DRN-2033195

The complaint

Mr and Mr S complain that The Prudential Assurance Company Limited mis-sold them a life assurance policy in 2005. To resolve their complaint, they want a refund of all the premiums they paid for the policy, with interest.

What happened

Mr and Mr S took out a joint decreasing term assurance policy through a tied agent of Prudential in October 2005. The policy offered them an initial £235,000 of life cover for a 25-year term. It also included terminal illness benefit.

In August 2019, Mr and Mr S contacted Prudential to query what their policy comprised as they had seen the direct debit for the policy when reviewing their finances. Prudential sent them a breakdown of the nature of the policy, including the current sum assured.

Mr and Mr S complained. They said they had no idea what they'd been paying for since 2005, and they'd assumed the policy was a type of boiler cover insurance. They said they had no recollection of being sold it, and Prudential hadn't contacted them whatsoever in the intervening years.

Mr and Mr S also said that they felt their policy was financially inappropriate because the premium didn't reduce proportionately with the policy's sum assured – which itself had no bearing to their mortgage lending. They felt Prudential had failed to act in accordance with the Financial Conduct Authority principles on treating customers fairly.

Prudential issued a written response to the complaint on 13 September 2019. It said it wasn't responsible for the sale of the policy as this was done via Egg Banking Plc, which was a tied agent company at the time. It could see that Mr and Mr S completed their application online, but Prudential had no part in that application.

It also said it wrote out to Mr and Mr S asking for additional information, and then it confirmed it had accepted the application. It said Mr and Mr S were sent information telling them how they could cancel the policy if they'd changed their mind along with an illustration explaining how a decreasing term assurance policy worked. So Prudential didn't agree it had misled Mr and Mr S, nor had it failed to treat them fairly when processing their application.

On 19 September 2019, Mr and Mr S cancelled their policy, by sending a letter to Prudential. They then referred their complaint to this service.

They said their complaint relates to two main points of concern and seven secondary issues. The two main issues were 1) though they'd instigated the application process in 2005, this was never properly set up pending a medical report for each of them and Prudential should not have finalised it without their consent and 2) Prudential has sent them no correspondence from 2005 to 2019 which they feel this is irresponsible and unreasonable.

Mr and Mr S said it was noteworthy that Prudential hadn't even addressed the first point in its final response letter to the complaint. In terms of the second aspect, they said their current mortgage was only £60,000 so the policy (which had a sum assured of approximately £186,000 at the time of cancellation) had left them grossly over-insured. If at any point Prudential had contacted them about that, Mr and Mr S say they would have realised the error and taken steps to cancel the policy.

They also said their seven secondary issues were:

- requesting their medical records on the basis they are a same-sex couple was unethical of Prudential and possibly discriminatory;
- the medical records cannot realistically have been requested because the request letter was dated 4 October 2005 and by 11 October 2005 the policy had come into force – this shows Prudential went ahead and instituted the policy without proper care and authorisation;
- following their civil partnership in 2006 they changed their names to Mr S and Mr S – something Prudential was unaware of, but they had told all relevant companies about the change at the time – so this therefore supports the fact they were unaware of the policy;
- because Prudential failed to contact them in almost 15 years, they believe this gave them 'vulnerable customer status' in accordance with FCA guidance on consumer vulnerability;
- the product is unreasonably mistitled as 'mortgage protection' when no attempt has been made to keep track of the ongoing value of their mortgage over time by Prudential and when the policy they were sold has a sum assured that has no relation to their mortgage;
- Prudential has told them that they supplied their basic information (their address, dates of birth and bank details), but this was information known to Egg and which could have been shared - so this is not evidence they entered into an agreement with Prudential, as it has claimed;
- The Prudential case handler mentions a wine voucher incentive in the complaint outcome letter as a possible reason for their application via Egg– but similarly to the insurance itself, they have no memory of receiving this voucher and they're sure they didn't use it.

Finally, Mr and Mr S said Prudential also failed four of the FCA's treating customers fairly objectives relating to fair treatment, suitable products, clear information and communication, and acceptable service standards.

An investigator from this service reviewed the complaint, but he did not think it should succeed.

He noted that Prudential hadn't needed Mr or Mr S's medical records once the application had been passed to an underwriter. And it had called them to explain the policy could go ahead without any medical reports.

Further, he said though Mr and Mr S had recently taken out new mortgage lending, Prudential didn't advise them or make any recommendations about taking out term assurance. That had been a matter of their choosing, by applying online through Egg. Because the term assurance policy had the premiums and sum assured chosen from the outset with no changes, there was no reason for Prudential to contact Mr and Mr S.

Finally, the investigator said he didn't think the product information was misleading and though the amount of the sum assured may have left Mr and Mr S over-insured, this wasn't Prudential's fault.

Mr and Mr S said they didn't agree. They said Prudential ought to have contacted them through the life of the policy in order to determine if it was right for them and/or to tell them what their sum assured had decreased to. They said that because of the passage of time, they became more vulnerable as the policy went on. They remained of the view that they'd been treated unfairly and sold a product with a misleading description.

Mr and Mr S asked for the matter to be passed to an ombudsman. Prudential didn't have any further comments to make.

What I've decided – and why

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 have reached the same outcome as our investigator, for largely the same reasons.

When deciding complaints (in accordance with the rules of this service) I will determine the outcome by reference to what is, in my opinion, fair and reasonable in the circumstances of the complaint. In assessing what is fair and reasonable, I'll take into account relevant law, regulations, rules, guidance, and standards. So I am mindful of the points Mr and Mr S have made about the requirements of the FCA, both in treating customers fairly and in its code on vulnerable consumers. However, I do not consider Prudential to have acted contrary to any of those standards – and I'll explain why that is.

I understand that since more than 14 years have passed, Mr and Mr S aren't able to recall with certainty what went on at the time of the sale of the policy. There are aspects of the sales process (because this was undertaken online with Egg) that Prudential will not be able to answer either – such as what became of the wine voucher incentive.

However, I do not believe Prudential is (or should be) liable for that. Nor do I think it has failed to abide by any of the FCA principles Mr and Mr S have referred to. It did not determine if their policy was suitable for them; it was not the business that sold the policy to Mr and Mr S. It was marketed by Egg, and the application process was completed without any involvement from Prudential.

On that basis, I do not agree that the policy is misleading or that it being entitled 'mortgage protection' caused a detriment to Mr and Mr S by Prudential. The nature of term assurance policies on a decreasing term basis is that these are commonly used to provide protection for an outstanding mortgage balance should a policyholder pass away during the term.

Taking out a form of life insurance alongside mortgage lending is generally considered a prudent form of financial planning. In advised sales, an adviser would generally look to start a sum assured at the same amount as an applicant's mortgage liability so that the sum assured would *broadly* decrease in line with a capital repayment mortgage. The premium remains the same because it priced to account for the full term of the product, rather than policyholder's having to pay significantly more from the outset.

But Mr and Mr S didn't have any advice when they chose their policy. Prudential offered a product which is suitable to protect mortgages on a decreasing term basis. That Mr and Mr S's sum assured was higher at the start than was required or that it has not decreased in line with their mortgage (because of overpayments for example) is not caused by Prudential and it has not acted unfairly or unreasonably by referring to its term assurance product as 'mortgage protection'.

Contrary to what has been suggested, the evidence does show Mr and Mr S made a direct application to Prudential, via Egg. Upon receipt of the application, it wrote to them on 4 October 2005 asking for consent to access their medical records. I realise Mr and Mr S feel that this treated them in a detrimental way, but I cannot agree that is the case. Prudential's application process allows it to ask any applicant - irrespective of any protected characteristic – for access to their medical records.

The process of applying for insurance policies of a medical nature can involve access to GP reports or further medical assessments if needed upon underwriting by the insurer. That is because it is accepting the risk of insuring a person for a defined period and it needs to understand what impact any existing health condition or circumstances may have on the likelihood of a claim being paid and price the policy on that basis. That is how insurance policies are offered and this isn't an unfair step to take. Insurers are permitted to determine what level of risk is acceptable for the purposes of offering insurance.

In Mr and Mr S's case, I have seen that Prudential sent each of them a letter saying it needed their consent to access their medical records. Those letters do indeed require action for the insurance to proceed, *if* Prudential needed to see the medical records. However, Prudential has also supplied case notes from the time showing that the underwriters confirmed the application could proceed without any further need to see medical records.

There is also a file note of 7 October 2005 showing a call was undertaken with Mr S where Prudential explained that the policy could proceed, and during that call a date was chosen for the policy to go on risk. Since Mr and Mr S wanted cover from 1 October 2005, Prudential agreed to backdate the cover and for the first premium collection on 1 November 2005 it took a double payment, reverting to the agreed £27.26 payment thereafter. It then wrote to Mr and Mr S on 11 October 2005 to confirm what was agreed. That letter was correctly addressed.

I believe that Mr and Mr S did likely know their policy had begun when it did, and at the time what they had applied for. Prudential sent them a copy of their application, the terms of the policy and cancelation rights – again, all of these were correctly addressed. Prudential did not do anything wrong by offering them insurance for an agreed price after receiving an application for the cover.

I realise Mr and Mr S feel that Prudential is at fault for the fact they allowed the policy to continue when they now say they didn't want or need it in the first place. But Prudential didn't know that they had (at some point) changed their mind about the policy they applied for and wished to begin on 1 October 2005. It had reasonably processed the application, offered the policy promptly and told Mr and Mr S how they could cancel it if they wanted to.

As the investigator explained, there hasn't been any further communication because the policy premiums were set in advance, and the policy literature gave Mr and Mr S a table of benefits showing how their policy's sum assured reduced each year.

I do understand that it would have been helpful for Prudential to write to Mr and Mr S periodically, and many insurers may do so annually for example. However, I don't believe in the circumstances of this case that compensation ought to be awarded on that basis. The terms and conditions of the policy do not require any step of this nature – and the contract of insurance sets out the responsibilities of the parties.

Even if I were to consider that Prudential ought to have reasonably reminded Mr and Mr S of their policy's existence or the current sum assured, I do not accept the argument that Mr and Mr S would have taken a different course of action such that Prudential is at fault for them carrying on with the policy premiums longer than they wanted to. There is no objective evidence to show that they would have cancelled the policy any sooner than 2019.

The evidence available is that the policy was something Mr and Mr S wanted in 2005. They say they then forgot what they'd taken out, not noticing the premiums until 2019, by which time they felt over-insured with a policy which wasn't right for them – though that wasn't caused by any advice from Prudential.

I realise that Mr and Mr S changed their mind about holding life assurance in the intervening years, but this was a matter of personal preference for them. Prudential had told them from the outset how they could have cancelled the policy. And they were accountable for the payment of policy premiums. That they chose to review their finances in 2019 isn't something Prudential is responsible for.

I note Mr and Mr S's concerns about their vulnerability, and that the FCA defines a vulnerable consumer as '*someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care'*. But, haven't seen any evidence to suggest that Prudential failed in its appropriate level of care towards Mr or Mr S which would disadvantage them on the grounds of a particular vulnerability.

It follows that I have not seen any reason why I believe this policy was mis-sold. Firstly, Prudential is not responsible for the sale. And I do not think that it has failed with the administration of the policy, particularly that I do not consider it is responsible by any failing or inaction for Mr and Mr S continuing to pay for life assurance that they'd since changed their mind about.

Likewise, I do not find Prudential at fault for the inception of the policy. Mr and Mr S were aware of it, both by instigating the application process and thereafter by choosing the policy start date. And even if I did agree the policy shouldn't have come into force on 1 October 2005 (which I do not), the redress for a mistake of that nature wouldn't be a refund of all the policy premiums. That is because Prudential didn't influence Mr and Mr S's original requirement to apply for life assurance – if there was a change to that requirement, the onus was on Mr and Mr S to make Prudential aware of it. As it is, they had the benefit of life cover from 2005 to 2019 that would have paid a sum assured to the surviving partner had one of them passed away whilst the policy was in force.

My final decision

I do not uphold this complaint, nor do I make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mr S to accept or reject my decision before 21 August 2020.

Jo Storey
Ombudsman