

complaint

Mr D complains about a mortgage endowment policy. It was sold to him in 1994 by The Prudential Assurance Company Limited. It was invested 50% in the with-profits fund and 50% in a managed fund. The policy was taken out jointly with Mr D's partner but has since been assigned to his sole name.

Mr D's representatives say the policy wasn't suitable for his needs.

background

Prudential didn't uphold the complaint. It said the policy wasn't guaranteed to repay Mr D's mortgage at maturity. It considered the fund choice was in line with the amount of risk Mr D was able to take. It said it probably would have seemed that Mr D would be able to meet any shortfall at maturity.

Following this, Mr D brought his complaint to our service. An adjudicator considered it. She recommended that it be upheld. She wasn't persuaded Mr D and his former partner would have understood the amount of risk they were taking. She noted they had no savings, a 5% deposit and were having to use a guarantor. She also said Mr D's self-employed work seemed seasonal and irregular. So, she said Prudential should calculate and pay redress.

Prudential didn't agree. It said the mortgage borrowing was within usual limits and affordability didn't appear to be a concern. It noted the policy was expected to mature before Mr D and his partner were expected to retire. Prudential also noted that their attitudes to risk were recorded on the fact find as 'balanced'. Finally, Prudential said the policy was on track to meet its target at maturity before it was surrendered.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I agree with the adjudicator that this complaint should be upheld.

I should say at the outset that I haven't seen evidence that satisfies me Prudential gave a guarantee that the policy would repay the mortgage at maturity. Or that it would return an additional lump sum. I appreciate the adviser is likely to have spoken about the policy in very positive terms. But, that isn't the same as giving a binding guarantee.

When selling the policy, the adviser had to give recommendations that were suitable to Mr D and his partner's circumstances.

This policy was invested 50% into with-profits fund and 50% into a managed fund. This would have been seen as presenting some, not the lowest, risk (but not a "high" risk). The half of the policy invested in the managed fund could have been subject to fluctuations in value and could have been seen to have no "safety net".

At the time of the sale Mr D and his partner were each in their early-twenties. They were first-time buyers. Mr D was self-employed in a skilled job and his partner had a clerical job. It seems Mr D's income was similar to the UK average and his partner's was around half of this. I understand they had no savings or existing investment products, although it seems they had a loan they were repaying. It was also recorded that they were each expecting to retire at 65.

I have taken account of all the evidence, including Prudential's arguments for why it considers the adviser gave a suitable recommendation. I can see that Mr D was borrowing around twice his income, which would have been seen to be within usual limits. The policy was due to mature when he and his partner were in their late-forties, which would have probably been seen to give them some years before retirement to save to repay any shortfall. It seems Mr D and his partner also selected an option that could have been seen to reduce some of the risk.

However, Mr D and his former partner appear to have been first time buyers with no previous investment experience. They had a low deposit and were having to use a guarantor. I have no reason to doubt that they were given all the relevant policy documents. However, I am mindful that the adviser had a duty to give a recommendation that was suitable to their circumstances. I suspect Mr D and his partner would have relied on the adviser's recommendation rather than the policy documents.

Prudential has said the adviser would have explained the risks presented by the policy and the alternatives. But, it is not clear to me from the documents available that the risks of this particular policy were explained to Mr D and his partner in a meaningful way. The adviser noted this policy was recommended for "security and spread of investment". It is not obvious to me that Mr D and his partner would have understood the nature of the risk they were taking in the context of their mortgage repayment.

Given Mr D and his partner's circumstances – as first-time buyers with a low deposit and irregular income – I am not satisfied overall that they would have wanted to take the risk presented by this particular policy if they had understood it.

In the light of the above, I agree with the adjudicator that on balance the policy was unlikely to have been a suitable recommendation.

redress

The financial regulator, the Financial Conduct Authority (FCA), has laid down a standard approach for calculating compensation in cases such as this in its guidance, *Handling Mortgage Endowment Complaints* (sometimes referred to as a Regulatory Update 89 or RU89 calculation). The guidance can be found in the FCA's handbook at DISP Appendix 1 or on its website.

In effect the guidance provides that Mr D is entitled to be put in the position he would have been in, so far as is possible, had Prudential not recommended this unsuitable policy. In other words, in this case, in the position he would have been in if this part of the mortgage had been arranged on a repayment basis in 1994. I am satisfied that compensation calculated in accordance with this guidance is the appropriate redress to award.

I understand that Mr D repaid his mortgage in 2005 and he surrendered the policy in December 2013. I understand no high-risk warning letters were ever issued.

In full and final settlement of the complaint, Prudential should pay Mr D 'E – F' where:

A = the loss identified by carrying out a loss calculation in accordance with the FSA's guidance "*Handling Mortgage Endowment Complaints*" to the date the complainant repaid his mortgage using a *nil surrender value*;

B = interest on the amount of 'A' from the date that Mr D repaid his mortgage to the surrender date;

C = the premiums the complainant paid to the policy from the date that the complainant repaid his mortgage to the surrender date;

D = interest on the premiums included in 'C' from the date of payment to the surrender date;

E = A+B+C+D; and

F = the surrender value of the endowment policy.

Prudential should pay interest on any loss identified from the surrender date to the date of settlement.

Interest is to be calculated at 8% simple per year.

If Prudential considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr D can reclaim the tax from HM Revenue and Customs if appropriate.

Mr D should be aware this calculation could show little or no loss.

my final decision

My final decision is that I uphold this complaint. I direct The Prudential Assurance Company Limited to calculate and pay redress in the way I have outlined.

Any redress should be paid within 28 days of Mr D accepting my final decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 13 April 2015.

Kirsten Smart
ombudsman