



## **complaint**

Mr and Mrs U, represented by a claims management company, have complained about the advice they received from The Prudential Assurance Company Limited to make three separate investments in a with-profits bond between 1998 and 2001. Mr and Mrs U's representative says the investments were unsuitable for them, particularly in respect of the associated risks and the lack of diversification of their money.

## **background**

I have previously issued my provisional decision on this complaint explaining why I feel Mr and Mrs U's complaint should be upheld in part.

In summary, I felt a with-profits bond was broadly suitable for Mr and Mrs U and was consistent with the degree of risk they were willing to accept. But I felt they were advised to invest too much in the bond and that this did not leave them with a suitably balanced or diversified portfolio. I took the view that the advice to make the first two investments in 1998 and 1999 was reasonable, but I did not think the advice to make the third and final investment in 2001 was suitable.

I invited both parties to let me have any further comments they wished to make.

Mr and Mrs U's representative did not accept my provisional decision. It believes a non-qualifying bond was unsuitable because Mrs U was a non-taxpayer.

Prudential did not accept my provisional decision. It said the fact find completed by the adviser at the time of sale records other options were considered for the final investment in 2001. In view of their cautious attitude to risk, it says the options for diversification for Mr and Mrs U were limited and pointed out that they were left with a sizeable emergency fund even after making their final investment into the bond. It also feels the view I have taken is significantly different from the outcome reached in similar cases we have considered previously.

## **my findings**

To decide what is fair and reasonable in this complaint, I have carefully considered everything Mr and Mrs U and Prudential have provided. Having reconsidered the case, including all responses to my provisional decision, my conclusions remain as set out in my provisional decision for essentially the same reasons.

In response to the specific points raised in response to my provisional decision:

I note the comments of Mr and Mrs U's representative about the tax implications of the bond. And while I agree that the tax implications of any investment are one of a number of factors that should be considered in providing investment advice, I do not share the view that an investment bond is necessarily unsuitable for non-taxpayers. While I appreciate other types of investment may have been more tax efficient, I remain satisfied that a with-profits bond was broadly suitable for Mr and Mrs U's circumstances and requirements. In response to their representative's comments about ISAs, it is relevant to note that Mr and Mrs U were investing significantly more than their annual ISA allowances.

My concerns about the advice specifically relate to the amount of their money Mr and Mrs U were advised to invest and the resultant lack of diversification within their portfolio. Following their final investment in 2001, they had nearly two-thirds of their capital invested in a single with-profits. In my view, this proportion was too high.

I am aware the sales documentation indicates there was some discussion about alternative types of investments, but I cannot see the adviser actively recommended diversification or explained the benefits of this or the possible drawbacks of putting so much of their money in one place. If he had recommended Mr and Mrs U diversify their assets, I think it is unlikely they would have rejected that advice. While I appreciate their unwillingness to accept high levels of risk limited their options to some extent, I do not believe this prevented Mr and Mrs U from diversifying their assets. And if Prudential did not offer the range of investments required to achieve this, the adviser could have recommended they speak to an independent financial adviser.

I have noted Prudential's reference to other cases we have investigated, but I must consider each case on its own merits. While it is not appropriate for me to comment in detail on other cases as part of my decision on Mr and Mrs U's case, I have briefly reviewed the cases mentioned and I am satisfied there are differences in the circumstances involved.

### **fair compensation**

To compensate Mr and Mrs U fairly, Prudential should put them as close as possible to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr and Mrs U would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I set out below is fair and reasonable given their circumstances and objectives when they invested.

### **what should the business do?**

To compensate Mr and Mrs U fairly, the business should compare:

- the performance of the part of Mr and Mrs U's bond that resulted from their investment in 2001

with

- the position they would now be in if the amount invested in 2001 had produced a return matching the average rate for fixed-interest bonds with 12 to 17 months maturity as published by the Bank of England

If there is a loss, the business should pay this to Mr and Mrs U.

### **why is this remedy suitable?**

I have chosen this method of compensation because:

- I believe Mr and Mrs U wanted to achieve a reasonable return without any significant risk to this part of their capital.

- Mr and Mrs U were prepared to invest for a longer period of time – but with some flexibility.
- The average rate would be a fair measure given Mr and Mrs U's circumstances and objectives. It does not mean that they 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.

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

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

#### ***fair value***

This is what the final amount invested in 2001 would have been worth if it had obtained a return using the method of compensation set out above. 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 date of calculation
- 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
- 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 calculation

#### ***actual value***

This means that part of the actual *surrender* value of the bond generated by the final investment in 2001 at the date of calculation.

#### ***withdrawals***

The relevant portion of any withdrawal made from the investment should be deducted from the calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

#### ***income payments***

The relevant portion of any regular payment that Mr and Mrs U received from the investment should be deducted from the calculation at the point in time it was actually paid so it ceases to accrue any return from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if the business adds all the income payments to the *actual value* and compares that total with the *fair value* instead of periodically deducting them.

***if the investment has been cashed in***

If the bond has already been cashed in, the above calculation should be used to identify the extent of any investment loss at the date of encashment. Simple interest at the rate of 8% per year should then be added to the investment loss from the date of encashment to the date compensation is paid. If Prudential considers it is legally obliged to deduct income tax from this interest, it must provide a tax deduction certificate so Mr and Mrs U can reclaim any overpaid tax from HM Revenue and Customs if they are eligible to do so.

**my final decision**

My final decision is that I uphold this complaint in part.

I direct The Prudential Assurance Company Limited to pay Mr and Mrs U compensation calculated in line with the method set out above.

Jim Biles  
**ombudsman**