

## **complaint**

Ms K complains about the sale of a mortgage endowment policy in 1984. The product provider for the policy was The Prudential Assurance Company Limited. In summary Ms K says the policy was unsuitable, was not needed and should not have been sold to her.

## **background**

The complaint was brought to the business which rejected it. The business said the policy had been sold by an Independent Financial Advisor before the introduction of the Financial Services Act 1986 and was therefore not a sale for which it was responsible.

Unhappy with that and after trying to trace the responsible business Ms K brought her complaint here.

One of our adjudicators looked at the complaint and decided the business was right in saying it was not responsible for the sale. Ms K then maintained that the business here ought to be responsible for the actions of the selling advisor.

Unable to agree the complaint has been passed to me to consider.

## **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 and while I know Ms K will be disappointed I am unable to uphold this complaint and I will explain why.

Firstly I can assure Ms K that I understand this is important to her. I can assure her I have given the whole file careful consideration. I know she will be disappointed with the outcome here. On one important point I would just mention this is not about whether the complaint is **upheld or not** it is simply about whether I can look at it **at all**.

Ms K should not think this is a “technicality” or that it doesn’t matter. In every single case we receive the first thing we must look at is whether the complaint falls within our jurisdiction to consider at all.

It is important because I must only use my powers in the way the regulator and parliament say I can. To do otherwise would be unlawful. If I uphold a complaint and that decision is accepted by a consumer (the business has no choice but to accept it) that decision becomes legally binding with no right of appeal to the Courts. To put it another way I cannot ignore the question of whether a complaint is in my jurisdiction or not. I have to make a positive finding it is in my jurisdiction before I can look at it at all.

Here the facts are reasonably clear. I say reasonably because this sale took place 30 years ago. It is surprising that any records remain from so long ago. The little that does survive shows the sale was not made by this business. That means the responsibility for the sale rests with another advisory business.

When the Financial Services Act 1986 came into force and when the various regulators were set up the law and regulations described what the new regulations covered. A start date had to be established which in this case is April 1988. Anything before that date was not covered by the new regulations and is not covered by ourselves (for Independent Financial Advisors).

Ms K suggests that this business should be responsible for the sale. I am afraid that under the law and the regulations set down by the Financial Conduct Authority I simply cannot say that it is. When making a decision I have to look at (have regard to) a number of things including the law and what the regulator says. Here it is quite clear that the sale is the responsibility of another business.

**my final decision**

My final decision is that I cannot hold this business responsible for this sale and cannot uphold this complaint (because I cannot consider it at all).

Mike Boyall  
**ombudsman**