summary and background to complaint

Mr and Mrs C have complained about their low-cost mortgage endowment policy sold to them by The Prudential Assurance Company Limited. They are unhappy with the investment performance of the policy as it has matured with a shortfall from the target amount of £44,000 and say that is due to it having been badly managed by Prudential. They also say that they have received mis-leading information at the point of sale and in subsequent years as to the amount the policy would pay at maturity.

Briefly, Prudential has rejected Mr and Mrs C's complaint including about the investment performance of their policy and, unhappy with that outcome, they brought their complaint to this Service. One of our adjudicators looked at the complaint and was of the view that it could not be upheld.

Mr and Mrs C have now asked that an ombudsman review the complaint and resolve the matter.

my findings

I have read and considered the whole file in order to decide what is fair and reasonable in all the circumstances of the complaint.

Having done so, I have come to the same conclusions as the adjudicator and for much the same reasons.

I can only uphold a complaint where it is fair and reasonable to do so and also safe to do so. Usually that means making a finding that the business has got something wrong. Simply because things have not worked out very well is not enough.

There are two significant hurdles Mr and Mrs C would need to overcome before I could uphold this complaint. Unfortunately from their point of view, on the available evidence, neither of those hurdles have been cleared.

The first problem is that this policy was not sold by this business. The person selling the policy had responsibilities under the financial services act 1986 which came into force in April 1988. Those responsibilities extended to ensuring the product sold was suitable for Mr and Mrs C. It would also require the advisor to make sure Mr and Mrs C understood enough about the policy to allow them to make an informed choice about what they were doing and whether to take the advisor's advice.

The fact that the projected rate of return used in the illustration was higher rather than lower is a good example. That would have meant the policy was cheaper but carried a higher degree of risk than a policy requiring a lower rate of return. That was not for this business to be concerned about. The advisor selling the policy would (or ought) to have known that and if appropriate explained it to Mr and Mrs C.

The second issue is that many commentators have made very similar observations and comments as Mr and Mrs C have (such as about historic unclear paperwork and illustrations, over optimistic projections and bonus assumptions). Many would agree with those comments and there will no doubt be elements of truth in some of them. That is not for me to comment on.

However that is using hindsight. I cannot use hindsight in making a decision. If a 10.75% rate of return was considered reasonable in 1988 the fact that such a projection would today be more likely to use a rate of 4% is irrelevant. The projections and information used at the time may seem very optimistic now but at the time they were simply what the industry expected going forward.

Here, under the terms of the contract between Mr and Mrs C and the business, the business promised to take Mr and Mrs C's premiums each month and invest them, after paying costs and the cost for life cover. The object was to invest their money so it would at least reach the amount of the mortgage but there was no guarantee of that.

On the evidence Prudential did what it said it would, but the policy has now matured with a shortfall. The value of the policy is what it is, no more and no less and I am sorry that it has not reached its target amount.

However, I have seen nothing to persuade me that Mr and Mrs C were given any kind of guarantee by the business as to what the policy value would be (except on death when it was indeed guaranteed to at least repay the mortgage).

I also have to take into account that Mr and Mrs C had been getting clear warnings that his policy may fall short. I have looked at the business's letter from 2007 and cannot agree that it promises that the policy was on track, as suggested by Mr and Mrs C in their complaint form. The remark that policies like theirs were maturing at target or above is simply a statement of the truth. I have also looked at the sales literature from 1988 and do not see that it promises that the target amount will be paid.

It is very unfortunate that the value of the policy did not grow by as much as Mr and Mrs C hoped, but that does not make it wrong.

With profits bonus rates are affected by investment decisions made by the business, which, of course, Mr and Mrs C are now all too well aware of. In hindsight, the fact that those decisions may not have been as successful or profitable as hoped for, is not something that this service can consider.

Changes in bonus rates or asset allocations are highly confidential commercial matters which most people in the business will know nothing about until such changes become public knowledge.

Such decisions and the resultant bonus rate changes have been due in part to worldwide economic recession, low interest rates and low inflation in the past twelve or so years. This has resulted in very low growth for Mr and Mrs C's plan and as far as I can see, that is what has happened here.

It is very frustrating that with-profits policies and the way they work is complex and it can be difficult to get information from a business on occasions. I might add this is certainly not just something which applies to this business but to most if not all similar businesses. The fact remains however that these policies are complex and not easy to understand.

All I can consider however is simply whether this complaint should be upheld or not. Here from what I can see the business has done what it had to do and has explained what happened and why.

The decisions made about how the business managed and invested Mr and Mrs C's money (and all the other policyholders) are matters for the managers and actuaries employed by the business. Those decisions and the consequences of them are matters of commercial judgement and professional opinion, which I will not consider.

I have seen nothing to suggest that those decisions were so clearly wrong and flawed (without using hindsight) that they could be said to be evidence of mismanagement.

I can fully understand Mr and Mrs C's disappointment when the policy they had paid towards for some 25 years matured with a shortfall and failed to pay off the mortgage. However, this was an investment and some investments do well and others do not – that is the nature of investing and each investment carries its own level of security or risk.

my final decision

My final decision is that I have seen insufficient evidence of a guarantee as to the policy's final value and I have also seen nothing to persuade me that Prudential has got anything wrong in managing its investments or that it has provided misleading literature or letters.

Mike Boyall
ombudsman