

complaint

Mr G complains that The Prudential Assurance Company Limited will not allow him to extend his joint term insurance policy. It will only allow single life policies.

background

In 1985 Mr G and his then wife took out a joint life, first death convertible term assurance policy with Scottish Amicable, which is now part of Prudential. Mr G says he and his wife took out the policy with the following in mind:

- *"Low cost starting life cover for a young married couple offering maximum flexibility with regard to future financial requirements (family, home, business, etc.).*
- *Facility to convert part or all of the sum assured to another form of life cover (Endowment. Whole life, etc.) on request during the term of the policy*
- *Continuation of any remaining unconverted part of the sum assured as Convertible Term Assurance.*
- *Facility to renew with a further Joint-life Convertible Term Assurance under the same conditions at the end of the term of the policy*
- *Joint-life First Death cover with guaranteed continuation rights for the surviving partner*
- *No requirement for further medical evidence in the case of any future conversion or extension".*
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In 2005 the cover expired and Mr G and his wife were provided with three options. They could convert the cover into a term assurance policy, convertible or otherwise, into a savings plan or into a Flexicover Plan. They chose the term assurance option which was fixed for 10 years. In 2015 the business notified Mr G the policy was coming to an end and he asked for quotes on conversion options. In the course of two letters he was offered various options including single life term assurance.

Mr G sought further clarification and was told he would receive a call which didn't happen and so he complained to the business. It responded and apologised for the delay in sending Mr G the information he had requested. In the meantime he had raised a second complaint and spoke with a representative from the business. He says that she told him he couldn't have a joint life policy as he was divorced from his wife, but he said they had been given a policy in 2005 when they had been divorced. This was followed up by another call during which the representative explained that as a result of the European Union Directive on Gender Equality Prudential was no longer offering policy holders the option of extending joint policies.

Mr G brought his complaint to this service and it was investigated by one of our adjudicators who didn't recommend that it be upheld. When he first contacted Prudential he was told that Mr G could extend the policy as he had requested. The adjudicator passed this new information on to Mr G, but shortly afterward Prudential said this had been a mistake. It confirmed that it had decided to stop offering joint life policies due to the EU Gender Directive.

The adjudicator explained to Mr G that due to the EU Gender Directive, the business was unable to take into account a consumer's gender when setting up a policy. The premiums on the Flexible Cover plan that Mr G had were based on gender specific rates and this was not allowed under the EU Directive. The adjudicator also noted that the terms and conditions of

the policy allowed the business to not implement any of the policy provisions if this became impossible or impracticable as a result of legislation.

Mr G did not agree with the adjudicator's view. He said that the policy document that Prudential had supplied to the adjudicator was not the right one for his policy and so had no relevance. He was also concerned more broadly that the adjudicator had based his reasoning on a different type of policy and had relied on misleading information from the business.

I issued provisional decision as follows:

Firstly I made it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

I added that I had read all Mr G's submissions at length and I trusted he would accept there was no disrespect intended if I didn't cover every aspect he had raised. I concentrated on what I regarded to be the key issues.

I noted there had been some confusion as to the nature of the policy and Prudential had referred to it as a Flexicover policy in correspondence. Mr G, quite rightly, had concerns that we were looking at the wrong policy. I asked for clarification and it confirmed that it was converted to a Convertible Term Plan in 2005 as set out in the background section above. It apologised for incorrectly describing the policy as a Flexicover one.

Prudential confirmed that the replacement policy taken out in 2005 was written using gender specific rates. The EU directive didn't take effect until 21 December 2012 when all new insurance contracts had to be written using gender-neutral rates. It also confirmed it didn't have gender neutral rates available in 2005.

Prudential said it didn't change its rules, but it was complying with the EU directive that all insurers use gender neutral rates when underwriting insurance contracts from 21 December 2012. It said there was an industry wide publicity campaign around the time making consumers aware of the likely impact this would have on all types of insurance. Prudential's position was that it ceased writing joint life insurance contracts from 21 December 2012 and currently does not offer any life insurance contracts having withdrawn from the insurance market.

The adjudicator had referred to the terms and conditions which allow Prudential to make the changes it has in regard to the EU directive. The relevant section he quoted says: "*The Society' reserves the right not to implement any of the policy provisions if during the term of the policy this becomes impossible or impracticable as a result of legislation or otherwise*". However, that clause is for the Flexicover policy and I didn't believe it had any relevance to Mr G's complaint. I asked Prudential for the terms and conditions and rules for the term policy. None of these contain a similar clause.

It seemed to me that Prudential simply decided not to offer joint policies once the directive came into force. The directive didn't force the business to stop issuing joint policies; it simply required them to be issued on a gender neutral basis. Prudential was entitled to opt out of offering joint policies and I wouldn't seek to interfere with that decision, but in doing so I believed it had disadvantaged Mr G. I didn't consider that to be fair or reasonable. He had a

reasonable expectation when he took out the policy that it could be extended without further medical evidence.

I considered he was entitled to some recompense. I explained that this service seeks to put people back in the place they would have been in had the cause of the complaint not happened. In Mr G's case he wishes to maintain a joint policy and so I believed the best solution would be for Prudential to source a suitable joint policy from another provider at no extra cost to Mr G. He would have had to pay premiums to Prudential had it been able to honour its original commitment and so I consider it should cover the cost of any excess, by whatever means is agreed to be reasonable.

In addition I considered Prudential has not handled the matter well and had on more than one occasion given both Mr G and this service incorrect information. It would appear that its staff had not fully understood the changes and had offered differing explanations as to why the policy couldn't be extended. It had offered Mr G £125, but I didn't consider this to be sufficient to reflect the trouble and upset Mr G had suffered due the Prudential's poor handling of the matter. I believed £275 to be a more appropriate figure.

Prudential Assurance Company responded and said:

- It does not feel that the suggested option is feasible to implement.
- It has agreed that it would allow Mr G policy to be extended for a further ten years.
- There would however be no option to convert the policy at the end of the further ten years.
- Mr G would be required to pay the back premiums.

Mr G responded in some detail, but the key points were that:

- He would not be comfortable in accepting a solution that forced him to accept an ill-defined policy sourced entirely at the discretion of Prudential.
- A more appropriate arrangement would be for him to be allowed the option to choose to accept either of an 'alternative' policy or 'appropriate compensation' at his sole discretion.

A copy of the business proposal has been forwarded to Mr G and he has made the following comments.

- The arrangement that Prudential suggest does not represent a like-for-like equivalent to the original Scottish Amicable Convertible Term policy, in that it does not retain the right of renewal beyond the offered 10-year period of extended joint-life cover.
- It would take "a number of weeks to implement" which, on past experience could mean that signature of documents could very likely extend well on towards a whole year from the original expiry date of the 2005-2015 policy, a period during which there would not actually be any formal cover in place on the lives of myself or my ex-wife.
- Despite the absence of any contract arrangement in this interim period, he is concerned that Prudential expect to receive monthly premiums backdated to September 2015.
- Mr G feels that if a solution of the form put forward by Prudential were to be pursued, the following modifications would be necessary:
- The period of the policy should be at least 20 years at that same monthly rate, to compensate for the removal of the renewal rights in the original policy contract.

- The period of future life cover should be calculated from the date on which documents are ready to be signed – not least because this gives Prudential an incentive not to drag their feet yet further.
- There should be no requirement for the backdating of premiums to September 2015, since there has been no effective life cover nor other policy benefits in place in the interim period.

I asked Prudential to consider a 15 year extension and it said that it didn't consider this to be reasonable. It pointed out that the convertible term assurance policy Mr G took out in 2005 had the option at maturity to convert to an endowment assurance or a whole of life assurance. It did not allow for a further convertible term policy to be arranged. As such it didn't agree that Mr G has, therefore, lost the right of renewal.

It said the policy schedule issued to Mr G states: *'This option shall be available only if, at that time, Prudential has published rates of premium for First Death Whole Life Assurances or for First Death Endowment Assurances of the appropriate term, as the case may be.'* It has already confirmed these rates are no longer available. It added that this clause seems to have been overlooked as it is not referenced in my provisional decision.

As a concession, and in view of the suggestions being made by me, it agreed to allow Mr G to extend his policy for a further 10 years, based on the current premium. It believes this is a generous offer and the savings Mr G will make on the reduced premium was not meant to be regarded as benchmark for appropriate compensation.

my findings

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

It's clear that we could continue correspondence on this matter for a very long time and I consider it is now appropriate to reach a conclusion with both parties having had the opportunity to put forward their views at some length.

I remain of the view that Mr G was disadvantaged by Prudential ceasing to offer joint policies and thus prevented him from renewing his policy. I say this after having taken note of the clause to which Prudential referred in its latest email. As such it remains for me to determine what is suitable recompense.

I had hoped that both parties may have come to an amicable agreement as to how this should be resolved, but that was a forlorn hope. I appreciate that Mr G is unhappy at the idea that Prudential should be allowed to source a suitable policy. Also Prudential doesn't regard this as a feasible solution. Mr G and his former wife have had the benefit of cover since 2005 and so I don't believe it would appropriate to refund the premiums. This leads me to conclude the only sensible option is to allow Mr G to extend the policy. He has suggested that he be given a 20 year extension. After much reflection I don't consider this is reasonable. I consider the original offer of a 10 year extension is fair, but that the 10 years should begin from the date Mr G accepts my decision, if he chooses to do so. In turn I would expect Prudential to set up the extension without delay and to endeavour to have it in place within one month of the acceptance.

The sum assured and the monthly premium should remain the same and there would be no option to convert the policy at the end of the extended 10 year term. I consider that this

allows Mr G the same cover at, what is in effect, a reduced rate. Prudential has said that Mr G should be required to pay the outstanding premiums from September 2015. Mr G disagrees and says he wasn't covered for that period. I don't propose to go into whether he was covered or not. I am considering the recompense as a totality and I believe it is reasonable for him to pay the outstanding premiums. This also fits with my conclusion that the start date of the 10 year extension should be the date on which he accepts the decision.

I accept that neither party will be happy with my decision, but I consider it to be a fair and reasonable decision.

my final decision

My final decision is that I uphold this complaint and I direct The Prudential Assurance Company Limited to:

- extend Mr G;'s policy by a further 10 years from the date of his acceptance of this decision and to do so without delay
- maintain the cover and keep the premiums at £18.23 a month
- pay Mr G compensation of £275.

This is subject to Mr G paying Prudential the outstanding premiums from September 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 September 2016.

Ivor Graham
ombudsman