complaint

Mrs N complained to The Prudential Assurance Company Limited that advice she received to invest £30.00 per month in the With Profits fund of an endowment savings policy over 10 years was unsuitable for her. She is represented in her complaint by a third party adviser.

The business upheld her complaint because it was not satisfied that Mrs N required the life cover that was incorporated in the policy to ensure that the proceeds were tax-exempt, the cost of which may have compromised its ability to achieve a worthwhile return.

In assessing whether or not Mrs N had made a financial loss when the policy matured, the business compared the maturity value she received and the return she would have received on her premiums if she had invested them in a 90-day notice account. This revealed that Mrs N had made no loss, as the policy's maturity value was greater than the return she would have received after 10 years from this deposit account. Therefore, it concluded that no redress was payable.

In response, Mrs N's representative rejected this conclusion and said that the business should apply guidance set out by the Financial Ombudsman Service which generally assumed that she would have received capital growth from an alternative, more suitable, product equivalent to 1% above Bank of England base rate, plus interest on any loss at the date the policy matured of 8% per annum simple to the date of settlement.

As the business was not inclined to agree with this view, Mrs N's representative referred her complaint to this service.

background

Mrs N's complaint was investigated by one of our adjudicators, whose initial conclusion was that it should be upheld.

He was satisfied that she would have invested her premiums in a low risk-based product (albeit one that did not include a deduction for the cost of life cover) and that the business should calculate loss in accordance with the claim made by her representative, i.e. with regard to the return from an alternative product being 1% above Bank of England base rate, plus interest on any loss at maturity at 8% per annum simple.

In response, the business did not agree with the adjudicator's view and maintained that there was no conclusive evidence at the point of sale to show how Mrs N might otherwise have invested her premiums. The documentation recorded that she held modest capital balances in bank and building society accounts and had no previous investment experience. Neither Mrs N nor her representative could be sure what type of investment she would have chosen had she not started the endowment policy. It believed that comparison with the return from a 90-day notice deposit account was appropriate in the circumstances.

The adjudicator reconsidered his view that a comparison with the return equivalent to 1% above Bank of England base rate may not be appropriate for an investor as this return does not incorporate any element of risk. He believed that using a 'benchmark' or 'index' incorporating an average return from fixed rate bonds and the APCIMS index more accurately reflected the degree of risk Mrs N was prepared to take to establish her financial position at maturity.

The business responded that it was not appropriate in this complaint to apply these recently adopted guidelines to resolve a complaint the business had investigated in September 2011. It requested the ombudsman to consider whether its original loss assessment was reasonable in the circumstances or whether this should be amended to take account of returns equivalent to 1% above bank of England base rate.

As no agreement has been reached in this complaint, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

As the business has upheld Mrs N's complaint and carried out a loss assessment, the issue I have considered is whether this assessment is fair and reasonable in the circumstances of her complaint.

It is evident that the business upheld Mrs N's complaint because the policy she was recommended included deductions for the cost of life cover she did not require, and not because the policy presented a degree of investment risk she was not prepared to take.

At the point of sale, it was recorded that Mrs N wished to build up a capital sum over 10 years for which she was prepared to take a 'very cautious' degree of risk. Given her existing savings were already held in deposit-based accounts, which provided capital security, it is evident that she would be prepared to invest in a product other than deposit accounts which offered her the potential to achieve a return that was greater than she was currently receiving by holding her capital on deposit.

I am persuaded, therefore, that, but for the advice she received, Mrs N would have invested in a product that offered potentially greater returns than a bank or deposit-based account in return for a small degree of risk.

Hence, I do not consider it appropriate for the business to assess any financial loss Mrs N may have suffered by comparing the performance of the policy to maturity and the return she would have received from a 90-day notice account over the same 10 years, or with the returns she could receive by applying 1% above Bank of England base rate.

I am satisfied that the adjudicator's reasoning for choosing a 'benchmark' or 'index' rate is more relevant to the degree of risk Mrs N intended to take. I note the point made by the business that it was inappropriate in this complaint to apply redress guidelines recently adopted by this service to resolve a complaint the business had investigated in November 2011.

However, it has always been open to this service to award redress on a basis that coincides with the nature and purpose of the type of investment the consumer would have effected. This does not mean that reference to Bank of England base rate would be appropriate in all cases, particularly where a consumer is prepared to take some degree of risk.

fair redress

To compensate Mrs N fairly, the business should put her as close to the position she would probably be in now but for the advice she received. I believe that Mrs N would have invested differently, although it is not possible to say *precisely* what she would have done differently. However, I am satisfied that the following basis of redress is fair and reasonable given her circumstances and objectives at the point of sale.

what should the business do?

The business should compare:

- the value of Mrs N's policy at maturity and
- the position she would now be in if 50% of this amount had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS index')

If there is a loss, the business should pay this to Mrs N, plus interest at the rate of 8% per annum simple on this loss at maturity to the date of settlement.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs N wanted a worthwhile return for which she was prepared to take a very small risk with her capital;
- The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The APCIMS index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.
- The average rate would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital. The APCIMS index for one who was prepared to take some risk to get a higher return.
- I consider that Mrs N's risk profile was such that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put her in that position.
- This does not mean that Mrs N would have invested 50% of her money in cash and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return she could have obtained from investments suited to her objective and risk attitude.

how to calculate the compensation

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

actual value

This means the value of the policy at the date of maturity.

total fair value

This is value of the policy at the maturity date if the premiums had obtained a return using the method of compensation set out above. It is the total of 'average rate element' and 'APCIMS index element'.

<u>average rate element</u>

To arrive at this value the business should:

- Find out the average rate for fixed rate bonds, as published by the Bank of England, for each month from the date of investment to the maturity date of the policy;
- The rate for each month is that published at the end of the previous month;
- Use the rate for each month to calculate the return for that month on 50% of the relevant portion of the investment;
- The calculation should be carried out on an annually compounded basis; that is, with the return added to the investment at each anniversary.
- Work out the value to the date of my decision.

<u>APCIMS index element</u>

To arrive at this value the business should:

- Work out the value of 50% of the policy if it had performed in line with FTSE APCIMS Stock Market Income (Total Return) index to the maturity date of the policy.

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.
- The information about APCIMS index can be found in the website of the Association of Private Client Investment Managers and Stockbrokers or the FTSE Group.

my final decision

My final decision is that I uphold Mrs N's complaint.

I require The Prudential Assurance Company Limited to pay Mrs N the amount calculated as set out above.

Kim Davenport
ombudsman