

## **The complaint**

Mrs and Mr R complain against The Prudential Assurance Company Limited (referred to as “Prudential”), about the sale of a With-Profits endowment plan (“the Plan”).

In short, they say the plan didn’t provide them with the benefit(s) they were told it would. So, to make things right, they’d like Prudential to pay them the money they were promised.

## **What happened**

In February 1985 Mrs and Mr R took out the plan with ‘Business A’, which has since been taken over by Prudential. The ‘plan proposal’ shows that the agent involved in the sale of the plan was ‘Business B’, and the Inspector was recoded as a Mr X (name anonymised) from Business A.

In response to the complaint Prudential said that Business B was responsible for the sale of the plan, therefore, it wasn’t responsible for looking into this complaint.

Unhappy with Prudential’s response, Mrs and Mr R referred the complaint to our service. Since then our service has informally explained that Prudential wasn’t responsible for the sale of the plan, but Mrs and Mr R maintain that Prudential is responsible because it took over Business A. They remember being sold the plan in a Business A branch, at no point where they told that a third-party – Business B – was involved/responsible for the sale of the plan.

One of our investigators considered the complaint but didn’t think it should be upheld, because he didn’t think Prudential was responsible for the sale of the plan. In summary, he said:

- There’s no dispute that documents produced by Business A were provided to Mrs and Mr R.
- The plan proposal, acceptance and confirmation letters, fund performance documents and the Inspector’s business card all contained Business A’s name.
- The plan proposal shows that the sale was arranged at a Business A branch and the Inspector’s name was also recorded on it.
- But, given that Business A was the ‘plan provider and administrator’ this was to be expected. Despite appearances, none of the documents suggested that any financial advice was given by Business A.
- At the time, it wasn’t unusual for providers *not* to sell products direct to customers, instead relying on financial advisers to do so.
- A third-party financial adviser, Business B, appears to be responsible for the sale of the plan. The plan proposal shows that it was acting as an agent for the sale of the plan and it was recorded as receiving commission for this.
- In the circumstances, Business B sold the plan, not Business A, therefore Prudential isn’t responsible for any financial advice.
- The Inspector played a role in the arrangement of the plan, but this doesn’t mean he offered any financial advice.

- In similar cases dealt with by our service, the following has been said about Inspectors:
  - The Inspector's role was to provide support and information to agents, but there's no record the Inspectors provided advice.
  - There were administrative staff, as well as Branch Inspectors, whose role was to promote policies and provide support to IFAs and mortgage lenders that could potentially sell them. It wasn't the Inspector's role to sell direct to the public.
  - At the point of sale, it wasn't unusual for Inspectors from the local branch of the life/investment company to be invited into sales meetings to provide 'technical support'.
- So, the role of the Inspector wasn't to sell products, it was to provide support to financial advisers who sold the products.
- Despite what Mrs and Mr R say about only meeting with an Inspector, in the absence of any record that this was the case, on balance he's unable to agree with this.
- The records made at the time show that Business B was responsible for the sale of the plan and that it received a commission. There's no reason to suggest that this was an inaccurate reflection of what happened at the time. So, the involvement of the Inspector doesn't mean that Business A was responsible for the sale.

Mrs and Mr R disagreed with the investigator's view and asked for an ombudsman's decision. In summary, they don't accept that a third-party business – 'Business B' – was responsible for the sale of their plan. No one told them that Business B was selling the plan in Business A's property and based on the paperwork they remain adamant that Prudential is responsible.

The investigator having considered the additional points wasn't persuaded to change his mind. He explained that the rules with regards to disclosure are much clearer now than they were in 1985.

As no agreement has been reached the matter has been passed to me for review.

### **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 agree with the investigator's conclusion for substantially the same reasons. The view covers all the pertinent points leaving little for me to comment upon. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs and Mr R say, I'm unable to safely say that Prudential is responsible for the sale of the plan in 1985.

Before I explain further why this is the case, I think it's important for me to recognise the strength of feeling Mrs and Mr R have about this matter. They've provided submissions to support the complaint, which I've read and considered carefully. However, I hope that they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by the Mr and Mrs R, and Prudential, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best

industry practice. But it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

Based on what Mrs and Mr R say, I appreciate that given the logistics there may be some confusion about which business did what and who was responsible for the sale of the plan.

I appreciate that the sale of the plan took place in a branch of Business A, and that through its Inspector it (probably) offered technical support (to Business B), but this doesn't of itself mean that Business A is responsible for the sale of the plan and offering financial advice, regardless of how confusing it may now be. I'm aware that this sort of set up wasn't uncommon in 1985.

I'm also conscious that memories generally fade over time. I note this was a sale that took place over 35 years ago, so it's likely that Mrs and Mr R's recollection of what happened, even with the best will in the world, isn't as clear now as it was in 1985.

Despite what they say, I note that (contemporaneous) documents produced at the time show that Business B was responsible for the sale of the plan and that it also received a commission. I agree with the investigator that there's nothing to suggest that this was an inaccurate reflection/record of what happened at the time.

I think that Mrs and Mr R's current recollection of events is unlikely to be helped by the fact that they have documentation with Business A's name on it. But this isn't unusual given that Business A was the plan provider and administrator – this also explains the involvement of an Inspector on hand to provide 'technical support' to the financial adviser, who may not know the product as well.

I appreciate what's been said by our service about Inspectors in similar cases in the past. Whilst every case must be considered on its own merits, I've seen nothing to suggest that the Inspector's role or conduct in this case has been any different to what's traditionally been their position and role. In this instance, I've seen no persuasive evidence that the Inspector provided financial advice.

Even if there was some confusion about the different roles of the businesses, it still doesn't mean that Prudential's responsible for the sale of the plan. The documents provided don't prove/suggest that Business A provided any financial advice for which Prudential is now responsible.

I appreciate Mrs and Mr R will be thoroughly unhappy that I've reached the same conclusion as the investigator. Whilst I appreciate their frustration, I'm not going to ask Prudential to do anything.

On the face of the available evidence, and on balance, I'm unable to uphold this complaint and give Mrs and Mr R what they want.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 28 October 2022.

Dara Islam  
**Ombudsman**