

complaint

Mr and Mrs M's complaint is about two mortgage endowment policies provided by the Prudential Assurance Company Limited. They are unhappy with the performance of the policies and that Prudential wouldn't remove the additional benefits from the policy, thereby allowing more of the premium to be invested to help mitigate poor performance. Mr and Mrs M say at no point were they told the additional benefits were permanently attached to the policy and couldn't be changed or removed.

Mr and Mrs M were also unhappy that when Prudential considered the suitability of the 2000 policy it determined it had been mis-sold, but they hadn't suffered a loss. They feel some gesture should be made as they wouldn't have gone through the stress and inconvenience of complaining if it hadn't been mis-sold.

background

Mr and Mrs M arranged their first endowment policy in 1995 and the second in 2000. The 1995 policy was for £47,150 over 25 years. The premiums were invested equally between the with-profits fund and a unit-linked managed fund. Critical illness cover equal to the policy's target value and waiver of premium benefit were added to the policy. The commission for this policy was paid to Mr M as he was a member of staff at the time of the sale.

The policy arranged in 2000 was for £26,950 and had a 20 year term. It was invested in unit-linked funds. Attached to the policy were the added benefits of critical illness cover equal to the amount of life cover and waiver of premium benefit.

In 2014 Mr and Mrs M complained to Prudential about the sale of the 1995 policy. Prudential asked for more information to allow it to investigate the complaint. When that information wasn't provided, it closed its file on the matter. It told Mr and Mrs M it was doing so and if they weren't satisfied, they could refer the complaint to this service. They gave them six months to do so from the date of their letter – so by 8 February 2015. Mr and Mrs M don't appear to have taken any further action at the time to pursue their complaint.

In 2018 Mr M wrote to Prudential to ask for the critical illness cover and waiver of premium benefits be removed from both policies and the portion of the premium used to pay for them be redirected for investment purposes. Prudential told Mr M this wasn't possible. It said it had withdrawn the ability to remove such benefits in 2007. It also confirmed to Mr M it hadn't told policyholders about its decision.

Mr and Mrs M complained to Prudential about the disappointing performance of the policies. Also, that they weren't told at the point of sale the additional benefits couldn't be amended or removed. They said the latter actions in refusing to vary their policies breached the regulators guidance and prevented them from gaining a fair outcome.

Prudential considered the complaint. It raised the issue of the suitability of the two policies for Mr and Mrs M at the times they were sold, despite this not being part of the complaint that had been made. It said any such complaint about the 1995 policy would be time-barred as any such complaint had to have been raised by 13 April 2016. It, therefore, said it wouldn't consider any complaint about this policy.

In relation to the 2000 policy, Prudential concluded the policy had been mis-sold as it had represented too high a risk for Mr and Mrs M in 2000. As such, it established if they had suffered a loss because of the mis-sale. It ran a calculation recommended by the regulator for such complaints, which compared the position Mr and Mrs M were in with an endowment mortgage and that which they should have been in if they'd had a repayment mortgage. Only the core endowment premium was included in the calculation – the cost of the critical illness cover and waiver of premium was removed. This was because it was assumed they would have wanted these benefits if they'd had a repayment mortgage and would have taken a standalone policy. The calculation established Mr and Mrs M hadn't suffered a loss.

As regards the complaint about the loss of ability to remove additional benefits, this wasn't addressed in the final response. When Mr M raised this with Prudential, it said its position was clear and wouldn't consider the matter again. In saying this, it would appear it was maintaining that the ability to do this was removed some years ago and so it didn't need to comply with Mr and Mrs M's request.

Unhappy with Prudential's response Mr and Mrs M came to us. Around that time they also surrendered their endowment policies.

One of our investigators considered the complaint. He upheld the complaint in part. He agreed with the business that the 2000 policy, which exceeded its target value, didn't require any redress to be paid. He was not persuaded by Mr and Mrs M's argument that the cost of the additional benefits should be returned to them. As regards the 1995 policy he agreed any complaint about the mis-sale was time-barred because the complaint had been made outside the relevant time limits.

However, the investigator thought the decision to remove the option to stop allowing changes to policies should have been communicated to policyholders. As it wasn't; he suggested Prudential pay £100 to Mr and Mrs M for the trouble caused.

Prudential didn't accept the investigator's view. It pointed out that the ability to cancel the additional benefits wasn't a right under the terms and conditions. It was a concession which, at one point, Prudential allowed. As it wasn't something consumers were entitled to, when the concession was withdrawn, no letters were sent.

I issued a provisional decision on 8 April 2019. In that document I explained what my conclusions were and how I had reached them. Below is an excerpt.

'Prudential has said that any complaint about the risks associated with the 1995 endowment policy was made too late. As Mr and Mrs M didn't actually make this complaint in 2018, I don't consider that I need to comment on whether the complaint was made in time or not. However, if I needed to do so, it would be the time limit detailed in Prudential's 2014 closure letter, in which it gave appropriate referral rights, that would be the relevant one.'

As regards the assessment of the 2000 policy Prudential made, it is able to consider wider matters than those specifically raised by a policyholder, if it notices a problem. This is a good thing and I would commend Prudential for doing so. In this case, Prudential determined that the level of risk with the 2000 policy was too high for Mr and Mrs M at that time. Therefore, the question I must consider is whether Prudential calculated whether Mr and Mrs M suffered a loss by a suitable method.'

There is, in fact, no 'right' way of calculating redress. There are a very large number of possible ways to approach it. However we adopt the approach which is common to the regulator, consumer bodies and the industry. That is to assume that if the policy in question hadn't been sold, the consumers would have taken a repayment mortgage instead. This is the method of calculation Prudential adopted and it seems reasonable to me that it did.

In this case, a repayment mortgage would not have been paid off until 2020. However, at the time Mr and Mrs M complained to Prudential, the policy was already worth more than the amount of mortgage it was arranged to repay. In addition, having reviewed the loss calculation sheets, a repayment mortgage would have cost them significantly more over the 18 years the calculation was done over. So I am satisfied that Mr and Mrs M didn't suffer a loss by taking out the 2000 policy.

Mr and Mrs M have noted that the entire endowment premium wasn't used in the calculation. They pointed out that they paid out circa an additional £10 per month for the policy. They want this money refunded. I have considered this request and I don't agree that this money should be refunded. The money paid the cost of the critical illness cover and waiver of premium benefit. I accept that Mr M asked to cancel these benefits in 2018, but there has been no indication that he and Mrs M didn't want or need them at the time they arranged the policy. As such, they paid for policy benefits that were wanted and received. Had a repayment mortgage been arranged, it's reasonable that Mr and Mrs M would have taken similar protection benefits to protect it, so refunding the cost of those benefits would be inappropriate.

I now turn to the matter of whether Prudential should have allowed the cancellation of the additional benefits in 2018 when it was asked to. I have reviewed the terms and conditions for both the 1995 and 2000 policies. Neither of these indicates that there was an option built into either of the policies to remove benefits after they were selected. So Mr and Mrs M didn't have the right to cancel the additional benefits when they asked to do so in 2018.

There is mention of a charge that could be levied if the policy was altered by mutual agreement between the policyholders and Prudential. This would indicate that on an individual policy basis, changes could be made if a policyholder made a request and Prudential was willing to agree it. Where such arrangements are made, they are called concessions. I suspect that Mr and Mrs M were aware such concessions could be made due to Mr M's employment with the issuing life assurance company at the time of the 1995 sale.

A policyholder has no right to a concession; it is entirely at the discretion of a financial business to grant one. That discretion is not something that this service would usually look to interfere with. I can see no reason to in this case. So when Prudential decided that it would no longer give such concessions in 2007, it was entitled to do so and I see nothing wrong with it making that decision. I would also comment that as a concession isn't a contractual right and will by its very nature vary or cease to be available at times, we wouldn't expect a financial business to proactively inform its policyholders of such arrangements or changes to them.

In summary, Mr and Mrs M were never entitled to remove the additional benefits from the policy. Prudential did nothing wrong in removing the concession that had at one time allowed such actions to be agreed. In addition, we would not expect policyholders to be informed of such a decision. I don't consider Prudential did anything wrong in this regard so I don't propose to make an award against it.'

Prudential didn't respond to my provisional decision. Mr and Mrs M said they completely disagree with the provisional decision. Mr M believes that assumptions have been made about his knowledge about the endowment policy because he worked in the financial sector at the time. He pointed out that he worked in pensions when the policy was taken out, not mortgages or endowments. So why would he have full knowledge of the policy? Mr M said he's lost all faith in this service.

my findings

I have considered all the available evidence and arguments, including Mr and Mrs M's further comments, to decide what's fair and reasonable in the circumstances of this complaint.

I am sorry Mr M has lost faith in this service and I would like to assure him I didn't make an assumption he had any in-depth knowledge of the endowment policy when I came to my provisional conclusions. I was fully aware he worked with pensions. However, given the alterations he and Mrs M wanted to make weren't a feature of the policy, it seems likely they were aware concessions could be made on products due to his employment with the issuing life assurance company. I am still satisfied that is likely to be the case.

Mr and Mrs M haven't provided any further information or evidence that would cause me to alter my conclusions. Those conclusions being the loss calculation carried out by Prudential for the 2000 policy was made using the appropriate method and established that Mr and Mrs M didn't suffer a loss due to the policy being mis-sold. I remain satisfied they weren't entitled to make the alterations they wanted to under the terms and conditions of the policy, so there wasn't anything wrong with Prudential declining the request.

my final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 9 June 2019.

Derry Baxter
ombudsman