

complaint

Mr and Mrs M's representative, a solicitor, complains on their behalf about a reviewable whole of life policy administered by The Prudential Assurance Company Limited.

The solicitor says The Prudential wasn't exercising reasonable commercial judgement in setting the premium. Rather, it deliberately assessed the premium at such a high level as to compel Mr and Mrs M to abandon the policy for reasons of affordability.

background

In a previous complaint about this policy which wasn't upheld, our service has considered the amount of life cover charges deducted from the policy in the latter years; and the inability of the business to predict what these charges might be going forwards.

The solicitor says he notes the previous decision was made on the basis that the assessment of the premium was a matter of Prudential's commercial judgement. But at the time there was no evidence as to what a reasonable premium level ought to be, and no basis upon which Mr and Mrs M could challenge the assessment that The Prudential was exercising reasonable commercial judgement.

He now points out that Mr and Mrs M have put in place a policy providing similar life cover (with a different policy provider) at a considerably lower cost per annum fixed for life.

Our adjudicator didn't recommend the complaint be upheld. In summary he found:

- The setting of policy premiums by life companies is considered to be a legitimate exercise of commercial judgement which our service doesn't generally review or comment upon.
- Our service has no power to decide what a reasonable market rate for a product should be. And to compare the price from one provider with another was unreasonable.
- There was no evidence that the business had done anything other than make a decision regarding the premium based on its usual formula.

The solicitor disagreed with the adjudicator's view. In summary he made the following key points:

- What The Prudential has done can only be interpreted as a way for it to get of paying out on the policy because:
 - Increases proposed by it have been drastically inflated, unsupportive and punitive.
 - The premiums can't be said to be in line with the market rate for similar policies given that Mr and Mrs M have been able to source a similar policy for the same cover.
 - It can't be said the premiums increase was proportionate.
- The ombudsman must decide whether it's fair for The Prudential to deliberately raise premiums to a level it knew meant it was highly likely the policy would lapse. And whether this is a fit and proper practice for the industry.

As an agreement couldn't be reached the complaint has been referred to me to review.

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 agree with the adjudicator's conclusions for substantially the same reasons. I'm not going to uphold this complaint.

But before I explain further why this is the case, I think it's important for me to note I very much recognise Mr and Mrs M's strength of feeling about this matter. Particularly as they've managed to put in place a similar policy costing much less.

Their solicitor has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr and Mrs M and Prudential, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I can take into account the relevant law, regulation and best industry practice but I'm not bound by it. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I'm aware the previous complaint wasn't upheld and the decision was made on the basis that the assessment of the premium was a matter of Prudential's commercial judgement. I agree with that statement. And despite evidence of Mr and Mrs M starting a new policy at a reduced cost, my view remains the same.

I don't consider this to be evidence of what a *reasonable* premium level ought to be or evidence that The Prudential hasn't exercised reasonable commercial judgement. Despite the solicitor's comments, it's simply not for me to set out what a *reasonable* market rate is – particularly for consumers of Mr and Mrs M's age and circumstances. I don't have the power to do so.

I agree with the adjudicator that setting of policy premium is considered to be a legitimate exercise of commercial judgement which our service doesn't generally review or comment upon. In other words, it's not within our role to involve ourselves in pricing premiums offered by a policy provider and I don't think it would be fair or reasonable to do so.

I appreciate Mr and Mrs M's dissatisfaction at being charged what they consider to be an unfair premium. But I've not seen any evidence to support the claims made by the solicitor in response to the adjudicator's view.

On the face of the evidence, I'm unable to say The Prudential determined that the premium would be at such high a level so as to "*deliberately compel*" Mr and Mrs M not to renew their policy. Or that the premiums were set in "*bad faith*". The price difference between the old policy and the new is simply not evidence of this.

I'm aware Mr and Mrs M were previously given the option to continue with the policy on the same terms as set out by the Prudential. But they exercised their right not to go ahead, as they were entitled to. They've paid for the cover that they've had, at the rate set by the policy provider and so I don't think they've suffered a financial loss.

In other words, if maintaining the policy wasn't to their satisfaction they were entitled to discontinue the policy and perhaps look elsewhere – which they have done.

In this instance, on the face of the evidence, I'm not persuaded The Prudential has done anything wrong other than to administer the policy in the way that it's entitled to.

my final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 20 February 2017.

Dara Islam
ombudsman