

complaint

Mr E complains The Prudential Assurance Company Limited didn't tell him it had stopped paying commission to third party financial advisers. If he'd been aware of this he wouldn't have topped up his bond. He believes Prudential should still offer him the 5% commission previously paid to his financial adviser.

background

The background and circumstances of this complaint are set out within my provisional decision of 24 April 2017. A copy of this is attached and forms part of this decision.

Both parties accepted the conclusions of my provisional decisions.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. For the reasons outlined in my provisional decision, I am satisfied this complaint should be upheld to the degree previously outlined.

If Mr E agrees to surrender his £50,000 top-up investment sum (in effect cancelling it) Prudential should return this sum to him and pay interest on this amount from the date he made this investment to 11 July 2016. It should use the formula this service uses when calculating likely returns on a cautious investment known as 50/50. This involves using an equal combination of the Bank of England's rate for fixed-rate bonds of 12 to 17 months' maturity and the FTSE Private Investors Income Total Return Index.

It should then add 8% simple interest per annum to this resultant sum from 11 July 2016 to the date of settlement of this complaint.

my final decision

I uphold this complaint and instruct The Prudential Assurance Company Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 9 June 2017.

Tony Moss
ombudsman

Copy of provisional decision

complaint

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background

Prudential said that from 2012 it was no longer entitled to pay advisers commission and had informed Mr E's adviser and other registered advisers of this at the time. It was not required to tell the policyholders themselves.

It admitted a call handler had failed to make this clear and probably gave him misleading information when he rang on 15 and 19 April 2016. As a result it said it would return him to the position he'd now be in if he'd not topped-up his investment. If he chose to cancel his £50,000 top-up payment it would refund this sum and add 8% interest from the date he'd paid it in, 4 May 2016, to the date he was told that no commission would be payable on 24 June. It said this sum would be approx. £559 gross (£447 net). It also offered to pay £150 for the trouble and upset its poor service had caused.

It said it would not agree to his request to cancel the top-up, keep the accumulated interest on this investment and get the 8% interest payment.

An adjudicator explained why he didn't feel Mr E's complaint should be upheld.

He said that regulatory changes in 2012 meant that, broadly speaking, product providers could no longer pay commission to third party financial advisers, and that both product providers and independent financial advisers were aware of this.

He appreciated Prudential had previously paid commission to Mr E's adviser and he had given this to him but this had stopped in December 2012.

He noted Mr E had made his top-up through his adviser who charged a fee for this. He felt the adviser should've made Mr E aware he could no longer claim commission and so wouldn't be able to rebate anything to him.

He said it wasn't common practice for Prudential to pay commission directly to customers and it had no obligation to notify them about the regulatory change. He was satisfied it would've notified any independent financial advisers it dealt with.

He recognised it might seem unfair that Prudential no longer paid commission to third parties and that it may potentially benefit from this. But he said it was entirely at Prudential's discretion whether it adjusted its annual charges now it no longer paid this commission. It was not within the remit of this service to tell Prudential how to run its business.

He noted that Mr E had said he would've invested this money in his Halifax investment if he'd known about this issue but said there was a wide disparity between the risk level of the Prudential bond and the Halifax investment. As a result, he didn't feel he could safely conclude Mr E would've put this £50,000 in an investment that carried a medium to high level of risk.

He noted Mr E had provided Halifax valuations from 16 June to November 2016 but said the relevant period was between 4 May and 24 June 2016. He said Mr E's Halifax investment's value could've fluctuated widely, including going down, in the comparable time period. It therefore wouldn't be fair to use the benefit of hindsight to safely say he would've reinvested the money in the Halifax plan.

He said this service's normal approach was to try and put a consumer back in the position they would have been in if an error had not occurred. In this case, this would involve refunding Mr E's original £50,000 and adding appropriate interest from 4 May up to 24 June 2016 - the point Mr E became aware there was a problem.

He said Prudential had agreed to do this. It had also paid Mr E a further £150 for its inaccurate phone advice. He felt this was fair and reasonable and consistent, with the type of award we'd have made in these circumstances.

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 broadly agree with the adjudicator, and for the same reasons.

Prudential cannot now pay commission to advisers or to the policyholders, directly or indirectly as in this case. Like most providers it will have traditionally paid commission to advisers rather than policyholders or investors, so it was not required to inform this latter group about the changes back in 2012.

It is obviously unfortunate that its call handler misled Mr E about this issue, and he decided to make this top-up based on this misleading advice. He is therefore entitled to compensation for the period between making this top-up and being informed of the true position, and given the opportunity to cancel his investment.

I do not accept that Mr E can reasonably expect to keep the investment and its increased value, and receive 8% interest as well. Nor can he keep the investment and its increased value and receive the 5% commission previously paid to his advisor.

That said, I don't believe Prudential's compensation offer fairly reflected Mr E's potential investment loss.

Firstly, because I think any loss calculation should be up to 11 July 2016, the date at which Mr E was first told he could cancel his top-up. Before this point I don't believe he could reasonably have been expected to choose to do this, even though he'd discovered two weeks earlier that his advisor wouldn't be receiving any commission.

And secondly, because I don't believe Prudential used the correct redress calculator.

While I'm not persuaded Mr E would've put this £50,000 in his Halifax bond which involved far greater risk than the Prudential product, I think it is more likely than not that he would have reinvested it.

Yet Prudential's offer to return this money, adding 8% interest, implies Mr E would probably not have invested this money elsewhere. From what I've read, I think it's more likely than not that Mr E would've invested this money in another low/cautious risk investment, and that this should therefore be the basis of any redress calculation.

The formula this service uses to calculate likely returns on a cautious investment is known as 50/50: using an equal combination of the Bank of England's rate for bonds of 12 to 17 months' maturity and the FTSE Private Investors Income Total Return Index.

Using these figures and dates, I have estimated that Mr E's £50,000 investment could've been worth around £51,800 as of 11 July 2016 if invested in a cautious product. This is roughly £1,300 more than the sum Prudential offered.

If Mr E accepts this sum of £51,800 in return for cancelling his top-up payment, he will also be entitled to 8% simple interest per annum on this sum – from 11 July 2016 to the date of settlement of this complaint.

Assuming any further responses do not change my view, I will set out this redress formula in detail in my final decision.

my provisional decision

I currently intend to uphold this complaint and instruct The Prudential Assurance Company Limited to pay compensation as outlined above on the condition that Mr E cancels his £50,000 top-up. Prudential will then be required to pay him this sum plus the compensation as set out in the formula described.

Tony Moss
ombudsman