

## **complaint**

Mr and Mrs N complain, through their representative, that The Prudential Assurance Company Limited has poorly managed their mortgage endowment policy. They also complain that Prudential has not clearly disclosed the policy's charges and fees and has mismanaged their complaint about the policy.

## **background**

In 1995 Mr and Mrs N were sold a 25 year unitised with-profits endowment policy. The policy was to be held with Prudential and was sold by a third party advisor. The policy had a target value of around £85,000 and was intended to repay an interest only mortgage loan in full at maturity.

From 2000 to 2011 Mr and Mrs N were sent annual updates on their endowment policy and most years they received 'amber' warning letters warning there was some risk of a policy shortfall. In 2012 and 2013 Mr and Mrs N received 'red' warning letters reflecting a high risk of their endowment policy underperforming its target value.

In late 2013 Mr and Mrs N complained to Prudential about the performance and management of their policy. They also complained to the third party advisor about the sale of the policy and advice given in 1995. They were awarded compensation for the mis-sale of the policy by the third party advisor.

In summary, Mr and Mrs N complain to Prudential that:

- it has unreasonably refused to make amendments to their policy;
- their policy has performed poorly and they consider this to be due to Prudential's mismanagement;
- high, unjustifiable charges and fees have been levied to the detriment of the returns of their policy; and
- they have received poor customer service when making their complaint

Prudential upheld Mr and Mrs N's complaint in part. It agreed that its handling of Mr and Mrs N's complaint had been poor and offered £50 compensation for this. All other parts of the complaint were not upheld.

Mr and Mrs N were unhappy with Prudential's response and so brought their complaint to this service where it was investigated by one of our adjudicators. The adjudicator recommended that the complaint be upheld in part. She upheld the complaint handling element of the complaint and considered that the customer service Prudential had provided had been found lacking. Her view was that Prudential should increase its award for the upset caused by its poor complaint handling to £150 in total. She did not consider that the other aspects of Mr and Mrs N's complaint should be upheld.

Mr and Mrs N disagreed with the adjudicator's view and so this complaint has been passed to an ombudsman for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Due to the length of time over which this complaint has progressed there is now a considerable volume of correspondence and evidence for my review. I would like to reassure Mr and Mrs N that I have read the case file in its entirety. Although I consider all the information provided to me, in reaching a decision I may regard it as unnecessary to comment on all the points raised. This is not intended to oversimplify the issues. Rather, it reflects the nature of this service and my role within it.

I can understand Mr and Mrs N's strength of feeling regarding the performance of their endowment policy. I appreciate that this policy was intended to repay Mr and Mrs N's mortgage in 2020 and it is not on track to do so. I note that Mr and Mrs N have separately made a complaint to the third party advisor who sold them the endowment policy. This complaint has been upheld and they have received compensation for the mis-sale of the policy in 1995.

### *policy amendments*

Mr and Mrs N complain that Prudential will not amend their endowment policy to make an adjustment for some features sold in 1995 that they say they do not want or need – such as the critical illness cover and the waiver of premium option. These options were recommended and sold by a third party advisor in 1995 and should have been taken into account when Mr and Mrs N received their compensation. Prudential says it is not able to change the policy. I am satisfied that Prudential has not acted unreasonably in declining to make such an adjustment to Mr and Mrs N's policy. Such adjustments are often not permitted in endowment policies, particularly in the latter years of the policy. The inclusion of the options is not due to any error by Prudential, but the advice given when the policy was sold by a third party in 1995.

Mr and Mrs N have received redress for the unsuitability of the endowment policy sold to them by a third party. Whilst I have not seen the exact details of the redress in this case, in such situations compensation is typically designed to return Mr and Mrs N to the position they would have been in if they had taken out a repayment mortgage in 1995, enabling them to now convert their mortgage to repayment so they have the certainty it will be repaid in full at expiry of the mortgage loan. Mr and Mrs N may wish to seek advice regarding continuing with the endowment policy in light of their dissatisfaction with the life cover provided and the policy's investment returns.

### *investment performance*

Mr and Mrs N are disappointed with the investment performance of their endowment. Having reviewed the evidence, I am satisfied that no guarantees or assurances were made by Prudential to Mr and Mrs N that have subsequently not been met. Under the terms of the contract between Mr and Mrs N and Prudential, Prudential undertook to invest Mr and Mrs N's premiums each month, after paying its costs and for the cost for life cover. The objective of the policy was to invest Mr and Mrs N's money so that it would at least reach the "target amount" of their mortgage through an increase in the value of the units purchased with Mr and Mrs N's premiums each month – *but the final maturity amount was not guaranteed*. I am not persuaded that Prudential guaranteed to Mr and Mrs N that they would receive the target value of their policy and that their mortgage would be repaid.

Fund underperformance, due to fund management decisions, economic factors and professional judgement is incredibly difficult for me to objectively assess due to the lack of transparency in products of this nature but also due to the subjective nature of investment management and investment selection. Mr and Mrs N say they suspect their fund has been mismanaged by Prudential. I am not persuaded that Prudential has acted unreasonably in managing Mr and Mrs N's fund, or made any commercial decisions that it is not empowered to do.

Mr and Mrs N consider that their policy's performance has been made affected by the high fees that are charged by Prudential. I have read Prudential's submissions regarding the charges and fees that apply to Mr and Mrs N's policy. It is the role of the regulator, rather than the Financial Ombudsman Service, to evaluate the fee levels set by firms. However, I can see that information regarding the fees and charges that apply to the policy was given to Mr and Mrs N when the policy was sold and I note Prudential has also provided a more detailed breakdown of charges as part of the investigation into this complaint. On balance, I do not consider that there is evidence that Prudential has incorrectly applied fees or inadequately disclosed the fees chargeable to the policy to Mr and Mrs N.

#### *complaint handling*

Mr and Mrs N complain that they have received poor customer service from Prudential when requesting further information and in its handling of their complaint. Prudential upheld this part of Mr and Mrs N's complaint earlier in 2014 but regrettably there have been further examples of poor customer service since that time. The problems have been varied, from incorrectly addressed correspondence to misinformation about the levels of life cover and the type of with-profits policy that Mr and Mrs N hold.

I do not doubt that these customer service shortcomings will have made the process of pursuing their complaint considerably more stressful for Mr and Mrs N and I can understand why it has led them to treat any information received from Prudential with a degree of scepticism. They are now concerned they have been deliberately misled by Prudential on a number of issues. I am satisfied that Prudential has not intended to deliberately mislead but has genuinely given Mr and Mrs N the wrong information in error on several occasions. In recognition of the mistakes made by Prudential and the impact this has had on Mr and Mrs N, I consider that an award of £300 for the trouble and upset caused is more appropriate in the circumstances.

#### *conclusion*

Whilst I have upheld Mr and Mrs N's complaint regarding customer service, I have not upheld the other parts of their complaint as I do not find that Prudential has acted unfairly to Mr and Mrs N in these matters. I appreciate my decision will be a disappointment to Mr and Mrs N and they have the option not to accept my decision if they wish to pursue the matter in court.

#### **my final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct The Prudential Assurance Company Limited to pay Mr and Mrs N £300 for the frustration and upset caused by its poor complaint handling.

Any compensation payments already made in relation to this complaint to Mr and Mrs N should be deducted from this award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs N to accept or reject my decision before 30 December 2014.

Emma Peters  
**ombudsman**