

The complaint

Miss A has complained that The Prudential Assurance Company Limited ('Prudential') has not paid her the proceeds due from a life with profits fund policy that she surrendered in 1999.

Miss A is being represented by her nephew, but I will refer to 'Miss A' in my decision for ease of reference.

What happened

In 2021 Miss A found a cheque for £20,177.64 dated 5 October 1999 which she had received from the Prudential upon the surrender of her life with profits fund policy. Miss A doesn't recall encashing the cheque and believes the amount is owed to her.

Miss A is 91 years of age and disabled. She would like to have the funds in order to make some modifications to her home.

Miss A raised her concerns with the Prudential.

Prudential wrote to Miss A on 26 July 2021 explaining that in accordance with the Data Protection Act it only held records for five years and no longer held any related documents in order to reissue the cheque. Miss A felt this response was unhelpful and the Prudential later awarded Miss A £150 in recognition of this. It wrote to her again on 30 August 2021.

It said it had limited records but did note the cheque issued on 5 October 1999 was stopped after Miss A contacted the Prudential in November 1999. A second cheque was issued on 11 November 1999 and Prudential had no reason to think this wasn't cashed.

Miss A wasn't happy with the outcome and brought her complaint to the Financial Ombudsman.

Our investigator who considered the complaint didn't think it should be upheld. Briefly she said;

- It was more likely Miss A had received the second cheque and had cashed it.
- Prudential confirmed the second cheque didn't lapse which suggested it had been presented for payment and cashed.
- The investigator didn't think the Prudential had done anything wrong.

In response Miss A said that cheques do not get out of date and it was not possible for her to provide evidence that she didn't cash the cheque as it was something that didn't happen. Miss A said she didn't contact the Prudential asking for a further cheque to be issued and no correspondence was issued or received by her. The Prudential should still be holding records from the time.

As the complaint couldn't be resolved it has been passed to me for a 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 reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I appreciate that Miss A is frustrated that the Prudential doesn't have any further records. But as the policy was fully surrendered over 20 years ago, and businesses aren't required to keep documentation indefinitely, I don't find this surprising. Miss A has said that in its role as a life assurance business the Prudential should be keeping records for longer. But this was a full surrender of Miss A's policy and the Prudential no longer had a relationship with Miss A after that took place and the payment made in 1999.

Miss A has given us a copy of the 'Full Surrender Statement' for her life with profits fund and 'withdrawal contract notes' which show that the investment was made in March 1995 and surrendered on 1 October 1999. The proceeds of the value of the units cancelled were £20,177.64 and Miss A has given us a copy of the cheque she has in her possession which is dated 5 October 1999. Miss A has told us she keeps good financial records and with the exception of this overlooked payment she keeps her finances in good order.

Miss A has said that cheques don't go out of date but my understanding is that if more than six months have passed since the cheque was written and dated then it's for the bank to decide whether to accept it or not. It's also my understanding that a cheque remains legally valid for six years.

The Prudential hasn't got any evidence to show the cheque wasn't cashed but it has been able to give us a screenshot noting the original cheque was sent on 5 October 1999 and the address quoted is Miss A's home address. There is a further note that says 'chq stopped and reissued on 11/11/99' and I think it likely it was sent to same address. Miss A has said system notes are no substitute for hard facts about when the cheque was paid. She also told us it wasn't her who contacted the Prudential to arrange for the cheque to be reissued.

However, I'm persuaded it's more likely than not that Miss A, or her Prudential representative, did make contact with the Prudential. I appreciate this all took place over 20 years ago and memories can and do fade over time. But bearing in mind Miss A had taken the proactive action of fully surrendering her with profits policy I think it likely that she was aware a payment of over £20,000 was to be made and the proceeds were on their way to her.

Clearly, I can't know what happened with the first cheque, whether it was received and misplaced by Miss A or delayed in the postal service as examples. But I think it's most likely the Prudential issued the second cheque after Miss A or her Prudential representative made contact with it.

I say this because I think it unlikely that after surrendering her policy Miss A wouldn't have taken any action if the proceeds weren't received. We know Miss A had received the 'Full surrender Statement' and the amount involved was not an inconsiderable sum of money so I find it difficult to conclude that its non-receipt would have gone unnoticed.

And the Prudential has confirmed to us its process for when cheques it has issued aren't cashed and lapse. It said that when a cheque goes out of date its financial department is alerted and takes steps to investigate with the product department the reasons for the lapsing of the cheque and to arrange for it to be reissued. As the Prudential doesn't have any evidence that the second cheque lapsed and wasn't presented for payment, I think it's more likely it was cashed. I would also think that an unreconciled sum of over £20,000 would have prompted the Prudential to take some action.

As I've explained above, when the evidence I have is incomplete or contradictory, I have to make my decision based on the limited evidence I do have and what I consider to be the likely outcome on the balance of probabilities. And in the particular circumstances of this complaint, I think it more likely the second cheque was cashed.

No doubt Miss A will be disappointed with my decision, but I hope I have been able to explain how and why I have reached the decision that I have. And I don't have any evidence to suggest Miss A didn't receive the second cheque and cashed it at the time.

My final decision

I don't uphold Miss A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 14 October 2022.

Catherine Langley
Ombudsman