complaint

The complaint concerns the investment advice Mr B received from The Prudential Assurance Company Limited (the business) to start a Personal Equity Plan (PEP). Mr B is represented by a claims management company ("CMC"), which has stated the advice was unsuitable given his circumstances and objectives at the point of sale.

background

Mr B started this PEP in 1996 and added another lump sum to it shortly afterwards. He then made monthly payments until surrendering it in 2012.

Mr B complained to the business but it did not uphold his complaint. It said the investment was suitable given his capacity for and attitude to risk. He had invested in a with-profits fund before and had a reasonable financial awareness.

Mr B made his complaint to this service where it was considered by an adjudicator. She considered the complaint should be upheld as whilst she felt Mr B was in a position to place his capital at risk, she did not agree the investment fund recommended to him matched his attitude to risk at the time.

The business disagreed with the adjudicator's recommendations and raised the following points, in summary:

- The literature demonstrates Mr B considered himself a low and medium risk investor. This would suggest he was prepared to place his capital in low and medium risk investments.
- Mr B clearly wanted to invest his capital for greater potential returns. The business cannot find any evidence to suggest Mr B did not understand the recommendation he was provided with.

As a resolution could not be reached the complaint was referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusions as the adjudicator and for essentially the same reasons. I uphold this complaint.

The business says that Mr B should be considered as having a "medium" attitude to risk. I have considered his circumstances at the time and it is not clear to me that these suggest that he would have a "medium" attitude or capacity for risk. He was in his mid-fifties, married with a dependant. His income and savings appear to be relatively modest and his investment experience appears to be largely limited to two with-profits endowment policies. It was the maturity of these polices which provided the funds for starting these investments.

Also, in the fact find completed at the time of the first investment, in response to a question;

"If you invested any money would your investment to be low risk, medium risk or high risk?"

Mr B appears to have ticked "low risk".

His money was invested into the business's managed fund. This type of fund would carry a significant degree of volatility due to the large proportion of equity based assets including some specialist and overseas equities. I am not satisfied that Mr B ought to have been advised to accept this degree of risk with this investment given his circumstances and his recorded attitude to risk. As I have said, given his circumstances it is not clear how he was assessed as having a medium attitude to risk and he had expressly said that he wanted low risk investments.

Having considered all the evidence, I agree with the adjudicator.

I note what the business has said about the redress proposed but I do not agree. I agree with the adjudicator that this is a reasonable means of placing Mr B in the position he may have been but for the advice. I think he would have placed his capital at risk but with a lower level of risk. I believe the redress proposed reflects this.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr B as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr B would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given his circumstances and objectives when he invested.

To compensate Mr B fairly, the business must

compare

- the performance of Mr B's investment

with

- the position he would now be in if 50% of his investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS income index')

If there is a loss, the business should pay this to Mr B.

I have decided on this method of compensation because Mr B wanted growth with small risk to his capital. Mr B was prepared to invest for a longer period of time – but with some flexibility.

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to his capital. It does not mean that Mr B 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 the capital.

The APCIMS income index, which is a combination of diversified indices of different asset classes, mainly UK equities and government bonds would be a fair measure for a consumer who was prepared to take some risk to get a higher return. I consider that Mr B's risk profile

was in between, as he was prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr B into the position he would have been in had he received appropriate advice.

how to calculate the compensation?

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

The *actual value* is the amount Mr B received at the date surrendered.

The *fair value* is what the investment would have been worth if it had obtained a return using the method of compensation set out above.

To arrive at the *fair value,* the business should work out what 50% of the original investment would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date of investment to the date surrendered and apply those rates to that part of the investment, on an annually compounded basis.

The business should add to that what 50% of the original investment would be worth if it had performed in line with the APCIMS income index from the date of investment to the date surrendered.

Any additional sum that Mr B paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mr B received from the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the date surrendered to the date of settlement. Income tax may be payable on this interest.

my final decision

I uphold the complaint about The Prudential Assurance Company Limited. My decision is that it should pay Mr B the amount calculated as set out above.

Keith Taylor
ombudsman