

## **complaint**

Ms B is being represented by a claims management company. Her complaint about The Prudential Assurance Company Limited concerns the advice to invest in a with-profits bond. Her representative believes the investment was unsuitable for Ms B because of the risks involved and her need to access the capital invested.

## **background**

Following discussions with an adviser in 1998, Ms B invested £11,000 into a with profits bond. Within only a few months, she had withdrawn around £7,000 of her capital. In 1999, Ms B received an inheritance and she was advised to invest a further £40,000 in the bond. Ms B continued to make a large number of significant withdrawals sporadically until she cashed in the bond completely at the start of 2005, by which time there was only around £3,000 remaining. Both bonds were set up for growth rather than income.

Our adjudicator recommended the complaint be upheld. In particular he was concerned that Ms B's financial situation meant she was always likely to need access to her money, as evidenced by the amount she withdrew very shortly after investing. He also noted that following her second investment, Ms B had more than 80% of her money in the bond. He did not believe sufficient care was taken to diversify her assets.

Prudential disagreed, maintaining its view the recommended investment was suitable.

## **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 done so, I agree with the adjudicator's conclusions for much the same reasons.

There is no dispute that Ms B received advice in 1998 and 1999 and the adviser had a responsibility to make sure any recommendation was suitable for her circumstances and requirements.

In 1998, Ms B lost two close family members in a short space of time and I understand the amounts invested were received as an inheritance following each of their deaths. The sales documentation records Ms B was looking to generate growth on her capital, and the recommended bond may well have been consistent with that objective. But I do have concerns about whether she should have been advised to tie up her money in a long-term investment.

According to the sales documentation, her total income was around £3,500 (less than £10 per day). And even though the fact find records she had some disposable income each month, I think it was always likely she would need to top-up her income from her capital. And I believe this is evidenced by the fact she had withdrawn more than half the money invested in 1998 before she made her second investment the following year. A similar pattern of withdrawals then continued once the second investment was made.

I appreciate Prudential says there is no evidence of what Ms B spent the withdrawals on, but she says the money was needed for living costs and her circumstances persuade me that was the case. I also believe her circumstances support the comments of her representative that she did not want to put her capital at any degree of risk. In the circumstances, I believe the advice to invest a large part of Ms B's capital in long-term, risk-based investments was unsuitable.

Prudential has referred to notes on the fact find indicating Ms B was expecting to receive a further inheritance in the future, but there is nothing to indicate this was imminent. And until it was received, my reservations about the advice to tie up so much of her money remain.

Further, the prospect of a future inheritance certainly does not appear to have stopped Ms B from needing to make regular withdrawals from her investment.

I also share the adjudicator's concerns that Ms B was advised to invest such a large part of her capital in a single bond with no attempt to diversify her assets. In my view, £40,000 to £50,000 is a large enough sum for an adviser to achieve significant diversification. And if he did not believe Prudential had any other suitable products, the adviser could have recommended Ms B speak to an independent adviser about investing a portion of her capital.

### **fair compensation**

As pointed out by Prudential, I am aware the total amount Ms B received from the bond (if the withdrawals and final surrender value are added together) is greater than the total amount invested. But this does not take account of the return Ms B would have earned from an alternative (and more suitable) investment, so it does not automatically show she was not disadvantaged by the advice she received.

In assessing what would be fair compensation, I consider my aim should be to put Ms B as close as possible to the position she would probably now be in if she had not been given unsuitable advice. I take the view that Ms B would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given her circumstances and objectives when she invested.

I note Prudential's comments about basing any compensation on the interest rate paid by the account in which Ms B's money was held before she invested in the bond. But I do not believe it would be reasonable for me to conclude this is where the money would have remained and any number of alternative decisions could have been made.

To compensate Ms B fairly, Prudential must compare

- the performance of Ms B's investment

with

- the position she 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 Ms B.

I have decided on this method of compensation because I believe Ms B wanted to achieve a reasonable return without exposing her capital to any degree of risk. Ms B may have been prepared to tie some of her money up for a period of time, but I believe she also required some flexibility.

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

#### **how to calculate the compensation?**

The compensation payable to Ms B is the difference between the *fair value* and the *actual value* of her investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the amount Ms B received at the date 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 Ms B 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 Ms B 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. Income tax may be payable on this interest.

#### **my final decision**

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

Jim Biles  
**ombudsman**