

## complaint

Mr B complains that The Prudential Assurance Company Limited hasn't calculated his surrender value correctly.

## background

One of our adjudicators considered the complaint but didn't think it should be upheld. In summary he said:

- Under the terms of the policy the business only promised to pay the sum assured, the reversionary bonus and the terminal bonus upon death of the life assured or his reaching the age of 90.
- He's seen no evidence to suggest the business departed from its obligations under its terms and conditions, or that the surrender value didn't represent what he was entitled to.
- The amount of bonus payment is a matter for the business in the legitimate exercise of its commercial judgement. It's not an issue our service gets involved in.
- Bonuses are generally declared annually but can sometimes be more frequent. Mr B's claim value will depend on the bonus applied to the policy up until a given point, and the bonus rate at the point of claim.
- The business wasn't being unreasonable by not telling Mr B what the future bonus was likely to be, because it didn't know.
- It's unable to discuss the bonuses it pays in individual cases, as it has to be fair to all customers, and couldn't award Mr B a higher bonus contrary to the terms and conditions.
- Mr B has also complained about suitability for the first time. The business needs to be given time to respond, and it's dealing with this as a separate complaint.

Mr B disagreed with the adjudicator's conclusions and wanted an ombudsman's decision. In summary he said:

- He was disappointed with the level of service he received and didn't feel he'd got an answer to why the business couldn't explain its valuation calculation.
- He received the a response dated 6 December 2017, which said: *"...to give each with-profits policyholder a return on the premiums which he or she has paid that reflects the earnings of the underlying investments, whilst smoothing out the peaks and troughs of the investment performance; and to ensure that with-profits policyholders receive a fair share of the profits distributed from the with-profits fund by way of bonus additions to their policies"*, and *"...your premiums are invested in the company's with-profits fund"*. In light of the business' final response he wants to know:
  - As he's not paying any premiums so what investments are being made on his behalf so the value doesn't decrease over the years? If no premiums are being paid the business isn't fulfilling its contractual obligations.
- His complaint isn't about guaranteed bonus figures in the future.

The adjudicator having considered the additional points wasn't persuaded to change his mind. He said:

- The business has already confirmed that the policy is eligible for bonuses going forward, this is generally the case even when a policy is paid up.

- In line with the terms Mr B will receive the sum assured plus the reversionary bonus declared up until the point of claim - as opposed to the reduced amount he'd been quoted recently.
- The final/terminal bonus (if any) can also be reduced at the discretion of the business upon surrender. The final bonus on claim (if any) will be based on the declared rate at that time. Mr B recently received this year's bonus notification so it's likely he's received previous bonus notifications.
- The business will keep Mr B updated on the policy value and bonuses declared going forward.
- The business has decided not to collect further premiums on this policy. It would happily accept further premiums but it has made a legitimate commercial decision not to.
- He doesn't think by asking Mr B not to pay premiums (whilst maintaining the policy benefits) equates to a claim. A valid claim would be upon death or when he reaches 90.
- The business has given Mr B a current surrender value and provided sufficient information so he can make an informed decision. It can't advise Mr B on how to proceed and it's up to him whether or not he maintains the policy.

As no agreement has been reached the matter has been passed to me for review.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the adjudicator's conclusions for much the same reasons. I'm not going to uphold this complaint. On the face of the evidence, and on balance, I'm not persuaded that the business has acted incorrectly.

But before I explain further why this is the case, I think it's important for me to note that I very much recognise Mr B's strength of feeling about this matter.

Mr B's provided detailed submissions to support his complaint, which I've read and considered carefully. However I hope he won't take the fact that my findings concentrate on what I consider to be the key issues, as a discourtesy. The purpose of my decision is to set out my conclusions and the reasons for reaching them.

The business made a commercial decision to make the policy paid up, most likely because it feels Mr B no longer has to pay premiums to maintain a reasonable surrender value. Its decision to do this is a legitimate exercise of its commercial judgement and not something that our service generally gets involved in.

But this change doesn't amount to a claim being made. And whether Mr B carries on with the policy as it is or surrenders it is a matter for him. Given the way that these policies operate, I can't safely say that one course of action is likely to be more disadvantageous than the other.

Just because the policy is paid up, and the business is longer taking premiums from Mr B, doesn't mean that in a year or two the policy is likely to have less value, than it does at the moment, with only weeks from the last premium being paid. Although this is possible, it's unlikely because the policy was paid up.

If the surrender value in this case was lower/higher than the expected maturity value, the business can apply smoothing in order to bring the value closer to its intended maturity value, which is likely to counteract any issues that might arise from lack of payment of further premiums. I don't think it'll have done anything wrong by applying this process.

In answer to Mr B's concerns, I'm not persuaded that the business' has breached its obligations. Under the terms of the agreement it's entitled to make the policy paid up. I don't think it did this to disadvantage Mr B. It's a common industry practice and not limited to the business.

That notwithstanding, I note the surrender value is subject to change and the business will provide a value which it feels fairly represents Mr B's share of the fund for the time his policy had been in place. I don't think at present there's a reliable way of knowing what that figure might be, because it's subject to change.

I'm conscious that if the smoothing process leaves a surplus in the fund, the policy can receive a terminal bonus, as a distribution of that surplus.

This way it's likely Mr B receives the true value of the gains accrued by the fund whilst the policy is in force. However, I note both the annual and terminal bonuses are at the business' commercial discretion and it's not something this service can interfere with.

I ought to clarify that any question of how funds are managed and operated is a question for the industry regulator, the Financial Conduct Authority (FCA). It supervises the management of funds and any question over whether the business has properly managed the with-profits fund is an issue for it to consider in its regulatory capacity.

By contrast, we don't have a regulatory role. And so when we receive a complaint involving concerns about whether a fund has been managed appropriately, it means we're not generally in a position to carry out an investigation.

We can make the FCA aware of potential issues that are brought to us. If it was the case that the FCA had concerns about the fund and its management, it has the powers to investigate and take any action it considers appropriate. In the event the FCA did identify issues and take action, it's unlikely it would contact individual(s) directly. Instead, it would be more likely to instruct the business to take action and contact policyholders itself.

If Mr B wishes, he could also contact the FCA himself with details of his concerns. But as I've said above, it's unlikely he'll receive a response setting out any action it may decide to take.

I appreciate this isn't be the outcome Mr B was hoping for. But for the reasons I've explained, I don't think there's anything further I can do to assist with this complaint.

### **my final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 January 2019.

Dara Islam  
**ombudsman**