

complaint

Mr and Mrs C complain that The Prudential Assurance Company Limited recommended they invest too much of their capital, resulting in them having to make withdrawals after just two years.

background

Mr and Mrs C's representative said that Mrs C had just retired early, thereby drastically reducing their household income even though they still had three dependent children living at home. They were also both in poor health at the time, and the advisor completely ignored this. Also, they planned to spend £10,000 on home improvements, meaning Mrs C's entire pay-out would be used after this £20,000 investment recommendation.

The Pru recommended they invest £20,000 into a with-profits bond. It was recorded that their joint finances were to be reviewed annually with special emphasis placed on four years' time when Mrs C would be receiving her pension income.

At the time of the advice in 1998 Mrs C had just taken a severance payment of £30,000 from her employer, which meant the household income would be reducing now she was no longer working. Mr and Mrs C were both age 55. After taking into account their expenditure it was recorded that they had a surplus income of just £50 per month; it was also recorded that income may be needed from the bond within 10 years.

Within 14 months of investing, regular withdrawals of £140 per month were being taken, allegedly to supplement their income, followed by further lump sums totalling £5,500 within the first three years, and a total withdrawal within four years. The withdrawals were required for general living expenses according to Mrs C.

An adjudicator at this service felt the complaint should be upheld.

He didn't believe it was suitable advice to recommend starting the investment and then take an immediate income as the investment had not had the opportunity to grow before withdrawals were made. He said there were clearly affordability issues with committing £20,000 into a bond which should be held for a minimum of 5 years and where, ideally, no income should be drawn within the first 10 years.

He also felt insufficient time had been allowed to see how Mr and Mrs C would manage as a family on just one income, before the majority of her lump sum was invested.

He said it was unclear whether the projected reviews happened or whether annual meetings were held. He was also concerned that the business did not fully establish Mr and Mrs C's financial circumstances. In his view it was not enough to record that they did not want to discuss 'lifestyle choice topics... mortgages and loans'.

He said it was recorded that they had an £18,000 mortgage but the advisor did not explore this further and establish how this would be repaid. He felt this was a significant factor that should have been taken into account when making a recommendation to invest a lump sum. Further, he noted Mr and Mrs C had confirmed it was an interest-only mortgage, and this was only repaid in 2008 when Mr C retired and received a lump sum. He said Mrs C remembered that the advisor recommended against repaying any of their mortgage with the severance payment.

He also noted that Mr and Mrs C had a unit trust (£5,341) and a PEP (£2,100) so already had some diversification of their capital. Overall, he felt they should have left their capital on deposit for a period of time to establish how they would adjust to just one income. This would have highlighted the affordability issues with committing this amount of capital, in his view.

After further exchanges it became clear that Mr and Mrs C spent the £10,000 on home improvements before she received the pay-out and that they had endowment policies in place designed to pay off their interest-only mortgage.

Despite this, the adjudicator still believed his assessment of the complaint was fair and reasonable.

The Pru did not agree, and said:

- As well as the £30,000 Mrs C received two months earlier in severance pay she had already received a salary of around £7,500 in that tax year
- In addition to the £30,000 redundancy payment, an additional £10,000 was already invested elsewhere or in bank accounts
- Two thirds of Mrs C's redundancy was invested with the Pru, but this still left them access to the remaining £20,000 (i.e. 50% of their overall savings)
- The fact-find documents state there was not a need for an immediate income at the time and covers the need for possible future income
- Mrs C was due to retire in 2002 and would therefore start receiving further income at that time
- Their aim was to invest for Capital Growth with a 10 year investment period, but still have access to income if required at a later date. The Prudential Investment Bond met this need
- The Product Guide for the bond recommends they avoid making withdrawals for at least 5 years, and the fact find records this feature as well as details of commitments, aims and the risk of the product. Mr and Mrs C were therefore aware that the bond was for a medium term
- Although regular withdrawals took place after approximately a year, these withdrawals were fairly low at £140 per month so this could be down to a change in circumstances or maybe due to the market conditions at the time
- There is no record of further reviews carried out after 1998
- The recommendation was suitable for Mr and Mrs C's needs at the time. It left them with £20,000 which was sufficient in savings and income for the medium to long term
- It is unfortunate that withdrawals were taken before the recommended timeframe; however, it was not aware of this requirement at the time of sale

The adjudicator then issued a further view explaining why he still felt the complaint should be upheld. He said:

- Mrs C had stopped working two months previously so the recorded income was simply her earning before she retired
- While the Pru claimed Mr and Mrs C still had access to around £20,000 after investing into the bond, all of this wasn't accessible as £8,840 was held in unit trust/PEP/shares which are medium to long term investments
- While it highlighted Mr and Mrs C held £31,680 on deposit at the time of the advice, after deducting the £30,000 lump sum severance pay there was a balance of just

£1,680; £800 in a savings account and £880 in the current account (which may have been due to Mr C having just been paid)

- So the advisor would have been aware Mr and Mrs C had little immediately accessible cash for emergencies or even for normal monthly living expenses and events; his advice left them no wriggle room, and started eroding the £10,000 left from the severance pay
- Mr and Mrs C have confirmed this £10,000 was not left on deposit but used to pay for family outgoings
- While the Pru pointed out that the documentation explained the product, a compliant sale does not make any recommendation necessarily suitable
- Mr and Mrs C's situation had just changed significantly, and the advisor had not allowed enough time for them to assess the impact of losing £1,300 per month of their finances before recommending a product which contained penalties for withdrawals made in the first five years
- There certainly appears to have been affordability issues as is evident in the withdrawal history starting just 14 months into investing

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In this case I agree with the adjudicator and for exactly the same reasons. I have therefore quoted his comments at length as they sum up my reasons for upholding this complaint and my assessment of the Pru's objections.

As a result I will only make a few specific, additional observations.

It is important to reiterate that my role, and that of this service, is to assess what we believe is most likely, on the balance of probabilities. In this context it seems to me more likely than not that Mr and Mrs C found they were not able to maintain their household, including three dependent children, on one income without drawing on a very substantial portion of this investment money.

I note that the Pru speculates that their regular income withdrawals after little more than a year – plus the large lump sum withdrawals - might have been due to an unpredictable change of circumstances or of changed priorities. But I think it is more likely than not that Mr and Mrs C found they needed this money and could not afford to lock it away for a minimum of five years or, ideally, longer as required.

The advisor's record that they only had £50 of disposable income now the family was reliant on one income should have made him seriously question whether they were going to need to draw on Mrs C's severance pay including the £20,000 he was recommending they lock away for the medium term. Given they had three dependent children still living at home there were innumerable reasons why £50 a month might prove completely insufficient.

I also seriously question the Pru's repeated assertion, when defending this sale, that Mr and Mrs C had £20,000 still available after this sale. I think this is completely misleading.

Aside from the remaining £10,000 of Mrs C's severance pay, the vast majority of the rest was already invested in risk-based investments and would not necessarily have been easily available or at no cost. The fact that these investments were risk-based commitments should have been actively considered when deciding how much, if any, of Mr and Mrs C's recent money should be exposed to risk and, crucially, locked away. As the adjudicator said, they

had only a very modest amount in their current account and this may well have been due to Mr C having recently paid.

In reality the evidence indicates that they had little or no other money in readily-available cash beyond the £30,000.

Finally, I have considered whether it would have been reasonable to recommend a much smaller investment sum than £20,000. But, on the balance of probabilities, I don't believe the advisor undertook sufficient efforts to fully establish Mr and Mrs C's circumstances, likely financial needs or objectives to safely recommend locking any of their money away – and I don't think it's possible to safely conclude that a smaller sum would necessarily have been a suitable recommendation. In this context I think he should have advised them to put all this money in a readily-accessible deposit account until they had had time to discover their likely need to supplement Mr C's income going forward.

I therefore agree with the adjudicator that redress should be based on the entire £20,000.

fair compensation

In assessing what would be fair compensation, my aim is to put Mr and Mrs C as close to the position they would probably now be in if they had not been given unsuitable advice. I take the view that Mr and Mrs C would have invested differently. It is not possible to say precisely what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs C's circumstances and objectives when they invested.

what it should do?

To compensate Mr and Mrs C fairly it should:

- Compare the performance of Mr and Mrs C'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.

It should also pay interest as set out below.

- Provide the details of the calculation to Mr and Mrs C in a clear, simple format.
- 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 the actual amount paid from the investment at the end date.

fair value

This is what 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, it 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. Apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investments should be deducted from the fair value 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 it totals all those payments and deduct 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 C wanted to achieve a reasonable return without risking any of their capital.
- The average rate for fixed-rate bonds would be a fair measure given Mr and Mrs C's circumstances and objectives. It does not mean that Mr and Mrs C 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.

further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds /1 year (IUMWTFA) and then exporting the source data.

Some examples of how the calculation should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'.

my final decision

I uphold the complaint and instruct The Prudential Assurance Company Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 11 January 2019.

Tony Moss
ombudsman