DRN-5337274

Financial Ombudsman Service

The complaint

Mrs A and Miss A complain about the sale of a with-profits savings plan by The Prudential Assurance Company Limited in 1996.

What happened

In 1996 Mrs A received advice from a Prudential adviser about her objective to save for the future for her three children. She was advised to save £30 per month in a with-profit savings plan, that her eldest child, Miss A, would be the life assured on. Under the terms of the plan Miss A became the policy holder when she turned 16 in 2000, thought Mrs A continued to make the monthly payments.

In January 2024 Mrs A and Miss A surrendered the plan and they were sent a chargeable gain certificate by Prudential. This caused them to raise a complaint, as Mrs A didn't remember being told the policy would be taxable in 1996 or in the later statements. Miss A may be liable to pay additional tax on the gain at the higher rate due to her current circumstances. Following this Mrs A raised concerns about the sale of the policy, including that the policy ought to have been for the benefit of all three children, but the way it was set up means it was just owned by Miss A when it was surrendered. If three policies were sold instead, then the tax treatment of those policies would have been different.

Prudential didn't uphold the complaint, saying that the point of sale paperwork makes it clear that the investment would only be in one child's name. They said the information about tax would have been given to Mrs A as part of the standard sales process. As Mrs A and Miss A remained unhappy they brought the complaint to our service.

An investigator at our service considered the complaint and upheld it. She found that it was clear Mrs A wanted all three of her children to benefit from the savings, and that if three products were sold, then the tax burden would have been spread out and likely would have meant there would be no additional tax to pay. So she said Prudential should:

- If the policy is worth less than the total amount of the premiums paid, Prudential should pay the difference, plus 8% simple interest.
- On receipt of proof of the tax payable, Prudential should pay this to Miss A, and if she's already paid the tax, they should add 8% simple interest from the date she paid the tax to the date of settlement.

Mrs A and Miss A were happy with this, but Prudential disagreed, saying that the complaint may have been made too late under the applicable rules, as they'd made it clear in a letter in 1999 that the policy would be owned by Miss A. If it had been made in time, then they still maintained the point of sale documents were clear and that Mrs A must have intended this.

The investigator wasn't persuaded to change her mind and noted that Prudential could not now object to our service considering the complaint under the applicable time limit rules, as they had previously given our service consent. As no agreement could be reached, the complaint has been passed to me for a final 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.

Having done so I agree with the outcome reached by the investigator, for largely the same reasons. As Prudential has raised an objection to our service's jurisdiction, and its unclear if they later withdrew this objection, I've set out my decision on both jurisdiction and the substance of the complaint.

Was the complaint brought in time?

We can't consider all the complaints we receive and the rules governing this are set out by the Financial Conduct Authority in the Dispute Resolution ("DISP") section of their Handbook. Specifically, DISP 2.8.2 says that our service can't consider a complaint if it's referred to us more than:

- Six years after the event complained of; or (if later)
- Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

Under DISP 2.8.2(5) a business can consent to our service considering a complaint where the time limits have expired. DISP 2.8.2A adds that where a business has consented, that consent may not be withdrawn. On 5 December 2024 Prudential replied to the investigator's clear and unambiguous question about time limits and confirmed they gave consent to our service considering the complaint.

So even if I were to agree that the complaint had been brought outside of the six- and three-year time limits, as Prudential gave consent and that consent cannot later be withdrawn, I find that this complaint is in our jurisdiction.

Was the advice suitable?

I can see that Mrs A met the adviser in May 1996 and at the time she had three children who turned 2, 5 and 12 in 1996 (Miss A was the eldest of the three). The adviser recorded their notes of the meeting in a fact find document, and noted that Mrs A held two policies for her middle and eldest child respectively which were maturing. The adviser recorded various needs for Mrs A, but that her main priority at the time was to have a:

"*Saving fund set up for children for future… [Mrs A] would like to set up a fund for the three children to age 18/20. I advised her of Prudence Savings Account for children.*"

Elsewhere in the document, there was a flowchart that Mrs A and the adviser completed. This shows that:

- Mrs A wouldn't need access to the money within 10 years.
- She was not willing to take a greater risk with the savings with the possibility of a higher overall return.
- She wanted a product that she could stop/start/add to with no fixed maturity date.

The flowchart led the adviser to recommending the Prudence Savings Account ("PSA"), which appears to be an open-ended investment into a with-profit fund, which includes life cover of 101% of the value of the investments. From my review, I believe it is a type of with-profit investment bond. From Prudential's explanation, I understand that the named life assured would be the child that ultimately would benefit from the policy and would own it after they turned 16 years old.

Originally, Mrs A wanted to invest a lump sum of £722 that had matured from a previous investment taken out for Miss A, as well as investing a regular premium of £30 per month. One application form was filled out to meet both needs, with Miss A as the life assured. In the application, it was also noted that Mrs A had three children in total.

The lump sum investment didn't go ahead, but no changes were made to the application. Mrs A signed the fact find document and application form. I can see Prudential's main argument is that Mrs A would have known that Miss A was the only beneficiary of the policy from these two documents – but I don't agree. The notes in the fact find are clear that she wanted the regular investment to benefit all three of her children, not just Miss A.

I can see that on the page of the fact find with the flow chart I've mentioned above, it says "*the proceeds can be used for the absolute benefit of the named child*". Mrs A did name her three children within the fact find – and again in the application form it was noted that she had three children. I'm not convinced a reasonable investor with minimal investment experience would have understood that as a consequence of Miss A alone being added to the policy as a life assured, she would be the only child who could ultimately benefit from the policy. The paperwork I've seen does not say this.

Considering this in the round, I'm persuaded that the adviser shouldn't have told Mrs A to complete one application form when she was investing the lump sum and the regular premium. Those two amounts clearly had different purposes – the lump sum was just for Miss A and the £30 per month for all three children.

The regular investment should have either been set up with all three children named as lives assured, or three separate policies should have been sold. I don't know if the former was possible, and I understand the latter wouldn't have been possible due to Prudential having a minimum premium of £20 per policy at the time of the sale.

However, both being impossible doesn't make it suitable that the adviser recommended only Miss A as a life assured. If the adviser could only sell Prudential products, and there were no products available that met Mrs A's objectives, then the adviser should have explained that to Mrs A so that she could get suitable advice elsewhere.

I've considered what likely would have happened if this product hadn't been sold. Mrs A has previously said she would have accepted three separate products of this type, and so there doesn't appear to be a question over the suitability of the fund itself, or the product type. For completeness, but for the minimum premium and way it was owned, I agree the type of product sold would have met Mrs A's needs of investing in a flexible and open-ended way.

I know that when she originally made the complaint Mrs A was concerned about the life assurance included in the product, and the costs that this would have involved. Having reviewed this I can see it was very minimal as any payment made on death would have been the value of the investment, plus 1%. The cost of that 1% cover would have been wrapped into the charges deducted from the fund, and in my experience usually hasn't got a direct cost attached to it as it's so minimal. It's a feature of investment bonds of this type and bonds have tax reliefs attached that are beneficial, like deferred tax on withdrawals and the potential use of top-slicing relief on surrender. Overall, I'm persuaded that the inclusion of this small level of life cover wasn't unsuitable.

This means that ultimately, the product was mis-sold simply because of the legal owners of it. I've considered the financial consequences of this and have found:

- The growth on the amount invested would have been the same regardless of the legal owners, as the fund and product overall were suitable.
- I don’t have the exact figures from when the policy was surrendered, but based on the annual statement from 2023, the policy was worth around £9,000 more than had been paid in. So, the first part of the recommendation made by the investigator would result in no financial loss being payable for that element.
- My understanding is that upon surrender, the gain made on the policy would have been treated as already having had income tax paid at 20%, which is unreclaimable.
- Miss A may be liable to an additional 20% tax on the gain (depending on her income).
- If the ownership of the bond had been split between the three siblings, then the tax burden wouldn’t have fallen on just Miss A, causing her to potentially need to pay the additional tax.
- On balance, I’m satisfied its more likely than not that had the gain be spread between three people, then the tax payable could have been mitigated with careful tax planning and no additional tax would have been payable on surrender.

So, the loss caused is any additional tax that Miss A has to pay on the gain from the product. On receipt of proof of the tax she needs to pay, Prudential should pay this promptly to Miss A, and if she’s already paid the tax, they should add 8% simple interest from the date she paid the tax to the date of settlement.

My final decision

I uphold this complaint. The Prudential Assurance Company Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs A and Miss A to accept or reject my decision before 11 April 2025.

Katie Haywood
Ombudsman