

complaint

Mr W has complained that in 1986 the Prudential Assurance Company Limited has mis-sold a mortgage endowment policy to the late Mrs W. He is acting for the Estate.

background

Mr W complained to the business. It did not agree the complaint should be upheld. Unhappy with that Mr W brought his concerns to us. One of our adjudicators looked at the evidence and said she could not recommend that the complaint should be upheld. Mr W remained unhappy and has asked for an ombudsman's final decision. The file has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I don't uphold this complaint. I understand this is not what Mr W wants.

I must only uphold a complaint when I can safely do so. Usually that involves finding that a business has got something wrong. Once upheld and accepted by a consumer (the business is not asked) that decision is binding in law. There is no right of appeal to the Courts.

This sale took place some thirty years ago. That obviously means any evidence will be old, very possibly incomplete and possibly contradictory. I cannot use hindsight in making a decision.

There are several material differences between the situation today and 1986. The first is that, as Mr W now knows there was no regulation in 1986. All an advisor had to do (even if advice was given) was to comply with a general duty of care under common law. That included a duty to ensure that the risks presented by the policy matched the likely true attitude to risk of the consumer and to make no material misstatements. I have seen nothing to persuade me the business failed in either of those duties.

Policies like this were, in 1986, regarded as safe (some would say very safe). They produced and continued to produce for many years very substantial tax free surpluses. They were thought an appropriate recommendation for most (although not all). Here Mr and Mrs W would have been considered a young professional couple. I suspect their attitude to risk was as low as the risk presented by the policy although of course it is very difficult to be sure.

They would, I suspect, have been thought ideally placed for a policy such as this. I understand what Mr W says about qualifications held. He is quite correct in what he says about product or investment knowledge. I think there may have been a slight misunderstanding. The adjudicator did not reject the complaint purely because of the qualifications held. It was because of a number of things-such as the lack of regulation, the changed economic environment and the passage of time seem to me to be the main difficulties in uphold the complaint.

The point, in my view, about the qualification is not that it would give specific product knowledge. It is that as a young professional couple the prospects for Mr and Mrs W were likely to have been thought good. However that does not change the fact that this policy was seen as very safe and not clearly an inappropriate recommendation.

Another thing which has changed significantly since 1986 is that policies such as this have sometimes failed to reach the values hoped on maturity. Many such policies were indeed mis-sold although many were not. Mr W must understand that from 30 years ago, on the evidence here, it is simply not possible to say this policy was mis-sold and that the business should pay compensation.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 September 2016.

Mike Boyall
ombudsman