

complaint

Mr and Mrs L complain about the Prudential Assurance Company Limited. They say the business sold them an unsuitable mortgage endowment policy. They also say the term of the policy and the related mortgage do not match and that they were wrongly advised to surrender an existing policy which could have been used for their mortgage. To put it another way they say the old policy was “churned”. Mr and Mrs L say this has caused them loss and they want compensation.

background

I have issued two provisional decisions. They are both summarised below. The first decision said I was minded to uphold the complaint about the “churn”. However after reconsidering the file and the responses I received from that first decision I changed my view of the fair outcome I could *safely* reach. I said I was minded not to uphold the complaint.

The background is as set out in my second provisional decision as follows:

The business upheld the complaint in part. It agreed that the policy sold in 1996 by its advisor was unsuitable. It calculated whether Mr and Mrs L had lost as a result of the misale but concluded that they had not. I have looked at the calculation as has an adjudicator. It seems to me that the business has properly calculated whether redress is due in the same way as this service would. Therefore, on the information here, no redress is due.

The business does not seem to have addressed the issue of the “term mismatch” between the policy and the mortgage. No details have been given by Mr and Mrs L. Without that it is not possible to progress this part of the complaint. It may be however that this problem was identified many years ago and it is possible that we could not now look at it in any event (or that again no loss has arisen). Unless I hear further from Mr and Mrs L about that I will assume that they do not wish to pursue that point any further.

The business rejected the final part of the complaint. It said that there was no evidence to suggest that the advisor had told Mr and Mrs L to surrender an otherwise suitable endowment. The adjudicator however agreed with Mr and Ms L that they had been advised to surrender the existing policy and recommended that the business pay compensation.

The business disagreed. It said there was no evidence that the existing policy was available to be used for the new mortgage arrangements. Therefore it would not agree to calculate and pay any compensation due. As the parties could not agree the complaint has been passed to me to consider.

As the parties know I issued a provisional decision saying I was thinking of upholding the complaint in part. I was intending to uphold the part of the complaint about the failure of the business to use the existing policy. Extracts from that decision are set out below and form part of this decision. I asked the parties to comment.

Mr and Mrs L said they had nothing to add. The business however said they wanted more information about the existing policy. That information has been obtained.

My second provisional decision said that because evidence had been produced to suggest the “old” policy could *not* be used for the new mortgage I was not minded to uphold the complaint. That evidence was that the old policy had unpaid premiums and had or was about

to lapse and that it was (probably) in any event a whole of life policy, rather than a mortgage endowment policy and that therefore it was not suitable for use with the new mortgage.

Mr and Mrs L do not agree and continue to say the old policy was “churned”.

I can now issue my final decision.

my findings

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 do not uphold this complaint. I understand this will be very disappointing for Mr and Mrs L. I am sure they feel very strongly about this.

If I uphold a complaint and that decision is accepted by a consumer (the business has no choice but to accept it) it becomes legally binding on the business. There is no right of appeal to the courts. I can only uphold a complaint when I can *safely* do so.

It is always very difficult to know with *reasonable certainty* what happened many years ago. Any evidence (and it is surprising there is *any*) will be old, possibly incomplete and often simply contradictory. All I can do is make a decision based on that evidence. The events here took place twenty years ago.

Here, as I said initially I thought there was enough evidence to say the old policy was “churned”. However I simply can't ignore what has now been produced. A letter from an unconnected business about the old policy and information about what the policy was can't be ignored. The fact that one lender accepted the old policy for a specific reason (perhaps life cover) does not mean another lender will or must accept it.

I should make it absolutely clear Mr and Mrs L are clearly honestly and simply repeating what they remember and think happened from so long ago. On the other hand all the business can do is produce whatever it has. My job is simply to decide between what evidence survives. I have to do that however much different parts of that evidence tells a different story.

I have read what Mr and Mrs L's Uncle has sent in. I have every sympathy with their situation. I must remain impartial however and make a decision in this very difficult case (partly because it was all such a very long time ago). This is not about whether Mr and Mrs L were “bad payers”. This has come down to a simple question of whether (on what I have here), the old policy could have been used for the new mortgage or not. On the evidence I simply cannot say it could have been.

How or why the “old” policy was accepted by the previous mortgage company is nothing to do with *this* business. But as I said before, that makes no difference here.

my final decision

My final decision is that I do not uphold this complaint. I simply can't say that the old policy could have been used for the new mortgage. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 3 June 2016.

Mike Boyall
ombudsman

summary of the previous provisional decisions

my second provisional findings

In summary, in my first provisional decision I said I found what Mr and Mrs L said to be credible and plausible. On what I could see at the time there was an alternative policy which could have been used as a repayment vehicle for Mr and Mrs L's mortgage loan.

However the information I now have changes my view. In order to be available for repayment of a mortgage a policy (such as the common mortgage endowment policies) had to meet certain conditions. Those conditions were a requirement of the lender. In particular such a policy had to have a fixed end date-usually the date the mortgage loan expired or earlier. It usually was also heavily "geared" such that most of the premium was invested in order to maximise the prospects of growth.

The information sent in which relates to the existing policy suggests it was not that kind of policy. It seems to have been set up as a protection policy to provide life cover and other benefits in the event of death or serious illness. There is nothing about a maturity date at which a lump sum would be paid. I can see the policy was charged to a lender but that may well have been simply to provide life cover. That was an alternative and very common requirement at the time.

If that is the case then the existing policy was very unlikely to have been available or acceptable as a repayment vehicle for a mortgage. I also note that it seems the policy had a significant number of unpaid premiums outstanding. The unpaid premiums were sufficiently serious as to bring into question whether the policy was still in place. That would again be a further reason why such a policy would not be acceptable as a repayment vehicle. Mr and Mrs L would have had to quickly bring all the outstanding premiums up to date in order to maintain cover as required.

First provisional decision

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 find I agree with the adjudicator. I am presently minded to uphold this complaint in part.

I do not need to consider the complaint about the mis-sale of the policy in 1996. The business has upheld that part of the complaint. As far as I can see, as I said above, Mr and Mrs L have not lost as a result of that sale.

As regards the term "mismatch" unless further information is produced that cannot be progressed. It is as I say also entirely possible that even if further information is produced that the point still cannot be considered. I will leave that to Mr and Mrs L to consider.

However as far as the last part of the complaint is concerned I am minded to uphold it. It may be that the business has not seen the mortgage endowment questionnaire provided by Mr and Mrs L. If that is the case I apologise. If the business wishes it should ask the

current adjudicator for a copy.

That questionnaire expressly says that an existing endowment mortgage was in place with a policy and gives details. That being the case I see no good reason for the surrender of the existing policy. As Mr and Mrs L say the surrender is likely to have resulted in a loss to them. The amount of that loss (if any) will only be known once the calculation put forward by the adjudicator has been carried out-assuming my final decision remains the same or the business carries out the calculation sooner.

In summary I find the submissions of Mr and Mrs L and the evidence they have sent in to be credible and persuasive. Unless the business can produce sufficient to persuade me otherwise I intend to uphold the complaint in part.

End