DRN-2511576

Financial Ombudsman Service

The complaint

Mr M (and the estate of the late Mrs M) is represented by a claims management company ('CMC') in bringing this complaint. The CMC says they were mis-sold a with profits endowment savings policy by an adviser from The Prudential Assurance Company Limited in 1986.

What happened

After a meeting at their home, Mr M and the late Mrs M were advised to invest in the endowment policy, with a total monthly contribution of £72.48. The policy had life cover and a guaranteed maturity value of £10,000 plus bonuses and an original end date of November 2007. In 1992 the term of the policy was reduced by three years. As such, the policy matured in 2004. After calculating the final value including bonuses, Mr and Mrs M were paid £22,082.70.

The CMC complained to the Prudential in November 2019. It said it had asked to see the Prudential's point of sale documents such as a fact find, financial report and a recommendation letter explaining why the adviser recommended this product, but the Prudential had said it no longer held those records. Because of this, it was entitled to rely on Mr M's recollections, and on that basis the policy sold was unsuitable for him and Mrs M.

Specifically, it said there was no requirement to sell them a policy containing life cover, because Mr M's children from his previous marriage were aged 16 and 20 at the time of the first advice. He and Mrs M did not have a mortgage or any other dependants. As the policy was designed to mature at Mr M's pension age, he would have been better suited to pensions advice.

The CMC also clarified that Mr and Mrs M knew their endowment was subject to fluctuation in its performance and they were not complaining about that. What it submitted was that they shouldn't have received advice to take out an endowment savings policy in the first place as a more appropriate view would have been to provide Mr and Mrs M with pensions advice.

The Prudential rejected the complaint in January 2020. It said though there was no record of a specific retirement, the policy was suitable as a vehicle for savings as it was guaranteed, held no risk and was therefore suitable for Mr and Mrs M's circumstances..

The CMC referred Mr M's complaint to this service. It said though the Prudential had suggested otherwise, there is no plausible reason why Mr and Mrs M would take out a savings policy with such an extended maturity date other than to provide a lump sum on retirement. A pension plan would have provided significant tax advantages to save for this purpose, yet this was ignored by the adviser in favour of an unsuitable policy.

It also reiterated that the life cover provided by the policy was unnecessary, as Mr and Mrs M had similar incomes working for the same employer and didn't have any dependant children together.

One of our investigators reviewed the complaint and felt it should not succeed. He said he

felt the policy was likely suitable for Mr and Mrs M as it met their savings needs and also provided them with additional life cover, had they needed to make a claim. He also noted the policy had made a sizeable return. All in all, he felt Mr and Mrs M had not been disadvantaged by the Prudential's recommendation.

The CMC said Mr M disagreed. It asked for the complaint to be passed to an ombudsman. It also reiterated that it felt the Prudential ought to have given Mr and Mrs M advice about a private pension rather than the endowment savings policy. Even though their policy made a return of more than £7,000, it didn't exceed the Bank of England bond rates for the same period. Finally, it said even if our investigator did not believe it appropriate redress to compare a pension wrapper to the mis-sold endowment, a calculation could have been proposed against the bond rates instead.

The Prudential had no further comments to add.

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 reviewed all of the information carefully, I am of the view that this complaint should not succeed. My reasons for that are summarised below.

Investment advice became regulated under the Financial Services Act 1986 with effect from 29 April 1988. Before this date, advisers didn't have to consider if a recommendation was suitable for a consumer's circumstances. Instead, advisers had to advise with reasonable skill and care, ensuring he or she didn't make mis-statements and that material information (if relevant) was disclosed.

I recognise that because of the passage of time, there is little available information from the time of the sale. However, the Prudential has been able to supply a policy application, policy literature, and some later correspondence from the policy's maturity date.

From this, I cannot say conclusively what advice was provided to Mr and Mrs M but nonetheless I believe that the suggestion to take out an endowment savings policy was a reasonable fit in the circumstances of Mr and Mrs M wishing to save funds for their retirement. I disagree that failing to provide pensions advice (as the CMC contends) meant that this policy was inherently unsuitable or, in the case of a pre-1988 sale, an unreasonable suggestion. Conversely, I believe that the adviser's actions were reasonable in the circumstances.

The booklet about the policy supplied by the Prudential to Mr and Mrs M at the time explained the likely charges and possible returns depending on the performance of the investment. I'm satisfied this met the requirement at the time to provide clear and relevant information about the product as a means to achieve long term savings.

That the CMC is assessing the return from the investment now as a comparison to deposit based accounts or fixed rate bonds is done with the benefit of hindsight. Instead, I must look at Mr and Mrs M's circumstances at the time of the sale based on any available evidence from both parties.

Though it has contended Mr and Mrs M had no young dependants, Mr M did have two children, one of whom was in their teens. Holding life assurance for family protection is a prudent form of financial planning and the CMC has since confirmed to our investigator that he and Mrs M had no other life assurance provisions in place at the time the endowment

policy was sold.

The life assurance inclusion was a 'qualifying' requirement, to ensure any gains arising from the policy were exempt from income tax. Mr and Mrs M were recorded as wanting to set up a savings vehicle for future life planning, and I do not believe the inclusion of a small proportion of life cover renders the whole of life policy unsuitable for that purpose.

The regulatory obligations that advisers now have in respect of recommendations to which the CMC has referred (in recommending a private pension instead) were not in force at the time of the advice, and not revisited in the circumstances of amending the policy's term in 1992. Having regard to the duties of the adviser at the time of the sale, I do not agree that the Prudential mis-sold the policy to Mr and Mrs M merely because it was designed to align with Mr M's anticipated retirement date. Nor do I believe the adviser failed to provide sufficient care or proficiency in providing information about the endowment policy to Mr and Mrs M.

My final decision

For the above reasons, I am unable to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and the estate of Mrs M to accept or reject my decision before 13 April 2021.

Jo Storey
Ombudsman