

## **complaint**

Mr and Mrs A, who are represented by a third party, have complained that advice they received in October 1994 to effect a regular contribution endowment savings plan, investing in the With Profits fund over 18 years, was inappropriate for them.

Specifically, in its letter of complaint to The Prudential Assurance Company Limited, the representative has said that:

- The policy was unsuitable;
- Our clients were first time buyers and had no previous investment experience apart from standard bank and building society accounts;
- The advisor did not correctly establish our clients' attitude to risk. The clients' attitude to risk was inconsistent with endowment mortgages;
- The clients would have chosen a repayment mortgage if properly advised;
- The clients were led to believe that the policy would pay off the mortgage loans.

Even though the business pointed out that the policy had never been assigned to a mortgage lender, or that it could find no evidence that the policy was sold to repay a loan, it upheld Mr and Mrs A's complaint because it considered that they had little need for the life cover incorporated in the policy.

Accordingly, it agreed to calculate whether or not the return Mr and Mrs A had realised from this policy at maturity had given rise to a financial loss compared to the return they would have received from a deposit-type account at a rate of interest equivalent to Bank of England base rate.

Mr and Mrs A rejected the business's conclusion and their representative referred their complaint to this service rather than back to the business for further consideration even though it changed the nature of Mr and Mrs A's complaint as follows:

- There were many more suitable ways of savings for the future than this inflexible policy with its high charges and lower investment percentages due to life cover, which was not required. However, as these [many more suitable policies] were not discussed or considered, it cannot determine what action Mr and Mrs A would have taken;
- Although the business has upheld their complaint, in carrying out a loss calculation based on a comparison with interest at Bank of England base rate, they have not treated Mr and Mrs A fairly. The correct method of redress should assume that Mr and Mrs A would have achieved a return of 1% above Bank of England base rate.

## **background**

Mr and Mrs A's complaint was investigated by one of our adjudicators, who concluded in his initial view dated January 2013 that it should not be upheld because it was appropriate for the business, having upheld their complaint, to calculate loss by reference to the return that they could have received had they placed their premiums in a savings account at an interest rate equivalent to the Bank of England base rate.

Specifically, his view was that, as their representative had submitted that Mr and Mrs A were bank and building society savers who had no previous investment experience, their claim

that a comparison with a return from an alternative investment of 1% above Bank of England base rate was not justified. The documentation completed at the point of sale did not support their claim that they would be willing to take a risk with their contributions to achieve their long term savings need.

The outcome of the business's calculation was that Mr and Mrs A had suffered no loss and, therefore, no redress was due.

In response, the business confirmed that it had found further documentation from the point of sale, including a 'factfind' and the policy application, which suggested that Mr and Mrs A's financial priorities of family protection and retirement provision made the sale of this policy suitable. However, although it concluded that it could make a case for not upholding Mr and Mrs A's complaint, it did not ask the adjudicator to disregard its final response letter to their representative.

The representative disagreed with the adjudicator's view and said that it did not believe that the outcome of the loss calculation was fair to Mr and Mrs A.

While it appreciated that each case is considered on its own merits, it said that it is clear from the guidance issued on the service's website that where an alternative investment is *not* known, it was likely that we would require the firm to adopt a rate of 1% above Bank of England base rate for the return Mr and Mrs A could have obtained from an alternative (unspecified) investment. It attached a recent decision made in a complaint that it considered was identical in nature.

It added that there were many cash based, deposit type investments available to Mr and Mrs A in 1994, which would have offered an interest rate in excess of the standard Bank of England base rate with no financial risk. However, these were not discussed with them at outset and, therefore, it considered that the 'default' position should be a return on the amount invested equivalent to 1% above the Bank of England base rate.

The decision to award Bank of England base rate was appropriate only if the consumer was not willing to invest. That Mr and Mrs A retained the policy for 18 years would indicate that they did want to invest, albeit that this should have been through more suitable alternative products.

The bank account used by the business in its loss calculation does not appear to have been discussed with Mr and Mrs A as a viable investment at the point of sale and, therefore, it does not believe that it should be used as a comparison in the loss calculation.

The adjudicator considered the complaint again and issued a further view endorsing his original conclusions that a comparison with a typical deposit rate of interest equivalent to Bank of England base rate was appropriate to calculate loss.

In response, the representative maintained its position set out above that it did not agree with the adjudicator's conclusion.

As no agreement has been reached in this complaint, it has been referred to me for review.

## **findings**

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

While the business later suggested that it might have rejected Mr and Mrs A's complaint once it retrieved further point-of-sale documentation, it has not requested me to reconsider its final response to Mr and Mrs A that the policy was unsuitable.

Therefore, the issue I must consider is whether Mr and Mrs A were disadvantaged by the advice they received and what would constitute a fair basis for compensation. My aim is to return Mr and Mrs A (as near as possible) to the financial position they would be in now but for the unsuitable advice they received.

It is not disputed that Mr and Mrs A's objective was to save for the future (to coincide with Mr A's likely retirement at age 65). The business concluded that, if Mr and Mrs A had not been recommended this policy, as it could not be certain what alternative product they would otherwise have chosen, they would instead have placed their premiums in a bank or building society offering interest at a rate equivalent to Bank of England base rate. In the circumstances of this case, I believe this was a reasonable approach to take to determine their loss.

In its submissions to this service, Mr and Mrs A's representative has said that the policy was not consistent with their attitude to risk and emphasised their lack of investment experience. The policy they were recommended invested in a With Profits fund, and provided a minimum guaranteed sum assured at maturity, plus potential annual bonuses which, once declared, could not be taken away. For these reasons, this policy would generally be considered suitable for investors who were prepared to take a small degree of risk.

If Mr and Mrs A's representative submits that they were not prepared to expose their policy premiums to *this* degree of risk, and given their monthly policy premiums were modest, I am not persuaded what other savings or investment products would have been suitably available to them, except deposit-based bank or building society accounts.

In circumstances where I do not believe an investor was willing to accept *any* risk, and would otherwise have placed their money in a savings account (rather than in an investment), I am satisfied that it is appropriate to use Bank of England base rate to provide a reliable estimate of the returns Mr and Mrs A would have expected to receive.

Their representative has quoted another decision issued by this service to demonstrate that an appropriate rate of return for comparison purposes was 1% above Bank of England base rate.

However, in the circumstances of that complaint, there was no evidence that the consumer was unwilling to accept some degree of risk and, accordingly, an alternative type of *investment*, rather than a deposit-based account, was a more appropriate option to consider.

In resolving Mr and Mrs A's complaint, the business has provided a copy of its loss calculation which shows that they achieved a greater return from the policy they were advised than from a deposit-based product which offered a return equivalent to Bank of England base rate.

As a consequence, I am satisfied that Mr and Mrs A were not disadvantaged financially by the advice they received compared to the return they might otherwise have received by placing their premiums elsewhere.

**final decision**

My final decision is that I do not uphold Mr and Mrs A's complaint and I, therefore, make no award.

Kim Davenport  
**ombudsman**