

## The complaint

Mrs J complains that Prudential Assurance Company Limited won't pay her the proceeds from a mortgage endowment policy she took out with her ex-husband.

Mrs J is being represented in this complaint. For ease, any references to Mrs J include her representative.

## What happened

Many years ago, Mrs J took out an endowment policy with her then-husband, Mr J. When they went through divorce proceedings in 2011, a court order was issued instructing Mr J to transfer his interest in the policy to Mrs J within 28 days. Around 14 months later, a decree absolute was issued dissolving their marriage.

In May 2019, shortly before the policy was due to mature, Prudential wrote to Mrs J asking her and Mr J to confirm how the proceeds should be paid. She explained they were divorced and asked for the proceeds to be paid solely to her. She provided the court documents and a letter from her solicitor confirming them to be genuine.

Prudential reviewed the court documents – but found they didn't in themselves assign the policy to Mrs J. As Mr J hadn't assigned his interest as instructed, he was still a joint owner of the policy. Prudential requested a deed of assignment confirming the transfer to Mrs J. It also offered to contact Mr J if she could provide his details.

Unhappy with this, Mrs J raised a complaint. Prudential maintained that it required a deed of assignment before it could pay her the proceeds. It also sent her a cheque for £150 to apologise for some communication issues, such as requesting documents it already held.

Mrs J disagreed with Prudential's response so referred the matter to our service. Our investigator was satisfied that Mr J was still a joint owner of the policy. So he thought it reasonable that Prudential required a deed of assignment—or agreement from Mr J—to pay the proceeds to Mrs J.

Mrs J didn't accept this view. She asked if Prudential would pay her the proceeds if it was indemnified against Mr J trying to claim his '50% share'. It didn't agree. It clarified that Mrs J and Mr J are *both* the legal owners of the policy; they don't each own a 'share' of it. And if the court order hadn't been complied with, that was for the courts to enforce. It said a district judge could sign the deed of assignment on Mr J's behalf. It also said it couldn't be sure that no further court proceedings had occurred. So releasing the proceeds without a deed of assignment or Mr J's agreement could result in future problems.

Mrs J thought the letter from her solicitor made it clear that no further court proceedings had taken place. She queried whether Prudential had taken this into account. And she felt our investigator hadn't critically examined its correspondence. As she didn't agree, her case has been escalated to me for a final decision.

### **What I've decided – and why**

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 come to the same conclusion as our investigator – and for largely the same reasons.

I'm very sorry to hear about the difficult situation Mrs J finds herself in. I understand her concerns about going to court and/or attempting contact with her ex-husband. I'd like to reassure her that I've taken these sensitive circumstances into account when considering whether Prudential has acted fairly and reasonably.

I know Mrs J thinks the documents she's provided show that she's the rightful owner of the policy. But although they set out the *intention* to transfer ownership, they don't actually put that into effect as a matter of law and fact. The statutory requirements for transferring ownership of a policy (or 'thing in action') are strict, due to the potential loss incurred by the party transferring away their interest (*cf.* section 136 of the Law of Property Act 1925). A deed of assignment is required to formally transfer ownership. Without that, Mr J is still an owner of the policy.

Whilst it may have been Mr J and Mrs J's intention that he'd assign the policy into her name only, I've seen nothing to suggest he asked Prudential to do this. So I can't hold Prudential—which wasn't party to the court proceedings—responsible for the failure to transfer the policy.

I appreciate that Mrs J considers it clear that there have been no further court proceedings. But the solicitor's letter she's referred us to doesn't explicitly say that. Although I haven't seen anything to suggest that further court action *has* occurred, I'm not comfortable requiring Prudential to potentially open itself up to legal risk as the evidence isn't conclusive. In addition, Mrs J's point about no further legal action taking place seems to include that no deed of assignment has been sought – despite Mr J's apparent failure to comply with the court order. And that's what's required to legally transfer ownership.

I don't consider it surprising or unfair that Prudential won't release the funds from the joint policy to Mrs J without a deed of assignment or Mr J's express agreement. The court order made it clear what needed to happen to transfer the policy. I'm satisfied that Prudential has also been clear with Mrs J about what it needs from her. I haven't seen anything which persuades me that she can't obtain a deed of assignment. I appreciate there may be costs involved – and it may seem unfair for her to incur these. But I'm not deciding whether she or another agent should bear those costs; the only party I have the power to make awards or directions against is Prudential. It wouldn't be fair for me to hold it liable for any apparent failings by third parties. That includes the action—or inaction—of Mr J and the solicitors involved in the divorce proceedings. I wouldn't expect Prudential to cover the cost of providing information it's reasonably requested – as I think it's done here.

I'm aware that Mrs J originally raised some concerns about Prudential's communication throughout the process of trying to claim the funds. I'm not sure what her view is on the compensation it sent her for this. For the sake of completeness, I'm satisfied that the £150 compensation it sent is sufficient to reflect the distress and inconvenience Mrs J has suffered because of any communication errors on Prudential's part – and is in line with awards we've previously made in similar cases.

Overall, Prudential has a right and responsibility to make sure the funds from this policy are paid to the correct owner(s). Whilst I appreciate this will be disappointing to Mrs J, I'm satisfied that Prudential's requirements to ensure this happens are fair and reasonable.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 20 December 2019.

Rachel Loughlin  
**Ombudsman**