

The complaint

Mr C complains on behalf his mother's, Mrs C's estate, about the service received from The Prudential Assurance Company Limited ("Prudential").

As a trustee, he's unhappy that Prudential won't reimburse the financial adviser set-up fees on a new bond.

What happened

Previously, Prudential gave Mr C some advice regarding the options open to him about reinvesting an expiring bond. Initially, it told him that he could transfer the bond to new holders, but upon review found that he couldn't.

A separate complaint against Prudential relating to this incorrect advice has been resolved. I understand that Prudential paid Mr C £100 compensation for the distress and inconvenience caused, and a refund of £828 in legal fees incurred, which he has accepted.

In any case, Prudential said Mr C needed to obtain financial advice if he wanted to reinvest in a new Prudential bond product, otherwise, it was a matter for him whether he wanted the funds back or re-invest as he saw fit.

I understand that Mr C indicated he wished to remain loyal to Prudential due to past family links. However, due to the time taken, inconvenience suffered, and costs incurred in relation to the incorrect advice, Mr C feels that Prudential should cover any cost of advice to reinvest the bond.

Prudential explained to Mr C, through various correspondence and telephone calls, that because the old bond has ended, he'd have to obtain (and pay for) fresh advice in order to reinvest with it.

In a Final Response Letter (FRL) dated 19 September 2019 the business didn't uphold the complaint. It maintained its position. It said that although it had initially given Mr C incorrect advice, it was never an option to reinvest free of charge. As Mr C had decided to start a new bond, it couldn't agree to refund the setup fees.

Unhappy with the business' response Mr C referred to the complaint to our service. He felt that he was given an assurance that he wouldn't have to pay this fee, and therefore he had an expectation that the reinvestment would be free of any charge to him.

Prudential hasn't been able to find any evidence that it provided Mr C with any kind of assurance that it'd cover the fees.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- Having carefully reviewed the file documentation and calls, he can't find any evidence that Prudential at any stage gave Mr C an undertaking or commitment that

- it would pay any future financial adviser fees.
- There's nothing to even suggest that Prudential had made a mistake and given Mr C an undertaking in error.
 - Mr C had made clear what he wanted and expected Prudential to do, but that placed no obligation on Prudential. His expectation arose out of his own wish for the business to do what he thought it should do.
 - Ultimately, it's a matter for Prudential, but it did make clear that this was a fee that would need to be incurred as part of the investment process. Unlike the industry regulator, the Financial Conduct Authority (the FCA), we can't ask Prudential to change its process.
 - The bond had ended and couldn't continue. Mr C didn't need to reinvest and could've chosen to just take the fees at no cost to him and/or reinvest with another business.
 - Whilst he can see that Mr C is unhappy, there's nothing more that Prudential needs to do.

Mr C disagreed with the investigator's view. In short, he said that whilst he can see the investigator considered the complaint carefully, he feels like the investigator wholly sided with the business and hasn't addressed his point about being given the impression that Prudential will cover cost, in full or at least in part.

Mr C understands that the business couldn't outright agree to pay the fees, but it was within its gift to do so. Having undertaken to consider the issue, the business' refusal is disingenuous.

The investigator having considered the additional points, wasn't persuaded to change his mind. In summary, he said:

- He can't agree that Mr C was told, or given the impression, that Prudential would compensate him for the financial adviser fees.
- Whilst it was within Prudential's gift, it wasn't obliged to waive/pay the fees that it made clear Mr C would be responsible for.
- Notwithstanding the background to this complaint, it was Mr C's decision to proceed with Prudential under its fee terms, or go elsewhere, and pay fees.
- Ultimately, it was for Prudential to decide whether (or not) it would pay those fees and for Mr C to accept or reject those findings.

Mr C disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he said:

- In the phone call prior to him proceeding to purchase the new bond, and incurring fees, the business said that it would consider the fees upon him submitting the evidence.
- Previously, the business said that it would consider the legal fees, which it refunded in due course.
- He also emailed Prudential to say that he was expecting it to pay the fees. The business didn't respond negatively.

As no agreement has been reached the matter has been passed to me for review.

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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr C says, I'm unable to safely say that Prudential has done anything wrong by refusing to pay/reimburse the cost of the financial advice to re-invest the proceeds from the expired bond plan.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr C's strength of feeling about this matter.

Mr C's provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he 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 C, 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 must consider the relevant law, regulation and best industry practice. But it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

Notwithstanding the broader case history, the business' refusal to pay/reimburse Mr C fees in respect of advice – about what to do with an expired/matured bond – isn't unreasonable. In my opinion, the issues raised in this complaint and the earlier complaint (that's already been dealt with), are mutually exclusive.

Unless Mr C decided to receive the proceeds in which case it would be the end of the matter, I think it's likely that he would have to pay fees to reinvest the proceeds of the bond. I agree with the business that although it had initially given Mr C incorrect information, it was never an option to reinvest free of charge.

In other words, although Prudential had initially offered incorrect information – in respect of which it has paid redress – it was never the agreement that he'd be offered the opportunity to reinvest free of charge.

On the face of the evidence, I've seen nothing to suggest that Mr C was given any assurance or undertaking that he wouldn't have to pay for any financial advice. In the circumstances, I don't think it's unreasonable that Mr C would need to obtain (and pay for) financial advice to make sure the new bond was suitable.

Despite Mr C making clear what he wants and expects the business to do in the circumstances, I'm satisfied that the business has also consistently made clear its position.

Despite what Mr C says about the conversation with the business, I'm not persuaded that he was given an undertaking that it'd pay for the advice and set up of a new bond. I appreciate what he says about term 'consideration', and what he understands by the businesses use of it, based on a previous occasion when it 'considered' legal fees and agreed to pay it. But I don't agree with his conclusion.

Just because the business considered the legal fee and decided to pay it, doesn't mean that its bound to follow the same course of action with anything else that it considers. In my opinion the circumstances are also different, in the former case it gave Mr C incorrect information.

In this instance, undertaking to consider an issue – whether it be legal fees or financial advice fees – simply meant that the business would look at the issue and then decide whether (or not) to pay it. The business not confirming its position in response to Mr C’s email, having done so previously, is not the same as a commitment to pay fees.

In the circumstances, I think the term must be read in light of its ordinary meaning. I’m satisfied that at no occasion did Prudential guarantee that it would pay the fees/cost, or else I think it would’ve made this point abundantly clear.

I note in a call dated 25 January 2019, the Prudential agent told Mr C “*I can’t guarantee we will reimburse the costs of the new product.*” In a call dated 19 September 2019, it confirmed that the fees would have to be paid. So, on balance I think Mr C ought reasonably to have known, that Prudent might not pay for the advice, despite him expecting or wanting it to do so.

On the face of the evidence, and on balance, despite what Mr C says, I’m not persuaded that Prudential was wrong to refuse to pay/reimburse the cost of financial advice needed to reinvest, even if it was within its gift. I’m not persuaded that it ever undertook to do so.

I appreciate Mr C will be thoroughly unhappy I’ve reached the same conclusion as the investigator. Whilst I appreciate his frustration, I’m not going to ask the business to do anything.

On the face of the available evidence, and on balance, I’m unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mrs C to accept or reject my decision before 26 November 2021.

Dara Islam
Ombudsman