

## **complaint**

Mr B has complained that The Prudential Assurance Company Limited (“Prudential”) misrepresented the nature and terms of an income protection policy to him at the point of sale.

While Mr B has accepted that the policy does provide a protection benefit, he was led to believe from the documentation he received that it also provided an investment return whenever he decided to surrender it. For example, the policy schedule states that, after an initial zero ‘allocation’ in the first four years, 95% of his monthly premium would be invested. Accordingly, he believed that this investment element was building up a capital sum within the policy he could access for his future benefit. He never received any correspondence from Prudential which suggested otherwise.

Mr B has since discovered that the policy only paid the remaining value at the end of its term and not if he surrendered it in the meantime. He has requested Prudential to pay him the *greater of* a “redemption value” based on the premiums that have been invested after the first four years and a refund of all premiums plus “statutory interest”, for the policy being mis-sold.

## **background**

Mr B’s complaint was investigated by one of our adjudicators, who concluded that it should not be upheld. He noted that Mr B took out the income protection policy in October 2000 when arranging a mortgage loan. The policy schedule did state that, following the first four years when none of his monthly premiums were allocated for investment, 95% of each monthly premium would be invested.

However, the adjudicator explained that this ‘investment content’ existed to pay for the potential costs of providing benefits – income replacement or life cover – in the event of a claim. The policy was a protection plan; not an investment product. When Mr B asked Prudential for an up-to-date policy valuation, it confirmed that no surrender value was payable if the policy was cancelled before the end of its term.

The adjudicator felt there was insufficient evidence which showed that Mr B had been led to believe that the policy would accrue a surrender value during its term, and all the documentation he would have received at outset confirmed that the policy did not acquire a surrender value until it expired.

In response, Mr B did not accept the adjudicator’s assessment and said that he did not receive either the illustration or a copy of the policy provisions which confirmed that the policy did not offer a cash value on surrender before its expiry date. He understood from the policy schedule that he would benefit from the investment element which would build up after the first four years.

As no agreement has been reached in this complaint, it has been referred to me for review.

## **findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator and essentially for the same reasons.

Mr B was arranging a joint mortgage with his wife and increasing his financial commitments. The adviser also recorded that, in the event that he was absent from work due to long term illness or incapacity, his employer paid his income for three months, followed by statutory sick pay. He was recommended to take out the income protection policy with a 13-week deferred period to replace most of his income he would cease to receive from his employer after three months of absence.

The policy was therefore recommended to Mr B as a protection plan in connection with his mortgage, and not as an investment. Also, given his circumstances at the time, I am satisfied that this advice was appropriate and that the benefit terms under the policy corresponded with his existing employer arrangements.

The other issue to decide is whether the policy was also presented to Mr B as an investment plan which built up a capital sum that could be available to him at any time during the course of the policy.

It is unclear precisely what information Mr B was provided by Prudential at the point of sale. In particular, he has said he did not receive a copy of the illustration which stated that: "*It [the policy] has no cash-in value at any time*" or the policy provisions, which stated in rule 8.2 regarding surrender that: "*If you cancel the policy, it does not have a value.*" Instead, Mr B has said that he relied on the information given in the policy schedule which confirmed that 95% of his monthly premiums would be invested after the first four years.

Notwithstanding whether or not Mr B did receive the illustration, the product particulars (incorporating his 'cooling-off' rights within 14 days), the policy provision or the key features document, the policy schedule does confirm that it "*is to be read together with the Rules for Income Protection Plan.*" On balance, I am inclined to believe that Prudential would have provided Mr B a copy of these Rules with the policy schedule at the point of sale. Otherwise, it seems reasonable to suppose that Mr B would have contacted Prudential for a copy of these Rules.

The Rules make a number of references to the way in which Prudential would invest Mr B's premiums and what benefits he should expect to receive.

For example, Rule 2.1 says that: "*Although we may use the [investment] funds to meet our obligations to you under the policy, you have no legal or beneficial right to any of the units or to any part of the funds*".

Rules 8.1 and 8.2 state that: "*On the date of expiry [when Mr B would reach age 55] we will pay you the value of the units allocated to the policy*" and that: "*If you cancel the policy [beforehand], it does not have a value*".

If I consider the policy schedule alone, it does confirm that no premiums are invested in the first four years and, thereafter, 95% of each premium is invested in the Managed fund. I accept that Mr B may have interpreted the wording in the policy schedule to mean that his premiums were accruing a value.

However, there is no indication in this schedule that would lead Mr B to believe that the fund value built up by these invested premiums is exclusively available to him as a cash sum at any time during the term of the policy. Neither is there any evidence that Mr B was told that he would receive a capital sum from the policy if it was cancelled before it expired.

How the ongoing value of the policy provides the benefits is governed by the policy provisions (“the Rules”) which set out the circumstances under which Mr B would receive any benefits. The zero ‘allocation rate’ in the first four years allows Prudential to cover the setting-up costs of the policy and the investment fund built up by the 95% allocation of monthly premiums in the Managed fund principally covers the cost of the benefits offered by the policy.

I have also considered that Mr B paid a monthly premium of £10.46 for an income benefit of £650 per month after 13 weeks of illness or incapacity. Given Mr B has accepted that the policy is a protection plan, I am not persuaded how he could have been led to believe from the documentation he says he did receive that the size of the monthly premium would provide a worthwhile capital sum as well as first funding the cost of the income benefit.

On balance, I am not persuaded that Prudential has acted other than in accordance with the terms and conditions of the policy and that it is not required to pay Mr B a capital sum if he cancels the policy before the end of its term.

**decision**

My final decision is that I do not uphold Mr B’s complaint and I make no award.

Kim Davenport  
**ombudsman**