

complaint

Mrs T has complained about the performance of her mortgage endowment policy. She is unhappy that The Prudential Assurance Company Limited (Prudential) has failed to pay the target amount at maturity. She also believes that Prudential has failed to pay the further bonuses it promised former Scottish Amicable policyholders when it acquired that business in 1997.

background

After being rejected by the business the complaint was considered by one of our adjudicators, who concluded that this complaint should not be upheld. In summary, she considered that there was insufficient evidence to allow her to conclude that Prudential had mismanaged the policy. She was also satisfied that there was no evidence that the maturity value Prudential had paid Mrs T was incorrect.

The adjudicator also said that as Prudential did not sell the policy it was not responsible for the advice at the time of the sale.

my findings

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

Firstly, I note that the sale of the policy was the responsibility of another business and not Scottish Amicable (now Prudential), so I must confine my remarks to the matters set out in the 'complaint' section.

It is very unfortunate that in recent years the maturity values of many policies like this one have been disappointing and below what was expected at the time the policies were taken out. There are many reasons for this and it is common to many product providers and most certainly not limited to Prudential.

The value of the policy at maturity is dependent on a number of factors. Some are not within the control of Prudential. Investment returns, inflation, economic events and the actions of others such as governments will all have an influence on the amount of money made by investments. Other factors include the exercise of commercial judgement and actuarial (professional) estimates and projections. I will not usually interfere with or challenge such decisions.

As I am sure Mrs T appreciates, the function of an investment manager calls for the making of fine judgements. Of course such judgements may subsequently turn out to have been 'wrong', in the sense that with the benefit of hindsight a different course might have produced a different or better result. However that does not in itself prove negligence or fund mis-management. That equally applies to decisions over bonus rates. However I cannot use hindsight in making a decision.

The business could not have known how returns would change over the years. The way this policy was set up was decided over 25 years ago. I will not challenge the way it was designed. There is nothing here to persuade me the policy was fundamentally flawed when it was set up. I have to say the way this policy was set up, and its resulting maturity value is

very similar to many other such policies across most if not all of the product providers of such policies.

Whilst there are many different techniques in recommending or selecting the investments, the one thing they have in common is that they do not always work. Quite simply, unless an express or implied guarantee is given then there is no guarantee of success. In this particular case, although I can appreciate Mrs T's disappointment with the performance of the investment, I cannot see anything to indicate a basis for a claim of fund mismanagement.

It has often been said that with profit funds are "opaque", complex and difficult to understand. That is not for me to comment on, but the way these products were designed clearly does not help consumers in understanding where they stand financially and it can be difficult to get information from a business on occasions. I might add this is certainly not just something which applies to this business but to most if not all similar businesses. The fact remains however that these policies are complex and not easy to understand.

As explained above Mrs T has complained about the takeover of the fund in question by this business. She says that promises made at the time of the takeover have not been kept. I think it worth explaining the remit of the Financial Ombudsman Service. We aim to resolve the case in a fair and reasonable manner having first taken account of the individual circumstances involved.

Where the crux of a complaint deals with the manner in which a business has managed an investment or it appears to be concerned with the exercise of its commercial judgement, we generally are unable to uphold the complaint. In certain situations we may dismiss such complaints without considering the merits of the case.

However, if it has been suggested that the business is acting in a manner that is unfair and this may have wider implications for a certain class (or classes) of investors we are able to refer the matter to the Financial Conduct Authority (FCA). That is the situation here. In summary Mrs T says promises made have not been kept. Those promises, she says, if kept, would have resulted in bigger bonuses being added to her policy. Although not expressly stated as such I suspect this is an issue which would, if found to be the case, apply to a significant number of people in the position Mrs T finds herself.

Given this background we referred this matter to the FCA. It has confirmed that at present it does not have any concerns about the management of the fund in question here. Given this finding, I find on balance that it would not be fair or reasonable for me to uphold the complaint on the basis of Mrs T's specific concerns about the management of the fund.

In respect of the policies and funds that Prudential inherited from Scottish Amicable it is my understanding that this took place in 1997. Mrs T points to literature which stated that a cash payment would be made along with a "special bonus". The literature went on to say that "further bonuses with a total current value currently estimated at around £530 million will be added to the bonuses of with-profits policies, when those policies are paid out".

I am satisfied that Mrs T was paid a cash payment and that £642.82 was added to her policy as a "special bonus" at the time of the transfer.

I understand a breakdown of the maturity value was provided in Prudential's final response, but this did not include any reference to "further bonuses". I can understand Mrs T's confusion about this but Prudential have explained that the bonus added in 1997 of £642.82

has itself accrued reversionary (annual) bonuses since then. It says that the “further bonuses” are the annual bonuses which have accrued on the “special bonus” added to the policy. The combined effect has been to increase the maturity value by £1,329.31 meaning the “further bonuses” accrued must have totalled £686.49.

I can see why Mrs T may have expected a separate identifiable “further bonus”. However I am satisfied, having considered all the evidence, that I cannot say Prudential has failed to pay the maturity value that Mrs T is entitled to.

Overall, I have seen insufficient evidence to persuade me that the maturity value Prudential calculated reflects anything other than the true value of Mrs T’s policy at maturity. This is the amount that Mrs T is entitled to and I cannot ask Prudential to pay her any more than that.

my final decision

These are very difficult cases. To some extent Mrs T, like many others have a point. It would be much better if this policy was simpler and if there was a better and clearer way of knowing what was happening to its value. However to uphold a complaint I must make a positive finding that it would be fair and reasonable to do so. That usually means finding the business has got something wrong. I cannot find that here.

For the reasons given above and for those given by the adjudicator before me I do not uphold this complaint and make no award against Prudential.

Mike Boyall
ombudsman