

complaint

Mr and Mrs W complain about their mortgage endowment policy provided by Prudential Assurance Company Limited. They complain that Prudential didn't write to them when it should have. Because of that they now have limited time in which to make arrangements for the repayment of their mortgage. They have also complained about a lack of information generally about the policy.

background

Since this policy began Prudential sent Mr and Mrs W regular updates on the performance of their investment. This included several letters before 2004 which showed that there was a risk the policy wouldn't repay Mr and Mrs W's mortgage. Mr and Mrs W decided to complain about the sale of the policy. Their complaint was investigated and upheld in 2003.

As a result of post being returned to Prudential as gone away by Royal Mail after that, no further letters were sent to Mr and Mrs W. As no further letters were sent Mr and Mrs W say they didn't know about the possible final value of the policy until they contacted Prudential again recently.

Mr and Mrs W complained to Prudential about this, but they were unhappy with the final response. The business upheld the complaint in part and made a small offer of money to Mr and Mrs W. They brought the complaint here. An adjudicator agreed that the complaint should be upheld and that Prudential should make a payment of £300 because of the trouble and upset the business' failures had caused Mr and Mrs W.

Mr and Mrs W did not agree and the complaint has been passed to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator. I uphold this complaint in part. I award the amount the adjudicator previously suggested.

I can see this is clearly very important to Mr and Mrs W and I can understand their frustration. However a lot of post is sent by businesses like this and although the vast majority is delivered as intended some will not be. I have seen nothing to suggest this is in any sense deliberate. Complaints of this nature are received from time to time about all such businesses. Of course it is not entirely satisfactory but it will inevitably happen. There is and was no requirement placed on businesses by the regulator to send any such letters by recorded post.

In making my decision I have to reach a conclusion which I think is fair and reasonable in all the circumstances of the complaint. That means being fair to both sides and as Mr W says adopting a "level playing field".

Here the main facts are not disputed. Mr and Mrs W have a policy. They were notified over ten years ago that it was a risk based product and that it may not repay their mortgage. They complained and were compensated.

For whatever reason it seems to be accepted that further update or reprojected letters were not sent or received by Mr and Mrs W. They say if they had received those letters they would have taken action to do something about the shortfall.

There is no dispute that the business got something wrong in not sending the letters as they should have. This is simply about what the business should do about it. On the one hand there is and was a responsibility on the business to send the letters. On the other hand I cannot ignore the fact that Mr and Mrs W were put on notice in 2003 at the latest that this was a risk based product and that the maturity value could be less than their outstanding mortgage.

The offer letter sent by the business in 2003 explains the uncertain nature of the contract. Therefore Mr and Mrs W have been on notice of this issue since at least then. They could therefore have asked the business for updates on the progress of their policy at any time.

Let me make it absolutely clear Mr and Mrs W were and are under no obligation to chase the business for information. This is not however about the fault of any party - that has been established. This is simply about what should be done about it.

Mr and Mrs W have sent in some information they wish to keep confidential. However the process here is intended to be about openness and fairness. That, and simple natural justice, means that any significant evidence has to be disclosed to both sides for comment. I cannot make a finding against one party if I know that something significant has not been shown to that party for comment. Mr and Mrs W would not, I am sure, want me to reject a complaint without the consumer having a chance to see and comment on the evidence on which a complaint is rejected.

I can perfectly well understand what Mr and Mrs W have said in their submissions and what they have said about what they have sent in. They have clearly been through a very difficult time. I hope matters improve for them.

However as I say I must strike a balance. On the one hand the business has not sent the letters it should but on the other Mr and Mrs W knew or ought reasonably to have known what was happening (at the latest in 2003) and could have asked for the information they wanted. These are always difficult judgments to strike and I fully accept that Mr and Mrs W may disagree, but my conclusion is the offer made is fair and reasonable.

To do otherwise I would need to be persuaded there was an alternative course of action Mr and Mrs W would most likely have taken if they had got the letters as they should have. I cannot see from the evidence here that there was such a course of action. This is not about the business avoiding responsibility for the unsent letters. It was and is responsible and has accepted that. As I said above this is simply about what it should do about it.

The fact is that on the evidence Mr and Mrs W knew the policy might not repay their mortgage in 2003 and it appears reviewed their mortgage again in 2012. I simply cannot ignore that.

Mr and Mrs W have also asked a number of other questions about (in particular) terminal bonuses. Endowment policies like the one complained of here are exceptionally complex. That has been publically commented on in great detail by regulators, government and various consumer bodies. Information about value, performance and the future prospects for

such a policy can be difficult if not impossible to obtain. That applies to all such contracts with all product providers, certainly not just the business here.

That is clearly not entirely satisfactory and has been much commented on but is in part caused by the simple facts that; the future is uncertain and that such matters as bonuses simply cannot be predicted and that some information is commercially sensitive. For instance changes in bonus rates will not be generally known in advance even within an organisation.

All I can do is look at a complaint and decide whether a business has got something wrong. I have seen nothing to persuade me it has here in respect of bonuses or other information provided or not provided (other than the letters it failed to send).

Complaints about the way the business conducts itself generally should be directed to its regulator, the Financial Conduct Authority.

my final decision

My final decision is that I uphold this complaint in part. I direct that The Prudential Assurance Company Limited pay to Mr and Mrs W £300 for the trouble and upset this has caused them. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to accept or reject my decision before 17 August 2015.

Mike Boyall
ombudsman