DRN-4685799

The complaint

Mrs S and Mrs M, as trustees of a trust set up by Mrs C, complain that they were given incorrect information by The Prudential Assurance Company Limited about the value of a life assurance policy held in the trust.

What happened

In 1990 Mrs C took out a whole of life assurance policy, on her sole life, which she placed in trust. The trustees were her, Mrs S and Mrs M. By 2021, the premiums were £836.29 per month and the guaranteed minimum sum assured was £60,051. Since 1990 the payments made to the policy total around £211,000. In April 2021 Prudential sent Mrs C an annual statement for the policy, which showed the plan value and sum assured as £117,007.35.

In 2021 Mrs C was 101 years old and living in a care home. Mrs S and Mrs M were receiving advice from a financial adviser, who received policy valuations from Prudential, including one of £129,579.90 in August 2021 and £130,547.27 in September 2021, amongst others. Mrs S and Mrs M decided to surrender the policy, in order to help fund the cost of Mrs C's care. Upon surrender, Prudential paid £40,147.23 to Mrs C – but the letter from Prudential confirming this payment also said the policy value was £130,547.27.

Mrs S and Mrs M subsequently raised a complaint about this, as they had been expecting the policy value of around £130,000. They were also unhappy that Prudential had asked Mrs C for identity documents, which caused a delay in surrender, and that additional premiums for the policy had been taken after the surrender.

Prudential explained that the statements issued since 2018 had been incorrect, due to a system error. They said the statements and valuations given should have been much lower and the £40,147.23 had been the correct value in 2021. They had been aware of this problem since 2018 but hadn't fixed it – any documents that were sent out, should have been manually checked, but unfortunately this didn't happen. Prudential offered:

- £2,000 for the distress and inconvenience caused, including the loss of expectation given by the incorrect valuations.
- A refund of the additional premium taken.
- As per their internal guidance, they didn't need all the documents that they requested, and so they caused a delay in the surrender. They calculated the loss this caused and paid £443.97 (including interest).

The trustees remained unhappy as they felt Prudential hadn't adequately explained what the error was that caused the disparity in the values, nor had they provided proof of the actual value of the policy. Sadly, Mrs C then passed away on 6 April 2022.

The trustees brought the complaint to our service and it was looked into by an investigator. The investigator said that our role is to look at what would have happened if the error hadn't occurred, so he didn't think it would be reasonable to ask Prudential to pay £130,000 as the policy wasn't actually worth that amount. He found the compensation offered by Prudential was fair.

Mrs S and Mrs M disagreed, saying that if they'd been told the correct value of the policy, they wouldn't have surrendered it. Given Mrs C's age, and the fact the sum assured was significantly higher than the correct value, they'd have left the policy in place and continued to pay the premiums. They said they had different funds from which they could have paid for care costs. As the investigator wasn't persuaded to change his mind, the complaint was passed to me for a decision.

I asked Prudential for a breakdown of the charges deducted from the policy over the years – both administrative and for the life cover costs. This showed totals of £868.06 and £169,837.66 respectively.

I issued a provisional decision on the complaint – my findings are copied at the end of this decision, and form part of my final decision. Prudential replied and accepted the findings. Mrs M replied, and though they were mostly satisfied with the overall outcome, they raised several further questions:

- She and Mrs S remained unhappy that Prudential hadn't explained what went wrong that caused the valuations to be incorrect over the simple "system error" reason.
- They asked for a history of premiums paid and the sum assured.
- They asked for information about how Prudential calculated the mortality charges.
- They explained that they don't think they received a refund of the premium mentioned of £836.29. They'd received the following amounts:
    - £40,147.23 on 3 November 2021 – the surrender value
    - £2,443.97 on 23 November 2021 – the compensation for distress and inconvenience and the amount to recognise the loss due to the delay in payment.
- They felt that the distress and inconvenience caused by this situation continued after the payment of the £2,000 compensation and they've spent over 500 hours dealing with this situation. So, they asked that I consider awarding more compensation.

I replied and provided the history of premiums and sum assured and explained that the way the mortality charge is calculated, but that the detail of it is at Prudential's discretion, which Mrs M accepted. I said that while its very frustrating that Prudential haven't explained their error in detail, my focus is on putting things right. Regarding the £836.29 that they say wasn't returned – I said I would take that into account in wording how Prudential should calculate redress.

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.

As there's no dispute over my findings about what would have happened but for the errors caused by Prudential, in that the policy would have remained in place, I see no reason to depart from the findings set out in my provisional decision regarding that, and make them final.

However as there's a disagreement over the compensation for distress and inconvenience, I've reconsidered what's happened to decide whether more compensation should be awarded. In considering this, I've kept in mind our guidelines around the amounts we typically award, which can be found on our website. I'm also mindful that I'm awarding interest at a rate of 8% - which is a compensatory rate of interest designed to make up for the loss of use of the funds they ought to have had.

I appreciate this whole situation has been ongoing for several years now, and I'm satisfied Prudential has caused delays throughout, including while the complaint has been with our service. I've considered the loss of expectation they caused here, in telling Mrs C's representatives for many years that they would receive almost £100,000 more than they were entitled to. They made plans for Mrs C because of this, which then couldn't go ahead. Given the amount involved, this naturally caused a high level of disappointment when it was discovered that the information was incorrect.

Also, I've considered the fact Prudential could have resolved this in a fair way in November 2021, by considering the position Mrs C's policy ought to have been in, but for their error. This is a well-established complaint handling principle that I expect Prudential to be familiar with, and it could have mitigated much of the resulting inconvenience.

Having considered all the events, including those that have taken place after the £2,000 was paid, I have to say the amount offered by Prudential is at the higher end of the range of compensation that I might have awarded if they hadn't first offered it. So, while I appreciate further inconvenience has been caused by Prudential since the payment of the £2,000, I'm not convinced a further amount is warranted here.

Putting things right

Prudential need to calculate the financial position the trust would have been in, had the policy remained in force until Mrs C passed away in April. I can't be sure of the exact date the claim would have been paid – and I note Prudential has told me they don't have the terms and conditions for this policy.

In my experience, many claims of life policies are calculated on the date of death and often interest is paid from that date to the date the claim is paid. So, though I appreciate it's unlikely the trust would have received the sum assured on that date exactly, I think that's a fair and reasonable date to use as the start date of the interest calculation set out below, given the lack of any other evidence of when the claim would have been paid.

Prudential should calculate and pay:

- The difference between the sum that would have been paid on a claim in April 2022, compared with the amount paid on surrender.

- Simple interest of 8% per year on that amount, from 6 April 2022 to the date of settlement.

- From this total Prudential should deduct:

    - The premiums that would have been paid from surrender to claim. I note that Prudential received a further premium post-surrender, which they say was returned to Mrs C. Prudential should check whether the refund was paid. If it was refunded, Prudential would be entitled to deduct it, but should provide the date of the refund and details of the account it was paid to, to Mrs M and Mrs S. If it wasn't refunded to Mrs C, then that premium shouldn't be deducted from the amount being paid.

    - The payment of £443.97 made during the complaint, as this was for the late payment of the surrender value, which wouldn't have been necessary if the surrender hadn't occurred.

I understand Prudential has already paid the £2,000 in compensation for the distress and inconvenience caused.

My final decision

I uphold this complaint. The Prudential Assurance Company Limited should pay Mrs S and Mrs M compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mrs M to accept or reject my decision before 12 April 2024.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've started by considering whether the policy values Prudential quoted to the trustees and their adviser throughout 2021 were correct. I can see the charges deducted from the policy over the years totals over 80% of the premiums paid in. I don't think the remainder of the premiums would have been able to grow to such an extent as to reach a value of over £100,000. This is especially because it's a regular premium paying policy, rather than a lump sum investment, so it would have taken many years to build up a significant value.

I also note that between 2012 and 2017, I can see the life cover costs being deducted had regularly exceeded the premiums. This means any value that had built up prior to this would have been reduced by that part of the costs over and above the premiums paid in – as well as having been impacted by any movement in the market in which the fund was invested.

So, I think it's more likely than not that the values provided from 2018 onwards, and particularly those in 2021, of over £100,000, were incorrect. Prudential has not been able to explain this error – other than by saying it was a system error and there ought to have been manual intervention prior to quotes being given. So though I appreciate that is frustrating for Mrs S and Mrs M, I don't think we are going to be able to provide more detail about what caused this issue.

My next consideration is about what would have happened, had the error not occurred. Once the complaint had been raised, I would have expected Prudential to have asked the trustees what they'd have done if they'd known the correct value. Had they been asked at the time, Mrs S and Mrs M would have been able to give a clear answer to this question, prior to Mrs C passing away. Instead, Mrs S and Mrs M's testimony on this question wasn't provided until April 2023 – and Prudential has argued that this has only been given with the benefit of hindsight. However, I disagree with Prudential – I'm persuaded that it's likely that if they'd known the true value of the plan, the trustees wouldn't have surrendered it. I'll explain why.

During the surrender process, the trustees explained that they needed the money to pay for Mrs C's care costs. However, I note that they said this when they believed the value was around £130,000. That amount of money can drastically change the level of care that can be provided, rather than simply paying for the regular costs of a care home. The trustees have outlined the additional plans they'd made, based on expecting to receive that higher amount. The additional things that could be paid for with £130,000 could be termed as aspirational - a "nice to have" - rather than the regular costs of the care home, which I would term as an essential cost.

I’ve seen evidence that Mrs M and Mrs C jointly held £74,000 in a bank account between 2020 and 2022. So, there was at least one other source of funds from which they could pay for the regular ongoing costs of care. It could be that they may have eventually needed to use the value in this policy to pay for the care costs too – but in September 2021, I’m convinced it wasn’t an absolute necessity.

In September 2021 there was a £19,903.77 different between the value of the policy, and its sum assured. It would have taken 24 further premiums of £836.29, before exceeding that difference in value. So, it would have been for the trustees to consider Mrs C’s advanced age, in comparison with that expense, to weigh up the risk of paying in more than the difference between the surrender value and the sum assured. I don’t think the trustee’s testimony that they’d have continued paying in is unreasonable, given those circumstances.

For the above reasons, and particularly given the availability of other funds, if they’d known the correct value of the policy, I’m satisfied that its more likely than not that the trustees would have continued paying for the policy. This means that it would likely have still been in place when Mrs C passed away in April 2022, and that they would have received the guaranteed minimum sum assured upon a claim. I’ve set out below how Prudential should calculate the redress payable here.

I’ve also considered the impact these errors had on the trustees – it’s clear they’d made additional plans for Mrs C’s care and the amount of money in question could make an incredible impact for her. So, the distress and inconvenience caused is significant here. I’m glad to see Prudential recognised this and offered £2,000 for it. Having considered the situation, I think this amount is fair and reasonable in the circumstances.

Putting things right

Prudential need to calculate the financial position the trust would have been in, had the policy remained in force until Mrs C passed away in April. I can’t be sure of the exact date the claim would have been paid – and I note Prudential has told me they don’t have the terms and conditions for this policy. In my experience, many claims of life policies are calculated on the date of death and often interest is paid from that date to the date the claim is paid. So, though I appreciate it’s unlikely the trust would have received the sum assured on that date exactly, I think that’s a fair and reasonable date to use as the start date of any interest calculation, given the lack of any other evidence of when the claim would have been paid.

Prudential should calculate and pay:

- *The difference between the sum that would have been paid on a claim in April 2022, compared with the amount paid on surrender.*
- *Simple interest of 8% per year on that amount, from 6 April 2022 to the date of settlement.*
- *From this total Prudential should deduct:*
    - *The premiums that would have been paid from surrender to claim.*
    - *The payment of £443.97 made during the complaint, as this was for the late payment of the surrender value, which wouldn’t have been necessary if the surrender hadn’t occurred.*

If it hasn’t already been paid, Prudential should also pay £2,000 in compensation for the distress and inconvenience caused.

Katie Haywood
Ombudsman