

## **complaint**

Mr and Mrs P's complaint concerns the recommendation a twenty year term mortgage endowment policy by The Prudential Assurance Company Limited in 1997. They believe the policy was unsuitable and the premiums should be refunded with interest. They are represented by a claims management company (CMC).

## **background**

The policy had a sum assured of £100,000, which matched a commercial repayment mortgage Mr and Mrs P already had in place to finance their business. The advice involved them replacing an existing whole of life policy held with another provider because they wanted a product that would also generate a lump sum during their lifetime.

Our adjudicator recommended that the complaint should be upheld. He recommended a refund of the premiums, less the cost of the life and critical illness cover chargeable on the endowment, with 8% simple interest added, less the surrender value of the policy taken in August 2010. He felt the deduction for the cost of life and critical illness cover should be made for the first seven years of the policy's term to match with the term of the commercial mortgage.

The adjudicator had two specific concerns:

- The commercial loan was on a repayment basis, and so it would have been more appropriate to recommend a decreasing term assurance over the remaining term of the loan, as it would have been more flexible and less expensive.
- Mr P was aged 60 at inception and Mrs P nearly 50. So premiums would have run beyond Mrs P's state pension age and would have been a commitment through to age 80 in Mr P's case.

The adjudicator also commented that if Mr and Mrs P had wanted to achieve an investment return during their lifetime on the premiums they paid there were alternative savings or investment options better aligned with their objectives.

Prudential didn't agree. It considered the type of alternatives that might have been available and pointed out that pensions could generally only return a maximum of 25% tax free cash compared with the endowment if it ran its term. Further, it was recorded that Mr and Mrs P wanted to invest in a with profits fund which wouldn't be an option via a PEP. The term of twenty years appeared not to have been a problem as it was recorded that the premiums would be met by the family business and at the time it was operating on a profitable basis.

The adjudicator reminded Prudential that Mr P's health was now rapidly deteriorating. Mr P did retire at age 71 when the business was sold and the commercial loan had been repaid six years earlier in 2004. Mr and Mrs P had therefore not been served well by the endowment owing to its inherent inflexibility.

In response Prudential drew the adjudicator's attention to a large investment made by Mr and Mrs P in a Prudential Inheritance Bond in 2009 following the sale of their business. This was sold by another adviser unconnected with the one that sold the endowment policy. Prudential suggested that the decision to surrender the endowment one year later in 2010 was therefore unlikely to be influenced by affordability issues.

As agreement couldn't be reached, the matter has been referred to me to review.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think it's reasonable to conclude from the documentation completed at the time – and this doesn't seem to be disputed – that Mr and Mrs P's main objectives in 1997 were to ensure their business' commercial mortgage remained protected while also generating a lump sum for the future.

What is in dispute then is whether a 20 year term endowment policy – the Home Purchaser plan – was a suitable means by which to try and meet these objectives. In my view – and for some quite clear reasons – it was not.

I accept that on the face of it, the new plan might've looked like quite good value when compared to the existing whole of life policy, which Mr and Mrs P had put in place three years earlier, in 1994. For an extra £70 per month the endowment would provide the same level of £100,000 of life cover but also (to an extent) address Mr and Mrs P's savings requirement.

But the purpose of the 1997 recommendation wasn't simply to try and 'improve' on what was already in place. In many respects that was immaterial. Rather, the purpose was to provide Mr and Mrs P with a suitable means by which to meet their objectives at that time.

But the recommended endowment policy provided life and critical illness cover far beyond the remaining seven year term of the commercial mortgage – and on a level basis that the repayment mortgage didn't require. And from a savings perspective, for the policy to be fully effective it committed Mr and Mrs P to meeting the premiums of over £400 per month until around Mr P's 80<sup>th</sup> birthday and well past Mrs P's retirement.

I note what Prudential has said about the likelihood, based on Mr and Mrs P's circumstances and what was said at the time, that the family business would've remained a going concern. And so the policy premiums would've been met by the business throughout the 20 year term even if Mr and Mrs P's personal circumstances changed.

But this strikes me as risky strategy given Mr and Mrs P's ages at the time. And what's happened since – Mr P's deteriorating health, the sale of the business – in my view supports this. I recognise, of course, that *specific* changes in circumstances couldn't have been predicted. But I think it would clearly have been more appropriate to have tried to meet Mr and Mrs P's savings objective with a more flexible alternative; something that could've been adapted to changing circumstances, and the performance of which wasn't dependent upon significant premiums being maintained over such a lengthy term.

So, in short, I don't think the recommendation of the endowment policy was suitable for Mr and Mrs P.

In assessing what would therefore be fair compensation, my aim is to put Mr and Mrs P as close to the position they would probably now be in if they hadn't been given the unsuitable advice.

I think they would have acted differently. But so many years on and with a number of alternatives having been open to them at the time, I don't think it's now possible to say precisely what they might've done differently. So, I'm satisfied that adjudicator's proposal represents a fair and reasonable resolution in the circumstances.

**my final decision**

For the reasons given, my final decision is that I uphold the complaint.

I direct The Prudential Assurance Company Limited to pay to Mr and Mrs P;

- a refund of the premiums paid to the Home Purchaser policy;
- less the cost of £100,000 of decreasing life and critical illness cover for the first seven years from commencement of the policy only;
- 8% simple interest on each premium added to date of settlement;
- less the surrender value paid in August 2010.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 20 July 2016.

James Harris  
**ombudsman**