

complaint

Ms A complains she was given misleading information about the potential benefits of taking out a savings plan with The Prudential Assurance Company Limited in 1992. She has said that she was led to expect a much higher payment at maturity than has turned out to be the case.

background

Prudential told Ms A it accepted that the savings plan was unsuitable for her circumstances at the time. It compared the return she received at maturity with the return she would have received using the Bank of England base rate as it believes she would have put her savings in a bank or building society deposit account instead. This calculation did not show any loss.

The complaint was referred here. Our adjudicator recommended the complaint should be upheld. He felt that it was likely Ms A was looking for a potentially higher return than was available from deposit based accounts and was willing to accept a small risk for the potentially higher return. He suggested Prudential should use a comparison using the Bank of England base rate plus 1% to determine if she has incurred a loss.

Prudential did not accept the adjudicator's findings. It says that there is no evidence that Ms A was willing to accept any risk with her savings and believes it has used a fair comparison by using the Bank of England base rate.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator and for essentially the same reasons.

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I have to assess the evidence on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Prudential has accepted the endowment savings policy should not have been recommended to Ms A. I have not therefore considered its suitability for Ms A's circumstances. The only issue which I need to address is how fair compensation should be calculated.

Due to the passage of time, and the different regulatory requirements in place in 1992, there is limited information to show what was discussed between Ms A and the adviser. What does seem clear is Ms A was looking to start some form of regular savings plan. She was in her early twenties, single, with no dependents and was living with her parents. She had no other investments and it is not clear what savings she had. The adviser appears to have recorded she had "*variable*" savings in bank and/or building society accounts. There is no record of any discussion about what level of risk Ms A might be willing to accept in order to obtain a potentially higher return.

Ms A has said the adviser told her she could obtain a higher return than on a deposit based savings account; she has said this was what she was looking for. I have no reason to doubt Ms A's recollections. It seems to me she was in a position to accept a small degree of risk with her savings in order to have a potentially higher return. I have not seen evidence to suggest she was risk averse or unwilling to consider any risk. I set out below what I find is fair compensation in this case.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Ms A as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Ms A would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given her circumstances and objectives when she invested. To compensate Ms A fairly, Prudential must

compare

- the performance of Ms A's policy

with

- the position she would now be in if the investment had produced a return of 1% more than Bank of England base rate.

If there is a loss, The Prudential Assurance Company Limited should pay this to Ms A. I have decided on this method of compensation because Ms A wanted to achieve a reasonable return and was prepared to invest.

how to calculate the compensation?

The compensation payable to Ms A is the difference between the *fair value* and the *actual value* of her investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the amount Ms A received when her policy matured.

The *fair value* is what the investment would have been worth if it had obtained a return using the method of compensation set out above.

To arrive at the *fair value*, Prudential should calculate the return by way of capital growth on the investment using an interest rate equivalent to 1% more than Bank of England base rate compounded yearly from the date each premium was paid to the date the policy matured.

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the maturity date to the date of settlement. Income tax may be payable on this interest.

my final decision

For the reasons given, my final decision is that I uphold the complaint. I direct The Prudential Assurance Company Limited to pay Ms A the amount calculated as set out above. Redress should be calculated and paid within 28 days of it being informed of acceptance of this decision.

Keith Taylor
ombudsman