

## **complaint**

Mrs E and Mr A's complaint is about two mortgage endowment policies sold to them in 1995 and 2000 by The Prudential Assurance Company Limited. They think that the policies were mis-sold to them because, although they understood there were risks associated with the policies, how they worked wasn't explained properly.

Following Prudential upholding their complaint, Mrs E and Mr A were unhappy that they weren't going to receive any compensation.

## **background**

Prudential considered the suitability of the endowment policies for Mrs E and Mr A. It decided that they weren't suitable at the times they were sold, so it did a calculation to determine if they'd suffered a loss. This involved comparing their actual mortgage arrangements, including the cost and value of the endowments, with those Mrs E and Mr A would otherwise have had – a repayment mortgage. The calculation showed that they hadn't suffered a financial loss.

Prudential also informed Mrs E and Mr A that the adviser who suggested that they convert part of their mortgage to a repayment basis wasn't linked to Prudential in 2005 when that advice was given. As such, it wasn't responsible for that advice.

Mrs E and Mr A didn't accept Prudential's findings as they felt strongly that they were due compensation. They provided detailed mortgage history and asked that the loss calculation be done again. Prudential redid the calculation, but it still resulted in no-loss to Mrs E and Mr A. Remaining unhappy, they referred their complaint to this service.

One of our adjudicators considered Mrs E and Mr A's complaint. However, she didn't recommend that it be upheld. She explained how the redress should be calculated. She also confirmed that she was satisfied that Prudential had completed the loss calculation in line with the guidance given to the industry by the regulator.

Mrs E and Mr A didn't accept the adjudicator's view. They said they felt like Prudential were being allowed to a) use an outdated calculation from an abolished institution and b) an incorrect surrender value. In relation to the latter point, they asked how it can be fair for Prudential to use a figure that includes a bonus amount which Prudential doesn't guarantee.

They questioned the numbers detailed in the calculation – how after 17 years of a 20 year term would they only have paid of £31,629 of a £44,500 mortgage. The same applied to the smaller policy – only 81% of that loan would have been paid off. Mrs E and Mr A also feel that they have been penalised by effectively paying twice for the amount by which they reduced the interest –only section of their mortgage – the policies were designed to cover it, but they were having to pay the capital on a repayment basis.

The adjudicator responded to Mrs E and Mr A's concerns and question. However, they remained unhappy and asked for an ombudsman to review the complaint. They asked how they could know that the calculation produced by Prudential was definitely right if we didn't provide a checking service. They reiterated their previous comments about the surrender value used, the figures the calculation produced and that they had been mis-sold the policies. They repeated their comments about having paid additional interest on the just under £15,000 they took on a repayment basis that the endowments had previously covered.

Mrs E and Mr A also said that they thought the adjudicator had missed their point about the performance of the policies. It was not that the performance had fallen short in some years, but rather that it had fallen short every year, even in periods where the economy had performed well and all other investments had risen and made profits. They think that the 'intrinsic qualities' of the type of policy they have mean that they are predisposed to fail – they should not have been sold such a policy.

### **my findings**

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

I don't propose to consider the suitability of the policies for Mrs E and Mr A's circumstances as both sides agree that the policies were mis-sold and not suitable for them. As Mrs E and Mr A are unhappy with the redress calculation I will focus on that.

As our adjudicator has already explained, the calculation is essentially a comparison between the financial position Mrs C and Mr A are in with an interest only mortgage supported by endowments and where they would have been had they had a repayment mortgage from the outset. The calculation must take account of everything that has happened with the mortgage, including interest rate fixes and changes to amounts or terms.

I have noted Mrs E and Mr A's comments about the regulator which determined how redress should be calculated. I can only comment that they are entitled to their opinions about the regulator and how they think it reflects on the redress method. However, that is the guidance we have and must take into account when ordering redress. I would also say that in a situation where a consumer is saying that they wouldn't have linked an investment product to their mortgage had they known how badly it could perform, a repayment mortgage would seem to be the appropriate alternative. So proposing redress be calculated as a comparison between the current and a hypothetical position if a repayment mortgage had been taken, seems appropriate.

In this case the calculation was done using a particular computer programme which is used across the industry. Whilst we don't check calculations for consumers or businesses, we can look at the information that has been input into the programme and that provided by the consumer about their mortgage history. Having done so, I can't see anything obvious that Prudential got wrong. If Mrs E and Mr A want a full check of the entire calculation, they would need to seek assistance elsewhere – perhaps an actuarial or accountancy firm might be able to provide the service they want.

As for the surrender value being used in the calculation, it needs to be the actual surrender value. I note the point Mrs E and Mr A are making – the terminal bonus isn't guaranteed, so if they chose to keep the policy, they might not get that terminal bonus when they either surrender the policy or it matures. That is true, but that is their decision. They know what the situation is at the present time and if they choose to continue with the policy, they do so in the full knowledge of the potential losses. Equally, it wouldn't be appropriate for the terminal bonus not to be included because they could then surrender the policy the following day and be in a better financial position than they would otherwise have been. The entire point of redress is to place a consumer in the position they would have been in at the present time, but for the error on the part of the financial business.

I have noted Mrs E and Mr A's continued comments about the performance of the policies, but I don't propose to comment on them. The performance of the policies isn't relevant as those policies should never have existed. So their performance is a moot point.

I know that Mrs E and Mr A won't be happy with my conclusion, but I don't uphold this complaint. I have seen nothing that makes me think that Prudential hasn't assessed their loss appropriately.

**my final decision**

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs E and Mr A to accept or reject my decision before 23 September 2018.

Derry Baxter  
**ombudsman**