

complaint

Mr J is being represented by a claims management company. His complaint about The Prudential Assurance Company Limited concerns the advice he received to invest in an ISA. His representative says the investment was unsuitable, particularly in view of the associated risk.

background

Following discussions with an adviser in 2000, Mr J put a lump sum into an ISA invested in Prudential's balanced trust. The investment was retained until it was encashed in 2012.

Our adjudicator recommended the complaint be upheld. He believed the investment involved a greater degree of risk than Mr J was willing to accept and was therefore unsuitable.

Prudential disagreed, making the following key points:

- Mr J's attitude to risk was recorded as '*cautious*'. He could have instead selected '*secure*' or '*very cautious*';
- the recommended investment was consistent with his attitude to risk;
- Mr J already had two with-profits regular savings plans;
- the fact this was Mr J's first ISA does not make it inappropriate – there always has to be a first time for a consumer to choose a more risky product;
- although Mr J's income may have been low, it still exceeded his outgoings;
- the investment was funded from a maturing endowment policy and he had another due to mature in 2002; and
- Mr J appears to have been willing to invest for the long-term and held the investment until 2012 with only small withdrawals before that.

my findings

To decide what is fair and reasonable in this complaint, I have carefully considered everything Mr J, his representative and Prudential have provided. Having done so, I agree with the adjudicator's conclusions for much the same reasons.

The adviser had a responsibility to make sure any advice given to Mr J was suitable for his circumstances and requirements. I note Prudential says explanatory product documentation was provided, but this alone is not sufficient to show the advice was appropriate. I have seen nothing to suggest Mr J was an experienced or sophisticated investor and I believe it is likely he would have placed far greater emphasis on what he was told by the adviser over and above the contents of any documentation.

In its response to Mr J's complaint, Prudential has described the scale used to assess Mr J's attitude to investment risk and this does seem slightly curious as it appears to jump straight from '*cautious*' to '*adventurous*' with no apparent middle ground. Prudential says Mr J's attitude to risk was assessed as '*cautious*' and I believe most people would understand this to mean they did not want to place their money at any significant degree of risk.

I believe a consideration of Mr J's circumstances at the time of sale also supports the view that he was not willing to expose his money to any significant degree of risk. In particular, I note he and his wife were both retired on ill-health grounds and in receipt of a modest income. While the documentation records their income exceeded their outgoings and I note

Mr J did not particularly need to access the money held in the ISA, I believe it is clear that they did not have the capacity to replace any capital loss.

I am also conscious that Mr and Mrs J do not appear to have had any previous experience of making lump sum investments and, apart from a small number of shares in a bank, all of their savings were held on deposit. They did have two savings plans as Prudential has pointed out, but these were with-profits plans and would generally be regarded as relatively low risk. And in any event the considerations involved in saving a relatively small amount each month are different to those involved in investing a significant lump sum (compared to Mr and Mrs J's overall holdings).

In making this complaint, Mr J's representative says he was not willing to accept a significant degree of risk and I believe the sales documentation and his circumstances at the time both support this view. While Prudential is undeniably correct to say there must be a first time for everyone who becomes involved in risk-based investments, I cannot see any particular reason why Mr J would have wanted to start exposing his money to any significant degree of risk at that stage in his life.

The ISA fund recommended for Mr J invested predominantly in shares, including overseas shares involving additional currency risk. For the reasons explained above, I believe the investment exposed his capital to a greater degree of risk than he was prepared to accept and was therefore unsuitable.

fair compensation

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

I take the view that Mr J would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given his circumstances and objectives when he invested.

To compensate Mr J fairly, Prudential must compare

- the performance of Mr J's investment

with

- the position he 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 J.

I have decided on this method of compensation because Mr J wanted to achieve a reasonable return without any significant risk to his capital. Mr J was prepared to invest for a longer period of time – but with some flexibility.

The average rate would be a fair measure given Mr J's circumstances and objectives. It does not mean that he 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 J into the position he would have been in had he not received inappropriate advice.

how to calculate the compensation?

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

The *actual value* is the amount Mr J received at the date his investment was surrendered.

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 surrendered and apply those rates to the investment, on an annually compounded basis.

Any additional sum that Mr J 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 J 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.

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the date surrendered to the date of settlement. If Prudential considers it is legally obliged to deduct income tax from the interest, it must provide Mr J with a tax deduction certificate so he can reclaim any overpaid tax from HM Revenue and Customs if he is eligible to do so.

further information

The 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.

my final decision

My final decision is that I uphold this complaint. I direct The Prudential Assurance Company Limited to pay Mr J compensation calculated using the method set out above.

Jim Biles
ombudsman