

The complaint

The estate of Mr J has complained that The Prudential Assurance Company Limited (Prudential) failed to settle his annuity contract into Trust, which has led to an inheritance tax (IHT) liability.

What happened

Mr J held a Retirement Annuity Contract (RAC) with Prudential.

In 2012 Mr J sent Prudential a letter requesting his policy's death benefits be placed into a Will trust he'd created. Prudential acknowledged receipt of this request and replied with a letter dated 16 March 2012 only confirming it had updated Mr J's address.

Mr J sadly passed away on 17 September 2016.

Mr J's estate submitted a death benefit claim under the policy and Prudential settled the policy with a value of around £76,000.

The funds were paid to Mrs J's bank account in her capacity as his spouse and one of the executors for the estate.

Mrs J sadly also passed away on 1 August 2019.

The executors for Mr J's estate raised a complaint with Prudential because while they were in process of settling Mrs J's estate an inheritance tax liability arose due to the funds that were paid out from Mr J's policy with Prudential.

The executors have said that Prudential shouldn't have paid the funds directly to Mrs J as Mr J had created a Wills Trust which they had been notified about previously.

Prudential has acknowledged that it failed to assess the validity of the trust when Mr J contacted it in 2012 and only found it to be invalid in 2017 after Mr J had passed away. However, it noted that in 2017 no (IHT) liability was incurred due to this error as the funds were paid to Mrs J who was the surviving spouse. And it felt that there was sufficient time from when Mrs J received the funds until she passed away for her to have arranged suitable IHT planning to avoid any future liabilities for her estate.

However, Prudential did offer £400 to acknowledge the impact its error in 2012 had caused and asked Mr J's executors to provide it with evidence to show what the inheritance liabilities were and how this specific pension payment was indeed the cause – for it to consider the matter further.

The executors have stated that they are unable to evidence the individual pension's IHT charge due to Mrs J's other accounts being grouped together in the IHT calculation. And as no further resolution with Prudential could be reached, they brought the complaint to our service to consider.

One of our investigators reviewed the complaint and agreed that Prudential had no obligation to pay the policy proceeds into the trust because the policy hadn't correctly been placed inside the trust and Prudential didn't possess discretionary powers relating to how the death benefits were paid.

The executors disagreed with the investigators findings and so the matter has been passed to me for a final decision.

I must make my decision by considering what is fair and reasonable in all the circumstances of the case. And, in so doing, I am required to take into account relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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 the complaint can't be upheld.

I've had to consider if Prudential should have paid the death benefit proceeds of Mr J's policy to his Will trust.

In examining this I have first considered whether or not Prudential made an error in 2017 when it paid the proceeds of the policy's benefits directly to Mrs J.

Prudential did assess the validity of the Will trust when the claim was first submitted in 2016. However, it found that it couldn't make payment to the trust, as the benefits listed did not specifically include or refer to this policy and so it was unable to find the benefits under the policy could be validly paid to the trust – this isn't unreasonable in my view.

Prudential also noted that as this was a S226 annuity it had no discretionary powers relating to how benefits could be paid and it could only pay the benefits directly to Mr J's estate. I am satisfied that the reasons Prudential has provided for how the benefits were settled were correct and I don't think it should have acted differently when processing the death benefit claim in 2017.

I have also considered the impact Prudential's failure had in 2012 by not assessing the validity of the trust at that time. Prudential has said that had it reviewed Mr J's request as it should have in 2012 it would have been able to advise him that the request wasn't valid and he needed to take further action to secure this policy in trust.

The executors for Mr J's estate have said that if Prudential had informed Mr J of the further requirements necessary to secure the policy in trust he would have taken the required actions and the benefits could have been paid to the trust avoiding the IHT charge which has now arisen.

In cases like this where one party has alleged a specific course of action would have taken place, but for the business' error our service must consider the actions that the customer would have likely taken based on available evidence of previous actions and behaviours. So while I'm not discounting what the executors have said about the action Mr J would have taken, I can't ignore that at the time in 2012 Mr J was following the same process with two other businesses. I've seen Mr J had sent the same letter requesting his policies benefits be placed in trust to these other businesses. But in those instances the businesses responded to Mr J and explained his request wasn't valid. Both advised he needed to submit further documentation or set up a different trust entirely, but Mr J appears to have never responded

to either business nor did he take the additional steps they both suggested to proceed with his request to place the policies in trust. So based on this – his previous actions- I can't say that Prudential's failure to contact Mr J in 2012 has meant he would have indeed proceeded with placing this policy in trust - on the balance of probabilities it is unlikely that he would have taken the required action on this policy alone.

Prudential has also correctly noted that in 2017 when it paid out the benefit to Mrs J no IHT charge arose as she was the surviving spouse to Mr J. And the charge only arose after Mrs J passed away. Again, our service has to take into account that we expect consumers to take steps that will mitigate any losses suffered due to a business' potential error. And while I understand the reasons Mrs J's executors have given as to why she failed to take further action, I can't ignore that there was almost three years after Mr J passed in which she could have employed the services of a professional to help her plan and avoid this charge on her estate, knowing the amount her potential estate would be and charges it would potentially incur.

Prudential did offer to review the matter if the executors could provide it with evidence of how this specific pension was the cause of the IHT charge and how much the charge was. Again, I don't think this is an unreasonable request, the policy's value on its own would not indicate that a IHT charge would have necessarily applied. And even if our service had found that Prudential's error had meant it caused the IHT charge, before we'd be able to make an award, we'd also need to be satisfied what the cost of the error actually was. But this information hasn't been provided so in its absence I don't think Prudential need to do anything further.

Overall, therefore, I am satisfied that Prudential didn't directly cause the IHT charge and I disagree that it should have paid the proceeds of the death benefit into the Will trust.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr J to accept or reject my decision before 26 April 2023.

Ayshea Khan
Ombudsman