

The complaint

Mrs F and Mrs E, as Trustees, complain on behalf of the trust of Mrs M about the level of service they received from The Prudential Assurance Company, referred to as “*the Pru*”.

In summary, they say they’re unhappy about the Pru’s redress, and feel that they’re owed at least another £1,882, along with interest on that loss, as well as compensation for distress and inconvenience caused.

What happened

In April 2020, the Trustees’ mother, Mrs M, invested in an investment plan through her Independent Financial Adviser (IFA) with the Pru. The Trustees say that the investment was taken out to pay for her care costs, and any remainder was to go to them.

Following Mrs M’s death in December 2020, her IFA offered to deal with the Pru on their behalf. The Trustees decided, in the short term, to leave their investment with the Pru (but after it was transferred into their names).

In March 2023 their IFA was advised by the Pru that to carry out the transfer, they needed a Deed of Variation (“*the Deed*”). However, it later transpired that the Pru had made a mistake and that the transfer couldn’t be done.

Although the Trustees complained to Pru, they continued to experience issues, including in relation to their instructions to encash the fund.

In a Final Response Letter (FRL) dated December 2023, the Pru eventually upheld the complaint. In summary, it said, said:

- Overall, it was sorry for the poor level of service and miscommunication.
- It was disappointed that the Trustees were led to believe that assigning Mrs M’s policy to them was an option. It regrets that the error came to light months later.
- It’s sorry that it continued to request a document that it had already been given, and for refuting the Trustees’ claim that it had.
- It’s also sorry that the Trustees were (incorrectly) told that it could accept payment instructions by email, because it required the original wet signature.
- It’s sorry a call consultant didn’t forward the call to a manager.
- It should’ve been able to make a settlement on 24 March 2023. Had it not made the delay it would’ve paid £185,084.41 on that date, rather than 11 November 2023. To compensate for the delay, it has added 8% simple interest (from 24 March 2023 to 11 November 2023) amounting to £7,529.14.
- It then deducted the amount it did pay of £180,742.93 which shows a loss of £11,870.62 as of 11 November 2023.
- It has then added interest of £79.10 to the amount, which brings the total loss calculation to £11,949.72. It arranged for that money to be paid to the settlement account.
- As part of its offer is made up of interest payment, it’s required by HM Revenue and

Customs (HMRC) to pay that interest, net of 20% tax. The interest paid in this case was £79.10 net (£98.87 gross, minus £19.77 tax).

- If the Trustees don't pay income tax, they may be able to reclaim this direct from their tax office. But if they're basic or higher rate taxpayers they may not be able to do so.
- In recognition of the distress and inconvenience caused, it made a further payment of £400 (to Mrs F) – making a total of £12,349.72. Plus £200 to Mrs E for the trouble and upset caused.
- Whilst it's not obliged under its terms and conditions to meet a further request, as a gesture of goodwill, it's happy pay another £2,937.50, to mark the time and effort in dealing with this complaint. Whilst it's less than what the Trustees have asked for, it awarded an hourly rate of £125 – for 23.5 hours of work – totaling £2,937.50.

Unhappy with the Pru's response the Trustees referred the complaint to our service, in doing so, they've questioned the following:

- The payment for distress and inconvenience caused which they feel should be higher.
- No interest was applied to the cost of the Deed that was refunded.
- Whether the redress methodology was correct, and
- Whether the tax certificates need to be revoked.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- The Pru accepts that it has made some significant errors, it has also gone some way to making right its errors.
- The Pru paid the Trustees a total of £600 for the distress and inconvenience caused. This amount is fair and reasonable and takes account of the distress and inconvenience caused by several errors, over a significant period of time, following the death of their mother.
- The Pru accepts it made an error by asking for the Deed and has since reimbursed the Trustees £780 for the cost of the Deed.
- It should add interest to this amount at 8% simple a year to mark the deprivation of funds. It should do so from the date the money was paid, to the date it was paid back.
- In terms of the redress calculation, firstly, he's satisfied that the dates used to calculate redress, as well as how those dates were chosen, is correct. Secondly, in line with guidance, the Pru is correct to deduct 20% tax for the payment.
- This is because this payment is for deprivation of funds, and in turn the loss of interest on the money in question. This isn't an ex-gratia payment.
- The (two) tax certificates issued to the trustees, reflecting the appropriate tax, aren't required to be revoked.
- However, the Pru should ensure that the tax certificates accurately reflect the payment for the loss of interest.

The Pru agreed with the investigator's view. It said:

"Thank you for providing your below adjudication. I confirm we accept your findings and how to put things right. I look forward to hearing from you further in due course."

The Trustees disagreed with the investigator's view and asked for an ombudsman's decision. In summary, they said:

- Given the number of issues experienced, they don't feel like they've been adequately

compensated for the distress and inconvenience suffered in dealing with the Pru over the last 12 months.

- Ultimately to get their mother's name wrong – referring to her under a different name – was “*plain outrageous*”.
- With regards to the £7,529 received from the Pru. They note that the investigator suggests this should be treated as loss of interest – ie £9,411.42 (with 8% interest), less £1,882.28 tax. They require the correct tax certificates in order to complete their tax returns.
- They now urgently require new tax certificates.

As no agreement has been reached the matter has been passed to me for 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 agree with the investigator's conclusion for much the same reasons. I'm going to uphold this complaint.

On the face of the evidence, and on balance, I'm satisfied that the Pru has behaved unreasonably and must pay compensation to put things right.

Because the Pru has upheld the complaint (and paid some compensation) the key issue for me to consider is redress, and whether it's fair and reasonable in the circumstances.

Having done so, on the face of the evidence, and on balance, in addition to what it has paid, I think it should also pay 8% simple interest to the cost of the Deed – between the date the money was paid, and when it was refunded.

The above notwithstanding, overall, and on balance, I think payment for the distress and inconvenience – in light of the compensation for the delay, time and effort dealing with the complaint and cost of the Deed (with interest) – is broadly fair and reasonable in the circumstances.

But before I explain why this is the case, I'd like to thank the parties for their considerable patience whilst this matter has awaited review by an ombudsman, due to the current demand for our service.

I think it's also important for me to note I very much recognise the Trustees' strength of feeling about this matter. They have provided submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made. My role is to consider the evidence presented by the Trustees and the Pru, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

I note from the outset that as of December 2023, the Pru has quite rightly held up its hands, and apologised, for its significant failings. There's no dispute that it has, overall, provided a very poor service to the Trustees during a difficult time. However, as I've mentioned above,

subject to adding interest to the cost of the Deed, I think the compensation it has offered is overall fair and reasonable.

There's no dispute that the Pru erroneously requested the Deed when it shouldn't have done, because the investment (previously in Mrs M's name) couldn't be transferred to the Trustees in any case. I also note it took several months before the error was spotted and rectified, causing additional delay. I note the Pru says that lessons have been learnt and feedback will be provided.

I'm aware that the Pru has refunded the cost of the Deed, but I think it should do so with interest at 8% simple a year, from the date of the payment to the date of the refund. This is to mark the deprivation of funds, which I note the Pru agrees with.

I note the Pru also accepts that there was a substantial delay in the payment of funds. Moreover, had there not been a delay, payment would've been made on 24 March 2023 (which coincides with roughly when they were given incorrect information) rather than 11 November 2023, undoubtedly avoiding an eight-month delay.

In the circumstances I've no reason to doubt the Pru's dates and/or the application of 8% simple interest between those date. I'm also aware that a sum, less tax – which the Trustees may (or may not) be able to claim back subject to their personal tax situation) – has already been paid. Overall, and on balance, I think the redress paid for the delayed payment of funds is fair and reasonable in the circumstances.

I also note that the Pru has paid the Trustees an additional sum of money – for 23.5 hours of work at a rate of £125 – to mark the time and effort spent dealing with this complaint. I note the Pru says that it's not usually permitted to make this kind of payment, but I think it has done so in this instance given the very poor service it has provided.

Whilst I don't doubt that the Trustees, have suffered material distress and inconvenience dealing with Pru as part of this complaint, as well the Pru using an incorrect name for their mother Mrs M. In the circumstances, and on balance, I think the £600 compensation offered (which works out to £300 compensation each) is fair and reasonable – especially given the additional payment for their time I refer to above, which isn't something I could make an award for.

I appreciate the Trustees think that they're eligible to receive more compensation – given all the issues they've suffered – and what the Pru has offered isn't enough. But I think the redress, taken in the round, with the financial loss, the cost of the Deed (with interest), compensation for their time – is fair and reasonable in the circumstances.

The above notwithstanding, I note the Pru has provide the Trustees with the appropriate tax certificates, but if it hasn't, it should do so as soon as is practicable.

I appreciate that the Trustees, on behalf of the Trust of Mrs M, will be unhappy that I've upheld the complaint but still haven't given them what they want. Furthermore, I realise my decision isn't what they want to hear. But on the face of the available evidence, and on balance, I'm unable to give them what they want.

Putting things right

To put things right, The Prudential Assurance Company Limited should calculate and pay the following redress, less any money that has already been paid in advance (notwithstanding compensation for the time spent dealing with this complaint):

- Pay 8% simple interest on the surrender value of the investment had it been surrendered on 24 March 2023, rather than 11 November 2023.
- Refund the cost of the Deed of Variation, along with 8% simple interest, from the date of payment to the date of refund.
- Pay £600 compensation for the distress and inconvenience caused.
- Provide the appropriate tax certificates.

My final decision

For the reasons set out above, I uphold this complaint.

The Prudential Assurance Company Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trust of Mrs M to accept or reject my decision before 4 April 2025.

Dara Islam
Ombudsman