

complaint

Mr and Mrs B complain about a mortgage endowment policy sold to them by the Prudential Assurance Company Limited in 1992. They say had they known about any risks presented by the policy they wouldn't have taken it out but stayed with a repayment type mortgage instead.

background

The business didn't uphold the complaint. In summary it said that it thought the policy sold was suitable. Mr and Mrs B were unhappy with that and came to us. One of our investigators looked at the complaint and thought it should be upheld and redress paid.

That was, in effect, on the basis that no assessment of attitudes to risk seems to have been carried out; Mr and Mrs B agreed and said:

- they weren't remortgaging but were perfectly happy with their existing repayment mortgage;
- that they had no relevant experience of this or any similar product;
- there is limited documentation from the time, and
- they acted quickly when they realised there was a risk their mortgage might not be paid off.

The business disagreed and produced some further evidence. It produced evidence that Mr and Mrs B were remortgaging their house at the time, borrowing further money and that they held some other investment policies at the time of the sale. It also pointed out the length of time since the sale and the effect that has on the evidence available.

As the parties couldn't agree I was asked to look at the complaint. I issued a provisional decision. In that decision I said I wasn't minded to uphold the complaint. Although I could understand what the investigator had done and why, I didn't think I could safely reach the same conclusions. The findings part of that decision is attached to this final determination and forms part of this final decision.

The business accepted the decision. Mr and Mrs B's representative didn't. It said (in summary):

- it disputed that Mr and Mrs B were remortgaging. It said the sale was a result of a "door to door" visit by one of the business' sales staff. If it wasn't for that, this sale wouldn't have taken place.
- it wanted to see the evidence that the borrowing was a further advance. It says according to Mr and Mrs B no further advance was taken out.
- it accepted that Mr and Mrs B had other investments and policies at the time of the sale. However it said that taking an investment risk with savings was one thing - Mr and Mrs B would not, it said, have knowingly taken any risk with their mortgage.

Although I have summarised what the representative has said above, I have read and considered the whole of the submissions. Copies of documents sent in by the business were then sent to the representative. As a result it said:

- the documents don't support the statement that £6000 was a further advance; and
- the business approached the consumers not the other way round.

I can now issue my final decision.

my findings

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

I will first deal with the evidence sent by the business. It is very difficult to read and incomplete. That is perhaps inevitable and to be expected from so long ago. The evidence I have seen was sent to the representative on 28 September 2017 and more recently. It is clear the new policy was for a target value of £ 30,000.

I accept that the purpose of the new policy is not absolutely clear given the poor copies we have available. It does seem however that under "advice given" was a £30,000 policy for home improvements. I suspect however it will never be completely clear.

The existing policies listed include a policy for an amount of £25,000. It is very difficult to read and be sure. Of course this just illustrates how difficult it is to look at cases from so long ago. When presented with conflicting evidence all I can do is make a decision on the balance of probabilities. One party says one thing, the other something different.

However I don't think I can disregard the (incomplete and not entirely legible) evidence that this was a further advance for home improvements. I don't doubt for one second what Mr and Mrs B are saying on the basis of what they remember. However I must also take into account the evidence from the business.

I understand what the representative is saying about existing policies. It is entirely possible, indeed very likely, that consumers will have a different attitude to risk for savings or investments as opposed to a house mortgage. I have to remember however that, at the time of the sale, policies like this were thought low risk and suitable for most.

As I said in my provisional decision this policy may have been mis-sold. The difficulty I have is in safely concluding it was. To put it another way I don't think I can fairly uphold this complaint.

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 B to accept or reject my decision before 10 September 2018.

Mike Boyall
ombudsman

extract from my provisional decisions

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 am not minded to uphold this complaint. I know this will disappoint Mr and Mrs B.

There are a number of difficulties in upholding this complaint. I can perfectly well understand why it was upheld before. However, particularly given the new information provided by the business, I don't think I can safely do so.

Clearly this policy could have been mis-sold as the investigator thought. However to uphold a complaint I must be able to safely say it is fair and reasonable in all the circumstances to do so - that usually means finding the business got something wrong.

This sale took place many years ago. That will bring its own problems. It is perhaps surprising any evidence survives. The record keeping requirements and the economic situation were very different then. But businesses still had to sell a suitable product. This product was seen at the time as low risk (some would say very low risk). It would have been thought suitable for most. Mr and Mrs B's situation is a very familiar one, they weren't "investors" but ordinary members of the public. They were both working and had a family.

However, due simply, I suspect, to the passage of time, some of the evidence is contradictory. That is not unusual or surprising. Mr and Mrs B suggest they were happy with their arrangements but were approached by the business and advised to switch to an endowment type mortgage. The business' position is different. It says Mr and Mrs B were remortgaging and borrowing more money. They also had some other investment or savings policies. The business has produced some evidence for that.

I can see no assessment of attitude to risk. That of course doesn't mean it didn't happen and I have to bear in mind it was not a requirement at the time to record any such assessment. The business suggests that in their complaint Mr and Mrs B say risks were discussed but it was decided they would take no risk. It is very difficult to know exactly what happened.

It is difficult for me to say that, 25 years after the event, this sale is clearly "bad" or so "wrong" that the business should pay redress. Mr and Mrs B's circumstances don't suggest to me the policy was obviously unsuitable. It is unclear exactly what happened, the circumstances at the time or what was discussed. As I say it is entirely possible this policy was miss-sold. But that isn't enough. I must be able to safely say it was.

my provisional decision

My provisional decision is that I am minded not to uphold this complaint.

end