

complaint

Mr K complains through a claims management company about the sales of 6 mortgage endowment policies made by The Prudential Assurance Company Limited. The policies were sold between 1985 and 1998. He makes a number of points. In summary, Mr K complains that the policies were unsuitable because they were risk based, better alternatives were not considered and that the life cover attaching to the policies was not needed in all cases.

background

Mr K complained to the business which rejected his complaint in respect of 4 of the policies but upheld his complaint in respect of 2 others. The business calculated redress in respect of the 2 policies it upheld and concluded that Mr K had suffered no loss. Unhappy with that and the basis on which redress had been calculated Mr K brought his complaint here.

The adjudicator considered the matter and agreed with the business that complaints about 4 of the sales should be rejected and 2 upheld. However she thought the way the business had calculated redress was wrong and that it should be amended. Mr K's representatives have not disagreed with the adjudicator's conclusions. However the business disagreed and asked, as it is entitled to do, for an Ombudsman's final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In respect of the "merits" of these complaints—that is whether they should be upheld or not, I agree with the conclusions reached so far and which appear to have been agreed by both parties and for the same reasons.

Here I will only deal with the remaining issue. That is how redress should be calculated in respect of the two complaints which have been upheld.

In brief the business offered redress on the basis of a comparison of the policies' values with what the premiums would be worth if invested in a 90 day notice savings account. That is the amount of premiums plus interest less surrender or maturity values. That is the calculation which showed no loss and which therefore resulted in no compensation being payable.

Redress is intended to put someone in the position they would have been in "but for" the business' errors. That of course can never be *known-only ever estimated*. In a calculation like this the starting point is to try and ascertain where premium payments would have been saved or invested if they were not being paid into the policy or policies complained about.

Sometimes it will be reasonably clear where the money would have been put. There might for instance already be a regular savings payment being made into a specific account from which payments were diverted into the mis sold product or products. It will often be fair to assume that, had the "new" products not been sold that the regular payments would have continued as before.

Here however, as is often the case, it is not clear where the money would have gone. Mr K says he would have invested the money elsewhere. That suggests to me he would indeed

have done something with the money-rather than spending it as part of his day to day expenditure.

Let me make it clear it is entirely possible that a comparison with a 90 day notice savings account might be the most appropriate comparison to make. It is not in any sense fundamentally flawed. What I find difficult to understand however is why the business thinks it is right in *this complaint*. There are any number of accounts with various notice periods.

Why 90 days is thought appropriate is not, to me, clear.

Over time this service has developed approaches for situations which occur on a regular basis and this situation is not unusual. Where someone would have saved or invested and we have no indication as to where, a starting point is to award premiums plus interest, compound, and at a rate of the Bank of England base rate from time to time plus 1%.

That is what the adjudicator recommended and I agree. To any loss (and there may be no loss still) should be added interest at 8% simple from the date of the calculation to the date of this decision if the policy has matured or been surrendered. For any policy which has not matured or been surrendered the lower "base plus 1%" rate should apply to the date of this decision.

I see no good reason to depart from that here.

my final decision

My final decision is therefore that The Prudential Assurance Company Limited should calculate redress as follows and if any redress is payable pay that amount to Mr K within 28 days of him accepting this decision. If any redress is not paid within 28 days interest at 8% simple should be added to the award from the date of this decision to the date of payment Redress should be calculated separately for *each* policy (that is any “gain” on one policy should not be set off against any “loss” on the other) as:

A+B-C

where

A is the amount of the premiums paid into the policies.

B-is interest at a rate of Bank of England base rate +1% from time to time (interest should be added from the date each premium was paid up to the date of the calculation which is the earlier of the date of surrender or maturity and the date of this decision)

C-the surrender or maturity value as at the date of the calculation.

If the calculation date is earlier than the date of this decision interest at 8% simple should be paid as above to the date of the decision.

Mike Boyall
ombudsman