

## **The complaint**

Mrs P has complained about the time it has taken for Prudential to pay monies due to her as a beneficiary under her late husband's pension policies. The payment still hasn't been made, over three years after Prudential were informed of her husband's passing. Because of this she will incur a tax charge which she feels Prudential should cover.

Mrs P is being represented by her daughter. But for simplicity I will refer to all submissions made on Mrs P's behalf as being from Mrs P.

## **What happened**

Mrs P's husband held two pension policies with Prudential. The policies were held in trust and Mrs P was named as the sole beneficiary of these policies as well as trustee. In May 2020 Mrs P's husband sadly passed away.

Prudential was notified of Mr P's passing by the executors of his estate on 29 June 2020 and Prudential confirmed receipt of this. And the assumption was that any payments from Prudential due to the estate and any due that fell outside of the estate would be made in a timely manner.

However, between that time and present-day Prudential hasn't made the payment to Mrs P due under the policies.

What has happened between Prudential and Mrs P over the last three years concerning the payments due to her are well known to both parties, so I don't intend to set them out in detail. However, it is worth me summarising the following:

- Initially Prudential failed to acknowledge the policies were held in trust and so sent several letters asking for the executors to sign the relevant forms to enable the payment. It was only in November 2020 that Prudential recognised the policies were in trust.
- Prudential also sent numerous letters to the executors of the estate asking for the claim forms to be signed. In fact, these letters continued to be sent to the executors until July 2023, after Mrs P had brought her complaint to this service.
- As of September 2023, having written to Mrs P Prudential is now waiting for the letter of claim signed by her as the trustee confirming who is to receive the payment before it can proceed with the making the payment.

During the investigation of this complaint by our service Prudential finalised its investigation and upheld the complaint. It accepted it had caused lengthy delays and should have written to Mrs P a lot earlier when it didn't receive any acknowledgement from the executors. Prudential confirmed that it would carry out a loss assessment once the claim on the policy had been paid. It left the issue of the tax charge open.

It also offered Mrs P £500 in recognition of the distress and inconvenience its actions had caused.

The complaint was assessed by one of our investigators who was in agreement with the offer Prudential had made. He acknowledged that Prudential had unnecessarily delayed the process and should have done a lot more, earlier on. But he felt the way Prudential had offered to fix the errors was in line with the approach of this Service. And he also agreed that the loss assessment and the issue of the tax charge could only be concluded once the claim payment had been made. He also felt the offer of £500 was sufficient to recognise the distress and inconvenience Mrs P had experienced.

Mrs P didn't agree with the assessment. She felt that Prudential should have always written to her as the trustee in the first place and not the executors and that this should have happened well within the two-year time period required to ensure that tax wouldn't be charged on the payment. She also didn't want Prudential to run a loss assessment and stated that Prudential must calculate the tax charge and pay this to her. She also stated that Prudential has not acted in accordance with the Financial Conduct Authority's (FCA) principals of business specifically conducting its business with due skill, care and due diligence and paying due regard to the interest of its customers and treating them fairly.

The investigator considered Mrs P's comments. He explained that the loss assessment could only be carried out by Prudential and this was necessary to return Mrs P to the position she would have been had the errors not occurred. He also agreed Prudential should pay Mrs P the tax that would be charged on the payment when it is made but stated this can't happen until the claim is actually paid which means Mrs P had to return the completed claim form. Once receiving notification of the tax due from HMRC Prudential could either make the payment to HMRC or should reimburse Mrs P if she needs to make the payment of the tax herself. As he had in essence agreed that the complaint should be upheld he wasn't persuaded to change his initial outcome.

I issued a provisional decision in November 2023 where I set out my reasons why I felt the complaint should be upheld and what Prudential had to do to put things right. An extract of these findings are set out below and form part of this decision:

*The delays and errors that have occurred have been accepted by Prudential so there is no reason for me to go into details about them. So the focus of my decision is whether the proposed method of redress put forward by Prudential is fair and reasonable.*

*However, it is worth me stating that, in my view, the delays Mrs P has experienced due to Prudential's action are unacceptable. The fact it has taken more than three years for this issue to come close to being resolved (even though Prudential still hasn't made the payment) is very poor. Further given the circumstances that prompted this issue in the first place I think Prudential's handling of this entire matter has fallen well below an acceptable level of customer service.*

*Having said that, my role is not to punish Prudential for its errors or poor handling. Rather, I must decide on the right way of redressing the errors and putting Mrs P into the position she would have been in, as much as possible, had they not occurred.*

*I have reviewed the information provided and have considered what I think should have happened and therefore when it would have been reasonable for the payment to Mrs P to have been made.*

*The start date for this process should have been taken as 29 June 2020 which is the date Prudential was informed of Mrs P's husband's passing.*

*Prudential has said that its normal process would be to reply to this notification within five business days. So within five days its reasonable that Prudential would have started the process of gathering the information required to start the claim process.*

*Prudential first wrote to the executors which, while it should have seen at this stage the policies were in a trust, given the executors and had notified Prudential of the death this doesn't seem wholly unreasonable to me that it did this. So I think that had the errors not occurred its likely Prudential would still have written to the executors.*

*However, as the executors didn't have anything to do with the policies because they were in trust it's unlikely they would ever have responded. So I think that after sending a couple of chasers knowing how important this matter was (and time sensitive) Prudential should have written to Mrs P given it has confirmed it had her details.*

*Therefore, taking this into account, if there were no errors, I think the correct timeline would have been:*

- *Notification of death on 29 June 2020.*
- *By Prudential's admission five days to reply and start the claim process.*
- *Prudential writes to the executors requesting the letter of claim be completed by the trustee sent by 6 July 2020.*
- *A two-week deadline for the executors to respond would have been reasonable.*
- *As the executors would not have responded because they weren't the correct party Prudential should have been writing to, its reasonable that Prudential would have sent a chaser, with again a two-week deadline for them to respond.*
- *This takes the timeframe of the process to the beginning of August 2020.*
- *It is at this point that I think Prudential should have contacted Mrs P directly and asked for the claim form to be completed in her role as trustee along with confirmation of to whom the payment was to be made. Prudential has said that this should have happened on 8 June 2021 but it hasn't provided any explanation why this date is the right one to use. In my view this is almost a year after Prudential was notified of Mr P's passing and without any valid explanation, I think this is far too late.*
- *I think if all this had happened in the way I have described above I see no reason why Mrs P wouldn't have returned the necessary form by the end of August 2020 at the latest.*

*I appreciate Mrs P hasn't actually returned the required form yet despite it being sent to her several months ago. However, had the errors not occurred, Mrs P wouldn't be so disappointed with the actions of Prudential and would have been more willing to interact with it. Also, she wouldn't be waiting for this Service to resolve the matter because no complaint would have been raised. So, in my view, if there had been no errors I think it's more likely than not that she would have returned the forms within a matter of weeks.*

*Therefore, on the balance of probabilities the payment would have been made in the first half of September 2020.*

*However, even if these dates are wrong, and I invite Prudential to present its own estimated timeline if it disagrees, I don't think there can be any doubt that the payment to Mrs P would have been made within the two-year deadline.*

*So, it seems clear that but for the errors and delays Prudential has caused it is fair and reasonable that the claim payment would have been paid in full much earlier.*

*So to resolve this complaint there are a number of steps that must be taken:*

- Mrs P must return the claim form fully completed. This is the only way the claim will be paid. If Prudential require anything else this must be submitted to Mrs P and returned to Prudential by Mrs P within a reasonable timescale.*

*Only then can a loss assessment be carried out.*

- Upon receipt of the necessary information Prudential must then carry out a loss assessment to calculate whether by not being paid within a reasonable time, as I have set out above, Mrs P has been financially disadvantaged. If she has Prudential must pay her the difference between what she would have got compared to what she has received.*
- Interest must also be added to this payment at 8% simple per annum, as I am persuaded that Mrs P would have used this payment just for day to day living and had no plans to invest it.*
- Prudential must pay the amount it initially proposed for the distress and inconvenience its errors has caused Mrs P - £500.*
- Prudential must also undertake to pay the tax charge that will be due upon Mrs P receiving the payment – either directly to HMRC if allowed or by reimbursing Mrs P if she makes the payment herself. This must be done upon Prudential's receipt of official notification from HMRC of the tax liability on the payment, or official receipt that Mrs P has made the payment Prudential.*

*The tax hasn't been charged yet and this isn't for Prudential to calculate this this is for HMRC. So it is essential that Mrs P return the claim form to Prudential at her earliest opportunity. This is because until the payment is made an assessment of any potential loss she may have suffered due to the errors cannot be made. Nor will she know about the amount of the tax charge until the payment is made.*

*It's important to note that as these are my provisional findings Prudential and Mrs P have the opportunity to contest the time frames I have used or anything else in the decision. However, while those dates of when the payment should have been completed may change, I remain of the view the payment would have completed within the two years. So the methodology and decision about Prudential being liable for the tax charge will very likely remain the same.*

Mrs P accepted the provisional findings but requested some clarity on how long Prudential should take in carrying out the loss assessment and whether tax would be deducted from any payment due under the loss assessment.

She also commented that the distress and inconvenience payment is now not enough in light of the further delays by Prudential in responding to my queries.

Prudential also accepted the provisional findings in principal but made the following comments:

The matter of when the payment should have been made is too vague in the provisional decision. So Prudential feel the specific date should be stated in the final decision.

The letter of claim from the trustee providing details of who is to receive the claim amount remains outstanding.

I requested some further clarification from Prudential as a result of the comments from both parties December 2023 asking it to confirm some details. Prudential didn't respond until the end of January 2024.

### **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 remain of the view that the complaint should be upheld. And the method of putting things right remains the same.

However, I want to clarify the following:

- I agree that an exact date of when the payment should have been made to Mrs P should be clearly stated. I therefore think 7 September 2020 is appropriate. Therefore, this is the date Prudential must use in its loss calculations.
- The claim form must be sent to Mrs P again regardless of whether Prudential feel it has already been sent. This will avoid any further confusion or delays. When Prudential writes to Mrs P with the claim form as well as setting out the claim requirements Prudential will include this Service in the correspondence.
- The claim form must be returned by Mrs P within 10 working days of receipt. If this doesn't happen, then Mrs must be aware that there will be further delays in the payment she is due.
- The payment under the loss calculation will be free of tax and only the 8% interest will be paid net of tax.
- Prudential has also confirmed that the tax deducted from the claim will automatically be deducted from Prudential's systems and then reported to HMRC. Prudential will therefore make an ex-gratia payment in respect of the tax paid.
- The loss assessment to be carried out by Prudential must be completed within 10 working days of the date of this decision.

Prudential must action all outstanding requirements on this claim including the payment to Mrs P and HMRC in a timely manner noting that the delay has been significant to date.

In terms of the distress and inconvenience award, I fully understand how frustrating this has been for Mrs P and as I have stated already there have clearly been mistakes on the part of Prudential. There is no doubt that Mrs P is due the payment under the policy and this should've been paid much earlier.

But I am satisfied this has been recognised in the distress and inconvenience award set out in my provisional findings. In line with this Service's approach to distress and inconvenience awards, which I know Mrs P has been directed to, our awards are usually modest and are only significant in certain circumstances which this situation is not. Furthermore, while I know Mrs P feels the award should be increased because of the delays by Prudential in responding to my queries after the provisional decision was issued, however I must make clear that any award this Service makes cannot be punitive and I must act in a fair and reasonable manner to all parties of this complaint. In the circumstances of this complaint, I feel that unless these delays have caused material distress or material inconvenience any increase I make in the distress and inconvenience award would be punitive. Mrs P hasn't evidenced any material distress or material inconvenience, so I don't think this applies.

I appreciate this will be disappointing for Mrs P but I trust my reasons are clear.

In summary, I remain of the view this complaint should be upheld.

### **Putting things right**

Prudential (and Mrs P) must carry out the following actions to put things right:

- Mrs P must return the claim form fully completed within 10 working days from date of receipt. This is the only way the claim will be paid. If Prudential require anything else this must be submitted to Mrs P and returned to Prudential by Mrs P within a reasonable timescale.

Only then can a loss assessment be carried out.

- Upon receipt of the necessary information Prudential must carry out a loss assessment to calculate whether by not being paid within a reasonable time, as I have set out above, Mrs P has been financially disadvantaged.
- If she has Prudential must pay her the difference between what she would have got compared to what she has received.
- The date used for this must be 7 September 2020 This is the date the claim should have been paid had the errors not occurred.
- This calculation must be carried out within 10 working days of the date of this decision.
- If loss has been incurred this must be paid to Mrs P within 10 working days of completion of the calculation.
- Interest must also be added to this payment at 8% simple per annum, as I am persuaded that Mrs P would have used this payment just for day to day living and had no plans to invest it.
- Prudential must pay the amount it initially proposed for the distress and inconvenience its errors has caused Mrs P - £500.
- Prudential must also undertake to pay the tax charge that will be due upon Mrs P receiving the payment. Prudential has confirmed that the tax deducted from the claim will automatically be deducted from Prudential's systems and then reported to

HMRC. Prudential will therefore make an ex-gratia payment in respect of the tax paid.

- If for some reason this cannot be done Prudential must reimburse Mrs P if she makes the payment to HMRC herself. This must be done upon, or official receipt that Mrs P has made the payment to Prudential.

### **My final decision**

My final decision is that I uphold this complaint.

I direct The Prudential Assurance Company Limited to redress Mrs P in line with the method set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 4 March 2024.

Ayshea Khan  
**Ombudsman**