

## **complaint**

Mr and Mrs D complain about the way the Prudential Assurance Company Limited has dealt with their request to stop paying premiums towards their mortgage endowment policy. Mr and Mrs D wanted the policy to be kept in force but not to have to continue to pay premiums. Instead as premiums were not paid the policy lapsed without value.

## **background**

The background was set out in my provisional decision as:

“Mr and Mrs D complained. They said that in 2005 they had contacted the business. They wanted to stop making payments towards their policy. They say they understood they could have the policy made “paid up”. That, they thought, meant the policy would retain (or possibly increase) its value while they no longer needed to make payments. Mr and Mrs D say that is what has happened with a similar policy with another business. Instead, unpaid premiums resulted in the policy lapsing without value.

The business rejected the complaint. It said that the policy could have been made paid up. However when Mr and Mrs D contacted the business they were asked to complete and return a form which would have confirmed their intentions and given the business the required authority to carry out the changes. That form was never returned.

The business says it does not and did not routinely “chase up” such forms because so many customers do not proceed with changes for a variety of reasons. Mr and Mrs D said they did not return the form because they did not fully understand it but instead wrote back to the business with their understanding of the position. They say they did not receive any reply to that letter.

Unhappy with the business’ response Mr and Mrs D came to us. One of our adjudicators thought that the business was not at fault. Mr and Mrs D had not done what the business asked and had not returned the form as requested. They had also not followed up to check their understanding of the position.

Mr and Mrs D did not agree. The adjudicator then made some further enquiries. Although he remained of the view that there was no significant fault on the part of the business it was clear it could not document everything it said had happened. It was also clear that the business had recognised that Mr and Mrs D had misunderstood the position but did not let them know.

On balance therefore he thought the business should pay an amount for the trouble and upset caused. The business has declined to do so and Mr and Mrs D remain unhappy. I have been asked to look at the complaint.”

After I looked the file I came to the view that the fair outcome here was different from that proposed by the business and the adjudicator. Therefore I issued a provisional decision to give the parties an opportunity to comment before reaching a final determination. That decision is summarised below.

In my provisional decision I said:

-the business had identified that Mr and Mrs D were wrong in their understanding of the position, but cannot evidence that they informed Mr and Mrs D of that

-Mr and Mrs D also bear some responsibility for the situation for not checking whether they were correct in their understanding or not

-that the complaint should be upheld in part.

-I asked for certain information to be provided

The business responded by explaining why the policy could not be reinstated at the time after it had lapsed. It said the forfeiture value in 2005 was some £12,000 odd, which it had offered to pay.

Mr and Mrs D say had they known the true position they would have taken the value of the policy at the time.

As the parties have now responded and I can issue my final decision

### **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 uphold this complaint in part for the reasons given in my provisional decision.

I think the business knew Mr and Mrs D were wrong in their understanding of the position. The business ought to be able to evidence that Mr and Mrs D were told that. I think on the evidence if Mr and Mrs D had known the true position they would have taken the money at the time.

I also think this failure by the business has caused unnecessary trouble and upset to Mr and Mrs D. But I think they could have helped themselves by checking the situation. However I take the view that a modest payment of £250 is appropriate for the trouble and upset caused.

My view is that if the business had got things right Mr and Mrs D would have had the forfeiture value in 2005. They would of course then have had use of that money. The business should, as it offered to do, pay the forfeiture value and add interest.

That should be at a compound rate of 8% simple from 30 days after the letter was received by the business from Mr and Mrs D in 2005 to the date of settlement. I say 30 days because in my view that is a fair estimate for how long it would have taken Mr and Mrs D to request and receive the funds had they known the true position.

If the business is advised to deduct tax from that interest it may do so. However if it does it must provide a certificate of tax deduction to allow any tax to be reclaimed if appropriate.

**my final decision**

I uphold this complaint in part. I direct that The Prudential Assurance Company Limited pay the forfeiture value to Mr and Mrs D as it previously offered to do. I also direct that they pay £250 for the trouble and upset caused. The business must also add interest to the forfeiture value as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 3 March 2017.

Mike Boyall  
**ombudsman**

### **extract from my provisional decision**

I do not think I need to repeat the sequence of events in any detail. Both the parties are well aware of what happened. In summary, Mr and Mrs D asked, in writing, for the policy to be made paid up. The business agreed to do that subject to a form being returned. That form was not returned. However Mr and Mrs D wrote to the business again asking for the policy to be made paid up although not completing the form.

The letter suggested that Mr and Mrs D thought the policy was going to be made paid up. The business got that letter and recognised that Mr and Mrs D thought wrongly that their request was going to be carried out.

An internal note produced by the business recognised that. It also said that the policy had been forfeited and that a decision had been taken not to reinstate the policy. It does not explain why that is the case. The note also says that Mr and Mrs D should be sent forms to enable them to claim the current value of the policy. The business cannot evidence that any such forms were sent.

What happened then is not entirely clear. It seems the business cannot evidence that it replied to that second letter or explained to Mr and Mrs D that they were wrong-(although it says it did). On the other hand Mr and Mrs D have given various explanations for what they were told and knew at the time. Of course from so long ago it is hardly surprising that memories fade and it can be difficult for consumers to recall precisely what happened.

However I must bear in mind the business is regulated with obligations to its customers. The form the business wanted completing simply set out in a slightly different format in effect simply what the written instructions of Mr and Mrs D were. Mr and Mrs D did not check to see what the position was or contact the business again about this. Neither did the business explain to Mr and Mrs D. As a result the policy lapsed.

In effect, Mr and Mrs D gave clear written instructions to the business (twice) which it failed to carry out simply because a form was not returned. Neither did the business tell Mr and Mrs D they were wrong in what they were thinking was going to happen. This is, of course a regulated professional business with obligations to comply with certain standards of conduct including treating its customers fairly.

The business says that the policy had already lapsed at the time of the second letter and could not be reinstated. It has however offered the forfeiture value of the policy. It has not said how much that is.

However it is also clear that, with respect to Mr and Mrs D, they could have done more themselves. The form sent by the business drew Mr and Mrs D's attention to the fact that the changes they wanted to make would make the policy "non-qualifying" for tax purposes. They say they did not return the form to the business because they did not understand what that meant. I must take into account that they could, of course, have found out what it meant or checked with the business.

In short there is, in my view, fault on both sides. It is always very difficult to know how a consumer should be compensated in a situation like this. No doubt a great deal of time and effort could be spent on trying to establish what the redress should be. However we are

intended as an informal service designed to resolve disputes with the minimum of formality.

The difficulty is in deciding how any redress should be calculated. In order to progress this complaint I would ask the parties to provide me with the following information. I would ask Mr and Mrs D to tell me what, if anything, they think they would have done had they known promptly that the policy could not be made paid up.

I also ask the business to tell me a) if the policy could not be reinstated and made paid up at the time, why not; b) how much the forfeiture and hypothetical paid up values of the policy are. The hypothetical paid up value is the value the policy would have had it been made paid up at the time of the original request.

**end**