

## **complaint**

Mr and Mrs H are being represented by their financial adviser. They're complaining about The Prudential Assurance Company Limited because it reduced the cover provided by their whole-of-life insurance policy and didn't offer them the option of retaining cover at the original level.

## **background**

In 1984, Mr and Mrs H took a whole-of-life insurance policy with Scottish Amicable (now Prudential). It initially provided cover of £1 million for a monthly premium of £152. They say the policy was part of their inheritance tax planning.

Prudential reviewed the policy regularly and in 2014, it wrote to say it couldn't continue to provide the same amount of cover for the original premium and reduced it to £626,000. In response to Mr and Mrs H's complaint, Prudential explained the review process and said it couldn't offer additional cover through the policy because of recent changes. Since the complaint was referred to us, the policy was reviewed again and the cover reduced further. It's now being reviewed every year because of Mr and Mrs H's ages.

I previously issued my provisional decision explaining why I thought this complaint should be partly upheld. Mr and Mrs H didn't accept my provisional decision. Their representative says the proposed premium for additional cover is too high and thinks a business the size of Prudential should be able to offer this at a more reasonable cost.

## **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 reconsidered the case, including the response to my provisional decision, my conclusions haven't changed.

I appreciate the cost of the cover being offered to Mr and Mrs H is high, but that's ultimately a matter for Prudential to decide. It's important to remember they're potentially looking for a significant amount of cover and are now considerably older than when they took the original policy. In the circumstances, I'm not particularly surprised the cost is high.

## **my final decision**

My final decision is that I partly uphold this complaint. I'm satisfied Prudential was entitled to review the policy and make the changes it has, and that following correspondence with our adjudicator it has now made offers to allow Mr and Mrs H to increase their cover.

I think the options offered are reasonable and that, subject to any of them being accepted, Prudential must make the necessary arrangements on the terms it has outlined. It may also be that Mr and Mrs H wish to amend the terms, for example by choosing a different level of cover, and their adviser can contact Prudential directly for the cost of this. Our adjudicator should be able to provide relevant contact details if requested.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 18 January 2016. If they want to accept any of the offers made by Prudential, it would also be helpful if they could indicate which one.

Jim Biles  
**ombudsman**

**extract from provisional decision:**

**my provisional findings**

Mr and Mrs H's policy is known as a 'reviewable' whole-of-life insurance and wasn't necessarily intended to provide the original amount of cover for the whole of their lives. At the start, the amount of cover and premium were based on assumptions about a number of different factors, including the future cost of life cover and investment performance, that couldn't have been known at the time.

Each monthly premium paid into the policy is essentially split two ways. The first part is used to pay for the cost of cover in that month. The remainder is invested into a fund or funds. The cost of the life cover is not fixed and increases with age. The hope was that the investment element would grow sufficiently so it can fund the shortfall when the policy reached the point that the cost of cover is greater than the monthly premium.

The policy has been reviewed regularly to check how it's performing against the original assumptions. At each review, Prudential also needed to make fresh assumptions about the cost of cover and investment performance in the future. Once these calculations were done, it could determine whether the policy 'passed' the review, meaning no changes to cover or premium were required. Or 'failed', as happened in 2014 when Prudential reduced the amount of cover.

Because the policy was set up on maximum cover terms, less money was invested meaning it was always unlikely the premium would be enough to pay for the original amount of cover for the whole of Mr and Mrs H's lives. As an alternative, the policy could have been arranged on minimum or standard cover terms, meaning more money was invested and the need to reduce cover in the future was less likely. But they would have had to pay a higher monthly premium from the start for a policy on those terms.

Given what's happened to the policy, I understand why Mr and Mrs H may now feel aggrieved at their situation. But the policy wasn't sold by Prudential and my consideration of this complaint is limited to whether it has correctly applied the policy terms and conditions. If Mr and Mrs H have concerns about whether the policy was appropriate for their needs in the first place, they'd have to raise that with the adviser who sold it to them - or possibly the Financial Services Compensation Scheme (FSCS) if that business is no longer trading. If asked, our adjudicator should be able to help point them in the right direction.

From reading the policy conditions, I'm satisfied Prudential was entitled to review the policy and reduce the cover when it failed. In these circumstances, the policy conditions allow for the policyholder to increase the premium on the policy by up to 25% to replace lost cover.

**5.3. Adjustment of Sum Assured and/or Premium**

*If, as a result of his review, the Actuary shall decide that, in his opinion, premiums payable up to the next Review Date (or during such longer period as he may determine), together with the units presently allocated to the policy, shall be insufficient to cover the Death Benefit Charge and any Special Charges during that period, the Sum Assured and/or premium) shall be adjusted as set out in 5.4 below. Except as provided for in 5.4 (iv) below, the adjustments shall be such that the Actuary shall then be of the opinion that there shall no longer be such insufficiency.*

**5.4. Limits to Adjustments**

*The amount by which the Sum Assured and/or premium may be adjusted shall be restricted by the following limits:*

...

*(ii) If the premium specification is "Level", the maximum increase in the premium shall be to 125% of the premium at the outset of the policy.*

Also, the policy conditions allow for the policyholder to arrange a replacement policy.

#### **8.4 "Replacement Option**

*Provided that this policy has been issued on the Society's normal terms and conditions for first class lives, then, if the Sum Assured of this policy is at any time reduced either as a result of a Sum Assured and Premium Review (Chapter 5) or the exercise of the Variation of Sum Assured Option (8.1) or Nominal Premium Option (8.3) or the alteration to paid-up or termination of the policy, the Investor may effect within one month a new FlexiCover (First Series) policy or policies, subject to the Society's normal terms and conditions for first class lives at that time (including minimum premium conditions). The Selected Sum Assured or total Selected Sum Assured of the new policy or policies shall not be greater than the amount by which the Sum Assured of this policy before alteration exceeds the greater of the Sum Assured after alteration and the Bid Value of units. In the interpretation of these conditions, there shall be taken into consideration any other identical policies issued by the Society to the Investor on the life of the Life Assured on the Date of Currency in which there is, also, a reduction in Sum Assured. If the resulting new policies would require to be combined if they are to satisfy the Society's minimum premium conditions, they may be so combined.*

The policy conditions were established in 1984 and there have been developments since then that have meant these options are no longer available in exactly the terms set out. This possibility was allowed for in the policy conditions.

#### **10.7 Exceptional Circumstances**

*The Society reserves the right not to implement any of the policy provisions if, during the term of the policy, this becomes impossible or impracticable as a result of legislation or otherwise.*

Since the policy started in 1984, changes have occurred that affected the options available to Mr and Mrs H.

- In 2011, Prudential stopped offering replacement policies because this particular policy hadn't been offered to new customers for some time. I understand it didn't communicate this to policyholders at the time because the number of these policies left in place was small, but I've seen nothing to suggest Mr and Mrs H would have done anything differently if they'd been told.
- Following the introduction of the European Gender Directive in 2012, insurers were no longer able to take into account a consumer's gender when setting up a new policy. Mr and Mrs H's premium was based on *gender-specific* rates where this was a factor. Any increase to the policy premium using the options described above would be considered a new policy under the directive because it would require Mr and Mrs H's consent. As a result, any increase would have to be on *gender-neutral* terms. Since Scottish Amicable stopped offering policies before the directive came into force, gender-neutral rates aren't available to establish the cost of a new policy.

These developments have meant Prudential can no longer offer to change the policy in exactly the terms set out in the policy conditions. This is clearly unfortunate, but I don't think this was foreseeable in 1984 and I'm satisfied the policy conditions allowed for the possibility that changes might need to be made in any event.

Since the complaint was referred to us, Prudential has offered a variety of options to Mr and Mrs H that are intended as a substitute to the adjustment to sum assured and replacement options. Some of these options wouldn't require medical underwriting. The adjudicator has already provided their adviser with details of these options and answered the questions he's raised.

The options offered aren't exactly the same as those in the original policy conditions, but I think they're in the spirit of those options and are the closest Prudential can get to the desired position from its current product range. I appreciate the premiums involved are high, but that's a matter for Prudential's commercial judgement. I think it reflects the fact that Mr and Mrs H are now older now than when the policy started. The policy conditions don't say the options would be based on the policyholder's ages at the start of the policy or that further underwriting wouldn't be required. In the circumstances, I think the offers Prudential has made are fair and reasonable.

The main options being offered are:

- The policy conditions allow for Mr and Mrs H to increase the original monthly premium by a maximum of 25%. A 25% increase would currently buy £7,360 of cover. In place of the adjustment to sum assured option, Prudential is offering two single with-profit whole-of-life policies providing cover of £7,360 for a total monthly premium of £38.20. No medical underwriting would be needed.
- The policy conditions allow for Mr and Mrs H to take a replacement policy for the lost cover, which before the 2015 review was £374,000. In place of the replacement option, Prudential is offering two single whole of life with-profit policies, each providing cover of up to £187,000. The monthly premium for the maximum £187,000 of cover would be £1,999.66 for Mr H and £1,782.74 for Mrs H. No medical underwriting would be needed

These offers were made a few months ago and based on Mr and Mrs H's ages at that time. Prudential has also offered other options, including term insurance policies and a non-profit whole-of-life policy with a subsidiary company that would require medical underwriting. The adjudicator has provided Mr and Mrs H's adviser with details.

As things stand, it seems Mr and Mrs H now need to review their circumstances and requirements and decide how to proceed in a way that's most appropriate for them. This may involve exercising the options Prudential has offered or making alternative arrangements elsewhere.

I assume Mr and Mrs H will want to involve their adviser in this process. Once they've made their decisions, the adviser can contact Prudential directly if they want to accept any of its proposals. If he has any further questions, either about how the policies work or the cost of different amounts of cover, the adviser can also contact Prudential directly.

### **my provisional decision**

My provisional decision is that I currently intend to partly uphold this complaint.

While I'm satisfied Prudential was entitled to review the policy and make the changes it has, following correspondence with our adjudicator it has now made offers to allow Mr and Mrs H to increase their cover. I think the options offered are reasonable and that, subject to them accepting any of the options, Prudential should make the necessary arrangements on the terms it has outlined.