

complaint

Mr and Mrs M says they were mis-sold a mortgage endowment policy by The Prudential Assurance Company Limited. They say they were never told about the possibility of a shortfall and alternative repayment methods weren't discussed. The complaint's been brought by a claims management company ("CMC") on Mr and Mrs M's behalf.

background

Mr and Mrs M took out the policy in June 1990. It was a with-profits policy with a target amount of £34,000, a basic sum assured of £25,681, and a 25-year term. In November 1992 Mr and Mrs M stopped paying into the policy and then it was surrendered in August 1993.

One of our adjudicators looked at the complaint. She thought the policy wasn't unsuitable for Mr and Mrs M. The CMC disagreed and so the matter's been passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The CMC says *"Our client has always been unhappy with the performance of their endowment plan however were never aware they were able to make a complaint."* I'm not sure if the CMC and/or Mr and Mrs M are confusing this policy with another as Mr and Mrs M only paid into this one for two and a half years, and haven't done so for the last 25 years. So it's not clear what "performance" Mr and Mrs M could have always been unhappy with as, back then, they could only have received two bonus letters both of which were likely to have been fairly positive, such was the financial climate back then.

The CMC and Mr and Mrs M also both told us Mr and Mrs M were first time buyers when they bought the property to which this policy related. But that's not so. After Prudential told us Mr and Mrs M had bought a previous home, also on an endowment basis, the CMC confirmed as much.

I only mention these two points above for completeness, as it leads neatly onto what the CMC said in response to our adjudicator's assessment. The CMC said that as there were no records from the time to support what Prudential has said it's not fair we've made assumptions and not taken Mr and Mrs M's testimony into account.

So, whilst I am taking Mr and Mrs M's testimony into account in this decision, I must keep in mind that their testimony on the above two points has been questionable. To be clear, I'm not in any way accusing them of being untruthful as it's entirely understandable with the passage of time that their memories aren't as clear on these events. We're talking about events from over 27 years ago. But that also means I can't place as much weight on their testimony of remembering precisely what they were told and what was and wasn't discussed as I would normally.

Unfortunately, because Mr and Mrs M have left it so long to complain about their policy, much of the information and documentation that would normally be relevant is no longer available. But I've looked at what both sides have said. When considering any complaint like this, it's often found that the true answer lies somewhere between the two parties' opposing versions of events. As Mr and Mrs M are the ones bringing the complaint against Prudential,

to uphold the complaint Mr and Mrs M's version needs to be *more likely* than Prudential's version; not *just as likely*. And having considered everything, on balance I can't say that Mr and Mrs M's version is anything other than *just as likely*.

It is not for me to "re-advise" Mr and Mrs M, or substitute what I think would have been best for them in 1990. All I can do is look at the evidence and reach a decision as to whether the sale was unsuitable. I must also not use hindsight in making a decision. At the time of the sale these policies were seen as low risk and safe. Historically they'd been maturing with tax-free bonuses. They were thought at the time to be suitable for most (but not all).

Mr and Mrs M say they wouldn't have taken a risk. Whilst I acknowledge what they're saying it's not unusual for a consumer to say this now, when bringing a complaint about investment risk, despite their attitude to risk being discussed and them having been willing to take some risk at the time of the sale. It's unfortunate documents to show what was discussed are no longer available, but that's understandable as the policy's not been in force for nearly 25 years. So I need to look at Mr and Mrs M's circumstances at the time.

At the time of the sale Mr and Mrs M were both 25, earned about £24,000 between them (with Mr M being self-employed) and had previously had an existing endowment-supported mortgage. There's nothing in their circumstances that would indicate they couldn't - and weren't willing - take a low level of risk (as these were considered at the time).

Whilst the illustration isn't available it seems likely this was in the format that was standard across the industry at the time. This would have shown the potential maturity value at three different growth rates; the lower showing a possible shortfall, the upper a possible surplus, and the middle showing the policy meeting its target amount. I've no reason to think the illustration wouldn't have been in that standard format, or that Mr and Mrs M would have gone ahead with the policy without seeing an illustration showing them what they were buying and how much it would cost each month. As this illustration would have shown a possibility of a shortfall, I can't safely say Mr and Mrs M took the policy unaware of the risk.

my final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 16 April 2018.

Julia Chapman
ombudsman