday.

The adviser said Mr T wanted the complaint to be passed to an ombudsman. He said that his three additional points of complaint had not been understood nor properly answered by the investigator. He also said, in summary:

- The investigator has failed to understand the complaint whatsoever.
- He now contends that it is not simply the use of the wording for 'most' customers, but the overall declaration made by Prudential that most of its customers would see increases in their policy values, when this was patently not the case.
- He proved in his spreadsheet supplied to this service that every single tranche of funding suffered a reduction in policy values when the changes were applied, apart from any funds invested between 1 March 2022 and 28 February 2023.
- There can be practically no customers investing funds under advice, as Mr T's product is now closed to new business.

- Therefore, given the above, Prudential's declaration was entirely misleading.
- It should have said most will see an increase in the value of their fund *over the year*.
- Missing out that distinction was what lead Mr T not to surrender part of his policy following his advice – and that loss is directly the responsibility of Prudential.

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.

I thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, given the current demand for our service.

I recognise the depth of feeling Mr T and his adviser have about this matter and I thank them for the time and detail taken over their submissions to this service, a summary of which I have outlined in the background to this decision. That being said, I won't be addressing every individual submission that Mr T, the adviser, or Prudential have made in turn. I do not intend that as a discourtesy to the parties. However, we are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each specific point or reach determinations on every individual submission put forward by the parties.

My remit is to make independent findings on what I believe to be fair and reasonable to both parties in the circumstances; this does not follow a prescribed format or require chronological assessment of every incident in the complaint history. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete, inconclusive or contradictory, I'll make conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence before me and the wider surrounding circumstances.

Having reviewed matters carefully, I've reached the same overall outcome as the investigator and I'll summarise my reasons for that below.

Mr T has invested in one of Prudential's with-profits funds. The industry regulator, the Financial Conduct Authority ('*FCA*'), has set down principles and rules that businesses must follow when working out and applying bonuses in with-profit funds. In accordance with these rules, Prudential publishes its Principles and Practices of Financial Management document ('*PPFM*') which sets out how it manages its with-profits funds and how it is accountable to the FCA in doing so. It's required to appoint a with-profits actuary and the FCA provides rules and guidance on those duties. Prudential also has an independent With-Profits Committee whose remit is to protect the interests of the with-profits policyholders and ensure that they are treated fairly. An annual report is provided to policyholders setting out how Prudential has complied with its PPFM. So, I don't think that a reduction in bonus means something has gone wrong or that the fund is being managed improperly.

I appreciate both Mr T and the adviser have expressed their frustration that our service hasn't provided an investigative analysis or independent view of Prudential's approach to its with-profits funds. However, that isn't our role. The Financial Ombudsman Service provides informal dispute resolution and was set up to handle individual complaints about financial products from consumers. We're not able to carry out a forensic audit of Prudential's management and operation of its with-profits funds - as explained above, it is the regulator that monitors the management of these funds. Prudential has made a decision in relation to setting returns within Mr T's with-profits fund, and that decision will have a wider impact on all investors, not just on Mr T. If Mr T remains unhappy with how the fund is operated, he can report this to the FCA.

I have thought carefully about Mr T's concerns around its wording ahead of the annual bonus declaration/overall yield, which takes place every year at the start of March. For 2023, Prudential said "*this year, most of our customers will see small decreases in the final bonus rates but due to annual bonus additions will see small increases in the value of their plans*".

Mr T did not fall into the category of 'most' customers, and he feels that if he had been properly forewarned of this, he could have completed his partial withdrawal and stemmed some of the financial loss.

However, I am not persuaded that Prudential was required to do this. In my view, Prudential didn't have to tell Mr T in advance that his bond value might reduce on the declaration date. Firstly, it would not have been able to presume that was the case, given the overall prediction that most customers would not see a drop in value. Secondly, giving advance notice that a revaluation would reduce values, and allowing policyholders to act before it, could be detrimental for policies still in the fund.

Overall, I don't think fairness required that the information Prudential gave had to include actionable advance notice of the bonus changes in the affirmative way Mr T would've needed to make his decision about a partial withdrawal. The declaration referred to changes that would happen for most, without specifying to whom it would or wouldn't apply. Prudential says it wasn't supposed to provide a basis for action, and I don't find that unreasonable in the circumstances.

Further, I've not seen any objective evidence that suggests a mistake by Prudential. Though the reduction in the bonus in March 2023 was understandably disappointing for Mr T, I've seen no clear evidence of other wrongdoing by Prudential, or that the calculation was so disproportionate that some sort or error could've been made. Instead, I'm satisfied the reduction in the terminal bonus, and the associated impact on the value of Mr T's bond, is attributable to the particular circumstances that Prudential explained in its final response letters.

The final aspect of the complaint concerns Prudential's administrative failings in not noting that Mr T's adviser had furthered his complaint in particular detail – and that the complaint required revisiting. Prudential has rightly upheld that part of the complaint, since it failed to identify the expanded issues, and it took several months to provide another reply.

What this service does is consider if a business has treated a customer unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. In this case, that was to correctly answer Mr T's concerns about his bond, through the adviser – as Prudential had authority to liaise with the adviser on his behalf.

As well as putting right any financial losses in a complaint (though there are none in this circumstance), we also consider the emotional or practical impact of any errors on a complainant. In doing so, we do not fine or punish businesses; as I explained earlier in this decision, the FCA undertakes the role of regulator. It may be helpful for Mr T to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Taking into account the impact of the delay and poor customer service, I believe the proposed payment of £300 was reasonable in the circumstances where Prudential caused upset and frustration for Mr T. The mistake had a medium-term impact on Mr T whereby Prudential unduly prolonged the complaint process by several months. I believe a sum of £300 is appropriate for one-off errors of this nature, and I do not make any other award.

Putting things right

I believe that Prudential has taken reasonable steps to resolve the complaint, by apologising to Mr T and by offering to pay him £300 for the upset he had been caused by the impact of its mistake. I think this offer is fair in all the circumstances. I note Mr T did not cash the cheque at the time it was issued to him in November 2023. So my decision is that Prudential should pay £300 to Mr T, as it hasn't been able to make that payment to him to date.

My final decision

For the reasons explained, I uphold this complaint in part. I do not uphold the complaint in respect the information Prudential provided to Mr T about his investment.

However, I agree that the failure to properly address all of Mr T's complaint issues (as furthered by his adviser) was unreasonably frustrating for him, when he and the adviser had actively chased Prudential for a number of months. I find that Prudential's offer to pay Mr T £300 as compensation for the impact of that customer service error is reasonable in the circumstances.

I direct The Prudential Assurance Company Limited to pay Mr T £300. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 December 2024.

Jo Storey
Ombudsman