

summary of complaint

The complaint concerns a Personal Equity Plan (PEP) which was established by Mrs D in 1997 with The Prudential Assurance Company Limited. Mrs D's representative has stated, on her behalf, that she was given unsuitable advice to invest in a complex and risky unit trust investment as she had no experience of equity-based pooled investments and that she preferred lower risk deposit based savings.

background to complaint

Mrs D's complaint was investigated by one of our adjudicators, who was of the view that it should be upheld. In summary, the adjudicator was not satisfied that the nature and operation of the bond was adequately described in terms that would have been understandable to Mrs D. The adjudicator also considered that, although Mrs D was prepared to accept a small degree of risk, she was not an experienced investor, was retired and had limited means to replace any lost capital. The adjudicator was also of the view that the PEP exposed Mrs D to a higher degree of risk than she was prepared to accept, as a recorded "cautious" investor.

In response, the business stated the following:

- At the point of sale, relevant literature would have been provided and it was clear from a review of the fact find that the contract details were discussed.
- It was not in possession of the letter of recommendation or illustrations provided at the point of sale, but it was not in any case required to retain these.
- Mrs D had direct share holdings, a Free Standing Additional Voluntary Contributions (FSAVC) plan, a PruBond contract and a Prudence Savings account, all of which pre-dated the PEP.
- The arrangement of a PEP provided Mrs D with a balanced portfolio of investment business which was aligned to her risk profile and objective of saving and investing over a five year period.

The adjudicator requested that the business send to him the fund fact sheets for the investment, but having received these, was not of the view that the outcome should alter. The adjudicator did, however, set out an alternative redress methodology to that previously recommended.

In response, the business commented that this amendment did not reflect the fact that the case had initially been investigated in early 2012, at which point a different redress methodology would have been recommended.

As agreement has not been reached on the matter, it has been referred to me for review.

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 reviewed the available evidence from the time of the sale, I note that Mrs D was categorised as being a "cautious" investor, certainly with regard to this particular investment. I am mindful of the share holding which Mrs D had at the time, but this was not particularly significant and she held the majority of her available capital in lower risk environments.

This is not to be particularly unexpected when Mrs D's wider circumstances are taken into account, in that she was recorded as being retired at the time and so, even with her husband still employed, with a diminished capability of replacing any lost savings.

This was not a capital investment sum, but rather a regular saving PEP, which would present less of a risk to savings already accumulated, but it nevertheless seems unlikely that this was money which Mrs D was willing to expose, as the risk definition stated, to anything other than a small or moderate level of risk. However, upon review of the information available regarding the Prudential Managed Trust, into which Mrs D's contributions were placed, I note that over 80% of the fund was invested in equities, with approximately 30% being invested in overseas equities. I acknowledge that the actual fact sheet from the time of the investment is not available, but the information produced by the business would seem to provide a reasonable indication of the asset split of the fund used.

Taking this, and Mrs D's wider circumstances into account, therefore, I am not persuaded that the investment represented the lower, or even perhaps moderate, type of risk which Mrs D would have been willing to accept. However, I have also taken into account the adjudicator's proposed amendment to the redress methodology - and the business' comments in that regard - and am of the view that this would better reflect the lower, or moderate, risk which I consider Mrs D would have been willing to accept.

my final decision

My final decision is that I uphold the complaint. In resolution of the matter, I consider that The Prudential Assurance Company Limited should compare the performance of the investment with the performance if 50% of the investment had produced an average return from fixed rate bonds and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS index').

The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The APCIMS index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.

The average rate would be a fair measure for someone who wanted to achieve a reasonable return without risk to the capital. The APCIMS index for someone who was prepared to take some risk to get a higher return.

I consider that Mrs D's risk profile was in between, in the sense that she was prepared to take a small - perhaps slightly higher - level of risk to attain her investment objectives. Therefore, the overall return from the 50/50 combination would broadly put her into that position.

It does not mean that I consider that 50% of the money in a fixed rate account and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return obtainable from lower risk investments. The investment objective was to produce a reasonable return but with only limited risk to capital. This benchmark takes into account both the desire for a degree of security and the willingness to take small risk, and it allows for losses as well as gains.

Overall I consider the above resolution to be fair and reasonable in all the circumstances of the complaint.

how the business should calculate the compensation

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

total fair value

This is what the investment would have been worth at the date of encashment – and it is my understanding that the PEP has been encashed - if it had obtained a return using the method of compensation set out above. It is the total of ‘average rate element’ and ‘APCIMS index element’.

average rate element

To arrive at this value the business should do as follows for the contributions paid:

- 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 encashment
- 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 encashment

APCIMS index element

To arrive at this value the business should:

- work out what 50% of the investment would have been worth, if it had performed in line with FTSE APCIMS Stock Market Income (Total Return) index to the date of encashment

actual value

This means the actual value of the investment at the date of encashment.

additional capital

Any lump sum additional sum that was paid into the investment should be added to the calculation (split equally between average rate element and APCIMS element) from the point in time when it was actually paid in.

withdrawals

Any withdrawal made from the investment should be deducted from the calculation (split equally between average rate element and APCIMS element) at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

income payments

Any regular income paid out from the investment should be deducted from the calculation (split equally between average rate element and APCIMS element) at the point in time it was actually paid so it ceases to accrue any return 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 the income payments to the *actual value* and compares that total with the *total fair value* instead of periodically deducting them.

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 information about APCIMS index can be found in the website of the Association of Private Client Investment Managers and Stockbrokers or the FTSE Group.

If there is a loss as at the date of encashment, simple interest should be added to the compensation amount at 8% simple each year from the date of surrender to the date of settlement.

If the business considers that the interest element is taxable, it must provide a tax deduction certificate to Mrs D. Mrs D may then reclaim the tax paid from HM Revenue & Customs if appropriate.

Philip Miller
ombudsman