

complaint

Mrs C's complaint is about a mortgage endowment policy she was sold in 1990. She believes it was mis-sold because it represented a risk to the repayment of her mortgage, which she was not willing to accept. She has also said she didn't need the life cover associated with the policy.

The Prudential Assurance Company Limited is responsible for the sale and will be referred to throughout this decision on that basis, even where activities were undertaken by previous life assurance providers.

Mrs C is represented in her complaint by a complaint management company.

background

At the time of the sale Mrs C was 24 years old, separated and was arranging a £21,600 mortgage over 25 years. She was employed full-time as a secretary and believes her income was between £12,000 and £15,000 a year. In addition, Mrs C believes she had some life insurance provided by her employer, but has been unable to give any details. She has also confirmed she had no savings or investments.

The endowment policy arranged had a target value and life cover of £21,600 over a 25 year term. It was a traditional with-profits policy with a basic sum assured of £7,452.22 (which was guaranteed to be paid at maturity) to which bonuses would be added throughout the term. The last premium was paid to the policy in March 2001 and Mrs C surrendered it in June 2001 for just under £5,000.

In her submissions to this service, Mrs C has said she was told she had to have an interest-only mortgage with an endowment. She wasn't told about any risks associated with the policy, but rather was told it would pay off her mortgage with an additional lump sum on top.

Prudential didn't uphold Mrs C's complaint. It concluded that the risks associated with the policy weren't unsuitable for her at the time of the sale. It also explained that the life cover was an integral part of the endowment policy and needed in order to provide its tax-free maturity status. So it didn't think that made it unsuitable either.

Mrs C didn't accept Prudential's decision and referred her complaint to this service. One of our investigators considered the complaint, but didn't think the evidence indicated the policy was unsuitable for Mrs C. So he didn't recommend the complaint be upheld.

Mrs C's representative didn't agree with the investigator. It said he had used assumptions when assessing the complaint and would like it assessed again with no assumptions being made. It considered the complaint should be assessed based on Mrs C having not been willing to accept any risk at all with the repayment of her mortgage. It said Mrs C recalled being told that the endowment route 'was the way to go' and all she was told was that it would pay off her mortgage and there would be a surplus. She was given the impression the policy guaranteed to do this. Mrs C has said that if there had been any mention of the possibility of a shortfall, she would have refused to take the endowment and insisted on an alternative way of repaying her mortgage.

Our investigator considered the representative's comments, but they didn't change his mind. The representative made further submissions. It said that in its opinion selling a consumer a product that had risks associated with it, but not making those risks clear, was misrepresentation. This was based on Mrs C's recollection from the time of the sale that no risks were declared to her. It reiterated that Mrs C was a first-time buyer and had no experience of investments. It said she wasn't given the opportunity to choose between a mortgage that had risks associated with it and one that didn't. It believes that interest-only and repayment mortgages should have been fully explained to Mrs C and only after they were, should she have been asked to make a decision about what type she wanted.

As agreement couldn't be reached, the complaint was passed to me for consideration.

my findings

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

I would firstly clarify that whilst the mortgage and the endowment policy were both sold to Mrs C at the branch of her lender, Prudential is only responsible for whether the investment product sold to Mrs C was suitable for her at the time of the sale. As we have previously explained to Mrs C's representative, any concerns she has about the mortgage advice, including whether an appropriate explanation of how mortgages worked and the different types, would be the responsibility of the lender.

Mrs C's representative has said that assumptions have been made about Mrs C's opinions, needs and attitudes at the time of the sale. Where there is limited information available from the time of a sale it is often necessary to make some assumptions and it's not inappropriate to do so. It is also not appropriate to use hindsight when reaching conclusions on such cases. We have to assess a case based on what we know about the exact circumstances at the time, the regulatory environment and requirements, common selling practices and general industry attitudes/concepts of products being sold.

I would also comment that whilst Mrs C is now adamant that she wouldn't have accepted any risk at all with her mortgage, even for the potential for additional gain; that is a recollection of a conversation that happened nearly 30 years ago. I have to take into account that memories fade and recollections change over time. An example of this would be that Mrs C completed a questionnaire recently in which she recollected having surrendered the policy several years before she actually did.

So I must look at a consumer's circumstances, what they were sold, what they were likely told and the information they were given, alongside their recollections, to decide whether a policy was mis-sold. To be clear, in order to uphold a complaint I must be persuaded that the financial business being complained about did something wrong. In this case, I must be persuaded the policy was unsuitable for Mrs C. That it *might have been*, isn't sufficient for me to be able to uphold this complaint.

Mrs C's endowment policy was considered to represent little risk at the time it was sold. Whilst changes to the financial markets over the following decade or so after the sale may have changed that perception, I must work from the basis of what the understanding of the policy was at the time. Such policies were considered suitable for most people at the time. Only for those who were positively risk averse would Mrs C's policy have been deemed

unsuitable. The only guarantee associated with the maturity value was that the basic sum assured would be paid. This was a sum significantly smaller than the target amount.

Unfortunately, due to the passage of time since the policy was surrendered we don't have an accurate record of Mrs C's circumstances at the time. However, based on what we do have from the time and Mrs C's recollections it would seem she was in a financially stable position. She remembers having an income that was above the national average, possibly significantly above it. She had no dependents or any debts.

The mortgage when compared to Mrs C's income was well within most lenders normal criteria of a maximum of up to three times income. That would indicate once she had moved into her new home, she was unlikely to be financially stretched. The policy was also due to mature long before Mrs C was due to retire, so if there was a shortfall, she would have had plenty of time to deal with it before her income dropped at retirement.

So there was nothing in Mrs C's circumstances that would indicate she couldn't have taken the small amount of risk the policy was considered to represent had she wanted to, possibly in order to hopefully receive a surplus after the mortgage was paid off.

I must also consider the information Mrs C would have been given and shown at the time of the sale. Whilst the illustration from the time isn't available, it was a regulatory requirement that one was produced and given to a consumer. I have seen many illustrations from around the time this policy was sold and at the lower growth rate it would have shown the policy not maturing with sufficient funds to pay off the mortgage. So I think it likely a risk probably was mentioned to Mrs C, albeit one that was not expected to come to fruition.

Mrs C's representative has said she didn't have any need for the life cover associated with the policy. Having no dependents or spouse at the time could support that she didn't need to leave the property to anyone, although it wouldn't rule out her wanting to do so. However, the simple fact is the life cover was an integral part of the endowment policy. It meant that when it matured the value above the amount paid in premiums would have been completely tax free. In addition, given Mrs C's age, the cost of the associated life cover would have been minimal. So I am not persuaded the inclusion of the life cover, given its benefits, would make an otherwise suitable policy unsuitable.

I can never know for certain what Mrs C's attitude toward risk was at the time of the sale. Nor can I know whether she would have accepted the low level of risk, which was never expected to come to fruition, in exchange for the potential of a surplus sum after the mortgage was paid off. The evidence indicates that Mrs C was in a position to accept the risk associated with the policy as it was perceived at the time and that she is likely to have been told that risk existed. As I said above, in order to uphold a complaint I must be satisfied Prudential got something wrong. The evidence here isn't sufficient to persuade me that it did.

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 Mrs C to accept or reject my decision before 13 September 2019.

Derry Baxter
ombudsman