

complaint

This complaint involves a Prudential Investment Bond (PIB) that Mr H took out on the advice of The Prudential Assurance Company Limited. Mr H says policy did not match his circumstances and needs at the time and as a result was mis sold to him. The complaint has been brought through a claims management company.

background

In January 2000 Mr H went to speak with an adviser at The Prudential to discuss his saving and investment options. He had recently retired and had a total of £13,743 to invest. He was looking to invest in order to achieve potential growth on his capital.

Following the fact find the advisor recommended that Mr H invest £10,000 into a PIB. This was invested in the product provider's with-profits fund and was intended to grow the capital through the addition of bonuses. The PIB was set to run for a minimum of ten years.

The adjudicator investigating this complaint noted that, at the time, Mr H was 61 years of age, single with no financial dependants. Mr H was retired with an annual income from his civil service pension of £3,338. This gave him £278 per month and £28 disposable income. Mr H was also renting his accommodation at the time.

Mr H had £2,600 in a deposit based savings account plus £11,143 on deposit as a lump sum from his recent retirement. Mr H's attitude to risk for lump sum investments was classified as "2" on a 4 point scale with 2 being "Very cautious".

The adjudicator read the key features document that was sent to Mr H by The Prudential. On page eight it explains how market value reductions work. This also explained the risks of the investment were explained to Mr H on page five where it states "*the value of your investment can go down as well as up.*"

Mr H was recommended to retain 30% of his capital for emergency funds. While this exact figure was not followed, the adjudicator did not consider that this was a sufficient amount to retain given Mr H's financial situation at the time.

Given that Mr H was retired at the time and was in rented accommodation the adjudicator also concluded that it was more likely than not that Mr H's expenditure would increase greater than his income on a yearly basis.

Overall the adjudicator concluded that the advice was not suitable given Mr H's overall circumstances. He did not think Mr H had a sufficient proportion of capital set aside, away from any risk of erosion. Furthermore the adjudicator did not feel that Mr H appears to have a sufficient capacity to be able to take any degree of risk with his capital.

The business disagreed with the view. In summary it reiterated its case. In particular it commented that Mr H had been advised to keep a bigger proportion of his funds outside the investment and had chosen to invest the amount he did. The business also disputes that the investment sold was unsuitable on risk.

As the matter has not been resolved it has been passed to me to decide.

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 have come to the same conclusions as the adjudicator before me which I will set out below

I should mention that the original adjudicator assessment concluded that the complaint should not be upheld for much the same reasons as given by the business. However on further review the adjudicator concluded it should in fact be upheld.

In summary the business says the sale was affordable, low risk, and compliant. Those representing Mr H make a number of points which I do not need to repeat in detail although some I agree with which I will deal with below.

At the time of the sale in January 2000, Mr H was 61 years of age, single with no financial dependants. Mr H was retired with an annual income from his civil service pension of £3,338. This gave him £278 per month and £28 disposable income. Mr H was renting his accommodation.

As the adjudicator said:

Mr H had £2,600 in a deposit based savings account plus £11,143 on deposit as a lump sum from his recent retirement. Mr H's attitude to risk for lump sum investments was classified as "2" on a 4 point scale with 2 being "Very cautious". This was stated in the fact find as; *"In saving or investing to achieve my [Mr H's] goal over a pre-determined period of time, I want the potential of some real capital growth. I understand that to have this potential I need to take a small risk with the capital I invest"*.

Mr H was recorded on the fact find as intending to invest for a period of ten years. The recommendation, based on this fact find, was to invest £10,000 into a PIB.

The information contained within the fact find was confirmed as being accurate by Mr H when he signed and dated the declaration on the 18 January 2000.

From looking at the fact find completed it appears Mr H wanted capital growth. I think it is difficult to be sure what true attitude to risk or understanding of risk Mr H had. I note he was lately a cleaner before fully retiring. While I must avoid generalisations there is no evidence Mr H had any experience or understanding of investment risk.

I have looked at the asset make-up of the with-profits bond that the PIB was invested in and note that it consists of a spread of assets including equities (33%), fixed interest securities (44%), cash (4.2%), other investment assets (5.9%) and property (12.1%). I fully understand what the business is saying and I also understand they would assess such a fund as suitable for a cautious or low risk investor. Of course that is not for me to comment on all I can do is decide whether this product was suitable for Mr H.

It has often been said that with profit funds (and most certainly not just this business' fund) are complex and opaque. How they work is intrinsically very difficult to understand in any real sense. I am not sure Mr H would have understood or did understand properly what he was investing in.

I agree with the adjudicator when he said it is important to look at not only Mr H's attitude to risk but also his capacity for taking that risk with his capital. I think it fair to describe Mr H's circumstances as "modest". He had very limited funds for what might well be over 20 years of retirement.

This is a medium to long term relatively inflexible and extremely complex investment. Other options do not appear to have been offered to Mr H. Although I can see the business' arguments I simply cannot see how this was the best thing Mr H could have been recommended to do with his very limited resources. In short I do not think he could afford to lose *any* money, although I understand the safeguards inherent in the fund recommended.

My final decision

My final decision is that I uphold this complaint. I direct that The Prudential Assurance Company Limited calculate and pay compensation (if any) to Mr H. I should warn Mr H it is possible that the calculation below will result in no compensation being payable. Not all bad advice results in financial loss.

As Mr H does not appear to display a capacity for taking a risk with his capital I consider that Mr H should be placed in the position he would have been in had he placed his capital in a non-risk based environment.

fair compensation

To compensate Mr H fairly, the business should put him as close to the position he would probably now be in if he had not been given unsuitable advice.

I think Mr H would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

what should the business do?

To compensate Mr H fairly, the business should

compare

- the performance of Mr H's investment

with

- the position Mr H would now be in if his investment had produced a return matching the average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England

If there is a loss, the business should pay this to Mr H.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr H wanted to achieve a reasonable return without (in my view) risking any of his capital.
- Mr H was prepared to invest for a longer period of time – but with some flexibility.
- The average rate would be a fair measure given Mr H's circumstances and objectives.
- It does not mean that Mr H would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to his capital.

how to calculate the compensation

The compensation payable to Mr H is the difference between the *fair value* and the *actual value* of his investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

actual value

This means the value of the investment if terminated on the date of calculation.

fair value

This 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 this value the business should:

- find out the average rate for fixed rate bonds, as published by the Bank of England, for each month from the date of investment to the date of calculation
- the rate for each month is that published at the end of the previous month
- use the rate for each month to calculate the return for that month
- the calculation should be carried out on an annually compounded basis; that is, with the return added to the investment at each anniversary
- work out the value to the date of calculation

additional capital

Any additional sum that Mr H paid into the investment should be added to the calculation from the point it was actually paid in.

withdrawals and income payments

Any withdrawal or income payment that Mr H received from the investment should be deducted from the calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if the business adds all those payments to the *actual value* and compares that total with the *fair value* instead of periodically deducting them.

further information

- I am assuming that the investment is still in place. If that is not the case, the parties should inform me immediately.
- The information about the average rate can be found in the “Statistics” section of the Bank of England website. It is available under the section headed Interest and Exchange rates data / quoted household interest rates / fixed rate bonds / one year.

The compensation should be paid within 28 days of Mr H accepting this decision. If it is not interest at 8% simple should be added to the redress from the date of this decision to the date of payment. If the business is advised to deduct tax from that interest it must provide a tax deduction certificate to Mr H.

Mike Boyall
ombudsman