

## **complaint**

Mr and Mrs R complain that The Prudential Assurance Company Limited (“Prudential”) mis-sold them a mortgage payment protection insurance (“MPPI”) policy in 1998.

## **background**

Our adjudicator considered the case and was of the view that it should be upheld. Prudential did not agree with this view and asked that the case be considered afresh by an ombudsman.

## **my findings**

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

Our general approach to considering complaints about the sale of MPPI is well-documented and I have considered the issues in accordance with this general approach. This includes taking into account the law and good industry practice at the time the policy was sold.

The key issues I need to consider in this complaint are:

- whether, in giving any advice or recommendation, Prudential took adequate steps to ensure that the MPPI policy was suitable for Mr and Mrs R’s needs; and
- whether Prudential gave Mr and Mrs R information that was clear, fair, not misleading and sufficient to put them in a position to make an informed choice about whether to buy the MPPI policy.

If there were shortcomings in the way in which Prudential sold the policy, I then need to consider whether Mr and Mrs R are worse off as a result. That is, would Mr and Mrs R be in a different position now if there had not been any shortcomings?

Mr and Mrs R took out a mortgage in 1998 and it appears that they bought a mortgage payment safeguard policy alongside it.

In 1999 they took out a further advance on their mortgage, and the documents available to me suggest that they took out a second policy to protect the additional commitment.

Because the policies were sold a long time ago I must decide this case on the balance of probabilities – what is most likely to have happened – given the testimony of the parties and the documentary evidence available to me. There was no requirement upon Prudential to maintain documents from a sale that took place this long ago, and only a small number of the documents from the point of sale are available.

However, having considered the documents that have been provided, I am persuaded that this was an ‘advised’ sale. This means that Prudential had a responsibility to recommend a suitable policy to Mr and Mrs R, having taken their personal circumstances into account.

I note that Mr R was selected as the insured party. I have therefore considered whether the policies that were sold to him were suitable for his situation.

On reviewing the available information, I note that Mr R had experienced periods of ill health in 1993 and that these conditions commonly result in on-going health issues. In common with most similar policies, Prudential has confirmed that Mr R would not have been able to claim for any problems arising from those previous conditions.

As I have found that this was an advised sale, Prudential had a responsibility to recommend a suitable policy, but also to draw to Mr and Mrs R's attention elements of the policy that might *not* have been suitable for their circumstances.

I can see that both Mr R and Mrs R's health history was discussed with them during the fact find in 1999, as it is recorded in some detail on the paperwork that the adviser completed. I have not, however, seen any evidence that it was discussed or noted during the 1998 sale.

I am persuaded that, had Mr R realised that the policies would not have paid out for any recurrence or consequence of conditions that he had relatively recently experienced, he would not have agreed to buy them.

While it is, of course, possible, that Prudential's adviser explored these issues and explained the policy limitations to Mr and Mrs R, I have not seen any documentary evidence to suggest that they did.

I appreciate that Mr and Mrs R may have been risk averse and may have thought that the policy offered them sufficient other benefits to make it worth their while despite the restrictions around pre-existing medical conditions. But I note that Mr and Mrs R had also told the adviser in 1999 that they were very concerned with keeping costs down, and that this was recorded in the adviser's notes.

Again, I have not seen anything that explains what action the adviser took as a result of Mr and Mrs R sharing this information during the fact find.

Good industry practice requires comprehensive disclosure of relevant information and issues before the sale is made so that the customer can make an informed decision about whether to buy the policy. On balance, I am not persuaded of the likelihood that Mr and Mrs R were given sufficient, clear information about the limitations of the policy to allow them to assess the suitability of the cover for their particular circumstances.

I am also not persuaded of the likelihood that Prudential's adviser gave sufficient attention to Mr and Mrs R's stated concern with costs when recommending they spend money on a policy which gave them a limited chance of making a successful claim.

I am persuaded that, if Prudential had properly advised and informed Mr and Mrs R at the time when they bought the policies, they would not have made the same decisions. It follows that I do not find that Mr and Mrs R were treated fairly by Prudential and that the policies were, in all probability, mis-sold to them.

I therefore uphold this complaint.

### **redress**

I consider that the appropriate approach to fair compensation in this case is to require Prudential to compensate Mr and Mrs R by putting them (so far as is now practicable) in the position they would have been in, had they not taken out the policies.

In this case Prudential should pay back to Mr and Mrs R the value of the premiums paid to their policies from the date of commencement in 1998 to the cancellation date. Prudential will also need to add interest calculated at 8% simple per year<sup>†</sup> on the value of each premium from the date it was paid to the settlement date.

<sup>†</sup> – I understand Prudential is required to deduct basic rate tax from this part of the compensation. Whether Mr and Mrs R need to take any further action will depend on their financial circumstances. More information about the tax position can be found on our website.

Prudential and Mr and Mrs R should contact HM Revenue and Customs if they want to know more about the tax treatment of this portion of the compensation.

**my final decision**

For the reasons set out above, I uphold this complaint.

The Prudential Assurance Company Limited should pay redress to Mr and Mrs R as set out above. I make no further award against The Prudential Assurance Company Limited.

Roxy Boyce  
**ombudsman**