

## **The complaint**

The estate of Mr H complains, through Mr H's representative, that The Prudential Assurance Company Limited (Prudential) unfairly asked it to return a total of £1,935.36 – two months' annuity payment – after Mr H's death.

## **What happened**

I understand that Mr H received financial advice from another business to set up two annuities with Prudential. These were effective from 1 September 2001. One of these was for an annual, non-increasing pension of £6,582.60 which was paid monthly in arrears, with the first payment on 1 October 2001. And with all future payments being made on the 1<sup>st</sup> of each month.

Unfortunately, Mr H died on 30 June 2021. Prudential wrote to his executor on 4 August 2021, as it had become aware of Mr H's death. It asked his executor to contact it and to provide a copy of the death certificate.

Mr H's executor completed verification paperwork which he signed on 18 August 2021.

Prudential asked Mr H's executor to pay back the annuity payments it had made in June and July 2021. These totalled £1,935.36.

Prudential wrote to Mr H's executor on 24 August 2021. It told him that Mr H hadn't chosen the option to receive a "final proportional payment", which it said was a payment for the period from the date of the last payment until the date of death. Because of this, it said the last payment to be paid from the annuities was the one on 1 June 2021.

Mr H's executor replied to Prudential on 24 August 2021. He felt that as the annuities had been paid monthly in arrears, and as Mr H was alive until 30 June 2022, he should've been due the 1 July 2022 payment to cover the previous month of June. He asked Prudential to explain this anomaly. And also said that he wasn't in a position to repay any overpayment until he'd received grant of probate.

Mr H's executor contacted Prudential again on 27 August 2021, as he still didn't understand why Mr H hadn't been entitled to the June payment in full. He asked Prudential to provide him with a copy of the document Mr H had signed where he'd opted out of the final proportional payment. After this, Mr H's executor raised a complaint.

Prudential issued its final response to the complaint on 20 October 2021. It didn't uphold the complaint. It said that its request for the 1 July 2021 and 1 August 2021 payments to be returned was correct. It said this was because Mr H had chosen monthly in arrears payments without a final proportional payment. And that as he had died on 30 June 2021, the last payment due to be paid was on 1 June 2021.

Prudential sent Mr H's executor a copy of the final quotation it said it'd sent to Mr H's financial adviser at the time the annuities were set up. It said this confirmed the benefits Mr H had chosen.

Prudential continued to chase Mr H's executor for the outstanding repayment.

Mr H's executor complained again to Prudential on 17 December 2021. He felt Prudential had provided him with a forged document when he'd asked it for an original or facsimile. He said it'd simply generated a new document from its current system, so it wasn't based on the original terms. He said he'd found the original policy document and that it supported his assertion.

Mr H's executor was also still unhappy with Prudential's explanation of why Mr H hadn't been entitled to the June 2021 annuity payment given he'd lived up to 30 June 2021. He felt the estate only owed one month's annuity payment. He asked Prudential to amend its claim for the overpayment to one month and to compensate him for the time he'd spent on the complaint.

Prudential replied to Mr H's executor on 30 December 2021. It repeated its point that it was owed two months' annuity payments. And asked Mr H's executor to return the overpayment of £1,935.36.

Mr H's executor was unhappy with this response. So he brought the complaint to this service on 7 January 2022.

Prudential provided a further response to Mr H's executor's 17 December 2021 complaint on 12 January 2022. It didn't uphold the complaint. It said that the document it had provided wasn't forged. And that it had been stored on its annuity quotation system. This had allowed it to save a copy of the original that had been sent to Mr H.

Prudential felt it had already fully explained why the overpayment was for two months. And referred Mr H's executor back to its 20 October 2021 response.

Our investigator considered the complaint. She didn't think it should be upheld. She didn't consider that Prudential had made an error.

Mr H's executor didn't agree with our investigator on two points:

1. Even if there was no provision for a final proportional payment, Mr H had lived for the full month of June. He felt June's payment was due at the end of the survived month, and due to be paid on the next working day.
2. He didn't consider that Prudential had provided satisfactory proof that Mr H hadn't opted for a final proportional payment. He felt he'd got all of the original documents and that "final proportional payment" wasn't mentioned.

Mr H's executor said that the document this service had shared with him was similar, but not identical, to the one that Prudential had previously sent him. But that it wasn't the original document for the quotation, which he felt he already had. He felt his original document showed the contract Mr H had engaged in with Prudential. And that the document Prudential had shared wasn't authentic.

Prudential told this service that the reason for the difference in the quotations Mr H's executor had noted was that the copy of the quotation it had sent as part of the complaint response on 20 October 2021 was a printout of the system using the current layout. But it confirmed that the actual basis of the annuity was still the same.

As agreement couldn't be reached, the complaint has come to me for a 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'm not going to uphold it. I know my decision will be very disappointing to Mr H's executor. But I'm satisfied that Prudential has acted correctly here. I'll explain why.

I first considered Mr H's executor's complaint point that Mr H should've been paid the June 2021 annuity payment because he'd lived up to the 30 June 2021.

Mr H's executor said that Mr H lived on every day of June 2021. And that even if there was no provision for a final proportional payment, June's payment was due at the end of the survived month.

Prudential said that as Mr H died on 30 June 2021, the last payment due to be paid was on 1 June 2021. It also said that if he'd chosen a final proportional payment, it would've covered the period between 1 June and 30 June 2021. But he didn't choose that option, so it felt it had correctly requested a return of the payments made to Mr H on 1 July and 1 August 2021.

When Mr H's annuity was priced, it was priced on the basis that he wouldn't receive a final proportional payment. This meant that, even if he lived to the last day of a particular month, he wouldn't receive a payment in respect of that month. So, even though Mr H did live until 30 June 2021, he wasn't entitled to the 1 July 2021 annuity payment as he didn't survive the entire month of June.

However, if Mr H had chosen the final proportional payment option, his annuity would've been priced on a different basis. And he would've received a part payment in respect of his last month of life. And Prudential wouldn't have asked for the return of all of the 1 July 2021 payment.

While I acknowledge that Mr H was alive on each day in June 2021, he didn't survive to July 2021. In order to be eligible for an annuity payment in July 2021, based on the terms of his annuity, he would've had to do so.

I next considered Mr H's executor's complaint point that Mr H did, in fact, opt for a final proportional payment.

### *Did Mr H opt for a final proportional payment?*

Mr H's executor considers that M H did opt for a final payment upon death, as he said he can't see evidence that he didn't within the original documents he's found.

Mr H's executor has provided two documents he said are the originals. One contains one page of information. It states the annual amount of pension and spouse's pension to be paid, and the commencement and first payment date. It also states that the pension will be paid monthly in arrears. But there's no further information. For example, it doesn't mention that the annuity had a five-year guarantee.

The other document Mr H's executor provided is a six-page document called "Your Annuity Policy", which explains the annuity in more detail. Neither document refers to a "final proportional payment".

Prudential told this service that the application and point of sale documentation is no longer

available. But it was able to provide a copy of the final quotation it said it'd sent to Mr H's financial adviser at the time the annuity was set up.

Although Prudential has shared with Mr H's executor, and this service, a two-page "About this quotation" document, Mr H's executor considers that this is a fraudulent document.

I've reviewed this document. It states in a table at the bottom of the first page, under: "*How we will pay your annuity*", that it will be paid: "*Monthly in Arrears without a final payment on death*".

The second page of the document has a section called: "*What happens when I die?*". This states:

*"We will not make a final payment covering the number of days between your last income payment and the date you die"*.

I've seen no evidence that the two-page document Prudential has provided is fraudulent. The information it contains is in line with the information provided in the six-page document. And while I agree that it contains further information about the final proportional payment, I've seen no evidence that Mr H selected this option.

I acknowledge that Mr H's executor doesn't consider that Prudential provided satisfactory proof that Mr H hadn't opted for a final proportional payment. But this service bases its decisions on the evidence it has available to it. Mr H's executor has provided no evidence that Mr H did in fact opt for a final proportional payment. Based on what I've seen, I'm satisfied that Mr H didn't opt for a final proportional payment.

Based on what I've seen, I can't fairly say that Prudential has acted incorrectly when it asked Mr H's executor to refund the 1 July 2021 payment, as well as the 1 August 2021 payment. I say this because I've seen no evidence that Mr H chose the option with the final proportional payment.

Mr H's executor was also unhappy with how Prudential had requested repayment. He said it was already hard enough dealing with the estate of a loved one, without harassment from a business. He also said it took him a great deal of time to sort out.

Based on the letters Prudential sent to Mr H's executor to request the repayment, I understand why he feels this way. He'd already told it on 27 August 2021 that he wouldn't be able to make any payments until he received the grant of probate. But Prudential continued to chase him for payment in November and December 2021.

I agree with our investigator that Prudential could've acted more sensitively here. But I'm unable to award compensation to Mr H's executor, as our investigator noted.

Overall, I'm not persuaded that Prudential made an error when it requested a refund of the two months' overpayments totalling £1,935.36. So I don't uphold the complaint.

### **My final decision**

I don't uphold this complaint for the reasons above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 31 January 2023.

Jo Occleshaw  
**Ombudsman**