

complaint

Mr and Mrs G complain that a mortgage protection plan was mis-sold to them by The Prudential Assurance Company Limited.

background

Mr and Mrs G took out a repayment mortgage in 2001. They also took out a mortgage protection plan which provided level term life assurance (with a sum assured of £72,000) and critical illness cover. They complained to The Prudential in 2014 because they said that they had been told that life assurance was a condition of the mortgage. They were not satisfied with The Prudential's response so complained to this service.

The adjudicator recommended that this complaint should be upheld in part. He was satisfied that the policy was not a condition of the mortgage and he believed that The Prudential was right to recommend a protection policy to Mr and Mrs G. But he did not consider that it was reasonable for The Prudential to recommend a level term policy to protect them. He considered that the difference between the monthly premium for a decreasing term assurance policy and the level term assurance policy was not minimal. So he recommended that The Prudential should refund to Mr and Mrs G the difference between the premiums that they had paid and the premiums that they would have paid for decreasing cover. He recommended that it should also pay interest on that amount.

The Prudential has asked for this complaint to be considered by an ombudsman. It says that a decreasing term assurance policy would generally have been a more suitable product in conjunction with a repayment mortgage. But it also says that Mr and Mrs G had three dependent children and they were clearly informed that a decreasing term policy was all that was required. It says that in view of the minimal difference in cost and more importantly the additional cover provided, Mr and Mrs G agreed to a level term assurance policy. It says it cost them an additional £17.69 each month. It also says that Mr and Mrs G have maintained contributions from 2001 until 2014, which suggests that the policy was affordable.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr and Mrs G and to The Prudential on 9 December 2015. In my provisional decision I said as follows:

The mortgage provider says that life assurance was not required as a condition of the mortgage. But the "Reasons Why" report that was prepared for Mr and Mrs G by The Prudential's agent in 2001 says:

"You understand that term assurance on a decreasing cover basis is all that is required. However, in view of the minimal extra premium and the additional cover provided throughout the mortgage term, you are attracted to a Mortgage Protection level cover option which I recommend."

It was incorrect to say that decreasing cover was required and, had Mr and Mrs G taken out decreasing term life cover, I would consider it to be reasonable for them to claim that they had been misled. But they did not take out life assurance cover on that basis and instead chose to pay more for the protection plan which included level term life assurance. The report refers to them being "attracted to" the mortgage

protection level cover option. I therefore consider it to be more likely than not that a level term mortgage protection plan had been discussed with them.

The monthly premium of £89.49 was set out in the report. Mr and Mrs G have paid that premium between 2001 and 2014 so I consider it to be more likely than not that it was affordable for them. The premium for decreasing term cover would have been £17.69 less each month. But whether or not that difference was “minimal” would depend on many factors and I do not consider that it is now necessary for me to determine whether or not it was “minimal”.

I consider that it is a suitable recommendation for an adviser to recommend life assurance to protect a mortgage. Decreasing term life assurance cover would normally be considered to be a suitable recommendation to protect a repayment mortgage. But Mr and Mrs G had three dependent children so the extra protection provided by level term assurance cover may have been beneficial for them, particularly as it appears that it was affordable for them. The policy that was taken out by Mr and Mrs G did provide protection that was consistent with the terms of the mortgage.

When I consider all of the circumstances that applied in 2001, I am not persuaded that there is enough evidence to show that the mortgage protection plan was mis-sold to Mr and Mrs G. I therefore do not consider that it would be fair or reasonable for me to require The Prudential to refund to Mr and Mrs G the premiums that they have paid for the policy or to take any other action in response to their complaint.

Subject to any further representations by Mr and Mrs G or The Prudential, my provisional decision was that I was not minded to uphold this complaint.

Mr G has responded to my provisional decision in detail and says, in summary, that:

- the salesman had no reason to bring this product to their attention;
- the policy was not a condition of the mortgage and the salesman did not highlight that they had a choice;
- the salesman did not provide independent impartial advice and did not present a range of options (Mr G assumes that he generated a substantial commission payment);
- the policy has now lapsed and they have lost in excess of £12,000 in payment of premiums and the protection and security of the policy; and
- they have complained about the way that a claim under the policy has been dealt with.

my 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 am not persuaded that I should change my provisional decision. For the reasons set out in my provisional decision, I am not persuaded that there is enough evidence to show that the mortgage protection plan was mis-sold to Mr and Mrs G in 2001.

I consider that the policy provided suitable protection for Mr and Mrs G. That is shown by the claim that they made under the policy and also by Mr G's reference to the protection and security that the policy provided. And they have not lost the premiums that they paid for the

policy – those premiums were paid for the protection that the policy provided to them when it was in force. The policy has now lapsed but I have seen no evidence to show that it has lapsed because of unfair or unreasonable actions by The Prudential.

Mr and Mrs G have made separate complaints to The Prudential and this service about the claim that they made under the policy. That does not form part of this complaint. So it would not be appropriate for me to address it here.

my decision

For the reasons set out above, my decision is that I do not uphold Mr and Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs G to accept or reject my decision before 18 February 2016.

Jarrold Hastings
ombudsman