

complaint

Mr K has complained to The Prudential Assurance Company Limited (“Prudential”) that, when he and the late Mrs K arranged to purchase their council house as ‘right-to-buy’ tenants, they understood that the mortgage of £21,000 arranged with Prudential was set up on an ‘interest-only’ basis.

He says they were also recommended to take out an endowment policy designed to repay a loan of £13,500, if either one of them died during the policy term or at maturity after 15 years. The remaining part of the mortgage loan would be covered by an existing endowment policy they held since 1992. Mr K has provided a copy of the ‘suitability letter’ they received in November 1998 confirming he and the late Mrs K had accepted this recommendation, together with an illustration they received at the time which set out the costs of the mortgage and the policy premium.

In July 2012, the late Mrs K sadly died and Mr K made a claim for £13,500 on the endowment policy he believed they had taken out in November 1998, in response to which Prudential confirmed that no such policy had been effected and, therefore, no claim value was payable.

In response to his complaint, Mr K received a ‘final response letter’ from Prudential confirming that, even though they were given a policy illustration and a recommendation to take out an endowment policy, Mr K and the late Mrs K had never applied for such a policy and no policy had ever been set up. The only policy they held once the mortgage completed was a pre-existing endowment policy which was due to mature in 2002.

As Mr K maintained that he and the late Mrs K had taken out the endowment policy recommended by the adviser, he requested Prudential to acknowledge the existence of this policy and to pay him the claim value from July 2012 of £13,500, together with all the mortgage repayments he has made since July 2012 when the mortgage would have been repaid.

background

Mr K’s complaint was investigated by one of our adjudicators, who concluded that it should not be upheld.

While he could see that Mr K and the late Mrs K had applied for a mortgage on an ‘interest-only’ basis, and had received an illustration for the policy they had been recommended, there was no evidence that they had applied for the endowment policy. The only endowment policy held by Mr K and the late Mrs K was a savings plan they had taken out in 1992, which matured in 2002.

Otherwise, Mr K and the late Mrs K should have expected to receive policy documentation, including a policy schedule, the ‘key features document’ and a product particulars notice (including their statutory right to ‘cool-off’). However, Mr K was not able to provide any evidence that they had taken out a policy and the adjudicator invited him to provide a copy of a recent bank statement that would show that a monthly payment for the policy premium, separate to their mortgage repayments, had been made to Prudential as policy provider.

In response, Mr K provided further points in support of his complaint, as follows:

- He had received a letter addressed to him from the current mortgage lender dated October 2012, confirming that it holds a Prudential joint life, low cost endowment policy. Given the pre-existing endowment policy in November 1998 had matured in 2002, the lender must be referring to a policy they had taken out other than this endowment policy;
- In November 1998, they acted on the recommendation made by the adviser to take out an endowment policy for £13,500;
- The policy illustration produced for them comprised two elements - the mortgage repayment cost and the policy premium, which corresponded to their total monthly repayment to Prudential. They would not have placed their home at risk by arranging a mortgage on this basis without a policy in place to repay the loan in the future;
- They were also aware that the endowment policy was not guaranteed to repay the mortgage loan at maturity and had also placed some capital in an investment bond which could help to repay any shortfall in the value of the policy at the repayment due date;
- He does not have a copy of recent bank statements to provide.

Having reviewed the points made by Mr K, the adjudicator maintained his view that his complaint cannot be upheld. While a recommendation was made by Prudential for an endowment policy to be set up, Mr K and the late Mrs K never applied for such a policy. He explained that their mortgage repayments and the policy premiums would have been separate payments to Prudential and he invited Mr K to provide a copy of his bank statements immediately prior to July 2012 when such a policy would still have been in force.

With regard to the letter Mr K received from the current mortgage lender in October 2012 indicating that a Prudential endowment policy was held by the lender as security for the loan, neither the lender nor Prudential has been able to show that such a policy exists.

Also, as an endowment policy does not appear to have been a pre-requisite of obtaining the mortgage loan, the adjudicator could not conclude that Mr K and the late Mrs K had been obliged to take out such a policy.

In a further reply to the adjudicator, Mr K did not accept the adjudicator's conclusions and enclosed a number of annual statements from the mortgage lender which shows that their monthly repayment corresponded to the total cost of their mortgage, including the endowment policy premium, from the original policy illustration. Also, a letter from his mortgage lender confirms that the loan is 'interest-only' and, therefore, the additional payments to the lender over and above the amount of interest charged on this loan must be the policy premium.

He also enclosed a copy of a letter from his solicitor dated February 1999 setting out the terms for completion of the loan.

In a final response, the adjudicator maintained his view that Mr K and the late Mrs K had not taken out an endowment policy in November 1998.

Specifically, the mortgage statements provided by Mr K confirm the repayments they had been making to service the loan. These statements would not include the cost of the policy,

which is an entirely different product, the premium for which would be collected by a separate direct debit from their bank account. Mr K has not provided a copy of his bank statement which show a policy premium paid to Prudential.

Also, the solicitor's letter from February 1999 does not confirm that an endowment policy had been taken out; it referred to a building and contents insurance, which would have been a condition of the mortgage agreement.

Accordingly, as no agreement had been reached in this complaint, it was referred to me for review.

developments

I issued a provisional decision dated 20 March 2014 to both Prudential and Mr K, upholding this complaint, but not for the reasons given by Mr K in his complaint.

I also emphasised that the role of the Financial Ombudsman Service was not that of a "consumer champion"; it resolves disputes on their individual merits in an impartial manner based on the facts of each case.

Briefly, Mr K and the late Mrs K were both in their mid-50s at the point of sale and decided to purchase their council house under the local authority's 'right-to-buy' scheme. Mr K had already retired at the time and the late Mrs K was a current member of her employer's company pension scheme.

In November 1998, they applied for an 'interest-only' mortgage of £21,000 over a repayment term of 15 years. In a suitability letter they received at the time (the '*Lifestyle Choices Personal Recommendation*'), the Prudential representative recommended them to take out a joint life, first death endowment savings policy providing life cover, or otherwise a 'targeted maturity value', of £13,500 over 15 years.

In making this recommendation, the representative took account of an endowment policy they already held which provided life cover of £7,500, and was due to mature in July 2002. Mr K and the late Mrs K accepted this recommendation.

It was not evident to me how this recommendation would wholly cover Mr K and the late Mrs K's total borrowing in all circumstances. If either one of them died before July 2002, the mortgage would be repaid in full by their existing endowment and the policy they were recommended. However, the representative does not appear to have requested a projected final value for this policy to assess whether it would repay £7,500 of this loan if they were both alive at the maturity date.

As it was, this endowment policy matured in July 2002 with a final value of approximately £4,000 and, therefore, if Mr K or the late Mrs K happened to die subsequently, there would be an ongoing shortfall on their mortgage of up to approximately £3,500 even if the policy they were recommended had been set up.

Otherwise, they could have invested the maturity value of this existing endowment policy to accrue a capital sum of £7,500 by the time the mortgage was due to be repaid in 2014.

However, notwithstanding all this, Mr K and the late Mrs K did not complete an application for this policy, no documentation was ever issued to them to confirm that such a policy had been set up and they have never made any premium payments.

Therefore, when the late Mrs K died in July 2012, no endowment policy existed on which Mr K could make a claim for the capital sum of £13,500 to repay this part of the loan.

While Mr K quoted from a letter he received from the mortgage lender in October 2012, which referred to an endowment policy it held as security for the loan, it appears that the lender was referring to the endowment policy which had already matured in 2002. There was no endowment policy in force after July 2002 acting as security for their loan.

Mr K also submitted that the endowment policy they were recommended did exist because the monthly instalments they were paying to the lender since 1999 of around £170 per month matched the total monthly cost of the mortgage quoted in the original illustration, which included the premium payable to the endowment policy they had been recommended.

However, this illustration was produced for an endowment policy providing a sum assured and targeted maturity value of £13,500 assumed they had arranged an interest-only mortgage of £13,500. However, their total borrowing was not £13,500; it was £21,000, on which interest payable alone would have been equivalent to the total cost of the mortgage shown in the illustration. In other words, the actual monthly cost was entirely mortgage repayments and did not include a premium to the endowment policy they were recommended in November 1998.

In any event, the monthly payments to the mortgage lender and the premiums payable to the policy are generally collected by separate direct debits and Mr K had not been able to provide evidence from his bank statements of a policy premium payable to Prudential.

Also, I noted that, on the personal financial profile Mr K and the late Mrs K completed with the adviser in November 1998 includes a 'stamp' on the front sheet dated February 1999 that the policy was "NTU'd", i.e. it was "not taken up".

The adviser also emphasised to Mr K and the late Mrs K in the '*Lifestyle Choices Personal Recommendation*' at the time that: "*I have given you an explanation of the options available. I have also advised you that it is your responsibility to ensure that an adequate mortgage repayment method is in place.*" He continued: "*I have made you aware of the implications of failing to make suitable arrangements to repay your mortgage or loan.*"

Therefore, while Mr K submitted that an endowment policy was in force, I am satisfied from the evidence provided from their dealings with the representative in November 1998, that they did not take out the endowment policy they were recommended at that time.

Having said all that, changes did occur in their mortgage application after November 1998 which Mr K had not mentioned in his submissions to this service. Annual mortgage statements he provided since 2007 showed that the monthly payments Mr K and the late Mrs K made to the lender were much greater than the repayments they would have made had the mortgage been wholly 'interest only'. This led me to suspect that the repayment basis of the mortgage had since changed.

I, therefore, retrieved the original mortgage file from the current lender to understand why the endowment policy recommended in November 1998 had not been taken up. Prudential had previously confirmed that this file was unobtainable.

It transpired that, in January 1999, Prudential expressed concern about Mr K's and the late Mrs K's ability to maintain and repay the mortgage loan on an 'interest only' basis over 15 years, given their ages and likely future financial position once they had both retired.

Accordingly, Prudential issued Mr K and the late Mrs K a revised mortgage offer in January 1999 in which the mortgage of £21,000 would be advanced as an 'interest-only' loan of £7,500, plus a 'capital repayment' loan of £13,500. The offer confirmed that the 'interest only' loan would be covered if either one of them died by their existing endowment policy which included a sum assured of £7,500 and the capital repayment loan would be covered by the lump sum death-in-service benefit payable from the late Mrs K's company pension scheme.

However, the nature and terms of this arrangement raise serious questions about the merits of this advice.

As before, the life cover under their existing endowment policy would expire when this policy matured in July 2002. Therefore, this part of the loan would not be fully repaid if either one of them died after July 2002. Again, this representative does not appear to have requested a projected maturity value for this policy to assess whether it would repay the loan at maturity.

Hence, only if Mr K and the late Mrs K invested the maturity value of this policy until it attained a value of £7,500 would this loan be repaid. In the meantime, they would continue to incur interest on this part of the loan they might have imagined would be repaid in July 2002. Also, if they had applied the maturity value to the mortgage loan at that time, there was a shortfall of approximately £3,500 and an early part-redemption charge of 4% would have applied.

Moreover, although the capital repayment part of the mortgage was protected by the death-in-service benefits within the late Mrs K's company pension scheme, this benefit would cease whenever she retired under the scheme. Given her age at the time, the mortgage may have continued for several years after life cover under her pension scheme ceased. I understand that the late Mrs K retired at age 60 and, therefore, no life cover was available from the pension scheme when she died approximately 5½ years later.

More seriously, the mortgage offer did not propose any form of life cover for Mr K if he died before the mortgage was repaid.

As it was, the serious shortcomings in the mortgage being set up on these terms were realised in July 2012.

While I acknowledge that Mr K and the late Mrs K signed this mortgage offer, I took into account that they were arranging their first mortgage as 'right-to-buy' council tenants in their mid-50s and was not persuaded that they would have understood the potential implications of the mortgage being set up on these terms.

In my view, the advice they received did not take proper account of their circumstances or their existing financial arrangements. I failed to appreciate why Mr K and the late Mrs K were not simply advised to take out a 'capital repayment' mortgage for £21,000 with an

appropriate joint life, first death decreasing term assurance (DTA) policy providing life cover over the mortgage term of 15 years.

Therefore, when the late Mrs K died in July 2012, I believe that Mr K should have been in a position that enabled him to repay the mortgage in full at that time.

I also believed that there were shortcomings in Prudential's investigation of Mr K's complaint given the circumstances that gave rise to his claim. If, for example, it had taken steps to retrieve its original mortgage file from the current lender, these changes in the terms of the mortgage agreement since November 1998 and, hence, and the reason why Mr K and the late Mrs K did not take out an endowment policy, would have been evident. As a consequence, Mr K's complaint may have been resolved differently in 2012.

As it was, Prudential's final response to him merely confirmed that, as no endowment policy existed, no claim could be made when the late Mrs K died. There appears to have been little attempt made to establish why Mr K and the late Mrs K did not apply for the endowment policy when they were recommended to do so in November 1998.

Even if Prudential had rejected Mr K's complaint based on the additional evidence provided by the mortgage file, I was inclined to believe that it could have been resolved much sooner by our service if this documentation had been provided to us in the first instance.

As it was, this service has been required to make several attempts to obtain sufficient evidence that has caused this complaint to take more than 15 months to resolve during what has inevitably been an extremely distressing time for him.

I, therefore, decided that The Prudential Assurance Company Limited should pay Mr K an additional sum of £750 for the stress and upset I believe this whole matter has caused him since July 2012.

findings

In response, Mr K has confirmed that he agreed the findings in my provisional decision.

Likewise, Prudential confirmed on 27 March 2014 that it agreed to the conclusion in my provisional decision.

As Prudential and Mr K have mutually agreed the conclusions I reached in my provisional decision, I have no reason to depart from these conclusions in my final decision.

Therefore, my provisional decision becomes my final decision.

final decision

My final decision is that I uphold Mr K's complaint.

My starting point is to assume that Mr K and the late Mrs K should have been advised in January 1999 to arrange their mortgage of £21,000 in such a way that would have enabled them to repay the outstanding balance of the loan if either one of them died during the repayment term.

While I accept that they already held an endowment savings plan in November 1998 which formed part of the mortgage agreement they signed in January 1999, this policy should not have been used as security for £7,500 of their borrowing as it did not provide comprehensive cover for this part of the loan.

As it was, they do not appear to have appreciated that this policy was intended to repay part of their mortgage from July 2002, as I understand from Mr K that they spent the maturity proceeds. All things considered, I have not taken into account the existence of this policy, or the cost of any life assurance policy they ought to have taken out, in my redress proposal.

In order to resolve this complaint, therefore, I require The Prudential Assurance Company Limited to pay Mr K redress of 'D', where:

- A = the current outstanding capital balance on Mr K's mortgage account at the date of settlement;
- B = the cumulative sum of the monthly capital and interest payments Mr K would not otherwise have needed to pay under the mortgage account from July 2012 to the date of settlement;
- C = interest to-date at the rate of 8% per annum simple from time-to-time on each monthly payment in 'B';
- D = A + B + C.

If the mortgage lender charges Mr K an administration fee whenever he redeems the mortgage in full, I would not include any such charge in the award as Mr K would have been obliged to pay this fee in any event.

Otherwise, for the reasons set out above, Mr K should appreciate that the amount of redress may differ from the sum he has claimed because I am satisfied that he and the late Mrs K did not take out an endowment policy in November 1998 that would have paid £13,500 when the late Mrs K's died in July 2012. As their mortgage was set up partly on a capital repayment basis, the outstanding balance of the loan at this time was less than £13,500.

However, I am persuaded that Mr K has suffered a considerable degree of distress and inconvenience in this matter, caused by the realisation since July 2012 that he had not taken out a policy which would have repaid his mortgage at that time and by Prudential's subsequent handling of his complaint.

I, therefore, require The Prudential Assurance Company Limited to pay Mr K an additional sum of £750 for the stress and upset I believe this whole matter has caused him since July 2012.

Kim Davenport
ombudsman