

complaint

Mr and Mrs F complain they had to pay a tax charge when their endowment policy matured. They say they weren't made aware of this by The Prudential Assurance Company Limited, and think the policy was mis-sold.

background

Prudential investigated the complaint. It found that Mr and Mrs F shouldn't have been sold the endowment policy in 1989. It calculated what return the premiums Mr and Mrs F had paid would have received, had they saved in another way. But this indicated there had been no loss. Prudential offered to consider the effect of any tax liability Mr and Mrs F had incurred, if they provided evidence of this. Prudential also offered to pay £250 for the trouble and upset they'd been caused.

Mr and Mrs F remained unhappy, and referred the complaint to us. They also provided details of the tax charge they'd incurred.

Our adjudicator wrote to Mr and Mrs F with her opinion. She noted Prudential had accepted the endowment policy shouldn't have been sold. Prudential had now examined the tax details Mr and Mrs F had sent, and calculated they had suffered an overall loss of £84.93. It was offering to pay this sum, in addition to the £250 for trouble and upset. The adjudicator thought this was fair and reasonable.

Mr and Mrs F didn't agree. They said they weren't made aware there would be a tax liability when they changed the term of the policy from 10 years to 25 years. They don't agree this was included in the documentation, as Prudential has said. They think this lack of evidence is key to the mis-selling of the policy. It's sufficient for Prudential to be liable for the extra tax they've paid. They were moved from a non-tax paying investment to a taxable one.

As the matter remains unresolved, it's been passed to me for consideration.

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 important to note that Prudential has accepted Mr and Mrs F shouldn't have been sold this policy at the outset. As a result, it has calculated what return they would have received had they invested the premiums elsewhere. As it's not possible to know for certain where they would have invested, Prudential used a nominal rate of return in its calculation. This follows the approach used by this service, and so I think it's fair and reasonable.

But there's a further complication in this case because of the tax charge Mr and Mrs F incurred when the policy matured.

At the outset, the policy had a ten-year term and was deemed to be a "qualifying" policy. This meant Mr and Mrs F wouldn't have been liable for tax on the maturity proceeds. But this position changed in 1991 when the term was extended to 25 years. This was a significant change to the policy, and meant the premiums reduced by more than half. This caused the policy to become "non-qualifying", and meant Mr and Mrs F could be subject to income tax on the policy gain.

Mr and Mrs F dispute that they were made aware in 1991 of the change to the taxable status of the policy. I note they believe this is a crucial element of their complaint. But while I understand their point, I don't think any lack of information about the tax position means they should simply be refunded the tax they've had to pay.

As noted above, Mr and Mrs F shouldn't have had the policy to start with. Any alternative way of saving they may have opted for could have been subject to tax, which may or may not have been more than the tax charge on the endowment policy. So I think the correct approach is to take account of the tax Mr and Mrs F have paid in the overall calculation. This is what Prudential has agreed to do.

Prudential has also offered to pay Mr and Mrs F £250 for the trouble and upset they've been caused. Like the adjudicator, I think this is fair and reasonable.

my final decision

I uphold the complaint, but find the offer made to Mr and Mrs F to be fair and reasonable. If Mr and Mrs F accept this decision, The Prudential Assurance Company Limited should calculate the return they would have received if they had not taken out the endowment policy. This should take account of the tax charge they've had to pay. The Prudential Assurance Company Limited should pay Mr and Mrs F any loss shown by the calculation, and provide them with a copy of its calculation in a clear, simple format. The Prudential Assurance Company Limited should also pay Mr and Mrs F £250 for the trouble and upset they've been caused.

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

Doug Mansell
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