

## complaint

Mr and Mrs F have complained that advice they received from The Prudential Assurance Company Limited ("Prudential") in 1998 to invest three capital sums of £10,000 in a with-profits bond was unsuitable for them.

They are represented by a claims management company, which has said that:

- The adviser did not accurately establish Mr and Mrs F's attitude to risk, and the nature of the investment did not match the client actual approach to risk;
- Other tax-efficient alternatives, for example, PEPS (ISAs) and TESSAs do not appear to have been discussed;
- The nature and terms of the investment were not fully explained to Mr and Mrs F at the point of sale;
- The concentration of £30,000 in one fund did not meet diversification requirements;
- The investment fund is subject to tax which cannot be reclaimed by Mr F or Mrs F, who were higher rate and non-taxpayers respectively.

## background

Mr and Mrs F's complaint was investigated by one of our adjudicators, who concluded that the complaint should not be upheld. Briefly, he believed that they could afford to invest a capital sum of £30,000 and the choice of the with-profits fund was consistent with their 'very cautious' approach to risk. Also, they retained a substantial proportion of their total savings in deposit-based accounts. He agreed that other products may also have been recommended but this did not make the recommendation they received unsuitable.

In response, Mr and Mrs F's representative did not agree with the adjudicator's view and said that the advice was flawed. The issue was not one of affordability; the advice did not adequately take into account Mr and Mrs F's respective income tax status. Accepted industry practice and regulatory guidance required an adviser to consider tax-efficient investment products in the first instance and there is no evidence that products such as ISAs, PEPS or TESSAs were presented to Mr and Mrs F for consideration at all.

Furthermore, almost 50% of their total capital savings was held by Mrs F in deposit accounts, from which she would have received interest gross, as a non-taxpayer. She was now being advised to switch some of this capital to an investment fund that is subject to tax she cannot reclaim.

Conversely, Mr F was a higher rate taxpayer and would not be expected to place capital in a deposit account where he would be taxed at the highest possible as he should not be advised to invest in a taxed fund, when tax-free products were available. The bond could also give rise to an excess rate tax liability for Mr F whenever they decided to surrender the bond.

Also, the risk inherent in a with-profits investment of a market value adjustment (MVA) factor applying on surrender was not pointed out to Mr and Mrs F.

Therefore, Mr and Mrs F received inappropriate advice due to the *choice* of product rather than risk presented by the fund or the affordability of the advice.

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 to decide what is fair and reasonable in the circumstances of this complaint.

Mr and Mrs F received advice in May, July and August 1998 to reinvest £10,000 each from the proceeds of three separate endowment policies that had recently matured for approximately £61,000. At the point of sale, these capital sums were temporarily held in deposit accounts in Mr F's name pending reinvestment. I agree with the adjudicator that, although three recommendations were given within four months, it is fair and reasonable to consider them as one piece of advice because Mr and Mrs F's financial circumstances and objectives were essentially the same during this period.

Mr and Mrs F's representative has since accepted that some elements of the complaint it first presented to Prudential do not apply; namely, the establishment of their attitude to risk and the lack of diversification presented by a with-profits fund. The complaint concerns the choice of an investment bond given Mr and Mrs F's respective tax status over more 'tax-efficient' products, such as ISAs, PEPs and TESSAs.

It is not evident what has prompted Mr and Mrs F to complain about this advice they received approximately 16 years ago; whether they are concerned at the ongoing value of the bond or they have surrendered it and suffered unexpected penalties in doing so.

I agree that the unique risk presented by a with-profits investment is the potential application of a MVA factor on surrender and that this risk does not appear to be expressly stated in the documentation completed at the point of sale.

However, the bond arranged by the business was a with-profits investment which, in 1998, would generally have been considered to present a 'low' level of investment risk for a 'very cautious' investor. Such policies had been performing well in the past and, given the then economic climate, it was generally expected that they would continue to do so.

Accordingly, product providers had not generally applied MVAs in the past and were not envisaged to do so in the future.

However, the economic conditions prevailing in 2002 and, again, from 2008, did see the introduction of MVA factors to avoid a strain on the with-profits fund as many investors sought to withdraw from these investments at the same time. In 1998, the likelihood of a MVA applying was not strong and, understandably, it did not feature prominently in the risk nature of a with-profits investment at that time. I have not been made aware whether or not the application of a MVA is a real issue for Mr and Mrs F.

Otherwise, my understanding is that, in 1998, Mr and Mrs F were both over 50 years old, with dependent children and no mortgage or other liabilities. Given their capital was previously held in endowment savings plans and deposit-based accounts, I am satisfied that an attitude to risk of 'very cautious' appropriately reflected their approach to investing for capital growth. There was an option on the 'fact find' for Mr and Mrs F to confirm that they were 'risk-averse' and they did not do so.

Specifically, Mr F was a higher rate taxpayer as he was drawing a pension from a previous employment as well as an income from his current employer. He was a member of his

current employer's pension scheme in which he had accrued approximately five years' pensionable service.

However, although his scheme retirement age was 60, the adviser recorded that Mr F was intending to retire at age 57 providing his total pension income at that time was at least £15,000 per annum. As his pension from his previous employment alone was likely to be approaching £15,000 per annum by then, it was reasonable to assume that he could retire as planned. Significantly, Mr F was then likely to become a basic rate taxpayer. Given the adviser recommended the bond for capital growth over at least five years, some of the tax implications for a higher rate taxpayer would therefore not apply to Mr F whenever Mr and Mrs F came to take the proceeds of the bond.

Based on the evidence provided by the documentation completed at the point of sale, Mrs F was a non-taxpayer who, therefore, could not claim back any tax incurred by funds within an investment bond.

I do accept that the tax treatment of investment bond funds is a consideration in assessing the suitability of this advice and Mr and Mrs F's representative has made this the central issue in their complaint. He has said that the adviser did not take proper account of their respective tax status and should have considered more tax efficient savings options, such as PEPs (ISAs) and TESSAs. While ISAs were not introduced until April 1999, I appreciate that its predecessor, the PEP, and TESSAs were viable tax-efficient options for Mr and Mrs F to consider. However, such were the contribution restrictions on these products that Mr and Mrs F could not have invested as much as £30,000 in the same tax year.

Mr and Mrs F wished to invest £30,000 of capital growth over at least five years while adopting a 'very cautious' attitude to risk. I do appreciate that other products may have received more favourable tax treatment, although the return they produced would also be dependent on other factors, such as plan charges, investment terms and asset allocation. While Mr and Mrs F's representative has not indicated what prompted them to complain, or the status of the investment, if they have complained because they are disappointed with the comparative return the bond has achieved, the tax treatment of the investment fund is but one factor in its performance.

It is not sufficient for me to conclude that, for this reason alone, a different product or products should have been recommended which may, or may not, have provided a better return.

Mr and Mrs F wished to invest for capital growth over the medium-to-long term and, notwithstanding the tax treatment of the bond, they could reasonably expect it to provide a better return than holding capital on deposit. I am not persuaded that the advice they received was inappropriate for their objective, even if alternatives existed which may also have constituted a suitable recommendation.

### **my final decision**

My final decision is that I do not uphold Mr and Mrs F's complaint and I make no award.

Kim Davenport  
**ombudsman**