

The complaint

Mrs S is unhappy about how The Prudential Assurance Company Limited dealt with the maturity of her endowment policy. Specifically, that Prudential didn't release the funds to her at maturity and the process (including the time it took) she had to go through thereafter for that to eventually happen.

What happened

In 1993 Mrs S and her ex-husband took out a joint mortgage endowment policy as the repayment vehicle for their mortgage. The policy had a term of 25 years and was due to mature in August 2018. The policy was not assigned to the lender.

In 2002 Mrs S divorced and the court ordered that her ex-husband should assign the benefits of the Prudential endowment policy to her. This assignment was not completed and so the policy remained jointly owned.

The policy matured in December 2018. Prudential confirmed shortly before this that the maturity proceeds would be paid in the form of a cheque in the name of both policyholders. Mrs S called Prudential and explained that her divorce had completed in 2002, she'd had no contact with her ex-husband since and wouldn't know how to trace him. She said she would send Prudential a copy of the relevant paperwork. Prudential confirmed that it would need confirmation from her ex-husband in order to pay the maturity proceeds to her.

Mrs S sent Prudential a copy of the court judgement saying that the policy should be assigned to her, but Prudential wasn't willing to pay the policy proceeds out to her off the back of it. That was because the assignment the court order said had to be made, hadn't been. This meant that the policy remained jointly owned.

Mrs S and her solicitors started the process to get the assignment needed to pay the maturity proceeds to her. It involved the courts and it appears that Mrs S had to initially attempt to gain an assignment from her ex-husband. As Mrs S didn't have an address for him, the legal documents (following gaining permission for it from the courts) were sent via Prudential, which had traced an address for him.

Mrs S has told us that this resulted in her ex-husband visiting her home. He refused to co-operate and the matter had to go back to court. The court issued a general order that allowed a judge to sign the assignment on behalf of Mrs S' ex-husband. Mrs S has told us that this required her and her carer taking time off work to attend the court hearing. Also, throughout this period, Mrs S had been required to continue making interest payments to her mortgage.

In August 2020 the deed of assignment was signed by a District Judge. However, it hadn't been completed before it was signed – so when Mrs S forwarded it to Prudential, it didn't document who it was assigning the policy to who. Nor was there anything contained in it that evidenced it had been through the court, such as a court stamp. A General Order was also issued by the court and provided to Prudential. This order allowed that a judge could sign the deed of assignment, but didn't confirm that it had been or which judge would be signing it.

Prudential told Mrs S that it couldn't accept the deed as it didn't state an assignor/assignee and hadn't been dated. A new deed of assignment was enclosed for her use. Prudential also told Mrs S that it would require a covering letter from the court/judge involved that would be signing the deed. Prudential explained that it needed to verify who the judge was and that it was the judge that had completed the deed of assignment.

Mrs S then filled in the blank sections of the deed that had already been signed. She has told us that she called Prudential to ask it what date she should write at the top of the document and was told to use the then current date. She returned the deed to Prudential with a request for payment to be made. However, Prudential reiterated that it needed the letter from the court/judge it had requested before it could pay out the money. The letter was obtained from the judge in January 2021 and sent to Prudential. The assignment was applied to the policy on 19 February 2021. Mrs S then completed the release form for the maturity value and it was paid out on 24 February 2021. Mrs S paid the money to her mortgage and it cleared into the account around two weeks later.

During this process Mrs S raised concerns about Prudential's approach, actions and requests. It issued several final response letters, which I have summarised below.

In its letter of 6 December 2018 Prudential addressed Mrs S' concern that it wouldn't pay out the maturity value without her ex-husband's consent or an assignment. Also, that she wasn't happy it wouldn't accept the 2002 court order in lieu of the deed of assignment. It also addressed the matter of there having been delays in Prudential dealing with correspondence and that it had failed to highlight to her that her divorce might impact the payment of the maturity proceeds. Prudential accepted that it had been inappropriate of it to presume that a single payment could be made to Mrs S and her ex-husband. It awarded Mrs S £100 for any upset or inconvenience this had caused her. Prudential did, however, confirm that it needed authorisation from both policyholders to pay the money out to just Mrs S and it was attempting to locate Mr S.

On 28 January 2019 Prudential addressed Mrs S' concerns about how long it was taking for Prudential to find her ex-husband. It explained the process it went through for such a trace and the potential difficulties that meant it could take some time to find someone. As such, it rejected the complaint and it also told Mrs S that it couldn't guarantee to find him.

In November 2020 Prudential rejected Mrs S' complaint that it had unreasonably delayed paying the maturity value to her. It reiterated that it needed to verify who the judge that had signed the deed of assignment was. This was because the deed had been signed before the details on it (including the date at the top of the document) had been completed. However, it accepted that when Mrs S had called it about the deed of assignment in September 2020 it should have provided her with more help, given it had designed the form. This caused delays and as such it paid Mrs S £200 as an apology for the upset and inconvenience she'd been caused.

On 5 March 2021 Prudential addressed Mrs S' concerns about the further delay in paying the maturity proceeds to her, given that it'd had the judge's letter since the beginning of February 2021. Prudential acknowledged that it hadn't sent the letter to the relevant department for almost two weeks. It also acknowledged that there had been various delays over the whole process. If these delays hadn't happened, Prudential thought the policy value could have been paid out as early as 9 November 2020. As such, it offered to pay Mrs S interest on the maturity value between that date and the date of payment in February 2021. It explained that if she wasn't eligible to pay tax, she could reclaim it from HMRC. In recognition of the inconvenience this had caused her, Prudential paid her an additional £250.

Mrs S wasn't satisfied that the offer covered all the losses she's suffered. She provided Prudential with mortgage statements showing the interest she'd paid since the policy maturity date, the cost of a field agent visit the lender had arranged and the amount the lender had charged for the duplicate statements. Ms S also said that she wanted Prudential to reimburse lost wages for herself and her carer they'd incurred due to having to attend court for the assignment to be signed. In addition, she explained that had she been told that Prudential had changed the way it pays out maturities, she could have arranged to get the assignment at an earlier point, when she was still eligible for legal aid. As such, she wanted Prudential to reimburse her legal costs. Ms S also informed Prudential that she didn't earn enough to pay tax and so she shouldn't have paid the tax it had deducted from the late payment interest it had already paid her. She also asked Prudential to compensate her for the stress and inconvenience she had suffer over the time since the maturity date.

Following this, Prudential issued another final response letter on 1 April 2021, setting out its evaluation of the further information that Mrs S sent it regarding her loses. It maintained that the earliest it could have paid out the maturity value of the policy was 9 November 2020. However, it agreed to reimburse her for the field agent visit, the cost of duplicate mortgage statements and for the cost of calls she'd made to her lender. In addition, it paid her the interest she had paid on the mortgage, on the amount of the maturity value, between when the maturity value should have been paid at the end of 2020 and when it was actually paid.

Mrs S wasn't happy with Prudential's response and referred the complaint to this service. At this point, Prudential had offered Mrs S the following:

- Late payment interest at 8% simple per year on the maturity value from 9 November 2020 to the date the maturity payment was made on 24 February 2021.
- Mortgage interest on the amount of the maturity value for the period 9 November 2020 to the date in March 2021 when the funds were credited to the mortgage account.
- £69 for a field agent visit charged by the lender.
- £15 cost for duplicate mortgage statements.
- £25 for the cost of telephone calls.
- A total of £550 compensation for the distress and inconvenience caused by its actions.

Mrs S told us that in addition she wanted:

- All of the mortgage interest paid on the mortgage since the maturity date.
- Interest on the maturity value from the maturity date.
- Her loss of wages due to having to attend a court hearing about the assignment.
- Her carer's loss of wages due to having to attend the court hearing.
- A refund of the income tax paid on the late payment interest.
- Compensation for two and a half years of stress and inconvenience.

One of our investigators considered the complaint, but he didn't recommend that it be upheld. He concluded the offer that had been made was fair in the circumstances.

Mrs S didn't accept the investigator's conclusions and asked that it be passed to an ombudsman for consideration. She said that she was concerned that the background the investigator had set out omitted looking into steps in the process and this meant that it was implied that she was continually complaining, which isn't true. Mrs S set out again what she considered Prudential had done wrong at various stages.

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.

Before I consider the events of this case, I believe it would be appropriate to explain to Mrs S what was and wasn't Prudential's role in the events that led to her asking us to consider this complaint. As our investigator tried to explain to Mrs S, it was not Prudential's role to provide Mrs S with legal advice, indeed it was not in a position to do so. That was the role of her legal advisers. So when Mrs S' ex-husband failed to assign the policy to her as required by the court order in 2002, it was not Prudential's responsibility to tell her that she needed to take action to fix that problem – that was for her legal advisers to do. While Mrs S may have spoken to Prudential at different points prior to the maturity date, it didn't do anything wrong in not questioning the status of the policy or the lack of assignment, even if the individuals she was speaking to knew she was divorced.

It was also not Prudential's role to provide Mrs S with legal advice once the issue about the policy not being assigned arose. This includes assistance in completing the deed of assignment – that should have been done before the deed was presented to Prudential. It may have given Mrs S incorrect advice about dating the document after it was presented in an incomplete format, but that assistance should never have been needed.

Mrs S has also commented at various points that she was expecting the maturity value to be paid direct to the mortgage. While this is not key to the outcome of this complaint, for completeness, I will explain why that would never have happened in her case. Historically, mortgage lenders would have supporting endowment policies assigned to them in order to ensure that they received the proceeds of the policies to pay off the mortgage. However, in the 1990s most lenders stopped that practice. If an endowment policy was not assigned to the lender, the maturity proceeds would be paid to the policyholders. It would then be for them to pay the money to the mortgage lender. Prudential has confirmed that Mrs S' policy was not at any point assigned to the mortgage lender, so the maturity proceeds would always have been paid to her and her ex-husband.

What this means is that when the policy matured, Prudential correctly told Mrs S that it couldn't pay the proceeds solely to her or to the mortgage account without her ex-husband's agreement. In that situation it would be normal for a product provider to suggest that the policyholders provide it with joint instructions about how to pay the money and to where. I know that this upset Mrs S due to the circumstances of her former relationship with her ex-husband, but Prudential wasn't to know that at the time.

I have also noted Mrs S' account of what happened when her ex-husband was sent assignment documentation to sign. I can appreciate him turning up at her home would have been very upsetting and worrying, given what she's told us about the relationship, but I can't hold Prudential responsible for that. While it was Prudential that forwarded the documents to Mrs S' ex-husband, this was on the instruction of Mrs S' solicitors, following it discussing the matter of the assignment with the courts. Prudential simply did what it was asked to do by those acting on Mrs S' behalf.

Put quite simply, Prudential did nothing wrong in requiring the policy to be assigned to Mrs S before it agreed to pay out the maturity proceeds to just her. While the court order from 2002 did say that the policy was to be assigned to her, put quite simply, it hadn't been. Prudential couldn't act as though the judge's instructions had been followed when they hadn't.

As such, I can't hold Prudential responsible for the time it took for the deed of assignment signed by the judge to be obtained. That means I can't hold Prudential responsible for the cost of Mrs S maintaining the mortgage payments during that time or the costs of the legal process. That would include any loss Mrs S and her carer suffered having to take time off work for the court hearing.

Mrs S has raised that the error in dating the incomplete deed of assignment caused five months of delay and that this was Prudential's fault. As I have explained above, it was not Prudential's fault that the deed of assignment wasn't completed when it was presented to it and it wasn't its role to help Mrs S in this regard. However, I am not persuaded that Mrs S putting the wrong date on the deed caused Prudential to ask for the additional letter from the judge. Indeed, it had asked for the letter before she dated the deed.

Prudential explained to Mrs S that it needed a letter from the court or judge who had signed the deed of assignment as it needed to verify who he/she was and that it was her/him that had signed the document. Mrs S was told this in October 2020. I note the general order stated that 'a District Judge' would execute the deed of assignment, but it didn't specify which judge would be doing so. I also note that while there was a handwritten note from the witness on the deed, there was nothing on the document to prove that it had been signed by a judge or that it had even been through the court. In those circumstances, it wasn't unreasonable for Prudential to want the confirmation it asked for. So I can't find Prudential liable for any cost associated with getting the letter from the judge or any loss associated with the time it took to get the letter.

Mrs S has asked that Prudential pay late payment interest from the date of the maturity. Where a policy provider is waiting for something from the policyholder to enable it to pay out a maturity value of a policy, we wouldn't usually expect it to pay interest.

That said, there were delays in Prudential responding to correspondence and dealing with information it was sent at times. Prudential has acknowledged this, and it has determined that but for the delays it caused, the maturity value would have been paid out on 9 November 2020, rather than 24 February 2021. This seems a reasonable assessment and I am satisfied that it treats Mrs S fairly. As such, Prudential has compensated Mrs S for the losses she incurred because of that delay. It has paid her both the mortgage interest that she wouldn't have paid if the maturity proceeds had been paid off the mortgage in November 2020 and it has also paid her late payment interest. That is more than a fair offer, as I wouldn't usually expect both these sums to be paid, as they both compensate for the same loss of use of the money.

I have also considered the other items that Prudential has reimbursed. I think Prudential acted appropriately in this respect too. As for the payments it made Mrs S for the upset and inconvenience that were paid, I again think this is a reasonable sum in the circumstances. I accept that Mrs S was put to a lot of inconvenience to sort out the assignment issue. She clearly had to have many conversations with her lender which may have been uncomfortable, and I won't attempt to speculate on how it felt for her to have to deal with her ex-husband turning up at her home. However, none of this upset or inconvenience was caused by Prudential having made mistakes, but it was down to the fact that the court order in 2002 wasn't complied with. That non-compliance was nothing to do with Prudential and I can't hold it responsible for the upset and inconvenience Mrs S suffered because of it.

I would also repeat what our investigator explained to Mrs S about the tax she paid on the late payment interest Prudential paid her. HMRC requires life assurance companies to deduct tax from interest payments in some circumstances. As such, if Mrs S thinks that her income was not such that she should have been charged the interest, she would need to speak to HMRC about obtaining a refund.

My final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs S to accept or reject my decision before 22 April 2022.

Derry Baxter
Ombudsman