

complaint

Mr H complains about the sale in 1998 of a mortgage endowment policy provided by the Prudential Assurance Company Limited. He says he did not understand the risks he was taking; the illustration used unrealistic growth rates and he did not understand what the status of the selling advisor meant. He wants the business to accept that the policy was mis-sold.

background

The business rejected Mr H's complaint. It said, in summary, that it thought the policy was suitable for Mr H and that it met his needs at the time of the sale. Mr H was unhappy with that and came to us.

One of our adjudicators looked at the complaint and thought it should be upheld. She thought that the level of risk presented by the policy and Mr H's circumstances at the time meant the policy was not suitable. She recommended that the complaint be upheld and that redress in accordance with the regulator's guidance be calculated and if any loss has been incurred it should be paid to Mr H.

The business continued to disagree. It mentioned the fact that Mr H explained he knew of some risk at the time. It also said that Mr H's situation suggested a degree of understanding of what he was doing.

As the parties could not agree I was asked to make a decision. However, as my views on the fair redress were different from that of the adjudicator I issued a provisional decision before this final determination.

In summary I said:

- Although I could that the business had made a number of persuasive arguments I thought on the whole the complaint should be upheld.
- I summarised Mr H's position at the time and discussed the evidence from the time in particular regarding the assessment of attitude to risk made by the business.
- I noted that the policy sold was not the lowest risk available.
- Overall although I understood what the business was saying I thought the fair outcome here was to uphold the complaint.
- Finally I dealt with other issues Mr H had raised which, in my view, had no bearing on the outcome.
- I then suggested a method of redressing the complaint. In summary I thought that was to start with the method of redress suggested by the regulator ("RU89") taking into account what I then thought was Mr H's mortgage conversion.

I invited comments. Mr H made no material comments. The business did not comment on the fact that I proposed to uphold the complaint but queried the method of redress I proposed. In effect the business said the mortgage had not been converted to repayment. Therefore it suggested the more straightforward application of the RU89 approach was appropriate.

I agreed with the business and asked the adjudicator to make Mr H aware of that. I can now 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 see no reason to change my conclusions. I uphold this complaint.

I uphold the complaint for the reasons given in my provisional decision (extracts from which are attached and form part of this decision) In summary I do not think Mr H had a proper understanding of the risks presented by the policy. If he had I do not think he would have taken it out. I must thank the business for its comments on redress.

my final decision

My final decision is that I uphold this complaint. I direct that the Prudential Assurance Company Limited calculate and pay redress using the formula set down by the regulator, commonly called an "RU89" calculation.

That calculation should be modified to take into account Mr H's personal circumstances and actual payments made as far as possible. Any changes, lump sums paid or other amendments to the mortgage taken out should be taken into account.

The business should also pay compensation equivalent to any reasonable fees Mr H is charged by his mortgage lender if he chooses to switch his endowment mortgage to an equivalent repayment mortgage, or if Mr H uses the compensation and/or policy surrender value to repay part of the loan.

The calculation date is the date of this final decision. The business should calculate and pay any redress within 28 days of the date Mr H accepts this decision. If it does not it must pay interest of 8% simple from the date of this decision to the date of settlement. It may deduct tax from any interest but if it does it must provide a tax deduction certificate to Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 March 2017.

Mike Boyall
ombudsman

extract from my provisional decision

my provisional findings

Firstly though I can see what the business is saying. It has made a number of perfectly good points. However, for reasons which become apparent, I think the overall evidence means that the fair outcome here is that the complaint should be upheld.

At the time of the sale Mr H was 27, a sheet metal worker, living with his parents and buying his first house. The mortgage he wanted was approximately 3 times his income. He had no experience of mortgages but did have a pension plan.

He says (in effect) he knew of a *degree* of risk with the policy but didn't understand the risk in any meaningful sense. I see the documentation from the time simply has three "tick boxes" for assessing attitude to risk. The middle one marked "balanced" is ticked. That was very common at the time. Unfortunately it doesn't give any indication of how any assessment was reached. It doesn't in fact mention mortgages at all. I accept that the context of the assessment means it could perhaps be for little else but it remains true. The reasons why letter or report provided by the advisor doesn't expressly mention risk when it talks about what was recommended and why.

As the adjudicator said, the policy sold was not the lowest risk available. Although I accept entirely that the policy would not at the time be describe as "high risk" there was, in my view, a *material degree* of risk. I note that the report after the sale does not suggest a repayment type (effectively risk free) mortgage was unaffordable or unavailable.

Of course the part of the policy invested in a with profit fund had at least some safety net or guarantees attached. However the other half of the investment did not. The policy was sold to repay a mortgage this is not like other investment products and the objectives they are trying to achieve.

A mortgage has to be repaid on a specific date. If by bad fortune the markets suffer a significant downturn at the time a sudden loss may arise without warning. I am not persuaded Mr H was aware of that or that he would have agreed to take that risk had he known about it. I can perfectly well see why the business has rejected this case. However I think on balance the complaint should be upheld.

I will just briefly touch on the other parts of the complaint which make no difference here. Firstly the growth rates used in the illustration were set by the regulator and were thought realistic at the time. The status of the advisor is not something I need to consider as I have upheld the complaint. To put it another way even if I found Mr H had been misled in some way or confused by the advisor's status I wouldn't be minded to award any more.

(I then set out redress which has now been amended following comments by the business)