

complaint

The complaint concerns an endowment savings policy taken out in 1990. The Prudential Assurance Company Limited has upheld the complaint but calculated redress based upon a comparison of the value of the policy with the return Mr A would have received if he had saved the premiums in a standard bank account using Bank of England interest rates.

background

The adjudicator was of the opinion that the method of redress proposed by Prudential was not in line with the approach of the Financial Ombudsman Service in similar complaints. She felt that the consumer was prepared to take a certain amount of risk with the investment, all be it not as high an amount as the unsuitable product, therefore the rate of return used should have been Bank of England plus one percent. Prudential responded stating there was no compelling evidence that the consumer was prepared to take any risk.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr A took out an endowment savings policy in 1990. The business has upheld his complaint as it could find no evidence he wanted the life cover provided by the policy. The business therefore concluded that the policy may not have been the most suitable savings product for Mr A. So the issue for me to decide is whether the redress offered by the business is fair and reasonable in the circumstances of this complaint.

The business has compared the return on this savings policy with what Mr A would have received if he had instead saved his money in a standard bank account using Bank of England interest rates. The claims company representing Mr A say that compensation should be calculated using Bank of England rates plus one percent for the period the money was invested in this savings policy.

Mr A took out this policy for a term of 13 years and paid a quarterly premium. It appears that Mr A was able to afford those payments as he continued to pay into the policy until it matured. There is very limited information recorded regarding the reason for this recommendation. A personal financial review was completed which indicates that Mr A was employed and that his only financial priority was savings. It records under "advice" in summary that the customer asked for the added saving to run alongside an existing policy.

I consider that at the time of sale Mr A was employed and given his age likely to remain employed for the foreseeable future so he had some means of replacing any lost capital. I consider on balance that the quarterly payments were affordable and I am satisfied that Mr A was willing to tie up his money in a savings plan for a considerable amount of time. I am not persuaded therefore that Mr A would otherwise have placed this money in a standard bank account. I consider it likely on balance that he was looking to place his money somewhere where it would achieve a reasonable return and was prepared to take a low level of risk in order to achieve that return. I note that the policy he took out only provided a guarantee of the sum assured plus any bonuses. I also note that the investigation summary provided by the business indicates that it considered Mr A had a low risk attitude to investment risk which was consistent with the policy taken out.

Overall I consider that compensation based on Bank of England rates plus one percent is a fair and reasonable method of compensation in the circumstances of this complaint. There is no compelling evidence as to which product Mr A would otherwise have invested in. However, I am not persuaded on balance that he would have placed his money in a standard bank account. I consider he was looking to achieve a reasonable return which was why he was willing to tie up his money for a long time. I am also satisfied that as he had a reasonable income and it appears he could afford to pay the quarterly premiums that he was willing to take a low level of risk over the long term. I am satisfied on balance that he would have looked to achieve a higher return than base rate by taking a low level of risk and by keeping his money tied up for a significant period.

So I consider it fairest to assume:

- With reasonable advice, Mr A would have had the original capital intact plus a reasonable rate of return on maturity.
- The rate of return on the original capital would have been equivalent to 1% more than Bank of England base rate from time to time compounded yearly.
- The rate of return would have been by capital growth, rather than income, and may be taxable in the consumer's hands as a capital gain.

My recommendation is that, in full and final settlement of the complaint, Prudential should pay Mr A compensation of D + E, where:

- A = the capital invested, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income before maturity;
- B = a return on the amount from time to time of A by way of capital growth equivalent to 1% more than Bank of England base rate compounded yearly from the date of the payment of each premium to maturity;
- C = the cash-in value of the actual investment at maturity;
- D = A + B – C, representing the investment loss to maturity;
- E = interest on D from maturity to the date of payment.

Interest is to be at 8 percent per year simple.

For clarification, A and B above should work as follows: Any sum paid into the investment should be added to the calculation from the point in time when it was actually paid in so it accrues the "reasonable rate of return" within the calculation from that point on. Any reduction to the investment (excluding the final encashment payment) should be deducted from the calculation at the point in time when it was actually deducted so it ceases to accrue the "reasonable rate of return" within the calculation from that point on. The final encashment payment is dealt with separately under point C above.

If Prudential considers it is legally obliged to deduct income tax from the interest, it must send a tax deduction certificate with the payment. The complainant can reclaim any tax overpaid from HM Revenue and Customs, depending on the circumstances.

my final decision

For the reasons outlined I uphold the complaint and compensation should be paid to the consumer by The Prudential Assurance Company Limited as outlined above.

Julia Chittenden
ombudsman