

complaint

Mr B complains he was mis-sold a whole of life policy by The Prudential Assurance Company Limited (the business).

background

In October 1977, Mr B met with a representative of the business, and was recommended a whole of life policy with a £3,000 sum assured, for £13.24 a quarter.

This sum assured was guaranteed to be paid at maturity, plus any bonuses. The policy subsequently started in November 1977, and the premiums were waived after 40 years.

One of our adjudicators considered the complaint but didn't think it was mis-sold. In summary he said:

- Because the policy commenced in 1977, before the Financial Services Act 1986 (FSA 1986) came into force, there wasn't a duty on the business to give advice. But if there was advice given, it had to be done with reasonable care and skill. The business also had a duty to disclose material information, and not make any negligent statements.
- There was no obligation on the business to record Mr B's financial objectives, or to complete a fact find.
- He was only looking to see if the recommendation was appropriate for Mr B. Based on what he's seen he was satisfied the recommendation made in 1977 was appropriate.
- He was satisfied Mr B wasn't misled about what the policy entailed. And there was nothing to suggest the recommendation was made in relation to a current or future mortgage. It was recorded that no mortgage related issues were discussed.
- The policy could've been converted into an endowment plan and in 2008 it was recorded that Mr B was considering doing this.
- If, as Mr B suggests the policy was sold for a mortgage, he would've raised an issue when the policy was rejected – as suitable cover – by the mortgage provider.
- The business can't be blamed for the lender's decision.

Mr B disagreed with the adjudicator's conclusions and asked for an ombudsman's decision. He strongly maintains the policy was mis-sold.

my findings

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

Because Mr B took out this policy in 1977, before the FSA 1986 came into force (in April 1988), there were different requirements when giving advice. The common law duty to act with reasonable skill and care when making a recommendation applied, rather than the suitability requirement which applied afterwards.

So, I have to consider this complaint in relation to the rules and regulations as they were in 1977. It's possible something that was appropriate pre-FSA 1986 may not necessarily be considered suitable now, but that doesn't mean the business acted incorrectly at the time.

In 1977, the business wasn't required to retain detailed paperwork about any conversations that took place. Therefore it's understandable that there may not be documentation to show what *specific* advice was given. Crucially – I note the business wasn't required to complete a fact find document (or a suitable alternative to *know your customer*) – recording Mr B's personal and financial circumstances, or issue a suitability letter detailing why the recommendation was made.

Notwithstanding the above, on the face of the evidence and on balance, despite what Mr B says I'm unable to safely conclude that the recommendation was inappropriate for him. At the point of sale, the recommendation only needed to be a reasonable degree of fit, and in the circumstances I think it was. I've seen no evidence that Mr B had adequate life cover in place at the time or that it was unaffordable. I note he's maintained it for a significant period of time.

I've seen nothing to suggest that the policy was sold for the purposes of a mortgage. Generally a whole of life policy wouldn't be considered suitable for a mortgage, unless there was a particular reason. In this instance I note it was recorded that no mortgage related issues were discussed at all, so I'm unable to safely say the policy was sold for this purpose.

It seems that this particular policy was capable of being converted into an endowment policy. I note in 2008 when this particular issue was discussed, and Mr B was considering doing this. I also note a mortgage lender didn't think this policy was suitable cover for a mortgage. Whether or not it was, and I think it's likely it wasn't, I don't think I can blame the business for this.

I note the members' booklet explained that there was life cover within Mr B's policy and indicated there were fees and charges applicable. I'm aware the business says that at the time it didn't have to explain or provide any details but they were available on request. In this instance I don't disagree with the business.

my final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 June 2019.

Dara Islam
ombudsman