

complaint

Mr and Mrs L complain about a mortgage endowment policy sold in 1995 for which the Prudential Assurance Company Limited is responsible. They made a number of complaints. However I think it fair to summarise the main part of the complaint as follows.

Mr L says he was told the policy was invested in a 100% with profit fund. He took that to mean a fund with a basic sum assured (a "traditional" fund). In fact it was and is instead a unitised fund which works in a different way. He says (in effect) he thought the policy he had been sold had some guarantees attached. He now finds he cannot sell the policy. He says if he had known that he would never have taken the policy out.

background

The business rejected the complaint. It said the policy was invested 100% in the unitised with profit fund. That was clear from the paperwork and Mr and Mrs L have had over 20 years in which to see what they had.

Unhappy with that, Mr and Mrs L came to us. One of our investigators looked at the file. In summary, he agreed with the business. He thought that it should have been apparent to Mr and Mrs L from the documentation they received what they had been sold. He could find no evidence of a specific guarantees being given.

Mr and Mrs L say that wasn't what the complaint was about. They say they are complaining they were, in effect, misled about the policy and the fact that they can't sell it. They remained unhappy and have asked for an ombudsman's final decision. The file has been passed to me.

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 don't uphold this complaint. I understand that this isn't what Mr and Mrs L want.

To uphold a complaint like this I would need to be satisfied about a number of things. Firstly I would need to be able to say that, on balance, Mr and Mrs L were mis-led about the policy. Here I can see some of the documentation is not as clear as it would have to be today. I can't use hindsight in making a decision however. I can only look at what was happening in 1995. The documentation from the time is very familiar to me and much as I would expect.

There are, broadly, two kinds of with profit policies. One is commonly called a "traditional" policy. That has a fixed basic sum assured (often about a third of the target amount) to which annual bonuses and possibly a terminal (end) bonus is also added. No bonuses are guaranteed. But the policy does contain guarantees. The basic sum assured is guaranteed to be paid out. Any bonuses added are also guaranteed.

As an alternative unitised (unit linked) policies were also sold-like the one sold here. They were invested in the with profit fund as the traditional policy was. There was no basic sum assured but it did (and does) carry a guarantee. The guarantee with these policies is that once unit values increase they can never go down. They were effectively guaranteed against losses and all profits were locked in.

I have looked at everything that both parties have sent in. I am satisfied this is a 100% with profit policy invested in a unitised with profit fund. There seems to have been some confusion about this.

There is and was no requirement for a business to consider the saleability of their policies. In any event, the policy here was taken out for mortgage repayment purposes, not for savings or as a stand alone investment. I can see nothing to suggest that, at the time of the sale of this policy the possibility of it being sold on was discussed.

I have seen no evidence that Mr and Mrs L were mis-led about their policy. In any event Mr L has said since he got the first statement (presumably no more than 18 months after the policy started) he understood what he had got. I have to ask then why he didn't take action much sooner in that case.

If I was satisfied Mr and Mrs L had been mis-led I would then need to be able to say they bought the policy entirely or mainly on the basis of that misrepresentation. I simply can see nothing from the time which supports that.

Finally I would then also have to be able to say that Mr and Mrs L have lost out as a result of taking out the policy. At the time of the sale both types of with profit policies were thought to have had a similar level of risk attached. Neither guarantees to meet the target amount of the mortgage.

I have seen nothing to suggest that Mr and Mrs L would be better off if they had taken out a traditional with profit policy than they are now. The fact that, over 20 years after the sale, one type of policy can't be sold is not something the business could have foreseen (or be expected to take into account at the time).

my final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 26 February 2018.

Mike Boyall
ombudsman