

complaint

Mrs P is unhappy the value of her with-profits fund with The Prudential Assurance Company Limited dropped suddenly in the 24 hours after she elected to withdraw funds. Mrs P says she's either being penalised for making a withdrawal or the fund has been mismanaged.

background

I issued my provisional decision on 25 September 2019. In it I explained that I was not minded to uphold Mrs P's complaint. I said that I appreciated Mrs P would be concerned to see that the projected value of her with-profits fund fell considerably in a short amount of time, particularly as she'd decided to make a large withdrawal.

But the way a with-profits provider, like Prudential, manages its with-profits funds is a matter of the provider's commercial judgment, and the fall in value was the result of the smoothing process used by Prudential, as a matter of its commercial discretion.

I also said I hadn't seen sufficient evidence to show that the fall in value came about as a result of anything other than investment performance and the legitimate use of Prudential's commercial judgement. And regardless, any failings in the management of the with-profits fund would be a matter for the regulator to consider.

I then invited both parties to comment on my provisional findings.

Prudential had no further points to raise.

Mrs P registered her dissatisfaction and maintained that Prudential mis-managed the fund, noting that since she brought her complaint the fund has not dropped in value once.

my findings

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

I understand that Mrs P was unhappy with my provisional decision and thinks that the fund has been mismanaged. And I understand she's said that her fund value has dropped since bringing her complaint.

But she's provided no further evidence to suggest that the previous fall in value of her with-profits plan came about as a result of anything other than investment performance and the legitimate use of Prudential's commercial judgment. And as I explained, Mrs P is free to bring her concerns to the industry regulator, the Financial Conduct Authority, who has oversight of how with-profits funds are managed.

So with no new merits based arguments being made, there is little more to say other than my decision remains as detailed in my provisional decision, a copy of which is attached and forms part of this final decision.

my final decision

For the reasons explained, I do not uphold Mr L's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 22 November 2019.

Jennifer Wood
ombudsman

my provisional decision

complaint

Mrs P is unhappy the value of her with-profits fund with The Prudential Assurance Company Limited dropped suddenly in the 24 hours after she elected to withdraw funds. Mrs P says she's either being penalised for making a withdrawal or the fund has been mismanaged.

background

Mrs P held a with-profits fund with Prudential. Mrs P contacted Prudential on 23 November 2018 and explained she wanted to withdraw £50,000 as a cash lump sum.

Prudential wrote to Mrs P regarding her options for making the withdrawal on 26 November 2018. The letter provided the current fund value and also said "*this figure is not guaranteed and can change on a daily basis.*"

Mrs P called Prudential the next day, 27 November, to go ahead with the lump sum payment. During this call she was given a fund value nearly £5,000 less than she was told in Prudential's letter from the day before. As Mrs P was unhappy with the sudden drop in value she made a complaint.

Prudential investigated the complaint and issued its final response on 29 November 2018. It explained that the fund Mrs P is invested in had experienced a negative unit price adjustment (UPA) of 3.4%, and this is what caused the drop in fund value. It also explained the fund had a smoothing process using expected growth rates (EGR), and when required, UPAs, to deliver a smooth investment journey. Whilst the EGR is the long term view of the performance they also need to make sure the performance of the assets in the fund are performing as expected. And if they're not they have to make adjustments by way of the UPA.

Prudential confirmed this was applied to the whole fund, and not specifically to Mrs P's plan.

Mrs P then brought her complaint to this service and one of our investigators looked into her concerns. The investigator concluded that while she understood why Mrs P is unhappy, she didn't think Prudential has done anything wrong in the circumstances. The investigator explained that Prudential was acting in line with the terms and conditions of the fund and were entitled to apply the negative UPA.

Mrs P didn't agree and so the complaint was passed to me for a decision.

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. Having done so, I don't intend to uphold this complaint.

I can see how it will have been a concern to Mrs P to see that the projected value of her with-profits fund fell considerably in a short amount of time, particularly as she'd decided to make a large withdrawal. But the way a with-profits provider, like Prudential, manages its with-profits funds is a matter of the provider's commercial judgment, and the fall in value was the result of the smoothing process used by Prudential, as a matter of its commercial discretion.

As explained in the terms and conditions provided to Mrs P when she started her with-profits plan in early 2017:

Returns from PruFunds are smoothed to reduce some of the short-term volatility which investments can experience. This means that we adjust returns for some of the extreme ups and downs of short-term investment performance, to provide a more stable return.'

The Principle and Practices of Financial Management document (PPFM) published on Prudential's website and available here <https://www.pru.co.uk/pdf/WPGB0031.pdf> explains how the smoothing process works. It states:

Like most stock market based investments, the value of the underlying funds change daily, sometimes increasing and sometimes decreasing. We use a smoothing process that aims to reduce the impact of these movements over the short term.

The PruFund range of funds has an established smoothing process which uses Expected Growth Rates, and where necessary, Unit Price Adjustments, to deliver smoothed returns, and provide some protection from some of the extreme short-term ups and downs of direct stock market investment.

Presently, I've not seen sufficient evidence to show that the fall in value has come about as a result of anything other than investment performance and the legitimate use of Prudential's commercial judgement. And regardless, any failings in the management of the with-profits fund would be a matter for the regulator to consider.

With-profits funds have historically attracted criticism for their complexity and perceived lack of transparency – it can be very difficult for policyholders to understand often complex and lengthy documentation and to be satisfied that they are receiving their proper entitlement under the terms and conditions of the particular product. But those difficulties do not necessarily mean that the provider of the with-profits fund has done something wrong or is not acting in accordance with its regulatory obligations.

The industry regulator, the Financial Conduct Authority (FCA) recognises that with-profits providers have a considerable amount of discretion about how they operate their with-profits funds. That said, providers are accountable to the regulator for the way in which they operate their with-profits funds (in accordance with their PPFM), and the FCA monitors the management of it.

The regulator's Principle 6 requires that regulated firms "...must pay due regard to the interests of its customers and treat them fairly". Furthermore, the Conduct of Business Sourcebook (COBS), and COBS 20 in particular, contains specific rules and guidance for businesses on the operation of their with-profits funds.

COBS 20.2.1 states:

With-profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.

And COBS 20.2.3 requires firms to have "good reason to believe that it's pay-outs on individual with-profits policies are fair."

Prudential publishes its PPFM document that sets out how it manages its with-profits funds and it's accountable to the FCA in doing this. It's required to appoint a with-profits actuary and the FCA provides rules and guidance on their duties. An independent with-profits committee is also required – its remit is to protect the interests of the with-profits policyholders and to ensure that they are treated fairly.

Prudential exercised its commercial discretion in setting the EGR and applying the negative UPA as part of smoothing process used in its with-profits funds. And this decision impacts not just Mrs P but all investors in the same with-profits fund. Mrs P can report this to the FCA if she thinks she or others haven't been treated fairly, however, I am not aware of it having any concerns about the operation of this fund.

Given my above findings, I'm not intending to ask Prudential to do anything else

my provisional decision

For the reasons given, I don't intend to uphold Mrs P's complaint.

Jennifer Wood
ombudsman