

complaint

Mrs C has complained that The Prudential Assurance Company Limited (“Prudential”) misrepresented the nature and terms of an income protection policy to her at the point of sale.

While she has accepted that the policy does provide a protection benefit, she was led to believe from the documentation she received at the point of sale that it also provided an investment return whenever she decided to surrender it. For example, the policy schedule states that, after an initial ‘nil’ allocation in the first four years, 95% of her monthly premium would be invested. Accordingly, she believed that this investment element was building up a capital sum within the policy she could withdraw in the future. She never received any correspondence at outset from Prudential which suggested otherwise.

Mrs C has since discovered that the policy only paid the remaining value at the end of its term, and not if she surrendered it in the meantime.

She has requested Prudential to pay her the *greater of* a reasonable “redemption value” based on the premiums that have been invested after the first four years and a refund of all premiums plus “statutory interest” for the policy being mis-sold.

background

Mrs C’s complaint was investigated by one of our adjudicators, who concluded that it should not be upheld. He noted that she took out the income protection policy in October 2000 when arranging a mortgage loan. The policy schedule did state that, following the first four years, when none of her monthly premiums were allocated for investment, 95% of each monthly premium would be invested.

However, the adjudicator explained that this ‘investment element’ existed to pay for the potential costs of providing benefits - income replacement or life cover - in the event of a claim. The policy was a protection plan; not an investment product. When Mrs C asked Prudential for an up-to-date policy valuation, it confirmed that no surrender value was payable if the policy was cancelled before the end of its term.

The adjudicator felt there was insufficient evidence to show that Mrs C had been led to believe that the policy would accrue a surrender value during its term, and all the documentation she would have received at outset confirmed that the policy did not acquire a surrender value until it expired.

In response, Mrs C did not accept the adjudicator’s assessment and said that she did not recall receiving either the illustration or a copy of the policy provisions which confirmed that the policy did not offer a cash value on surrender before its expiry date. She understood from the policy schedule that she would receive a future capital sum from the investment element which would build up after the first four years.

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator and essentially for the same reasons.

Mrs C was arranging a joint mortgage with her husband. In conjunction with this loan, she was recommended to take out the income protection policy with a 52-week deferred period to replace most of her income that would cease from her employer after 12 months of absence due to long term illness or incapacity. Her employer paid her income in full for six months, followed by half-pay for a further six months and then statutory sick pay.

The policy was therefore recommended to Mrs C as a protection plan, and not as an investment. Also, given her circumstances at the time, I am satisfied that this advice was appropriate and that the benefit terms under the policy corresponded with her existing employer arrangements.

The other issue to decide is whether the policy was also presented to Mrs C as an investment which would build up a capital sum that would be available to her at any time during the term of the policy.

It is unclear precisely what information Mrs C was provided by Prudential at the point of sale. In particular, she has said that she did not receive a copy of the illustration which stated that: *"It [the policy] has no cash-in value at any time"* or the policy provisions, which stated in rule 8.2 regarding surrender that: *"If you cancel the policy, it does not have a value."* Mrs C has said that she relied on the information given in the policy schedule which confirmed that 95% of her monthly premiums would be invested after the first four years.

Notwithstanding whether or not Mrs C did receive any of the illustration, the 'product particulars' (incorporating her statutory 'cancellation rights'), the policy provisions or the key features document, the policy schedule does state that it *"is to be read together with the Rules for Income Protection Plan."* On balance, I am inclined to believe that Prudential would have provided Mrs C a copy of these Rules with the policy schedule at the point of sale.

These Rules make a number of references to the way in which her premiums are invested and the benefits Mrs C could expect to receive from the policy.

For example, Rule 2.1 says that: *"Although we may use the [investment] funds to meet our obligations to you under the policy, you have no legal or beneficial right to any of the units or to any part of the funds"*.

Rules 8.1 and 8.2 state that: *"On the date of expiry [when Mrs C would reach age 60] we will pay you the value of the units allocated to the policy"* and that: *"If you cancel the policy, it does not have a value"*.

When considering the policy schedule in isolation, it does confirm that no premiums are invested in the first four years and, thereafter, 95% of each premium is invested in the Managed fund. I accept that Mrs C may have interpreted the wording in the policy schedule to mean that her premiums were accruing a value, and this is true.

However, there is no indication in this schedule which would lead Mrs C to believe that the fund value built up by these invested premiums is exclusively available to her as a cash sum

at any time during the term of the policy. Neither is there any evidence that Mrs C was told that she would receive a capital sum from the policy if she cancelled it before it expired.

How the ongoing value of the policy provides the benefits is governed by the policy provisions ("the Rules") which set out the circumstances under which Mrs C would receive any benefits. The zero 'allocation rate' in the first four years allows Prudential to cover the setting-up costs of the policy and the investment fund built up by the 95% allocation of monthly premiums in the Managed fund principally covers the cost of the benefits offered by the policy and not a capital sum for Mrs C to surrender.

I have also taken into account that Mrs C paid a monthly premium of £14.04 for an income benefit of £650 per month to age 60 after 52 weeks of illness or incapacity. Given she has accepted that the policy is a protection plan, I am not persuaded how she could have been led to believe from the documentation she says she did receive that the size of the monthly premium would provide a worthwhile capital sum as well as, in the first instance, funding the cost of the income benefit.

On balance, I am not persuaded that Prudential has acted other than in accordance with the terms and conditions of the policy and that it is not required to pay Mrs C a capital sum if she cancels the policy before the end of its term.

decision

My final decision is that I do not uphold Mrs C's complaint and I make no award.

Kim Davenport
ombudsman