

complaint

Mr and Mrs J complain, through a representative, that they were mis-sold a mortgage endowment policy in 1991 for which the Prudential Assurance Company Limited is responsible.

In summary they say they were not told about any alternatives. Also they were not informed about the risks involved in taking out the policy and they thought the policy would pay off the mortgage and provide a surplus. They also say had they known that they would have explored other options, including taking out a repayment type mortgage.

background

The business didn't uphold the complaint. It said it thought the policy was suitable when it was sold. It said it could find no evidence of any guarantee that the policy would repay the mortgage. Illustrations were provided at the time of the sale which demonstrated the possibility of a shortfall. Also the fund invested in, the with profit fund, was considered low risk at the time of the sale.

Unhappy with that Mr and Mrs J came to us. One of our adjudicators looked at the complaint. She also thought the policy was suitable and didn't recommend that the complaint should be upheld.

Mr and Mrs J's representative didn't agree. It made a number of points. It said that there was no record of Mr and Mrs J's attitudes to risk at the time. There was also no record of costs or alternatives being discussed. The representative took the view that because Mr and Mrs J already had an endowment type mortgage, the business made assumptions about them (particularly about their knowledge and experience) which were not true.

The adjudicator made the point that there was no requirement for business to record attitudes to risk or explain alternatives and costs at the time of the sale. She was still not persuaded the complaint should be upheld. As the representative remained unhappy the complaint has been passed to me to consider.

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 that, I don't uphold this complaint. I know this isn't what Mr and Mrs J want.

I understand this borrowing of £10,000 was in addition to an existing endowment type mortgage. It was less than one year's income for Mr and Mrs J, well within the limits set by lenders. Of course the representative is quite correct when it says an existing policy does not mean an additional policy is automatically suitable or appropriate for a client. However it does suggest there may be some appetite for risk and that the consumers are content with their existing arrangements.

The representative points to a number of issues such as a failure to record any assessment of attitudes to risk. While of course it would have been very helpful to make such records there was no requirement to do so. Also of course strictly a failure to record attitude to risk does not automatically mean it wasn't done. But it is very difficult for me to penalise a business for not doing something unless it was required to do that thing.

I note the length of the policy against the expected retirement dates of Mr and Mrs J. Of course the representative has a point that if Mr and Mrs J didn't know there was a risk, they may have been happy for the policy go on for longer. It would still however require payments to be made post retirement. That in and of itself was a risk which Mr and Mrs J presumably were prepared to take.

I must also "test" the sale against what was known and expected at the time of the sale, not now. Of course it is *possible* that Mr and Mrs J were unsuited to this policy and were misled as to what it was. What I don't find however is that the evidence allows me to say that on balance, the policy *was* mis-sold.

Mr and Mrs J's representative makes a number of assumptions itself. It assumes that, from (now) over 25 years ago, Mr and Mrs J's recollections demonstrate that on balance the policy was sold in a misleading way. I do not doubt for one moment the policy was sold in very positive and "upbeat" ways. The difficulty is being satisfied that expectations for the policy (not thought unreasonable at the time) were put in a misleading way so as to cause Mr and Mrs J to buy something they wouldn't otherwise have done.

In summary this is a sale in 1991 of a low risk policy for a modest sum (when tested against income). There is nothing in the circumstances of Mr and Mrs J which suggest that, in principle, such a sale was "bad". I don't for one moment doubt their recollections but documentary evidence from the time is something I can't ignore.

my final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 28 February 2019.

Mike Boyall
ombudsman