

complaint

Mr and Mrs J complain that they were mis-sold a mortgage endowment policy in 1999 by The Prudential Assurance Company Limited. Mr and Mrs J complain that Prudential mis-sold the policy because:

- their attitude to risk wasn't assessed;
- they weren't told there could be a shortfall at maturity;
- alternative types of mortgages weren't discussed;
- no fact find was completed;
- the advisor didn't explain the risks inherent in the policy or the different funds; and
- fees and charges weren't explained to them.

background

In 1999, Mr and Mrs J decided to buy their first home. They met with an advisor working for Prudential (then trading as Scottish Amicable). Mr and Mrs J were advised by Prudential to take out a mortgage endowment policy with a target value of £115,000 alongside an interest only mortgage of the same amount. The mortgage endowment policy was intended to repay the interest only mortgage in full at maturity in 2024.

In 2014 Mr and Mrs J complained to the business about the sale of the policy in 1999. But Prudential didn't uphold their complaint. It said that the records from the time showed that a fact find has been completed and that the risks of the policy, the charges and the types of funds had been discussed. Prudential didn't agree that the policy was unsuitable for Mr and Mrs J's needs at the time.

Unhappy with this response, Mr and Mrs J brought their complaint to us. Our adjudicator recommended that the complaint should be upheld. She didn't think that Prudential had sufficiently explained the risks involved in the policy when it was sold. She said Prudential should calculate whether Mr and Mrs J had suffered financial loss as a result of taking out this policy rather than a repayment mortgage in 1999. If they had she thought Prudential should pay this amount to Mr and Mrs J.

Prudential disagreed, responding to say:

- Mr J had prior knowledge of investments and had a good level of awareness of similar financial products;
- it assumes that the booklet of different funds was shown to Mr and Mrs J at the time the policy was sold because that is what should have happened;
- the types of funds Mr and Mrs J chose were not the "usual generic" fund options. Prudential says this shows that the funds selected were Mr and Mrs J's choice- not the advisor's recommendation; and
- it doesn't consider that each fund choice needed to be fully discussed if it met the consumers' attitude to risk.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator's view that this complaint should be upheld. I'll explain why.

First, I'm satisfied that Mr and Mrs J weren't given a legally binding guarantee by Prudential that the policy would repay their mortgage in full at maturity. I don't doubt that the advisor portrayed the policy in a favourable light when it was sold. The policy was taken out with the intention of repaying Mr and Mrs J's mortgage in full at maturity in 2024. But I'm not persuaded that the target value was guaranteed to Mr and Mrs J. I say this because the policy illustrations produced at the time say "*you could get make more or less than the amount shown*". And the advisor's recommendation says Mr and Mrs J were interested in the "*possibility of a tax free lump sum*". The evidence doesn't indicate any *guarantees* were given to Mr and Mrs J about the performance of the policy.

During the sale of the policy, Prudential obtained detailed personal and financial information from Mr and Mrs J. I've looked carefully at all the documents provided by Prudential from the time the policy was sold.

At the time of the sale Mr and Mrs J were in their twenties and had one young dependent. They were jointly earning approximately £43,000 per year. They had savings of around £20,000 but these were to be used for the deposit to purchase the new property. Mr J was saving £50 per month in a Scottish Amicable saving plan but this had only started a few months earlier in January 1999. There appear to have been minimal other savings to fall back upon if their circumstances changed after buying the property.

Neither Mr nor Mrs J's occupation suggests any above average knowledge of finance and investment. I appreciate Prudential's argument that Mr J had a savings plan which was invested 50/50 into a with-profits fund and a managed fund. However, this savings plan had only just been taken out. And Mr J may have relied heavily upon Prudential's advice to take out this plan and choose the funds he did. So I don't think the saving plan shows that Mr J was an experienced financial investor. I'm satisfied that Mr and Mrs J would have relied heavily on what they were told by the advisor and the recommendations Prudential gave.

Mr and Mrs J were sold a unit-linked endowment. Their premiums bought units in four different funds:

- 25% of the policy was invested a with-profits fund,
- 25% in a Schroder managed fund,
- 25% in a Newton fund; and
- 25% in UK equity income.

It isn't for me to "risk rate" this policy but I think it's fair to say that most commentators would consider this policy represented a higher risk than a standard with-profits policy. Its value could fluctuate, sometimes quite markedly over short periods of time. Prudential says that Mr and Mrs J chose the funds that their premiums were invested in. It said it appears this is the case because the "usual generic" fund options would typically lead to a recommendation of a policy being split 50/50 between a with-profits and a managed fund. The advisor, in their recommendation notes, "*I confirm that the funds selected are in line with your balanced attitude to risk*". But there is no other mention made of the funds selected, and why these are not what would usually be recommended by Prudential.

The records indicate there was some discussion about the different mortgage options open to Mr and Mrs J and the fees and charges applied. But it is less clear whether there was a thorough explanation of the risks involved in the policy recommended. The advisor's recommendation highlights that Mr and Mrs J wanted to have a portable loan and/or repayment method, and that they wanted the possibility of a tax free lump sum. But it doesn't say why this type of endowment policy was right for Mr and Mrs J's situation, the risks involved, and the potential volatility of the value of the units.

Having considered all of the evidence, I'm not satisfied that this policy was a suitable recommendation for Mr and Mrs J. Whilst it could be argued that Mr and Mrs J may have been in a position to take some risk with their mortgage, I'm not satisfied that they would have knowingly accepted the degree of risk this policy presented had they been aware of the nature and extent of the risks.

As far as I'm aware Mr and Mrs J's policy is still in force and there is a further nine year term on their mortgage. Mr and Mrs J may wish to seek independent financial advice to help them explore their options- with both their endowment policy and their mortgage loan.

what should Prudential do now to put this right?

The financial regulator, the Financial Conduct Authority (FCA), has laid down a standard approach for calculating compensation in cases like this in its guidance, "*Handling Mortgage Endowment Complaints*" (sometimes referred to as a Regulatory Update 89 or RU89 calculation). I think this method is appropriate in this case.

The guidance provides that Mr and Mrs J are entitled to be put in the position they would have been in, so far as is possible, had Prudential not recommended this unsuitable policy. In other words Mr and Mrs J will be put back in the position they would have been in if their mortgage had been arranged on a repayment basis in 1999.

Prudential should carry out a calculation in line with the regulator's guidance to determine whether Mr and Mrs J have suffered a financial loss as a result of the advice it gave. I note that Mr and Mrs J have said they made extra monthly payments to their mortgage. This will need to be taken into account in the calculation. Mr and Mrs J will need to provide Prudential with any information it reasonably requires to complete the calculation.

my final decision

My final decision is that I uphold this complaint against The Prudential Assurance Company Limited. Redress should be paid as directed above. If there is any compensation due, it should be paid within 28 days of the date on which Mr and Mrs J accept my final decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs J to accept or reject my decision before 21 October 2015.

Emma Peters
ombudsman