

complaint

Mr C has complained that an endowment savings policy was mis-sold to him by The Prudential Assurance Company Limited (“the business”) in January 1993 because he was promised a return of more than £40,000 at maturity. He subsequently received a final value at maturity in January 2013 of approximately £14,500.

He has requested the business to pay him redress of £30,000, this being the difference between the maturity value he says he was guaranteed and the maturity value he actually did receive.

background

I issued a provisional decision on this complaint on 15 November 2013, a copy of which is attached and forms part of this final decision.

Although the business had upheld Mr C’s complaint, it did so because it considered that he had been recommended a policy that was inappropriate for his needs as it included life cover he did not require in a savings plan. It did not uphold his claim that he should receive a maturity value of more than £40,000.

Mr C had complained in April 2012 (before the policy was due to mature) and the business assessed whether he had suffered any financial loss at that time by comparing the value of the policy in May 2012 and the value his policy premiums would have acquired at *simple interest* equivalent to Bank of England base rate (net of basic rate income tax of 20%).

In my provisional findings, I agreed with the business’s decision that Mr C’s complaint should be upheld, and for the reasons it had given in its final response letter. On balance, I was not persuaded that Mr C had received any form of contractual guarantee at the point of sale that he would receive a maturity value of more than £40,000 for a monthly premium of £40.00 paid over 20 years. Therefore, I rejected his claim for compensation on this basis and considered whether the business had offered him the appropriate form of redress given its reasons for upholding his complaint.

I decided that, as Mr C had no previous experience of risk-based investments, he should be regarded as a ‘risk-averse’ client. As such, any financial loss he has suffered should be calculated according to the return his policy premiums would have received at a rate equivalent to Bank of England base rate compounded annually, compared to the maturity value he actually did receive.

This basis of redress differed from the redress proposal made by the adjudicator. It also differed from the loss calculation carried out by the business in its final response in that the assumed rate of return should be compounded annually and not subject to income tax at the basic rate of 20%.

developments

Mr C replied to say that he accepted my provisional decision.

In response to my provisional decision, the business said that it had assessed Mr C’s financial loss in its final response letter on the same basis as I proposed in my provisional decision, which showed that he had suffered no loss.

However, as his policy has matured in January 2013 since he made his complaint, the business completed an up-to-date loss calculation on the basis I set out in my provisional decision, which again concluded that Mr C had suffered no financial loss.

findings

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

As I confirmed in my provisional decision, I agree with the decision made by the business that Mr C's complaint should be upheld because he required a dedicated savings policy that did not include deductions for the cost of integrated life cover.

However, there is insufficient evidence to persuade me that Mr C should receive compensation for the policy failing to achieve a maturity value in excess of £40,000 after 20 years.

The business has provided its up-to-date calculation of the loss Mr C may have suffered when the policy matured in January 2013 on the basis I set out in my provisional decision, and this shows that he has suffered no financial loss at that date. Therefore, the business submits that no redress is due to Mr C.

I have reviewed the calculations provided by the business and am satisfied that it has carried out the loss assessment in accordance with the formula I set out in my provisional decision. I shall ask the adjudicator to let Mr C have a copy of the business's calculations which show that he had suffered no financial loss when the policy matured.

Therefore, while I agree with the decision made by the business in response to the original complaint made by Mr C, it is evident that he has suffered no financial loss when the policy matured compared to the return he might otherwise have received over 20 years if he had invested his policy premiums in a capital-secure, deposit-based savings account.

decision

My final decision is that I do not uphold Mr C's claim for compensation of £30,000 that would have given him a maturity value from the policy of more than £40,000.

Furthermore, I agree with the business's assessment that the advice Mr C received gave rise to no financial loss when compared with the return he might otherwise have received from a deposit-based savings account.

I, therefore, make no award.

Kim Davenport
ombudsman

PROVISIONAL DECISION

complaint

Mr C has complained that an endowment savings policy was mis-sold to him by The Prudential Assurance Company Limited (“the business”) in 1992 because he was promised a return of more than £40,000 at maturity. He received a final value at maturity of around £14,500.

He has requested the business to pay him redress of £30,000, this being the difference between the maturity value he says he was guaranteed and the maturity value he actually did receive.

background

Mr C’s complaint was upheld by the business because it did not consider that he required the level of integrated life cover the policy necessary to ensure that the maturity proceeds were paid to him free of tax.

Accordingly, the business concluded that the policy may not have been the most suitable savings product for him and offered him redress based on a comparison of the return he would have received if he had deposited his premiums in a bank account and the value he received from the policy at maturity. However, as the maturity value was greater than the value of his premiums held on deposit, the business concluded that Mr C had suffered no loss and it was unable to offer any compensation.

Mr C’s complaint was investigated by one of our adjudicators who agreed with the business that it should be upheld.

However, the adjudicator did not agree with the approach the business had taken in calculating Mr C’s loss. He recommended that the business should determine any loss Mr C may have suffered by comparing the maturity value of the policy and the return he would have received as a ‘risk-averse’ investor equivalent to the average return from fixed rate bonds with 12 to 17 months maturity (as published by the Bank of England on its website) over the same term.

In response, the business did not agree and said that:

- Mr C had no previous investment experience and held a modest capital sum in a building society account. It, therefore, did not agree that he would have invested his premiums “differently”;
- There is no evidence of Mr C’s specific objectives (other than he wanted to save over the long term) or that he wanted a reasonable return without risk to capital;
- Saving in a bank or building society would not subject him to any risk to capital and, although he wanted to save over the long term, there is no evidence that he required flexibility;
- As Mr C was single and lived with his parents, there is no reason to conclude that he would otherwise have placed his monthly premiums in any product other than a deposit-based savings account.

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

provisional findings

As there is no dispute that Mr C's complaint should be upheld, I have considered the basis for redress the business should adopt to resolve this complaint in the light of Mr C's financial circumstances and objectives in 1992.

First, while I note Mr C's contention that he was led to believe the policy would provide a maturity value of more than £40,000, I am not persuaded that he should receive redress of £30,000 on the basis that he was guaranteed such a capital sum. It is not clear whether Mr C was promised verbally a final value at maturity of more than £40,000 or he received an illustration from the adviser which showed that the policy could achieve a final value of £40,000 assuming a certain annual rate of return. Either way, there is insufficient evidence for me to conclude that Mr C received a contractually binding guarantee from the business that the policy would produce a return of more than £40,000 after 20 years. Given he paid a monthly premium of £40.00, such a return would be highly optimistic.

With regard to the business's reasoning for its calculation of Mrs C's loss, I note that its final response letter confirmed that it was upholding his complaint because it was not convinced he required a policy that included such a level of life cover. In other words, but for the inclusion of life cover necessary for the policy to be 'qualifying' for tax exemption, the business appears to be implying that it might have been appropriate for Mr C to effect a policy invested in the With Profit fund, which was suitable for an investor wishing to adopt a 'cautious' attitude to risk.

I am more inclined to believe the business when it responded to the adjudicator's view that Mr C had no previous experience of risk-based investment and should have been considered a 'risk-averse' client.

However, I do not necessarily agree that this means he would otherwise have placed his money in a bank account. I am inclined to believe that Mr C sought advice (and the adviser recommended the policy) to achieve a return over the longer term in excess of the interest rates that were then currently available from a bank or a building society account, with no risk to his capital. Otherwise, it seems unlikely that Mr C would have sought advice at all if he simply wanted to save £40.00 per month in a bank account.

Therefore, I believe that Mr C would have invested his premiums in a product that provided capital security and a worthwhile return in excess of any gains he might realise by placing his premiums on deposit.

However, there is no information from 1992 about the returns which match the average return from fixed rate bonds with 12 to 17 months maturity in the "Statistics" section of the Bank of England website and, therefore, it may not be possible for the business to follow the basis of redress recommended by the adjudicator.

I have therefore reverted to our guidance which calculates loss based on the return Mr C could have expected to receive from a capital secure product equivalent to Bank of England base rate.

provisional decision

My provisional decision is that I uphold Mr C's complaint.

I require The Prudential Assurance Company Limited to pay Mr C redress, if any, of 'D' + 'E', where:

- A = the cumulative total premiums he paid to the policy from the start date to the date the policy matured;
- B = a return on each monthly premium Mr C paid from time to time in 'A' equivalent to Bank of England base rate, compounded annually from the start date of the policy to the date it matured;
- C = the value of the policy at the date it matured;
- D = $A + B - C$, representing the investment loss, if any, at the date of maturity;
- E = interest at the rate of 8% per annum simple on 'D' from the date the policy matured to the date of settlement, if applicable.

Compensation for the return in 'B' on the policy premiums is not subject to income tax. Mr C may be liable to pay capital gains tax on this return, but this will depend on his financial circumstances. I do not require the business to deduct capital gains tax.

If the business considers that it is legally obliged to deduct income tax from the interest calculated in 'E', it must send a tax deduction certificate with the payment. Mr C may reclaim any tax overpaid from HM Revenue and Customs, if his circumstances permit him to do so.

Kim Davenport
ombudsman