

complaint

Mr W and Ms M (“the policyholders”) complain that The Prudential Assurance Company Limited didn’t pay them enough when they surrendered their mortgage endowment policy.

background

In February 2019, Ms M called Prudential about surrendering their mortgage endowment policy. Prudential told her the current surrender value was £28,976.08. It said the value wasn’t guaranteed and might change on a daily basis. Ms M asked about the surrender process. Prudential ran through this, and then Ms M said they’d like to go ahead with the surrender. Prudential arranged to send out the relevant forms and explained that, once the request was processed, the policyholders wouldn’t be able to change their minds.

After returning the required documents, the policyholders received a letter in early March 2019 saying the policy had been cashed in and £26,078.03 had been paid into their chosen account. Ms M called in and disputed the payment value. She said they were expecting £28,976.08 – and although she’d understood that the value could change, she’d thought this only applied if they didn’t request the surrender during the call and then asked to surrender at a later date.

Ms M asked Prudential to listen to the initial call and pay the difference between the surrender value it had paid and the value it quoted during the call. Prudential explained it couldn’t do this right away, but agreed that Ms M could call back the next working day. When Ms M did this, the person she’d previously spoken to had left for the day. The new call handler said it might take a while longer for Prudential to respond; and also said the value given during the surrender call would be payable.

A few days later, Prudential sent its final response. This said Ms M had been advised that the value might change, and the policyholders had correctly been paid the surrender value which applied on the date the claim form had been received. Prudential said it had been incorrect to tell Ms M that the initial quotation value was payable during her most recent call. It offered £200 compensation for this. Prudential also refunded a direct debit which had been taken just before the surrender went through.

The policyholders then referred the matter to our service. Our investigator questioned Prudential about the extent of the change in value, it being nearly £3,000. Prudential told him it was because Mr W’s date of birth had been recorded incorrectly during the sale – and this only came to light when he provided proof of identity during the surrender process.

Our investigator didn’t think Prudential was responsible for the error with Mr W’s date of birth, as the policy had been sold by another party. And he thought Prudential was within its rights to adjust the surrender value to reflect this. But the investigator did feel Prudential should’ve let the policyholders know about this adjustment before processing their surrender. As it didn’t, they lost the opportunity not to proceed. The investigator said he couldn’t know what the policyholders would’ve done if they’d been told about the adjustment, but he felt Prudential should pay them a further £400 compensation, i.e. a total of £600.

Prudential didn’t accept this outcome. It said it wasn’t responsible for the error with the date of birth – and pointed out that it would’ve taken some time for the benefits to grow to the level originally quoted due to the age discrepancy. Prudential said it would offer a further £200 for the loss of expectation, but wouldn’t agree to a further £400.

The policyholders also didn't accept this outcome. They said they weren't told that the surrender value had been adjusted due to Mr W's age until we got involved. And they queried why this affected the value. They also said the £200 Prudential had initially offered should be considered separately, as that was specifically for the call.

As no agreement has been reached, the case has been passed to me to decide.

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 agree with the outcome our investigator reached – and for largely the same reasons.

I've first considered whether Prudential made any substantive mistakes in its application of the policy terms and conditions. And I don't think it did. Although I understand why there was some confusion, I'm conscious that Prudential did explain the following during the initial call:

"The value today is not guaranteed and may change on a daily basis"

"It's important to note that, once we've processed your request, you can't change your mind"

The policyholders were then sent forms to complete, and Prudential wouldn't have been able to process the surrender until and unless these were returned. So I'm satisfied that Prudential didn't guarantee the value. It was made clear that the value could change on a daily basis until the process had completed. And this process was dependent on the policyholders returning the forms. Accordingly, I don't think Prudential gave incorrect advice about – or misapplied – the terms and conditions of the contract. And that means its liability to pay compensation is necessarily limited.

That said, the main reason for the significant change in value wasn't because of the daily fluctuations Ms M was warned about. It was because the valuation was based on incorrect information – i.e. Mr W's date of birth. But I can't reasonably hold Prudential at fault for this. The sale was conducted by another party, and I haven't seen anything which persuades me that Prudential was responsible for the seller's acts or omissions or should otherwise have been aware of the error at an earlier date.

I know the policyholders don't feel the error with the date of birth should affect the surrender value. But I'm satisfied with the explanation Prudential has given for why in fact it does. The policy contained both an investment and life cover element, with the policyholders' premium being split between the two. If Prudential had known that Mr W was around six years older than initially represented to it by or on behalf of the policyholders, more of the premium would've gone towards the life cover to reflect the additional risk – leaving less to be invested. Prudential is within its contractual rights to make an adjustment for this. I wouldn't reasonably expect it pay out a higher value because it wasn't responsible for the incorrect information at proposal.

However, whilst Prudential didn't make a mistake with regard to the sale or application of the contract, I don't consider its actions to be wholly without error. The adjustment for Mr W's age was a substantial change which went beyond what Ms M was warned about during the call. So I'm not satisfied it was reasonable for Prudential to proceed with the surrender without letting the policyholders know about the change. And Prudential has already admitted that it gave Ms M incorrect information during one of the calls. Nevertheless, it seems to me that the reasonably foreseeable consequences of those errors are limited to distress and inconvenience rather than actual financial loss (which is unproven and too remote from the wrongful acts or omissions).

The question is, what would've happened *but for* these errors? It's important to bear in mind that the policyholders would never have been contractually entitled to the higher amount quoted; and they didn't change their position to their detriment in reliance on that information – which is why I can't reasonably instruct Prudential to make another payment to bring the surrender value up to this level. Instead, I've thought about what's likely to have happened if the policyholders had been told about the adjustment after submitting their forms.

As our investigator has pointed out, it's difficult to determine in hindsight what course of action the policyholders would've taken. I take on board Prudential's point that it would've taken some time for the benefits to reach the quoted level given the age adjustment. And I'm conscious that the policyholders actively approached Prudential about surrendering the policy. On balance, I don't judge it likely that they would've stopped the process. I'm also conscious that Prudential wasn't in a position to know about the adjustment until it received Mr W's proof of identity. So the policyholders would've always experienced some disappointment when they found out about the adjustment.

That's not to say Prudential's errors didn't have an impact on the policyholders. Prudential's failure to tell them about the adjustment at the time meant they lost the *opportunity* to weigh up their choices and make an informed decision. Even though I consider it unlikely that the policyholders would've reached a different decision, their feelings about the situation would've been improved if they'd been given a choice. So the policyholders did suffer undue distress and inconvenience as a result of how Prudential handled this situation. The impact of the error was heightened by Prudential's failure to adequately explain why the valuation had changed so much. The policyholders were left confused about this until our service got involved. Ms M was also given a false expectation when she was told that the original quotation would be paid out during one of her complaint calls – causing disappointment when this turned out to be incorrect.

I've considered what level of compensation is fair in the circumstances. Although the policyholders don't want us to take into account Prudential's previous offer, our service's approach – in the context of compensation for non-financial, emotional harm – is to think holistically about the overall impact of any errors. Taking everything into account, I consider that Prudential should pay the policyholders a total of £600 compensation (i.e. including the amount they've already received). I'm satisfied this fairly reflects the distress and inconvenience the policyholders suffered because of Prudential's errors – and is in line with the sort of compensation we've previously awarded in similar cases.

my final decision

For the reasons given above, my final decision is that I require The Prudential Assurance Company Limited to pay the policyholders £400 compensation in addition to the £200 compensation it's already paid; in other words, a total of £600. The sum owing should be paid within 28 days of Prudential being notified by us of the policyholders' acceptance of my decision, failing which interest will accrue at the simple rate of 8% a year from the date of decision to the date of settlement (less any tax properly deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask the policyholders to accept or reject my decision before 12 September 2019.

Rachel Loughlin
ombudsman