

## **complaint**

Mr and Mrs K complain that The Prudential Assurance Company Limited's predecessor company (the business) mis-sold them a policy which included joint life and critical illness, mortgage payment benefit, waiver of premium benefit and unemployment cover.

They say they were led to believe they wouldn't be granted the mortgage unless they took out this policy which was very expensive.

## **background**

The background and circumstances of this complaint are set out within my provisional decision of 17 September 2015. A copy of this is attached and forms part of this decision.

The business disagreed with my provisional decision, and highlighted the following arguments:

- Mr and Mrs K's monthly rent was £140; the proposed mortgage payments were £137 so their outgoings were not increasing
- The illustration provided suggested their mortgage payments were £137 a month, and not £115 as the ombudsman stated
- Mr and Mrs K had a disposable income of £795 a month, after payment of essential bills etc., indicating the policy was affordable
- It wasn't unreasonable to describe the difference between the cost of a level term policy and decreasing term policy as 'minimal'
- While there's no evidence the advisor supplied a cost comparison of these two options, it's reasonable to assume he did as both options were discussed
- Mr and Mrs K were paying £100 a month on a car loan, and £30 a month on credit card payments
- So along with their mortgage payments, their total monthly commitments exceeded the recommended £220 a month mortgage protection and unemployment cover
- The benefits provided by these policies are not exclusive to covering mortgage payments

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also carefully considered all the business's new arguments, and would like to address the following points in particular:

### The monthly mortgage payments

I acknowledge that the business's fact find records that the proposed monthly payment was £137. However, Mr and Mrs K insisted it was £115. They have since provided me with their first mortgage statement which confirms it was £115.74.

### The level of cover

I don't agree that the difference between the cost of decreasing term cover and level term cover was 'minimal'. The latter was a third more expensive. I've seen no evidence to suggest the advisor did provide comparative figures.

In the absence of evidence to the contrary, I still believe that Mr and Mrs K would have chosen the cheaper option if they'd been presented with all the appropriate information. They had a repayable mortgage, and in this situation decreasing term assurance is most likely to be the best recommendation, in the absence of any special factors.

### Mortgage/unemployment cover

Mr and Mrs K's mortgage commitment was for 25 years, so it was obviously appropriate to recommend mortgage payment cover and unemployment cover for this time span.

The business then argues that as they had two other existing, monthly commitments of £130 this justifies the recommendation to take out the far higher level of cover.

Yet neither of these commitments was for 25 years. The car loan was due to be repaid in around three years and the credit card repayments, while ongoing, were clearly not a 25 year commitment.

Overall, I don't believe the advisor used his best endeavours to discover what Mr and Mrs K needed or wanted, nor do I believe he presented them with suitable recommendations based on their financial objectives and priorities.

To clarify, I have not suggested these policies were necessarily unaffordable. But I believe that if Mr and Mrs K had been presented with all the appropriate information, they would have chosen a cheaper package of cover. This is set out in detail in my provisional decision and forms the basis for the compensation below.

### **my final decision**

For the reasons above, I uphold this complaint.

I instruct The Prudential Assurance Company Limited to pay Mr and Mrs K the difference between the cost of the premiums they paid on this policy and the cost of the premiums on a policy set up under the following conditions:

- 25 year decreasing term assurance cover with an initial sum assured of £22,000
- Waiver of Premium: cover to reflect this decreasing term policy
- Mortgage Payment Benefit of £115 a month
- Unemployment Cover Benefit of £115 a month
- Plus the difference in any policy charges

I also instruct The Prudential Assurance Company Limited to add 8 per cent simple interest per annum to the difference in premium costs, from the date each premium was paid until the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K to accept or reject my decision before 3 December 2015.

Tony Moss  
**ombudsman**

## copy of provisional decision

### complaint

Mr and Mrs K complain that The Prudential Assurance Company Limited's predecessor company (the business) mis-sold them a policy including joint life and critical illness, mortgage payment benefit, waiver of premium benefit and unemployment cover. They say they were led to believe they wouldn't be granted the mortgage unless they took out this policy which was very expensive.

### background

#### The sale

In July 2001 Mr and Mrs K met with an advisor at the Mortgage Advice Bureau, an appointed representative of the business. They were in the process of buying their council property and he advised on the mortgage as well as the above policy.

He recommended a plan lasting 25 years with level cover of £22,000 providing the following:

- Life and Critical Illness cover
- Waiver of Premium
- Mortgage Payment Benefit for Mr K providing £220 a month to help cover the mortgage payments in the event of illness or injury
- Unemployment cover of £220 a month to help with the mortgage payments in the event of unemployment

The illustration set out the cost of the policy and provided a breakdown of the different elements of the cover. The total cost was £54.62 a month.

He said he recommended level term life and critical illness cover rather than decreasing term assurance cover, generally considered more suitable for a repayment mortgage, and explained:

*"You understand that term assurance on a decreasing cover basis is all that is required. However, in view of the minimal extra premium and the additional cover provided throughout the mortgage term, you are attracted to a Mortgage Protection level cover option which I recommend..."*

Mr and Mrs K signed the relevant documents to say they understood the recommendation, and wished to proceed with the purchase.

#### The complaint

Mr and Mrs K say they had no experience of financial products and were buying a property for the first time in their lives.

They were extremely naïve and thought the Mortgage Advice Bureau was a government-sponsored advice agency for people buying their council homes. They assumed that the advisor was there to help provide them with the best possible advice, and they would have agreed to anything he recommended.

They say they were told that without this policy they wouldn't be granted a mortgage.

#### The adjudicator's view

An adjudicator at this service didn't feel the complaint should be upheld.

She felt the recommendations had been suitable for Mr and Mrs K's circumstances, and that the advisor had explained the reasons for the various proposals.

She said that while Mr and Mrs K felt the policy was expensive, the cost had been clearly explained to them. And based on their income and expenditure at the time, it was affordable. If they felt it was too expensive they were not under any obligation to proceed with the recommendation, and could have opted for specific elements of the plan.

She said they were given sufficient opportunity to ask questions and review the documentation. They also had a 'cooling off period' during which they could have cancelled the policy.

She accepted that Mr and Mrs K said they were told they would not be given the mortgage unless they purchased the policy. However, she said that while she couldn't be sure what had been said verbally, she'd not seen any evidence to support this claim. The fact that they could have cancelled the policy at any time suggests that cover was not required.

### **my provisional findings**

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

Firstly, I acknowledge that Mr and Mrs K believe they were told this policy was compulsory, without which they wouldn't be given a mortgage.

But all the documentation makes it clear that this wasn't the case, and they signed to say they had understood it, and agreed to the terms. So I don't feel I've seen sufficient evidence to conclude that they were misled into believing that this was compulsory.

I also agree with the adjudicator that it was reasonable to recommend some form of protection for Mr and Mrs K's proposed mortgage.

They were taking on an important financial commitment, had a young family, and limited resources to pay for this mortgage in the event of sickness, unemployment, critical illness etc.

I am satisfied that some combination of all the recommendations was appropriate.

However, I have concerns about three particular elements of the policy.

#### The level term cover

I recognise that the advisor explained that Mr and Mrs K could choose to take out decreasing term cover rather than the level term he recommended. But I don't accept that this was the most appropriate recommendation in the first place.

The advisor would have been aware that Mr and Mrs K had no prior experience of financial products, and I feel he had a responsibility to clearly set out that decreasing term cover was all that was required to repay their mortgage in the event of death or critical illness, and there was no need for greater cover than this.

In my view the recommendation letter doesn't do this sufficiently.

Crucially, he should have spelt out the difference between cost of level term and decreasing term premiums. If he had, it would have been clear to Mr and Mrs K that the difference in cost was not 'minimal' as he claimed.

His recommendation was a third more expensive than that needed. This also increased the cost of the waiver of premium element proportionately.

### Mortgage payment benefit

Mr and Mrs K's initial monthly mortgage premium was, according to the evidence I've been given, £115 but the recommended level of premium, specifically designed to provide help 'to cover the cost of mortgage payments' was £220.

I accept that the advisor's recommendation letter says 'you have chosen this level of benefit' but I've seen no evidence to suggest how this suggested figure arose.

In considering this issue, I think Mr and Mrs K's circumstances at the time are crucial. They have a modest income, and are taking on a major new financial commitment including the life and critical illness cover already discussed. And the proposed overall cost of this package of cover represents almost half the cost of their new monthly mortgage payments.

In this context I feel the advisor should have recommended that the mortgage payment benefit cover match their mortgage payment which it was designed to cover.

There may be a number of reasons why Mr and Mrs K might have been attracted to a policy providing higher cover but in this situation I believe the advisor had a responsibility to clearly set out the cost of the various options including cover for the mortgage premium alone.

Taking account of Mr and Mrs K's circumstances at the time, I believe they are most likely to have chosen the option of cover for the mortgage commitment only.

### Unemployment cover

In my view the same arguments apply to this element of the plan. In the absence of any evidence to the contrary, I feel Mr and Mrs K would most likely have chosen cover of £115 rather than £220.

### **my provisional decision**

For the reasons above, I currently intend to uphold this complaint.

I intend to instruct The Prudential Assurance Company Limited to refund Mr and Mrs K the difference between the cost of the premiums they paid on this policy and the cost of the premiums on a policy set up under the following conditions:

- Decreasing term assurance covering an initial sum of £22,000 and term of 25 years
- Waiver of Premium: cover to reflect a decreasing term policy
- Mortgage Payment Benefit of £115 a month
- Unemployment Cover Benefit of £115 a month
- Plus the difference in any policy charges

I also intend to instruct The Prudential Assurance Company Limited to add 8 per cent simple interest per annum to the difference in premium costs, from the date each premium was paid until the date of settlement.

Tony Moss  
**ombudsman**