

## **complaint**

Mr R complains that The Prudential Assurance Company Limited failed to pay out the correct maturity sum on his endowment policy and didn't deal with his concerns about this promptly or adequately, or pay sufficient compensation.

## **background**

Mr R said:

- The salesman said he could reasonably expect to receive back treble his money after 25 years
- This is the basis on which he took out this Scottish Amicable policy rather than one with the Pru whose growth projections were lower. The Pru, who took over this policy at some point, should therefore pay out what he'd been promised initially
- There was a specific fund established to protect Scottish Amicable policyholders after this 'take-over', and he has not received a fair sum or bonus from it, or an explanation as to what the Pru is doing with this money

An adjudicator at this service did not feel his complaint should be upheld.

He said he'd seen no evidence that the Pru had not paid the appropriate maturity sum which did include some bonuses but others had never been guaranteed. He said that the terms, conditions and general operation of Mr R's policy had not been affected as a result of the Pru taking it over from the original provider. The projections given at the outset were based on previous/recent returns, something which was likely made clear in the documentation but that these had proved over-optimistic as growth rates (and therefore returns) had plummeted in the years since.

He'd seen no evidence to conclude that the Pru had acted incorrectly in its management of the Scottish Amicable inherited fund but any overall concerns about this would need to be addressed to the industry regulator, the Financial Conduct Authority.

He also felt £200 was reasonable compensation for the trouble and upset caused by the Pru's inadequate responses, particularly given it had late interest to the maturity sum to take account of the delay in providing these.

Mr R disagreed, and said:

- Legally binding contracts are usually written and documented, and in Scotland they can include verbal contracts provided they can be evidenced
- He entered into a legal, verbal contract based on what the salesman told him; there was no mention of warnings. His friend, who is also complaining about the same product, did the same thing and has the same recollection of what was promised
- He's still yet to be provided with an explanation about who will benefit from the Scottish Amicable Investment Fund and believes he's been cheated out of approximately £2,500. He would like to know how much, if any of the 'maturity sum' of his policy actually came from this fund

- The adjudicator said that he did not disbelieve his recollections from 1993. But why should he question this at all given he is an honest, respectable member of the public?
- He enclosed a letter from Scottish Amicable – at the point of sale – which he felt supported his argument about what was promised

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In this case I agree with the adjudicator and for the same reasons.

Firstly, I fully understand why Mr R was so disappointed by his final pay-out as this was so much less than he was expecting, and believes he was promised at the outset. There are therefore two distinct issues: what was his contractual entitlement and is there sufficient evidence to conclude that the Pru breached this; and whether the original salesman misled him into believing he was guaranteed a specific return.

Having read the documentation, I have seen nothing to suggest the policy did guarantee either a specific return, beyond the basic sum assured, or particular bonuses. In this respect the policy mirrors those sold by all other providers of these types of endowment policies. Part of the money is used to pay for ongoing life cover while the rest is invested. By definition, growth rates, and therefore the eventual pay-out, cannot be accurately predicted, let alone guaranteed over any period time, let alone 25 years.

In this respect projected returns could only be based on certain assumptions about possible future growth rates. Such projections had to be approved by the financial regulator at the time, and since, so Scottish Amicable would not have been able to pluck an unrealistic rate out of thin air just to lure customers. The projections had to be based on returns in recent years and approved by the regulator.

Unfortunately, since the early 90s growth rates have fallen rapidly and never returned to earlier levels; in recent years they have been in low single figures. This is why most policies taken out in the 80s and 90s have ended up delivering far less than was originally projected. So this not a unique Scottish Amicable or Pru problem.

I don't believe the documentation would've said that bonuses were guaranteed as I have never seen an endowment plan where this was the case. So I can see no grounds to uphold Mr R's complaint on this point. In relation to the Scottish Amicable Insurance Fund, in my view the Pru explained how it oversees this fund in its Final Response Letter in reasonable detail, saying:

*'The purpose of the demutualisation process was fundamentally to protect existing policyholders by trying to ensure that their investments were not negatively impacted. This was done by creating a 'ring fenced' fund called the Scottish Amicable Insurance Fund (SAIF). The fund is used exclusively for appropriate ex-Scottish Amicable investments and Prudential cannot access the fund for any wider purpose.'*

Given this, I've no reason to doubt that it paid Mr R a fair sum from this fund. It also outlined the different payments he'd received in its Final Response Letter.

This still leaves the issue of whether the salesman offered promises which ran counter to the terms and conditions of the policy.

I understand that Mr R took exception to the adjudicator's comments saying that he didn't doubt Mr R's recollections but still could not uphold this part of his complaint. I therefore won't repeat this explanation.

But this sale took place more than 25 years ago, the person concerned is no longer alive and so cannot offer any evidence himself, and there appears to be no documentation which could clarify what was said. I therefore have to consider whether there is sufficient, persuasive evidence to safely conclude that the salesman misled Mr R, presumably deliberately.

I say this because the salesman would have known it was impossible to offer any guarantees about returns over the next quarter of a century so could only have made such a claim knowing this was not true.

Given I only have Mr R's recollection, and that this is of a conversation that took place more than 25 years ago, I simply do not believe there is sufficient evidence to safely conclude that the salesman definitely misled him.

Even if I did reach such a conclusion, I could not instruct the Pru to pay out what Mr R believes he was promised as he was never entitled to anything more than he recently received. I could only consider whether Mr R would have taken this policy out if he was aware that the projections were not guaranteed, and what he might have done with this money instead. As no savings or endowment plans offered guaranteed returns I might conclude that he would still have agreed to this policy.

Finally, I am satisfied that the Pru was prepared to make the pay-out on time and subsequently paid reasonable compensation in lieu of the fact that it had not responded to Mr R's reasonable queries earlier.

### **my final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 March 2019.

Tony Moss  
**ombudsman**