

complaint

Mr G complains about the sale of a mortgage endowment policy in 1984. The Prudential Assurance Company Limited is responsible for the sale.

background

The business upheld the complaint. It agreed that Mr G had been mis sold the policy. It calculated what redress was due to Mr G. Having done so it said no compensation was due. It calculated how much refunding the premiums paid by Mr G over the years plus interest, less the surrender value of the policy. Having performed that calculation the business said nothing was due to Mr G.

Mr G was unhappy with that. He brought his complaint here. One of our adjudicators looked at the file. He thought the business had taken the wrong approach to calculating redress. He thought that at one stage the policy had been used with the intention of repaying a mortgage. Therefore he thought that a different loss calculation should be carried out. If that calculation is carried out, the adjudicator said, some compensation would be due to Mr G.

The business disagreed. In effect it said the policy was never intended to be used for a mortgage (in fact Mr G was too young to have a mortgage when the policy was sold) and that the other evidence indicated that the policy had been used as an investment not as a mortgage repayment vehicle.

The parties could not agree therefore the complaint has been passed to me to consider.

my 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 to say I agree with the adjudicator here. I think the business has not used the right approach in calculating whether any redress is due to Mr G. I take the view the adjudicator's approach is the fair way to settle this complaint.

Firstly I should say I can perfectly well understand why the business adopted the approach it did. There is no such thing as the "right" redress. All we can do is reach what we think is a fair outcome. Redress and compensation calculations are some of the most difficult issues we are asked to decide. It is no easier for businesses. That is because there are many unknowns in trying to reach the fair outcome.

This decision will concentrate on the way compensation should be calculated. The business has helpfully and in my view rightly upheld this complaint from the start. Therefore I do not need to and will not consider that issue.

In deciding the fair way to calculate redress our starting point is to ask the "but for" question. What would the consumer have done "but for" the mistake(s) on the part of the business. Here, the question is if Mr G had not been sold this policy- what would he have done instead. The business says this was an investment and Mr G should be compensated as if he had been sold the wrong product for meeting a need for investments or savings. If that is the case the business is, in my view, right in how it calculated redress.

The adjudicator says that is the wrong approach. This policy, the adjudicator says, was used at least at some stage, for the purposes of supporting and hopefully repaying a mortgage. Therefore the approach used where an unsuitable or inappropriate product was sold for the purposes of mortgage repayment should be used (at least in part).

Here the evidence is contradictory. All I can do in a situation like this is reach a view on the balance of probabilities (what I think is most likely) and what I think is fair overall. Here the business rightly says Mr G was too young for a mortgage when the policy was sold. It also says the policy was never formally assigned or otherwise used for mortgage repayment purposes. Mr G's own comments, it says, supports its' view when he says the policy was taken out simply as an investment.

The adjudicator highlights different evidence. He says the application (proposal) form indicates future mortgage repayment was discussed when the policy was sold. When Mr G took out a mortgage the amount borrowed suggests the policy was to be used for repayment purposes. The mortgage was partly supported by another policy and the total target values of the two policies equalled the mortgage amount. The adjudicator says, in effect, this was no co-incidence and that it suggests the policy was being used to repay the mortgage. I note what the business says about the policy not being assigned. However as the business knows over time most lenders stopped taking assignments over policies as a matter of routine.

As I have said there is no "right" answer to this. On balance and it is about striking a balance I think the adjudicator is right. I think the evidence supports the view that for at least part of its term the policy was intended to be used for the purposes of mortgage repayment.

Therefore I take the view the business should carry out a calculation as suggested by the adjudicator. I set that out below.

my final decision

My final decision is that I direct the Prudential Assurance Company Limited calculate and pay redress (if any) to Mr G using the approach suggested by the adjudicator which I repeat below.

Redress should be $D - E$ where:

- ☐ **A** = a refund of the premiums paid from the date the policy started to the date that the mortgage started;
- ☐ **B** = interest on the premiums paid before the mortgage started from the date of payment to the date of decision or earlier settlement;
- ☐ **C** = the loss identified by carrying out a loss calculation in accordance with the FSA's guidance, [Handling Mortgage Endowment Complaints](#) - using a *nil surrender value* and, for the hypothetical repayment mortgage, a mortgage term equal to the original term of the endowment;
- ☐ **D** = $A+B+C$;
- ☐ **E** = the surrender value of the policy at the date of maturity.

Interest should be added to $D-E$ from the date of maturity to the date of this decision.

Interest should be at 8% simple.

Redress should be calculated to the date of this decision. Any compensation should be paid within 28 days of Mr G accepting this decision. If it does not interest at 8% simple must be paid from the date of this decision to the date of settlement. If the business wishes to deducted tax from any interest paid it may do so but must provide Mr G with a tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 2 November 2015.

Mike Boyall
ombudsman