

The complaint

Mr and Mrs H's complaint is about a mortgage endowment policy they took out with The Prudential Assurance Company Limited in 1994. They believe it was mis-sold to them because of the risks associated with the policy and its term beyond retirement.

Mr and Mrs H are represented in their complaint by a complaint management company (CMC).

What happened

Mr and Mrs H took out two mortgage endowment policies with Prudential in 1991 and 1994.

In late 1990 Mr and Mrs H were buying their council house under the right-to-buy scheme. They had arranged an interest-only mortgage and Prudential recommended a with-profits endowment policy with a target amount of £32,302 over a term of 23 years. Mr H was a self-employed landscape gardener aged 41 earning just over £5,000 a year. Mrs H was a 38-year-old nurse earning £10,500. They had two teenage children. Their only savings or investments was £1,000 in a deposit fund in Mrs H's name. Mr and Mrs H also had some life cover policies with Prudential. The endowment policy started in 1991 when the mortgage completed.

In 1994 Mr and Mrs H decided to move home. They were still employed in the same professions and were buying a new property for £57,000. Their children were still dependent teenagers. Mr H's income had increased to £9,000 per year and Mrs H's to £14,000. Mrs H was detailed as being a member of an occupational pension scheme and would have 27 years of service at the normal retirement age for the scheme of 60 and so would receive a pension of around a third of her final salary. Mr H didn't have any retirement provision and was recommended to do so urgently. He was expecting to retire at state retirement age of 65.

The adviser recommended Mr H make some provision via a personal pension plan and Mrs H pay more into her pension, or take out a FSAVC, to make up the shortfall in retirement income. He also encouraged them to increase their life cover provision to assure the other's standard of living in the event of death. It was also detailed that Mr and Mrs H had arranged the interest-only mortgage and were looking for a way to support the increase of £16,698 over 20 years. It went on to say '*The different ways have been discussed and a top up of low cost endowment has been decided.*' The policy sold was a with-profits arrangement that had a target value of £16,698, a basic sum assured of £8,683 and a term of 20 years.

In early 2000 Mr and Mrs H were sent a policy review for both of their endowments. This showed the 1991 policy was, at the middle growth rate, predicted to fall short of the amount needed to repay their mortgage. They were recommended to increase the monthly premium to that policy by just under £22, which they did. The 1994 policy was on-track to pay off the mortgage at the same growth rate.

In 2002 Mr and Mrs H surrendered both of the endowment policies. They have said this was because they converted their mortgage to a repayment type.

In 2019 the CMC made a complaint on behalf of Mr and Mrs H about the suitability of both the 1991 and 1994 endowments.

Prudential upheld the complaint in relation to the 1991 policy. It commented that Mr and Mrs H's attitude toward risk hadn't been documented and there was no evidence alternative methods of repaying the mortgage had been discussed. Prudential concluded the policy was not suitable for them as they were first-time buyers and so a repayment mortgage would have been more suitable. It offered compensation that placed Mr and Mrs H in the same financial position they would have been in at the time they stopped using the endowment for their mortgage in 2002, had they had a repayment mortgage from outset.

In relation to the 1994 policy, Prudential rejected the complaint. It highlighted the adviser had noted he'd discussed alternative methods of repaying the mortgage. It concluded that Mr and Mrs H had been aware of the risk associated with the endowment policy because of the 1991 policy, the discussions they had with the financial adviser and the policy documentation they received at the time of the sale. It also said that as they were not first-time buyers and had previous mortgage experience, it was fair to assume they knew how an endowment worked and were happy to accept the risks associated with the new one being recommended.

Mr and Mrs H accepted the redress offered for the 1991 policy, but weren't happy the complaint about the 1994 policy had been turned down. The CMC asked us to look into the complaint. When it did so it said Mr and Mrs H were 45 and 41 when the policy was taken out and they couldn't afford to take any risk, as the policy matured after both their expected retirement ages, and so they would have to make up any shortfall from their retirement income. It highlighted that Mr and Mrs H had changed their mortgage to a repayment type in 2002 and surrendered the policy, which it said supported the fact the endowment was not a suitable repayment method for their biggest financial commitment. It said they have still not been able to repay their mortgage in full.

One of our investigators considered the complaint, but he didn't recommend that it be upheld. Mr and Mrs H didn't accept the investigator's view. The CMC said that their circumstances hadn't changed sufficiently to make the outcome of the complaint about the 1994 policy so different to that about the 1991 policy. It again highlighted the policy matured after retirement when Mr and Mrs H would have difficulty dealing with a shortfall. It said that Mr and Mrs H should have been retiring into a stable position, not having to potentially sell their home. The CMC asked that the complaint be referred to an ombudsman for consideration.

I issued a provisional decision on 31 March 2021, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'Prudential has accepted the first endowment policy was unsuitable for Mr and Mrs H. It has indicated it concluded this because they were first-time buyers, their attitude toward risk was not documented, they had no previous investments and it didn't appear that any discussions about alternative ways of repaying the mortgage were discussed. I don't propose to comment on the suitability of this policy for Mr and Mrs H. However, I would comment that as Prudential concluded it wasn't suitable for them, I don't think it reasonable to place any reliance on its existence, or assume any understanding by Mr and Mrs H of how it worked, when reviewing the 1994 policy sale.'

In 1994 Mr and Mrs H had similar circumstances to those in 1991, other than they were older and were earning slightly more money. The new mortgage would have been within normal lending criteria, given which lender had agreed the mortgage. So, if Mr and Mrs H had

wanted to, there was nothing in their circumstances that would indicate they couldn't take a risk with their mortgage. That said, they had no experience of investment products that can reasonably be relied on and the mortgage term ended almost two years after Mrs H was due to retire and a month after Mr H's expected state retirement.

The Prudential adviser highlighted in 1994 that Mr and Mrs H's retirement provisions were inadequate, particularly so in the case of Mr H. Mrs H was on track to receive a pension of around a third of her final salary and Mr H wasn't expected to receive anything more than a state pension. This would mean that Mr and Mrs H's income in the final two years of the term would be significantly reduced, and this would reduce even more significantly at the end of the term. As such, it would appear Mr and Mrs H would be likely to find it difficult to deal with a shortfall if there was one at the end of the term.

A with-profits endowment policy would generally have been considered to represent a low level of risk in 1994, which would have been considered to be suitable for most consumers at the time. However, the slightly shorter than average term and the term going beyond retirement, where consumers had inadequate retirement provision, would increase the risk associated with the policy significantly. As Prudential has highlighted, there is no evidence of what Mr and Mrs H's attitude toward risk was in 1991 or 1994. So we can't be certain whether they were willing to risk not being able to pay their mortgage at the end of the term and, if they were, what level of risk they were willing to take. In light of their circumstances, I am not persuaded Mr and Mrs H were in a position to take the risk associated with the endowment policy they were recommended.

I note that Prudential has placed significant emphasis on different types of mortgage being discussed with Mr and Mrs H. Whilst this may have aided them in making an informed choice about whether to accept the recommendation its adviser was making to them, I don't consider it negated the adviser's duty of care to only recommend a suitable product. Even where consumers have already been recommended an interest-only mortgage by a lender, a financial adviser shouldn't sell an investment product as a repayment vehicle unless it is suitable for the individual consumers' needs and circumstances.

Overall, I am not persuaded the advice to arrange the 1994 endowment policy was suitable, given Mr and Mrs H's individual circumstances at the time.'

Both parties accepted my provisional decision.

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.

As neither party objected to my conclusions or made any further submissions, I see no reason to alter those conclusions. I remain satisfied this complaint should be upheld.

Putting things right

The Prudential Assurance Company Limited should calculate whether Mr and Mrs H suffered a loss due to being recommended the mortgage endowment in 1994 rather than a repayment mortgage.

The redress should follow the regulator's guidance, known as 'RU89'. This will compare the position of Mr and Mrs H's mortgage when they converted it in 2002 with the hypothetical position they would have been in, had they had a repayment mortgage from the outset. Any loss identified should be paid to Mr and Mrs H.

Interest at 8% simple per annum will be payable on any loss identified from the date of calculation to the date of settlement. If Prudential considers it is required by HMRC to deduct income tax from any interest paid, it should provide Mr and Mrs H with evidence of the amount paid for use with HMRC if required.

My final decision

My decision is that I uphold this complaint. I require The Prudential Assurance Company Limited to settle the complaint as detailed above in 'Putting things right'. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 12 May 2021.

Derry Baxter
Ombudsman