

complaint

Mr and Mrs C have complained to The Prudential Assurance Company Limited (“Prudential”) about a mortgage endowment policy they were sold in 1991.

Represented by a claims management company, Mr and Mrs C say the endowment was not suitable for their needs.

background

In 1991 Mr and Mrs C were first time buyers, and sought a mortgage in order to purchase the house they’d been renting under the ‘right to buy’ scheme. They were sold an interest only mortgage and a low-cost endowment policy (invested in the with-profits fund) over a 25-year term.

Mr and Mrs C say they were told the policy would return sufficient funds to repay the mortgage and perhaps produce an extra lump sum at the end of its term. The policy matured in 2016 leaving a shortfall from being able to repay the mortgage.

The CMC representing Mr and Mrs C say the endowment policy was unsuitable as their attitude to risk was not considered and they could’ve afforded a capital repayment mortgage. It also said that Mr and Mrs C weren’t told about the policy costs.

As Prudential didn’t uphold their complaint, Mr and Mrs C have referred the matter to our Service. One of our investigators reviewed everything and recommended the complaint be upheld. In summary, he said that although the endowment policy was considered to be low-risk, in their circumstances he didn’t think Mr and Mrs C had wanted to or had the capacity to take risk.

Although Mr and Mrs C accepted the investigator’s opinion, Prudential did not. It said that it wasn’t persuaded Mr and Mrs C were totally risk averse, and it is possible risk was discussed – but in 1991 the requirement to record information was not the same as now.

Prudential highlighted that although Mr and Mrs C weren’t experienced investors, such policies were considered to be relatively safe at the time. It pointed out that Mr C’s income was above the national average and they would have immediate equity in the property as it was being bought at below market value from the local authority. Prudential also said it’s quite possible mitigating the risk of shortfall was discussed, by using disposable income or savings. In fact, Mr C’s pension was ultimately used to make up the shortfall, and this could’ve been considered as an option at the time.

As no agreement could be reached, I’ve now been asked to review everything afresh and make a 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. Having done so, I’ve reached the same conclusion as the investigator, and for much the same reasons.

I should say at the outset that I haven’t seen evidence to satisfy me Prudential gave a guarantee that the policy would repay the mortgage at maturity. Or that it would return an

additional lump sum. I appreciate the adviser is likely to have spoken about the policy in very positive terms. But, that isn't the same as giving a binding guarantee.

When selling the policy, the adviser had to give recommendations that were suitable for Mr and Mrs C's circumstances.

At the time of sale Mr and Mrs C were relatively mature first time buyers, with three dependants. They were purchasing the property at a discounted value, and had a modest, but above national average income. They were making a small savings contribution each month, but had little investment experience, and no mortgage experience.

I consider it likely they would have been very reliant on the options and advice given to them to arrange the mortgage and policy. Due to the time which has since passed, there is little recorded information from the sale, and so it's necessary for me decide what I consider to be most likely on balance.

Whilst I appreciate the endowment policy was considered to be low-risk and relatively safe at the time, I don't think Mr and Mrs C have demonstrated anything to suggest they'd be willing to take any chances with there being a shortfall to repay the mortgage. They were relatively unsophisticated in their financial experience, and given they had the opportunity to buy their first family home, it's likely they'd want it to be secure.

Mr and Mrs C had sufficient disposable income to have been able to afford a repayment mortgage, and given the comparison, I think that the likely option they would've taken. So whilst I take on board the points raised by Prudential, overall I'm not persuaded the sale of the endowment policy was suitable.

putting things right

The financial regulator has laid down a standard approach for calculating compensation in cases such as this in its guidance, "*Handling Mortgage Endowment Complaints*" (sometimes referred to as a Regulatory Update 89 or RU89 calculation). The guidance can be found in the FCA's handbook at DISP Appendix 1 or on its website.

In effect, the guidance provides that Mr and Mrs C are entitled to be put in the position they would have been in, so far as is possible, had Prudential not recommended an unsuitable policy. In other words, in this case, in the position they would have been in if the mortgage had been arranged on a repayment basis in 1991. I am satisfied that compensation calculated in accordance with this guidance is the appropriate redress to award in this case.

Prudential must pay the compensation within 28 days of the date on which Mr and Mrs C accept my final decision. Should payment not be made within that period Prudential should add interest at 8% simple per annum to the loss from the date of this decision to the date of settlement.

If Prudential considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr and Mrs C can seek to reclaim the tax from the HM Revenue and Customs if appropriate.

my final decision

For these reasons and for those given by the investigator, my decision is that I uphold Mr and Mrs C's complaint against The Prudential Assurance Company Limited. I direct that it should put things right by calculating and paying the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 21 April 2019.

Ross Hammond
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