DRN-4526839

Financial Ombudsman Service

The complaint

Mr B and Miss N are unhappy with the investment return on the mortgage endowment policy they had with The Prudential Assurance Company Limited. They have said that at the time of the sale they were told the policy would at least reach the target amount and would likely provide surplus funds, which they could use for their retirement. However, they received less than the target amount at the end of the term. They are also unhappy that the policy was encashed before the end of the term, and so the value was lower than they believe it would have been had it been left invested until the maturity date.

In settlement of the complaint, Mr B and Miss N want Prudential to pay them what they were promised – an additional £8,000 to £20,000.

What happened

Mr B and Miss N took out their mortgage endowment policy in 1998 with a target value of £50,500. It was invested in a with-profits fund and had a term of 25 years. The policy was sold to them by an independent financial adviser (IFA).

In order to protect the policy from last minute fluctuations in investment values, the policy had a security term. The policy terms and conditions state:

'***9.5 Maturing Policy***

One month before the Date of Maturity, we will switch all units then allocated to your policy in any investment-linked fund into a Cash Fund. … After the switch has been made, we may refuse to allow any further switch of units and any further units allocated will be allocated from a Cash Fund.'

In 2014 Mr B and Miss N raised concerns about the advice they had received to take out the policy. Prudential told them their concerns should be referred to the IFA that sold them the policy.

In February 2023 Mr B and Miss N complained to Prudential about the return from the policy. They were also unhappy that Prudential had switched their policy value to a cash fund as it meant that they had lost the growth the original investment fund had achieved during the last month of the policy term.

Prudential responded to the complaint in a letter of 15 March 2023. It explained that at the time of the sale of their policy expected returns were higher than they went on to be. This was why the policy had failed to reach its target value, and it was satisfied the amount it paid Mr B and Miss N was the amount they were due. Prudential acknowledged that it had not made Mr B and Miss N aware that it would move the investment into the cash fund for the last month and paid them £50 for any inconvenience this caused them.

Dissatisfied with Prudential's response, Mr B and Miss N referred their complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and concluded that we couldn't consider the issue about the investment performance. He didn't uphold the complaint about the end of term funds switch as he considered the compensation already paid was adequate in the circumstances.

Mr B and Miss N didn't accept the Investigator's conclusions and asked for a final decision.

The complaint was passed to me, I concluded the complaint about the performance of the policy was not entirely time-barred, and we could consider the performance over the last six years under our rules. The Investigator explained this to Prudential and it also consented to me considering the performance of the policy throughout its term.

I issued a provisional decision on 4 December 2023 in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'*In the complaint made to this service Mr B and Miss N have combined two separate complaints. They have said they are unhappy about the performance of the policy because they were told it guaranteed to pay out at least its target value. The policy Mr B and Miss N took out didn't, under the terms and conditions, guarantee to pay out even the target value let alone provide additional sums. As Prudential explained to them many years ago, if they were told otherwise, they would need to raise that complaint with the IFA that gave them the misleading advice.*

That said, Prudential is responsible for how the fund the policy invested in during the term performed, and that is a complaint I can consider. However, while I know this will disappoint Mr B and Miss N, I won't be upholding this part of the complaint.

Mr B, Miss N and Prudential entered into a contract when the policy application was accepted. Mr B and Miss N agreed to pay a monthly premium and Prudential agreed to provide life cover during the term. It also agreed to provide an investment which, if anticipated growth rates were met, would reach a target amount.

This is where the problem has arisen. The hoped-for growth rates haven't been reached - far from it - but they were never guaranteed. A shortfall was always possible. Of course, no-one thought that would happen when the policy was sold, but that doesn't change the nature of the contract.

Each month Prudential had to invest the premium Mr B and Miss N paid, taking costs as and when required from the fund. As far as I can see that is exactly what it did. Growth over the policy term has turned the premiums paid into a maturity value which unfortunately was less than hoped for.

Mr B and Miss N were warned about the progress. It was made clear that the policy was not performing as expected and was unlikely to reach its target value. Mr B and Miss N were encouraged to take action to deal with this situation.

Prudential did what it had to do. Mr B and Miss N have known about the poor performance of the policy for some time and that the maturity value wasn't guaranteed. If I look across the industry I see most businesses, indeed most investment classes, having similar problems. The economic and regulatory situation is very different now from what it was in 1998. That is nothing to do with Prudential. I don't know where Prudential's investment returns sit in any table of results, but it will no doubt be more successful than some but less successful than others.

Being able to say that, looking back, different investment decisions would have been more profitable than the ones actually taken is a statement of the obvious. To make judgments like *that, however, would be to use hindsight in making a decision. I cannot use hindsight in making a decision.*

A very large number of decisions over a 25-year period relating to investments, costs and charges have been made by the investment managers at Prudential. Those decisions were made in a regulated environment with layers of governance, independent scrutiny (such as by actuaries and the Regulator) and oversight. Some of the factors influencing returns were outside Prudential's control. Even if I were to try and drill down to individual decisions it is very unlikely that I could point to an individual decision or set of decisions which were, without using hindsight, so manifestly bad or wrong that redress should be paid.

I am satisfied Prudential kept Mr B and Miss N informed over the years, rather than the shortfall being a surprise when the policy came to mature in 2023. It's unlikely to have been in the interests of the fund managers to perform badly and I am sure Prudential would have wanted the fund to do as well as possible. I haven't seen anything to persuade me that Prudential mismanaged the fund or acted negligently. I am afraid the simple fact here is that Mr B and Miss N invested in an investment product which hasn't performed as well as hoped.

As for Prudential switching the investment holding of the policy a month before the end of the term, I can't find that it did anything wrong in doing so. The policy was designed for this to happen and so Prudential simply applied the terms and conditions as it should. If Mr B and Miss N were unaware that this would happen, that is something they would need to raise with the IFA that sold them the policy. However, Prudential paid Mr B and Miss N £50 for not having reminded them that this switch was going to happen. I am not persuaded that Prudential had to provide such a reminder, but it would have been good service. As such, I consider the amount it paid was appropriate in the circumstances.'

Prudential accepted my provisional decision.

Mr B and Miss N said they were very unhappy and somewhat dismayed with the provisional decision. They said they had never been informed the policy would transfer the fund holding to a cash fund in the last month. In addition, they asked what actions Prudential took to ensure the financial adviser at the time was acting fairly and providing the correct advice. Mr B and Miss N said they felt let down by all parties and believe those parties just wanted a sale at their expense.

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.

I note Mr B and Miss N's comments about not being aware of the automatic fund switch in the last month of the policy term. This is documented in the policy terms and conditions and would have been detailed in the point-of-sale brochure they would have been given too. However, as I said in my provisional decision, it was for the IFA who sold them the policy to ensure they understood how it worked, including such features as the fund switch. If they were not aware of this, I can't hold Prudential responsible for that lack of knowledge. Nor can I find it did anything wrong in administering the policy in line with the terms and conditions.

As for what actions Prudential took to ensure the IFA was suitable to sell its products, that was not something Prudential would have needed to do. At the time Mr B and Miss N took out their policy all investment businesses and IFAs had to be registered with the industry Regulator to be able to sell investment products such as their endowment policy. The Regulator carried out the checks to ensure financial advisers were suitably qualified and were ‘fit and proper’ to sell financial products. As long as an IFA had the appropriate authorisation from the Regulator, Prudential was entitled to rely on the checks the Regulator had done.

While I have considered Mr B and Miss N’s further comments, they have not made me change my conclusions.

My final decision

My decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr B and Miss N to accept or reject my decision before 19 January 2024.
Derry Baxter
Ombudsman