

## **complaint**

Mr and Mrs K have complained that, when they part-surrendered a guaranteed bond (“the plan”) in 2010, they were informed by The Prudential Assurance Company Limited (“Prudential”) that the “guaranteed minimum fund” (GMF) due after five years would remain intact and be reduced only by the value of the part-surrender.

Specifically, as Mr and Mrs K’s original “guaranteed” investment was £22,800, and they wished to withdraw £18,000, they were led to believe that the GMF at maturity in 2013 would then be £4,800.

As it was, when the plan came to mature, Mr and Mrs K received back approximately £1,700, as the “guarantee” had been lost in 2010 when they part-surrendered the plan and its final value was disproportionately reduced.

Prudential accepted that it had misinformed Mr and Mr K in 2010 and it offered to pay them a sum of £300 for its error. Mr and Mrs K rejected this offer and requested Prudential to pay them the shortfall in the maturity value they received in 2013 and the amount they were promised of £4,800.

## **background**

One of our adjudicators issued her assessment of Mr and Mrs K’s complaint in which she was inclined to uphold it. She recommended that Prudential should reinstate the “guarantee” that existed under the plan at outset they had been assured remained intact in 2010 by paying them the difference between £4,800 and the maturity value they actually received.

In response, Prudential said that, while it accepted that Mr and Mrs K had been informed incorrectly that the “guarantee” remained intact when they part-surrendered the plan, this did not entitle them to receive a maturity value that was significantly more than the true value of the plan. In these circumstances, an award for the distress and upset caused to Mr and Mrs K when the plan matured was appropriate

I issued a provisional decision on this complaint in February 2015 in which I concluded that, in my view, the incorrect information given to Mr and Mrs K by Prudential in 2010 did not alter the contractual nature of the plan.

Therefore, it would not be appropriate for me to return them to the financial position represented by verbal statements made by a representative of Prudential that ultimately overstated the true value of their investment.

Accordingly, I considered that an award for the trouble and upset this matter had caused Mr and Mrs K was appropriate in the circumstances and that the offer made by Prudential of £300 was fair and reasonable.

A copy of this provisional decision, to which I invited both Prudential and Mr and Mrs K to respond, is attached and forms part of this final decision.

## **developments**

In response, Mr and Mrs K disagreed with my provisional conclusions and asked for the following points to be taken into account:

- they took out the plan in 2008 for the reassurance it provided that the original capital would be guaranteed at the fifth anniversary for which they paid an additional monthly charge;
- when they needed to raise money in 2010, they considered several options, such as a personal loan, a re-mortgage, realising the value of some company shares, part-surrendering the plan or a combination of these options;
- after receiving the information from Prudential that the “guarantee” would be unaffected by part-surrendering the plan, they decided on this option. This made financial sense as there would be no additional costs or penalties they would otherwise incur under the other options such as tax on selling shares, interest charges or monthly repayments on a re-mortgage loan;
- at no time until the plan matured did Prudential advise them that the information they had received in 2010 was incorrect, which they consider to be legally binding;
- they have been unfairly treated by Prudential and penalised financially by approximately £3,000.

In reply, Prudential confirmed that it accepted my provisional conclusions and it had no further comments to make at this stage.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I do very much appreciate Mr and Mrs K’s point that they rejected alternative means of funding their need for capital in 2010 in the expectation that the plan would at least provide a “guaranteed” net maturity value of £4,800.

However, Mr and Mrs K have not clarified which option they would otherwise have chosen to raise capital of £18,000 if they had been correctly informed in 2010 that they were not guaranteed to receive £4,800 from the plan at maturity.

Consequently, I do not know the terms and cost of the alternative means of raising £18,000 to decide whether Mr and Mrs K would have been justified in believing that this option might have been more beneficial to them than part-surrendering the plan. Even though they lost the capital “guarantee” offered by the plan, Mr and Mrs K would not have known in 2010 whether its overall value at maturity would be greater or less than their original investment.

Accordingly, I do not believe it is appropriate to increase the actual maturity value of the plan to more than its true value on the basis that Mr and Mrs K might have considered alternative means of raising capital of £18,000 if they had been informed in 2010 that the plan’s maturity value was not guaranteed to be at least £4,800.

Mr and Mrs K have not lost £3,000, which is the difference between the actual amount they received at maturity and the amount they were told remained guaranteed. It does not consider the cost of the alternative options of raising a capital sum of £18,000, which is unknown.

Notwithstanding this, their complaint concerns the loss of expectation they have suffered on discovering approximately three years after they part-surrendered their plan that the maturity value in 2013 was no longer protected.

In these circumstances, I believe that the amount of £300 offered by Prudential for the upset this will have caused them is fair and reasonable.

**my final decision**

My final decision is that I do not uphold Mr and Mrs K's claim for the capital guarantee to be reinstated under their plan following the incorrect information they were provided by Prudential in 2010.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs K to accept or reject my decision before 23 April 2015.

If Mr and Mrs K accept this decision, The Prudential Assurance Company Limited should pay them the sum of £300 for the trouble and upset this matter has caused them.

Kim Davenport  
**ombudsman**

## COPY OF PROVISIONAL DECISION

### complaint

Mr and Mrs K have complained that, when they considered part-surrendering the value of a guaranteed bond (“the plan”) in 2010, they were informed by The Prudential Assurance Company Limited (“Prudential”) on two occasions that the “guaranteed minimum fund” (GMF) due after five years would remain intact and be reduced only by the value of the part-surrender.

Specifically, as Mr and Mrs K’s original investment (and the original “guaranteed” amount) was £22,800 and they wished to part-surrender £18,000, they were led to believe that the GMF at maturity in 2013 would then be £4,800. On the basis of this information, Mr and Mrs K part-surrendered the plan.

As it was, when the plan came to mature, Mr and Mrs K received back approximately £1,700, as the “guarantee” had been lost when they part-surrendered the plan and its final value was disproportionately reduced.

As Prudential has accepted that it had misinformed Mr and Mrs K in 2010, it offered to pay them a sum of £300 for its error. Mr and Mrs K rejected this offer and requested Prudential to pay them the shortfall in the maturity value they received in 2013 and the amount they were promised of £4,800.

### background

Mr and Mrs K’s complaint was investigated by one of our adjudicators who upheld it. Her view was that Mr and Mrs K’s decision to part-surrender the plan relied in part on the incorrect information they were given on two separate occasions. They should not have to bear the financial consequences of Prudential’s error.

Mr and Mrs K were explicitly told that their minimum guaranteed value would not be affected by the withdrawal of funds and, for this reason, they proceeded with the withdrawal. Prudential has accepted that they were wrongfully informed and, had they been given the correct information, the adjudicator felt that they would have taken a different course of action.

Therefore, she believed that the fairest outcome for their complaint is that Prudential should offer Mr and Mrs K the full capital guarantee under the plan.

In response, Prudential did not agree with the adjudicator’s assessment and said that;

- it does not dispute that incorrect information was provided to Mr and Mrs K when they were considering part-surrendering the plan;
- however, they should not be placed in a more advantageous financial position than the position they would have been in had the correct information been given in 2010. In other words, they should not benefit from an error and the adjudicator’s recommendation gives Mr and Mrs K more than their policy was worth at maturity;
- Mr and Mrs K have not suffered a financial loss and the purpose of redress is not to rectify a financial loss that has not occurred;
- given the large withdrawal they took in 2010, it is reasonable to suppose that Mr and Mrs K would have fully surrendered the plan if they had been informed that the part-surrender adversely affected their guarantee. As it is, the full surrender value in 2010 is less than the value of the part-surrender, plus the remaining maturity value in 2013, and, therefore, Mr and Mrs K have not been financially disadvantaged based on the correct valuation of the plan;
- in the circumstances, its offer of £300 for the trouble and upset it has caused Mr and Mrs K is fair and reasonable.

Mr and Mrs K replied that:

- they do not accept the calculation made by the business which indicates that there has been no loss;
- before they made the part-surrender, they were informed that they would still receive the remaining value of the capital guarantee at maturity of £4,800;
- it was irrelevant what they would otherwise have done if they had been given the correct information in 2010.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

That Prudential provided Mr and Mrs K incorrect information in 2010 with regard to the effect of part-surrendering the plan on the capital guarantee at maturity in 2013 is not in dispute.

The issue for me to consider is whether this information provided a contractual guarantee that the minimum maturity value would not be affected by part-surrendering the plan within the term of the investment.

Also, given the size of the part-surrender in relation to the total value of the investment, I do believe it is relevant to consider what action Mr and Mrs K would otherwise have taken if they had been provided the correct information in 2010.

The position with regard to the effect on the “capital guarantee” at maturity of taking an income or withdrawals from the plan is set out in the key features document, which states:

*“Your minimum guaranteed amount will be reduced proportionately for any income or withdrawals that you take and will be shown in your regular statements.”*

Significantly, the terms and conditions refer to the minimum guaranteed amount being reduced *proportionately* according to the value of units before and after the part-surrender had taken place, and not by the actual amount of the withdrawal.

In my view, the incorrect information given to Mr and Mrs K by Prudential in 2010 did not alter the contractual nature of the plan. Therefore, it would not be appropriate for me to return them to the financial position represented by verbal statements made by a representative of Prudential that overstated the true value of their investment.

I have also considered whether Mr and Mrs K would have acted differently if they had been given the correct information in 2010. As the sum they applied to withdraw amounted to approximately 80% of the value of the plan at the time, I am inclined to believe that they did need to raise this sum. Therefore, I am inclined to agree with Prudential that, if Mr and Mrs K had been informed that this withdrawal would have reduced the final value of the plan at maturity by approximately £3,000, they would have fully surrendered the plan at that time unless they could raise a sum of £18,000 elsewhere and so protect the “guarantee” the plan offered.

As Prudential has shown that, if Mr and Mrs K had surrendered the plan in full in 2010, they would have received back a greater sum altogether, they have suffered a loss of expectation at maturity and not an actual financial loss.

Therefore, unless Mr and Mrs K can persuade me that they could have raised the sum of £18,000 elsewhere that would have enabled them to leave their plan undisturbed in 2010, I would not consider that Prudential should pay them redress that increases the maturity value of the plan in 2013 to £4,800.

This complaint concerns the upset Mr and Mrs K have suffered on discovering approximately three years after they part-surrendered their plan that the maturity value in 2013 was no longer protected.

In these circumstances, I believe that the amount of £300 offered by Prudential for the upset this will have caused them is fair and reasonable.

**my provisional decision**

My provisional decision is that I do not uphold Mr and Mrs K's claim for the capital guarantee to be reinstated under their plan following the incorrect information they were provided by Prudential in 2010.

Accordingly, The Prudential Assurance Company Limited should pay Mr and Mrs K the sum of £300 for the trouble and upset this matter has caused them.

Otherwise, I make no award.

Kim Davenport  
**ombudsman**