

complaint

Mr and Mrs H, who are represented by a Claims Management Company ('CMC'), have complained about the advice they received from The Prudential Assurance Company Limited. That advice was to progressively invest into a Prudential Prudence Gold Bond between 1996 and 1999. The Prudential Prudence Gold Bond is a with-profits bond. Whilst the CMC considered that the initial investment was not unsuitable, it has argued that the subsequent investments were because the proportion of their portfolio invested into the same bond was too great.

background

On the recommendation of Prudential, Mr and Mrs H invested £105,000 into the Prudence Gold Bond with four separate investments of between £20,000 and £35,000 made in 1996, 1997, 1998 and 1999.

The adjudicator assigned to the case recommended that the complaint should be upheld in part. In brief, he stated that the advice to invest into the with-profits bond, in itself, was not inconsistent with Mr and Mrs H's recorded attitude to risk. Whilst the adjudicator stated that he did not consider the advice to invest in 1996 and 1997 was unsuitable, he considered that the subsequent advice was, as it led to a lack of diversification.

He has highlighted that after the investments advised in 1998 and 1999, Mr and Mrs H held 60% and 87% of their investments in risk-based assets with a significant share with the Prudence Gold Bond. And, the adjudicator considered that this elevated and exposed Mr and Mrs H's portfolio to an unsuitable level of risk given their circumstances at the points of sale.

Whilst Mr and Mrs H accepted the adjudicator's assessment of the complaint, Prudential did not. In response, it has highlighted that they were clearly willing, and able, to expose their portfolio to the level of risk represented by the with-profits fund. In addition, it has also highlighted that they retained substantial funds on deposit together with much of Mr H's income being guaranteed. In conjunction with their relatively small outgoings and no future planned expenditures, it did not consider the advice to be unsuitable.

As an 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 considered all of the evidence and the further comments from Prudential, I have reached the same conclusion as the adjudicator and for broadly the same reasons. In essence, I believe a with-profits bond was broadly suitable for Mr and Mrs H. But I also think that they were advised to invest too much into this one bond with the result that they did not have a suitably balanced and diversified fund.

I think the method of redress proposed is fair and reasonable in these circumstances.

Mr and Mrs H were initially assessed as having a "medium" attitude to risk. Their circumstances changed over the period of these investments, four years or so. Mr H had

retired, Mrs H had changed her job on at least two occasions and their disposable income appears to have been diminishing. Prudential went on to assess their attitude to risk as “very cautious” from 1997 onwards.

As a result of following the advice, by 1998 Mr and Mrs H had invested £85,000 into this one bond and they added a further £20,000 in 1999. In 1998 the bond represented around 60% of their total investments and this rose to over 85% in 1999. As I have said, whilst the bond may have been a suitable recommendation in terms of the risk it posed, I do not think the advice to invest such a large proportion of their money into a single investment in a single fund resulted in a balanced and diversified portfolio.

I do not think the advice given in 1998 and 1999 was suitable. I do not know what Mr and Mrs H may have otherwise done with the money but given their “very cautious” attitude to risk I think they may well have left it on deposit. And so I think the redress proposed by the adjudicator is fair and reasonable on these facts.

I uphold this complaint and direct that redress should be calculated as follows in relation to the investments made in 1998 and 1999.

redress

To compensate Mr and Mrs H fairly, Prudential must

compare

- the performance of Mr and Mrs H’s investment

with

- the position they would now be in if the investment had produced a return matching the average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England

If there is a loss, Prudential should pay this to Mr and Mrs H.

I have decided on this method of compensation because Mr and Mrs H wanted to achieve a reasonable return with investment suited to their very cautious attitude. Mr and Mrs H were prepared to invest for a longer period of time – but with some flexibility.

The average rate would be a fair measure given Mr and Mrs H’s circumstances and objectives. It does not mean that they 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 the capital.

I consider that it is *sufficiently* close to assist me in putting Mr and Mrs H into the position they would have been in had they not received inappropriate advice.

how to calculate the compensation?

The compensation payable to Mr and Mrs H is the difference between the *fair value* and the *actual value* of their investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the value Mr and Mrs H will receive if they terminated the investment on the date of my decision.

The *fair value* is what the investment would have been worth if it had obtained a return using the method of compensation set out above.

To arrive at the *fair value*, Prudential should find out the monthly average rate for fixed rate bonds for each month from the date of investment to the date of my decision and apply those rates to the investment, on an annually compounded basis.

Any additional sum that Mr and Mrs H paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mr and Mrs H received from 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. If there are a large number of regular payments, to keep calculations simpler, I will accept if Prudential totals all such payments and deducts that figure at the end instead of periodically deducting them.

my final decision

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

If my award is not paid within 28 days of Prudential receiving notification that Mr and Mrs H has accepted my decision, simple interest is to be added at a rate of 8% gross a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

Keith Taylor
ombudsman