

## **complaint**

Mr F's representative, a claims management company (CMC), complains on his behalf that he was given unsuitable investment advice by The Prudential Assurance Company Limited (the business).

In summary the CMC says the investment was too high risk. It suggests Mr F should've used the funds to reduce his mortgage and retained funds for emergencies and unexpected future spending.

## **background**

Between October 1997 and November 2002 Mr F contributed £48.30 a month into a Prudential Managed Trust Fund PEP, subsequently changed to M&G Episode Growth Fund Stocks and Shares ISA (the investment).

Between December 2002 and November 2008 he contributed £50 a month. He made no withdrawals until 2008 when he withdrew £7,009. The £182 left was withdrawn in September 2014 and the investment was closed.

One of our adjudicators considered the complaint and thought it should be upheld. In summary he said:

- There's no evidence that Mr F was made aware what a 'medium' attitude to risk meant, or that Mr F had accepted getting less than he invested.
- Mr F was on a low income at the point of sale and shouldn't have been advised to invest half of his money. He was left with very little for unexpected future expenditure.
- Although he owned his own property, he had a substantial mortgage outstanding.
- It's unclear how he acquired the shares that he had. Nevertheless it doesn't prove that he was aware of the risks associated with the recommendation.
- Whilst Mr F may have been contributing to the family income, the advice was given only to him.
- Overall he's not satisfied that the amount invested or the associated risk of the investment is suitable.
- Mr F should be given redress based on the 50/50 benchmark.

The business disagreed with the adjudicator's view. In summary it said:

- The investment risk would have been explained to Mr F.
- The fact find at the time didn't have a documented risk explanation, but this doesn't mean that the risk wasn't explained to Mr F.
- Mr F would have been given the Key Features Document (KFD) at the point of sale which made clear the risk factors involved on the very first page.
- The recommendation was suitable.

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 going to uphold this complaint. On the face of the evidence, and on balance, despite what the business says, I'm not persuaded that the recommendation was suitable.

Whilst it's fair to say certain questions were asked of Mr F to arrive at the conclusion that he was a medium risk investor, I'm uncertain as to the reasoning behind this being identified as his attitude to risk.

I note Mr F wasn't an experienced investor, he had a fairly substantial mortgage outstanding and little money set aside for future unforeseeable spending or emergencies. Overall, I'm not persuaded this was an accurate or correct assessment of Mr F's attitude to risk.

I'm not suggesting that Mr F was risk averse or that he wasn't willing to take any risk at all. I'm just not satisfied that he was aware of the level of risk, so wasn't willing to take that risk in order to achieve capital growth. And there appears to be no reason for him to go beyond the scope of products which offered anything other than a low/cautious risk.

I appreciate that just because the fact find at the time didn't have a documented risk explanation, doesn't mean it wasn't explained to Mr F. But this doesn't automatically mean that it would have been explained to him either. On a balance of probabilities, on the face of the evidence I can't safely say that it was.

I also appreciate the points made about the KFD, but I think it's likely that Mr F relied on the advice that he was given rather than the documentation. And I'm conscious of the business' reasons for recommending a higher investment amount, but I don't think it was suitable in light of his overall financial circumstances either.

Because Mr F was prepared to take some risk, as opposed to no risk at all, I don't think the adjudicator's recommendation to use the 50/50 bench mark is unsuitable.

### **fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr F 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 F would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

### **what should the business do?**

To compensate Mr F fairly, the business must:

- Compare the performance of Mr F's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

the business should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
The Prudential Managed Trust Fund PEP subsequently changed to M&G Episode Growth Fund Stocks and Shares ISA.	surrendered	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

**actual value**

This means the actual amount paid from the investment at the end date.

**fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, the business should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

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

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* 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 those payments and deducts that figure at the end instead of deducting periodically.

**why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr F wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr F's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr F into that position. It does not mean that Mr F would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr F could have obtained from investments suited to his objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

### **my final decision**

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

The Prudential Assurance Company Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F either to accept or reject my decision before 8 April 2019.

Dara Islam  
**ombudsman**