

complaint

Mr and Mrs M complain about a with-profits bond The Prudential Assurance Company Limited advised them to take out in 1997. Their representative says that this presented too much risk for them and the large withdrawals they took support this. It therefore says that, although the Prudential has upheld the complaint, the redress calculation is wrong. It says this calculation assumes they wished to take investment risk when, in its view, that was not appropriate or suitable. It says Mr and Mrs M should have been advised to take no risk at all.

background

I issued a provisional decision on 18 April 2018. A copy is attached and forms part of this final decision. In the decision I said that the complaint should be upheld and then suggested what I believed was fair redress.

Mr and Mrs M's representative accepted the provisional decision.

The Prudential did not accept the provisional decision. It thought that the redress it had proposed was fair. It has said that:

- It would be interested to know how the 60/40 split was decided.
- It believes I have suggested that it used a comparison that assumed a 100% investment into a risk based product. It says it did not and assumed 50% was placed in a nil risk environment.
- It makes reference to other cases dealt with by this service and says that the "50/50 split" it has used is more appropriate. £50,000 (of the £100,000) represents 40% of their money on deposit.
- I have not made any suggestion about the remaining £40,000. By using 60% of the investment and final surrender value would not give an accurate reflection for the remaining £40,000 investment.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the Prudential's further submissions.

I would make the following comments:

I am afraid the suggestion that the low risk comparison assumes 50% of the investment was placed in nil risk deposit type investments misunderstands that redress method. That method amalgamates a nil risk benchmark with a risk based benchmark to come up with a low risk benchmark. That is then applied across the full investment – leading to 100% of the investment being compared with a low risk benchmark. In this case I did not think that fairly reflected what would have happened if Mr and Mrs M had been given suitable advice.

As I said in the provisional decision, I thought that some investment in with profits would likely have been appropriate – so it was not that 100% of the investment in with profits was

unsuitable. Only a part was. Only the proportion which should not have been invested in with profits would need to be redressed. A comparison assuming 40% of the investment was suitable and 60% should have been left at nil risk is clearly very different than assuming 100% should have been placed at low risk.

A pragmatic approach needs to be taken when considering what proportion would have been suitable. There is no set approach and each case need to be considered on its own merits bearing in mind the circumstances. In this case I thought 40% was fair and appropriate.

I have not made any redress suggestion as to the £40,000 I deemed was appropriate because, being appropriate, that sum does not need to form part of any redress. I have said that £60,000 should be used and that therefore 60% of any withdrawal and 60% of any surrender value can be taken into account. That would therefore mean that 60% of the investment is compared with a nil risk comparison and the remaining 40% will benefit from any return as if that were a standalone investment. In effect this will represent the position as if Mr and Mrs M took out a £40,000 with profits investment and placed the rest at nil risk.

my final decision

I uphold the complaint and require that The Prudential Assurance Company Limited to calculate and pay redress as set out in the attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 11 June 2018.

David Bird
ombudsman

copy provisional decision

complaint

Mr and Mrs M complain about a with-profits bond The Prudential Assurance Company Limited advised them to take out in 1997. Their representative says that this presented too much risk for them and the large withdrawals they took support this. It therefore says that, although the Prudential has upheld the complaint, the redress calculation is wrong. It says this calculation assumes they wished to take investment risk when, in its view, that was not appropriate or suitable. It says Mr and Mrs M should have been advised to take no risk at all.

background

The Prudential upheld Mr and Mrs M's complaint. It carried out a redress comparison which used a risk-based approach for 100% of the money invested. This mirrors a comparison often used by this service where it is believed the individuals were low risk investors. This calculated that Mr and Mrs M had not suffered a financial loss through investing in the with profits bond.

Mr and Mrs M's representative did not accept that the Prudential had used the right redress comparison and referred the complaint to this service.

An investigator considered the complaint but did not uphold it. He thought that the Prudential had used an appropriate redress comparison bearing in mind Mr and Mrs M had shares and were noted as 'medium' risk investors.

Mr and Mrs M's representative did not agree and so the complaint has been passed to me for review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In order to decide if the Prudential has undertaken an appropriate and fair redress comparison I have considered Mr and Mrs M's circumstances when the advice was given and what risk was likely appropriate for them. That is necessary because that determines what redress, if any, is appropriate.

It is recorded at the time the advice was given that Mr and Mrs M were retired and had an income of about £14,000. They had £2,000 in shares each. It seems they had about £128,000 on deposit (the bond they had appears to be a bank deposit based plan). So from their money on deposit, Mr and Mrs M were advised to put £100,000 into the with-profits bond. That is too much of their money to place in one investment and that does not appear to be disputed.

The Prudential has then used a low risk comparison for 100% of that money. That means that an assumption is being made that it would have been appropriate for Mr and Mrs M to place £100,000 in risk based investments. On balance I do not believe that is correct.

Given Mr and Mrs M's circumstances I don't believe it likely that they would wish to place so much of their money at risk. They were retired on a modest income and they would be reliant on this money to support them in the future. It seems to me the evidence suggests they were not accustomed to taking risk with significant amounts of their money – the only risk based assets they appear to have are the shares – and there is no evidence as to how they came to have them (they could be 'demutualisation' shares). I am not persuaded that the risk grading of 'medium' is likely correct – and certainly not for large proportions of their money.

That does not mean that some investment in with-profits would not be suitable. There is no particular reason why Mr and Mrs M would not wish to, or it would not be suitable for them, to invest some proportion of their money in a low risk environment in order to give them the opportunity of a higher return. It is the amount that was too high.

So my view is that a recommendation to invest some of the money would have been appropriate. Given their circumstances I believe it most likely the remaining money should have been placed at nil risk. I therefore need to decide what is a reasonable amount to have invested in the with profits bond. I think £40,000, or about a third of their cash based funds, would be a reasonable amount to assume for redress purposes. The rest should be assumed to have been placed at nil risk. So I will suggest a redress comparison on this basis.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs M as close to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr and Mrs M would have invested differently with 60% of the money placed in the with-profits bond. It is not possible to say *precisely* what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs M's circumstances and objectives when they invested.

what should Prudential do?

To compensate Mr and Mrs M fairly, Prudential must:

- Compare the performance of 60% of Mr and Mrs M's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Prudential should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
with-profits bond	surrendered	average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

actual value

This means 60% the actual amount paid from the investment at the end date.

fair value

This is what 60% of the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Prudential should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. The withdrawals should be assumed to be in the same proportion as the assumed amount invested (i.e. 60% of the withdrawals should be taken into account).

If there are a large number of regular payments, to keep calculations simpler, I will accept if Prudential totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs M wanted to achieve a reasonable return on 60% of their money without risking any of their capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs M's circumstances and objectives. It does not mean that Mr and Mrs M 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 their capital.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my provisional decision

I uphold the complaint. My provisional decision is that The Prudential Assurance Company Limited should pay the amount calculated as set out above.

David Bird
ombudsman