complaint

Mr H's complaint is about the advice he was given by The Prudential Assurance Company Limited to start a pension policy to support repaying his mortgage. Mr H believes that the policy was mis-sold to him. Mr H also believes that this policy was sold to him as offering an endowment and pension.

background

In June 1988 Mr H met with a representative of the Prudential. He was interested in using a pension policy to support the repayment of his mortgage which he was converting from a repayment to interest only. At the meeting a fact find was completed which recorded Mr H's circumstances at that time and the representative documented on the *"advice given"* section of the form that Mr H was purchasing a *"Pension Mortgage"*.

Mr H complained to the Prudential. It responded and said that whilst the policy was intended for mortgage purposes they did not offer a separate distinct pension mortgage policy. Mr H's policy was a personal pension and was not formally referred to as a pension mortgage, although it was sold for that purpose.

Prudential did however state that although this was arranged for mortgage purposes there was no need to arrange this policy and Mr H could have increased his existing pension. Prudential said that it would have been better for Mr H to have increased his original policy rather than take out this policy, and upheld the complaint for this reason.

Prudential offered to compare the pension benefits Mr H would receive from the two policies he held with them against that if he had one policy. It confirmed to Mr H that it would pay the higher of the two figures to him.

Mr H referred his complaint to the Financial Ombudsman Service. An adjudicator investigated the complaint and concluded the complaint should be upheld. In summary, he said that as the Prudential provided a recommendation to Mr H to purchase this policy to support repaying an interest only mortgage, it should have assessed the suitability of the advice.

The adjudicator concluded that the advice provided was unsuitable for the following reasons:

- Mr H's occupation was not one which would have required him to have an understanding of financial products, particularly the risks in using the arrangement to purchase to support repaying a mortgage.

- Mr H's mortgage had already been running for a number of years before it was converted to an interest only mortgage. The term of the mortgage had to be increased to coincide with the minimum retirement age for the pension. This meant that Mr H had additional costs that he would not have had he kept his repayment mortgage.

- Mr H did not have experience of other investments, and it was reasonable to conclude that Mr H would not have understood the risks in using a pension policy to support the repayment of a mortgage.

The adjudicator recommended that Prudential undertook recalculations by comparing the costs of a repayment mortgage with that of an interest only mortgage. The adjudicator recommended that the calculation took into account that Mr H stopped using his policy against his mortgage in 2006.

Prudential responded to the adjudicator and disagreed with his findings for the following reasons:

- Mr H confirmed in a telephone call on several occasions that he specifically requested a pension mortgage and it was not an option that he was advised on by its representative. Prudential believed that it would be inappropriate to consider the redress the adjudicator recommended.

- The fact find completed at the time was not as detailed as more recent forms. It would not be expected for the document to have comprehensive details added when Mr H had confirmed that the decision to switch to a pension mortgage arrangement was of his own volition.

- The life cover amount on the policy was £20,000 and not £26,000 which the adjudicator based his assessment on.

The adjudicator listened to the telephone call provided. He confirmed to Prudential that Mr H did indicate it was his idea; but he remained of the view from that call and other information provided that advice was given to Mr H to purchase the policy.

The adjudicator noted that during the call the Mr H confirmed that he was told by the adviser that he would sort it out for Mr H. The adjudicator also said that in the absence of information stating that no advice was provided it was still Prudential's responsibility to assess whether the product was suitable. The adjudicator remained of the opinion that the product was unsuitable for the purpose it was sold for.

The adjudicator confirmed that Prudential should undertake redress calculations in line with that previously explained, however based on the further evidence the costs should be based on a £20,000 mortgage rather than a £26,000 mortgage.

Prudential disagreed with the adjudicator and asked for an ombudsman to investigate. In summary it said:

- In order for the pension policy to be arranged, it was necessary for a fact find to be completed. Whilst the form denotes under the advice heading "Pension Mortgage", the evidence available indicates that Mr H had already made his decision prior to the meeting.

- Its representative would have to have assessed the suitability of the product. However, it had not seen evidence to suggest that the correct sales process was not followed. There is also no evidence that the representative misled Mr H in any way by giving guarantees.

- It is entirely possible that Mr H may have obtained information regarding a pension mortgage arrangement before his meeting, as Mr H states it was his idea in the first place. It is more likely than not that based on his age and employment at that time, he was attracted to a pension mortgage

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint and have come to broadly the same conclusions as the adjudicator, for broadly the same reasons.

I have listened to the telephone call that Prudential provided, and accept Mr H said that it was his idea to use a pension mortgage. During the telephone call Mr H confirms that he was told that policy would have paid off his mortgage, and also that the adviser would sort out this out for him. Whilst Mr H may have had the initial idea to buy the policy, Prudential's adviser continued the process in providing advice about the policy.

I note that the fact find does clearly state under the advice section *"Pension Mortgage*". My conclusion is that Prudential provided advice to Mr H about using a pension policy to repay his mortgage. As the representative gave advice, he was under a duty to give suitable advice.

Mr H's occupation does not indicate that he had any particular financial expertise. I understand that he did not have any other experience of other investment products. I am not satisfied that he understood the risks associated with using a pension policy to support repaying a mortgage.

Mr H was self-employed. The risks of using a pension mortgage increased, because if Mr H had insufficient earnings he might not be able to contribute to the pension. The mortgage was due to be repaid when he retired. If the lump sum was not sufficient to repay the mortgage Mr H would not have time to make alternative arrangements.

I also note that the advice provided meant that Mr H's mortgage term increased from what it was to coincide with the new 25 year tern term. This has meant that Mr H would have to pay mortgage interest for a longer period of time.

I am of the view that had the risks been explained to Mr H, then Mr H would have retained his repayment mortgage rather than switched to the arrangement he purchased. He would then have paid less into the pension and increased contributions to his existing policy.

fair compensation

I consider that the advice provided by Prudential to Mr H to use this policy to support repaying a mortgage was unsuitable. Mr H's complaint should succeed and compensation calculated on the basis he had continued with his existing mortgage. The additional contributions to the pension would have been made to the existing policy. The compensation should be calculated as follows:

1. Establish the amount that would have been repaid under a capital repayment mortgage over a term of 19 years starting on 30 June 1988 to 31 August 2006. That is the date that Mr H moved properties and was no longer reliant on the proceeds of the policy to repay his mortgage. This figure will be known as Sum A.

2. Add interest to Sum A at the rate of 8% per annum simple from 31 August 2006 to the date of this decision. This figure will be known as Sum B.

3. Establish 25% of the current value of Mr H's pension plan based on premiums paid from 30 June 1988 to 31 August 2006. This figure should be deducted that from Sum B and will represent Mr H's capital loss.

4. Establish whether there has been any loss for regular outgoings (cost comparison), by comparing:

   a) the equivalent mortgage costs for a capital repayment mortgage from 30 June 1988 to 31 August 2006 of £20,000 (capital and interest) plus the cost of a decreasing term assurance for £20,000;

   with –

   b) the costs associated with the pension linked mortgage from 30 June 1988 to 31 August 2006 (interest plus 25% of the net pension contributions and any associated life assurance that was purchased at the time).

If the comparison shows that Mr H has experienced a loss as a result of higher on-going costs, that amount should be added to the capital loss established above. If the comparison shows there has been no loss or a gain, it should be ignored, as it is most likely that Mr H will have spent any savings as part of his regular monthly outgoings.

In addition Prudential offered to compare the combined value of Mr H's two policies to the value if his existing policy had been increased. That is in my view appropriate and should be included in my award.

Simple interest is to be added to my award at a rate of 8% gross a year from the date of this decision to the date of payment.

Mr H has also been caused some distress because he was unable to use the pension lump sum to fully repay his mortgage. I consider that £100 is appropriate to compensate for that.

my final decision

I uphold the complaint. The Prudential Assurance Company Limited should:

- Calculate loss and pay compensation as set out above;
- Compare the value of the two pension plans Mr H has with the value if he had increased his existing plan and compensate for the difference; and
- Pay £100 for the distress and inconvenience caused.

Roy Milne
ombudsman