

complaint

Mr and Mrs L complain about a with-profits bond recommended to them by The Prudential Assurance Company Limited in 1999. They are represented by a claims management company (CMC). It says the investment was not consistent with their attitude to risk and any investment they made should have been more widely diversified.

background

Mr and Mrs L took out a with-profits investment bond in 1999. They made withdrawals from the bond in 2002, 2007 and 2008. They surrendered the bond in 2009. In 2016 a claims management company made a complaint to the business on their behalf. It said Mr and Mrs L were inexperienced investors and this investment posed too much risk as they did not want to take any risk with their capital. The CMC also said they had made a withdrawal in 2002 which suggested the investment was unaffordable.

The business did not uphold their complaint. It said the recommendation was suitable as the investment matched Mr and Mrs L's attitude to risk and they had wanted to invest a lump sum for an anticipated term of five years. The business said the nature of the investment was explained to Mr and Mrs L and it was not a complex product. It also said the investment bond allowed withdrawals to be made so it did not agree that the investment was unaffordable.

The CMC disagreed with the business and referred the complaint to our service. It made some further points and said too much of Mr and Mrs L's capital was invested in just one fund so there was no diversification. The CMC said there was no evidence that the key features of this investment had been explained to Mr and Mrs L. The CMC pointed out that a withdrawal had been made before the end of the five year term. It said this showed a five year investment was unsuitable for Mr and Mrs L. The CMC also said there was no evidence that any discussion had taken place about investing in a tax free product. It pointed out that Mr L was a tax payer.

Our investigator did not think the complaint should be upheld as she did not feel the recommendation was unsuitable in the circumstances. She took into account that Mr and Mrs L were inexperienced investors and had received a windfall of £35,000. She noted they had invested £10,000 in the investment bond. The investigator felt that the investment matched Mr and Mrs L's attitude to risk and objectives. She felt the investment left them sufficient capital on deposit for emergency expenditure. The investigator thought the with-profits bond was sufficiently diversified as it was invested in a mixture of assets. She took into account the points made about tax-free products but did not think this made the investment unsuitable. The investigator also felt that Mr and Mrs L had been prepared to invest for five years and there was nothing at the point of sale to suggest they would need access to the funds before then.

The CMC disagreed and said that Mr and Mrs L should have been recommended an ISA instead of the investment bond as it was a tax efficient product. It said Mrs L had paid tax on the investment through the fund even though she was a non-tax payer. It also said Mr and Mrs L should have been warned that a Market Value Reduction (MVR) could be applied to their investment when they surrendered it or made a withdrawal.

The investigator confirmed that no MVR had been applied to Mr and Mrs L's investment on surrender or at the point of the withdrawals. Overall she was not convinced the recommendation was unsuitable or that Mr and Mrs L should have been recommended a with-profits ISA instead.

The CMC disagreed and asked for the complaint to be referred to an ombudsman for review.

my findings

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

Mr and Mrs L received a windfall of £35,000 and decided they wanted to invest some of that money. The business recommended they invest £10,000 in a with-profits investment bond. A fact find was completed detailing their financial circumstances and a suitability letter was sent to Mr and Mrs L setting out a summary of the discussions with the adviser and the reasons for the recommendation.

Mr and Mrs L were employed and in their late 50s and early 60s. I am satisfied they were looking to invest some of their windfall money. The documentation records they were looking to achieve better capital growth. I take into account that they were inexperienced investors. But I am not persuaded that a with-profits bond was unsuitable taking into account their circumstances and objectives.

I consider Mr and Mrs L were willing to tie up their money for at least five years as there are numerous references to a term of five years in the point of sale documentation. The suitability letter states the recommendation is for a term of five years. I also note that Mr and Mrs L retained this investment for about ten years. So, I am not persuaded the fact they made a withdrawal after three years meant this investment was unaffordable. I also note from what is recorded in the suitability letter that the adviser recommended they kept a certain amount of their capital reasonably accessible.

I am satisfied that Mr and Mrs L were prepared to take a low level of risk with their capital over the medium to long term in order to try to obtain better capital growth. I note that smoothing is used in a with-profits investment to try to prevent big fluctuations in value and once bonuses are added they cannot be withdrawn. I consider that their money was invested in a mixture of assets within this bond so I am not concerned about diversification. I also take into account they still had a good proportion of their capital remaining for any unexpected expenditure. So, overall I am not persuaded the investment posed too much risk for Mr and Mrs L.

I am satisfied that the suitability letter made clear reference to the taxation of this product. It said that the underlying treatment of the investment fund in relation to taxation had been discussed and that the adviser had explained that even a non tax-payer was unable to reclaim any tax paid. So, I consider in all likelihood there was some discussion about taxation with Mr and Mrs L.

I note the tax efficiency of the product was not a feature of the original complaint to the business and I am not persuaded it was high on Mr and Mrs L's list of priorities at the time. Mr L was a basic rate tax payer and Mrs L was a non-tax payer. I take into account that ISAs had recently been brought in and so the CMC says an ISA should have been recommended instead. But I am not convinced that the availability of ISAs made this recommendation unsuitable for Mr and Mrs L particularly as I think it likely that there was some discussion about taxation.

The CMC has said that Mr and Mrs L were not warned of the possibility of a Market Value Reduction (MVR) being applied to their investment. If an MVR was applied it would reduce the amount they received back from their investment. The business has confirmed that no MVR was applied to their withdrawals or the surrender value they received so Mr and Mrs L were not affected by an MVR. But in any event I consider on balance that Mr and Mrs L were informed of the possibility of one being applied.

Mr and Mrs L signed the application form for the bond which referred them to a declaration and asked them to read it before signing. The declaration stated "*You understand that a Market Value Reduction may be applied in certain circumstances.*"

Mr and Mrs L also signed to say they had received a copy of the Key Features Document and that document made reference to the investment being reduced because of a market value reduction.

I also note that when Mr and Mrs K made withdrawals there was clear reference to MVR on the paperwork where it referred to "important information" about withdrawals. If they had been unaware of the potential for an MVR to be applied I would have expected Mr and Mrs L to have raised this with the business or make a complaint at the time of the withdrawals but they did not. So I consider this also shows they were made aware that an MVR could be applied to their investment.

I also note it is recorded in the suitability letter that the adviser explained the contents of the Key Features Document to Mr and Mrs L and noted it set out the risk factors for the investment.

Overall I am not persuaded on balance that the investment recommended by the business was unsuitable taking into account Mr and Mrs L's circumstances and objectives.

my final decision

My final decision is that Mr and Mrs L's complaint against The Prudential Assurance Company Limited is not upheld for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision 5 January 2018

Julia Chittenden
Ombudsman