

The complaint

Mrs M complains that The Prudential Assurance Company Limited (Prudential) will not pay her a dependant's pension under her late partners annuity. She wants the pension paid.

What happened

Mrs M says when her late partner, Mr H, took out a pension annuity with Prudential in 2004 he selected the option for a dependant's pension to be paid to her in the event of his death with no reduction in the income. At the time Prudential asked for a copy of Mrs M's birth certificate to verify her date of birth, which would impact the annuity rate available. This was provided and the annuity was set up. Mrs M and Mr H didn't live together and following his death and enquiries from his children about the annuity in 2024, Prudential contacted Mrs M. It confirmed that she was the "*named dependant*" on the annuity and benefits could only be paid to her. But Prudential said as Mr H and Mrs M weren't legally married or in a civil partnership in order to make payment it was a requirement that she was financially dependent on Mr H at the time of his death in order to comply with HMRC rules and the Finance Act 2004 and it needed to see evidence of this.

Mrs M complained about these procedures and Prudential issued a final response accepting it had caused delays and sent her a cheque for £175. It said its administration team were looking into the issue. Prudential then wrote to Mrs M setting out further details. It said the rules required that she had to be either financially dependent on Mr H, or that they were financially mutually dependent or that she was dependent on him because of physical or mental impairment at the time of his death. It said it needed to complete a financial dependency test and that "*some form of financial relationship/financial reliance between you is all that is required to be proven*".

Mrs M called Prudential about this and says it suggested sending in bank statements. So, in June 2024 she sent copy bank statements from 2009 and 2014 showing a standing order of £233, being paid from her bank account to Mr H's account. She said more recently Mr H preferred to use cash rather than bank accounts and she made purchases for him, and he'd then re-imburse her in cash. Mrs M said she didn't want to approach Mr H's family for his bank statements as this would cause upset. On calling Prudential for an update, it said it couldn't locate these documents and Mrs M sent them again on 12 July 2024.

Prudential said the bank statements from 2009 and 2014 didn't evidence financial dependency at the time of Mr H's death. It set out a list of other items which might do so, like a copy of his last Will showing Mrs M as a beneficiary or joint loan or mortgage statements. Mrs M said she didn't have a copy of the Will and wasn't a beneficiary of it and she raised a further complaint making a number of points. Including that, she'd been told these bank statements would be sufficient and it wasn't reasonable for Prudential to ask for further evidence and the policy had been mis-sold to Mr H.

Prudential looked into Mrs M's complaints and upheld two of her points but said it couldn't pay the annuity benefits to her without evidence of financial dependency. It said it hadn't mis-sold the policy as this had been arranged by an independent financial adviser, who was no longer in business and that Mrs M might wish to contact the financial regulator, the FCA,

about this. It said it had never received the first letter Mrs M had sent enclosing bank statements and that this must have been lost in the post, but it agreed it had failed to return calls as promised. And that its call handler hadn't made it clear it was financial dependency at the point of death that needed to be shown when initially discussing her sending in bank statements. Prudential sent Mrs M a further £200 cheque as compensation for the distress and inconvenience caused.

Mrs M contacted her MP who wrote to Prudential, and she referred her complaint to our service and our investigator looked into it. But he didn't uphold it.

Our investigator said he didn't think Prudential could pay the annuity to Mrs M without seeing evidence of financial dependency at the time of Mr H's death due to the legislation in place. And he said our service couldn't tell a business to deviate from legislation or HMRC rules. He said Prudential had apologised for delays and some poor service and he thought the total of £375 it had already paid in compensation for this was fair.

As Mrs M doesn't agree it has come to me to decide.

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 am not upholding the complaint.

I can only sympathise with how distressing this situation is for Mrs M, but apart from causing some delay and confusion, I don't think Prudential has treated her unfairly or unreasonably, and that means I can't uphold her complaint. Our service can't tell a business to break the law or ignore HMRC requirements.

The legislation in place does require the administrator of the pension scheme (Prudential) to be satisfied that financial dependency existed at the time of Mr H's death in order to pay the dependants pension to Mrs M.

The Finance Act 2004 (Para 1, Sch 28) states that,

“... A person who was not married to the member at the date of the member's death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death -

(a) the person was financially dependant on the member,

(b) the person's financial relationship with the member was one of mutual dependence, or

(c) the person was dependant on the member because of physical or mental impairment.”

HMRC's internal Pensions Tax Manual under chapter PTMO71200 (available online) elaborates on (b) above saying,

“This will need some element of reliance on each other financially. It is for the scheme rules to set out the criteria to be used to determine dependency in these circumstances.”

So, Prudential does need to see reasonable evidence to show dependence. As Mrs M and Mr H didn't live together obvious evidence like Council Tax or utility bills aren't available. And she says her own financial records don't show evidence around the time of Mr H's death. Prudential's letter to Mrs M of 19 July 2024 set out the following list of examples of evidence it considers potentially acceptable,

- *the last Will and Testament of the late Mr H (if one was held) where you are named as the sole or main beneficiary of his estate (providing for you financially after his death).*
- *bank statements from your bank account (covering at a minimum the period 3 November 2023 to 3 February 2024) showing regular sums of money from or to Mr H.*
- *bank statements from Mr H's bank account (covering at a minimum the period 3 November 2023 to 3 February 2024) showing regular sums of money from or to yourself*
- *evidence of a reliance on Mr H to help you pay for the cost of private care or accommodation*
- *a loan or mortgage in joint names*
- *a mutual financial power of attorney*
- *a life assurance policy of the policyholder's where you are the nominated beneficiary*
- *any other documentation you feel evidences your financial dependency.*

That's a wide range, so I don't think Prudential has set unreasonable evidence requirements to show dependency.

I don't doubt that it was Mr H's intention and expectation that Mrs M would benefit from the annuity in the event of his death. The income payable from the annuity was in part based on her own age (she was younger than Mr H) and life expectancy, meaning less income was paid to Mr H than if he'd not selected a dependant's pension. Mrs M says she feels she can't contact Mr H's family to ask if there is any financial information which might support her claim for a dependant's pension, and I can understand her reluctance to do that. But as only she can benefit from the annuity, and it was clearly Mr H's intention that this be the case, it might be worth explaining the situation if she hasn't already done so.

Mrs M has said the policy was mis-sold, but Prudential didn't provide Mr H with advice to set the annuity up. And the application form he completed clearly states in the section about dependant's pensions that,

"A dependant is a person who at the date of death is financially dependant on you. It need not be a relative of yours."

Prudential says a financial adviser arranged the plan. And if this adviser is no longer authorised it may be possible for a claim to be made to the Financial Services Compensation Scheme (FSCS) about the advice received at the time. But as Mrs M is aware it may be necessary for any such claim to be made by the Executors of Mr H's estate, rather than herself, which again would involve her contacting Mr H's family.

So, I don't think Prudential has treated Mrs M unfairly in saying it isn't able to pay the dependants pension to her as things currently stand. It did cause some delays and might have initially explained it's requirements more clearly which has caused Mrs M both distress and inconvenience. Prudential has already paid her £375 in compensation for this, which I think is fair in the circumstances of the complaint, so I can't reasonably tell it to do any more than it already has.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 June 2025.

Nigel Bracken
Ombudsman