

The complaint

The settlor and beneficiary of the B Trust, Mrs B, has complained The Prudential Assurance Company ('Prudential') didn't know the legal owner of the Trust's policy. She says it was surrendered incorrectly and Prudential didn't act as it should have done by allowing the policy to be surrendered. She has also said the surrender proceeds were incorrectly transferred.

To put the matter right, she wants the transferred funds to be returned to the Prudential investment.

What happened

In 2015 the policy – PruFund Investment Plan Mark 3 – was assigned into an existing trust, the trustees for which I will refer to as 'Trustee T' in my decision. On 10 November 2018 new trustees were appointed, 'Trustee P' via a Deed of Removal and Appointment of Trustees document. Later that month the policy was surrendered, but the signatory was one of the approved signatories of Trustee T and not Trustee P.

The surrender proceeds of £105,477.02 were paid to Trustee T. Trustee T then placed the funds into investment funds belonging to Trustee P, which was not regulated by the Financial Conduct Authority ('FCA'), and which went into administration in 2022.

Mrs B raised a complaint with Prudential at the beginning of 2024. It initially responded on 6 March 2024 and said;

- It had previously sent information to the legal owners of the policy but couldn't discuss policy information with the representative trustee without authority.
- It had written to the settlor and life assured on 2 June 2015 confirming the settlor's request to assign the ownership of the policy to Trustee T on 18 February 2015, so Trustee T were the legal owners of the policy.
- They had two forms for this type of investment – one used for Prufund Investment Plan Mark 1 and the other wasn't applicable to Prufund Investment Plans as it was only used for Mark 2 and Mark 3 plans.
- It offered £125 for the distress and inconvenience caused by its lack of communication.

After Mrs B contacted this service about her complaint, Prudential wrote again on 19 March 2024. It said;

- There had been confusion about Prudential writing to the legal policy owner. In response to the query that had been raised it had replied to the original financial adviser in line with its file notes and had failed to notice it had authority on file to deal with the representative trustee.
- The signatory upon surrender was one of the approved signatories of Trustee T and the bond was surrendered correctly and in good faith.

- The surrender form used incorrectly stated that it needed to be signed by all the trustees of Trustee T, but they were all independently authorised to sign.
- It increased its offer from £125 to £300 for its failure to provide the information requested and poor customer service when dealing with the complaint.

Our investigator who considered the merits of the complaint didn't think Prudential needed to do anything more. He said;

- Prudential said it never received the change of trustee document dated 10 November 2018 and there was no evidence it had been informed of the change of trustees by Trustee T.
- He was satisfied it would have been for Trustee T to have informed Prudential of this, and that Prudential acted in good faith when surrendering the policy and paying out the proceeds.
- He commented on the wording in the claim form being used for the surrender, but Prudential had apologised for this.
- He didn't think Prudential was responsible for any financial loss incurred.

Mrs B didn't agree. She said;

- The signatory who surrendered the policy – who I shall refer to as 'Ms A' in my decision – had also signed the trust reassignment form, meaning she knew it didn't belong to Trustee T, so acted fraudulently and Prudential was negligent in its handling of this.
- During the surrender process Prudential had referred to its fraud department and was satisfied the surrender was authorised because it thought the signature list was valid. Mrs B challenged this and said the fraud department failed on many counts and was negligent.
- The signatory was not authorised and the form used should have been accompanied by the relevant Board Resolution referencing the trust that it applied to. An authorised signature list wasn't sufficient to remove funds from a trust using an authority that wasn't a trustee.
- It would be immoral if an ombudsman found that Prudential had acted with due care and attention to safeguard funds that belonged to a trust in accordance with Dispute Resolution ('DISP') rules, the FCA handbook and Principles and the required regulatory perimeters and Trust legislation.
- They didn't think the claim form wording was irrelevant. Prudential hadn't handled the surrender process in accordance with its own instructions.
- They questioned whether the signature verification in the absence of independent documentation was acceptable on a matter of Prudential's discretion.
- Prudential recognised the need for further identification which it failed to follow.
- Trustee T wasn't registered with HMRC or a regulatory body under anti-money laundering regulations which should have been apparent to Prudential. Nor was it registered with the Solicitors Regulation Authority ('SRA') which is mandatory when an entity is carrying out legal services by facilitating property transfers and raised questions about Prudential's oversight.
- There were other cases where Prudential incorrectly surrendered investment funds from Trustee T to another party which evidenced Prudential not acting with due care and attention.
- Prudential did have procedures in place for encashing funds but wasn't disclosing

them.

- One of the two directors of Trustee T had resigned four months before the surrender and Prudential should have checked Companies House records to ensure their checks were up to date.
- Prudential had failed in its three requirements necessary for surrender which were; a correctly completed surrender form, validated signatory list and bank statements dated within three months.
- The signatory on the surrender form wasn't authorised to do so by specific Trust special power of attorney ('SPOA') or general power of attorney ('GPOA') accompanied by a required board resolution on behalf of the Trust. The signatory list didn't comply with Trustee Act requirements nor contained any certification of authority.
- Despite Prudential not receiving the change of trustee document, it had a duty of care to check who the current owner was.

Mrs B's response didn't change the investigator's opinion, so the complaint has been passed to me for a decision. Mrs B highlighted the use of the incorrect form, lack of proper authorisation, ignoring procedural safeguards and failure of due diligence.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

I'm aware I've set out the background to this complaint in far less detail than Mrs B and I've done so using my own words. I'm not going to respond to every point made by the parties involved. No discourtesy is intended by this. Instead, I've focused on what I find are the material issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't

mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I need to decide on what I think is the crux of this complaint and that is whether Prudential acted as it should have done and with the appropriate due diligence when it processed the surrender of the trust's policy.

As already referred to in the above summary, Mrs B has complained that Prudential breached some of the rules and regulations including FCA Principles. These have a wide application, and I have therefore considered Mrs B's points with the Principles and rules in mind as a relevant consideration throughout my decision.

To my mind, the heart of this complaint is whether Prudential acted appropriately when allowing the Trust's policy to be surrendered and paid out to Trust T. I've considered whether Prudential acted fairly and reasonably in doing so.

Appointment of new trustees

Prudential has confirmed that it never received the trust deed showing that the trustees had changed prior to the withdrawal being requested. It had never been informed of this change;

no contact had been made to advise it of such nor was it provided with the new trustee details that had been put in place.

It said that if new trustees had been appointed then it would have been for either Trustee T to say it was no longer trustee of the trust or for the new trustee, Trustee P, to have made contact and provide the new trustee document to enable it to update its records. Prudential was of the view that as it was never informed that the new trustees had been appointed it was for Trustee T to explain why it had sent a surrender claim if it was no longer trustee and had not informed Prudential of any change in the Trustee arrangements.

I think Prudential's comments are valid. Without being informed of a change of Trustee, Prudential was reasonably entitled to assume Trust T remained the legal owner of the trust and that it was in turn able to accept a surrender request from Trustee T. And it's not clear to me why Trustee T made the surrender request when it was aware that it was no longer trustee with effect from only eight days earlier.

But that issue is not part of this complaint. I have no jurisdiction to consider any complaint in connection with the acts of Trust T or Trust P. This complaint relates to whether Prudential acted fairly and reasonably when administering the surrender of the policy, based on the knowledge it did have. And from the information presented to me, I haven't been given any evidence to show Prudential was aware that new trustees – Trustee P – had been appointed. So based on that, I have gone on to consider whether the policy was surrendered correctly, bearing in mind what Prudential knew, as well as the payment of the surrender proceeds of the policy.

The surrender of the policy and payment of the surrender proceeds

Mrs B has complained that Prudential shouldn't have processed the surrender as the incorrect surrender document was used. I can see Prudential's 'Full and Partial Cash-In Form' clearly states 'Note: this cash-in form cannot be used for PruFund Investment Plan.' This was completed by Trustee T on 21 November 2018.

However, Prudential said in its response to Mrs B's complaint that it uses two different forms for its PruFund Investment Plan. One is used for PruFund Investment Plan Mark 1 and the second form – which says 'this cash-in form cannot be used for PruFund Investment Plan' is only used for the Mark 2 and Mark 3 plans. So, while I acknowledge Prudential said that this does cause confusion – which I do think is the case – from what Prudential has said, it does look more likely the correct form was used.

But in any event, even if the incorrect form was completed and Trustee T had been asked to complete a further 'correct' form, I've seen nothing to suggest that the outcome would have been any different. I say this because I think that if asked, Trustee T would have completed a new claim form and proceeded with the surrender as intended. So, while I recognise the trustees' strength of feeling about this point, overall, I don't consider it would have changed what happened in that Prudential wouldn't have acted differently as it wasn't aware that Trustee T shouldn't have signed the surrender form and so would have acted in good faith by processing the surrender as instructed.

The surrender request was referred to Prudential's fraud team and Mrs B has said the surrender should have been rejected on the basis it was the wrong form and hadn't been completed correctly in accordance with its instructions and Trust legal requirements. Mrs B has referred to inaccuracies in the surrender form in that it states any corrections needed to be initialled, but a correction made for the address of the bank/building society wasn't initialled. And the form contained two different addresses for Trustee T, the second of which wasn't registered at Companies House until 29 April 2019 which was over five months after

the form was signed using that address as the surrender address. They have said this is evidence of negligence on the part of Prudential.

However, to my mind, the issue here is Trustee T's intention when it completed the surrender form keeping in mind Prudential's understanding that Trustee T was the correct trustee. And I'm satisfied the completion of the form was done with the intention of surrendering the policy and I don't find that if an incorrect form was used or was incorrectly completed alters that intention. I think the core issue here is whether Trustee T's actions demonstrated a clear and unambiguous intention to surrender the policy. I think the completion and submission of the form was evidence of Trustee T's true intent and the fact that Mrs B considers that the incorrect form was used – which I'm not necessarily persuaded is the case – and so shouldn't have been processed, I don't think nullifies Trustee T's intention to surrender.

And with regard to the legal requirements, I'm satisfied that from Prudential's view, the form had been completed by the authorised trustee, and with the intention of surrender.

I am aware Ms A was never a director of Trustee T and so she could only have been appointed by the trustees to act on their behalf as agent. So, when Prudential surrendered the policy and paid the surrender proceeds it needed to be reasonably sure Ms A had been appropriately appointed. I asked Prudential about Ms A's authority and its policy approach in these circumstances, but it only provided a copy of the trust deed and indicated that the answer was contained in the deed.

I have carefully considered the wording of the deed, and note that at paragraph 4.1 the deed says the standard provisions of the Special Provisions of the Society of Trust and Estate Practitioners 2nd Edition ('STEPS') apply. I have in turn taken into account the relevant STEP provisions and note that with regard to the delegation of trustee functions, the provisions say;

'15 Delegation

A trustee may delegate in writing any of his functions to any person. None of the restrictions on delegation in sections 12 to 15 Trustee Act 2000 shall apply. A trustee shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or expedient) provided that he took reasonable care in his selection and supervision.'

The Society's guidance notes for the STEP special provision says;

'Provision 15, which provides that a Trustee may delegate in writing any of the functions to any person, includes a provision that none of the restrictions in section 12 to 15 Trustee Act 2000 shall apply. Under the STEP Standard Provisions there is no obligation to consult with Beneficiaries when deciding to delegate any of their functions. Therefore, a delegate can make decisions without consulting either the delegating trustee or the beneficiaries. Normally a beneficiary should be consulted.'

In this case it would seem Prudential is saying that paragraph 4.1 of the trust deed takes precedence over the requirements of s15 Trustee Act 2000, which imposes particular requirements on trustees when authorising a person to exercise their asset management functions as their agent. Whether that is the position at law is, as I understand it, unclear. And so, had it been the case that the surrender money had been misapplied here, it is likely that Prudential would need to provide further evidence to support the approach they took.

However, ultimately my view is formed by the fact that there is no evidence of misapplication of the funds, or of any fraud on the part of Ms A. Ultimately, Prudential correctly paid the surrender proceeds to Trustee T, who was the legal owner of the funds in accordance with its records at the time. And I am further satisfied that Trustee T was aware that the surrender had been instructed and wanted it to proceed. All in all, the surrender proceeded exactly as the legal owner intended it to – Prudential did not, for instance, pay the money directly to Ms A or to anyone other than the legal owner. And so I don't agree it has done anything wrong.

In reaching this conclusion, I have given careful regard to the authorised signatories list that had been provided to Prudential before the surrender instruction on which Ms A's name appeared as one of three persons authorised to 'sign all documents on behalf of [Trustee T]'. The authorisation was provided by way of a resolution of the board of Trustee T at a board meeting held on 9 November 2018.

Mrs B has complained that 'all the trustees' needed to sign the surrender form and not just one of the 'three trustees'. By this, I assume she is referring to the three persons who were authorised to sign on behalf of the trust. There was of course only one trustee (Trustee T), and not three, as Ms B suggests. In turn, the rules concerning multiple trustees do not apply here. And I can't see that there are any restrictions in the authorised signatory list requiring all three authorised persons to sign each time they sign a document on behalf of the trust.

And Prudential has told us that only one of the three trustees needed to sign the surrender form so I can't see that Prudential did anything wrong here. It checked the signatory list and Ms A's name was on the document. And she had authority to sign 'on behalf of' Trustee T in her name only.

Again, Mrs B is right to say that the person who completed the form – Ms A – was signing on behalf of a trustee who was no longer trustee at the time. But again, I am satisfied Prudential wasn't aware of the change in trustee.

Mrs B also says that Prudential didn't check Companies House for an updated list of the directors of Trustee T because if it had done it would have found that the director who the trustees were told had authorised Ms A to surrender the policy had resigned in July 2018. It says this shows the signatory list was out of date as Prudential should have used the signature list for Trustee P.

But I don't find that point relevant. I say this because it was Ms A who signed the surrender document and it is only her name that mattered for surrender purposes, and she was authorised to do so at the time from Prudential's position as it hadn't received the change to the trustees document. And Ms A was an independently authorised signatory for Trustee T. But overall, with regard to the administration and processing of the surrender of the policy, I don't find that Prudential did anything wrong and acted in good faith.

With regard to the particulars of the payment of the surrender proceeds, I note that on 23 November 2018, Prudential confirmed with Trustee T that it had received the claim form which Trustee T sent on 21 November 2018. It is noticeable to me that there was no reply from Trustee T suggesting it did not want the surrender to go ahead. In my view, if Ms A had not been authorised to give the surrender instruction, and if she had, as Mrs B suggests, wrongly instructed Prudential to liquidate the fund, then I would expect Trustee T to surely have said so.

Again, this leads me to the view that Ms A was authorised to send the surrender instruction on behalf of Trustee T, and that the surrender took place entirely in line with Trustee T's wishes.

Mrs B has said that Prudential was complacent in its due diligence in paying away the surrender proceeds by using previous verification details. They referred to a computer file note from Prudential that said;

‘The money is requested in the [Trustee T’s] bank account which is a source account for policy [number] which we surrendered recently.’

This suggests to me that Prudential had recently carried out business with Trustee T and had noted that the bank details for that business matched those for the payment of the policy proceeds, which doesn’t seem unreasonable.

And I’ve seen Prudential’s computer records regarding the need for bank statements which reads ‘Happy to accept the internet copy of bank statement provided other requirements are met’. I assume the ‘other requirements’ to mean checking of the bank account details where Prudential had already satisfied itself the bank account on the surrender form was the same as one it had recently used as a source bank account for Trustee T.

Overall, I’m satisfied Prudential did carry out reasonable checks before paying the surrender proceeds away and I’m not persuaded by Mrs B’s argument here. I say this because it confirmed with Trustee T it had received the claim form and there’s nothing to show Trustee T didn’t agree a surrender had been made. And even if Prudential had gone further and re-checked the bank account details it would have referred back to Trustee T who would have provided the relevant information – I can’t see it would have provided alternative bank details.

All of this suggests to me that even if there were a problem with Ms A’s authorisation to instruct the surrender, the outcome would not have been any different, as it seems clear to me that Trustee T did intend for the surrender to take place.

And I haven’t been presented with any evidence that the surrender proceeds weren’t received by Trustee T as intended by the payment request. I say this because the complaint stemmed from the fact that the surrender proceeds, after being paid to Trustee T, were then invested in funds belonging to Trustee P on Trustee T’s instruction. So, I am satisfied this evidences that the proceeds were correctly received by the intended recipient – Trustee T – as per the surrender request.

In my opinion, there’s no evidence of fraud which should have been identified by Prudential as the surrender proceeds were paid out to the correct recipient – i.e. Trustee T as the legal owner of the funds (absent any notice of the change of trustee).

Prudential recorded it had ‘received a valid signatory list’ which again Mrs B says indicates it used the Trustee T signatory list when it should have used one for Trustee P. But as I have said above, Prudential hadn’t had sight of the trustee removal/appointment document so had no reason to challenge the information it did have and, to the best of its knowledge, an authorised signatory – Ms A – had been used.

In conclusion, I don’t find that Prudential did anything wrong in paying away the surrender proceeds to the bank account as stated on the surrender form.

Incorrect correspondence

After Mrs B raised concerns on 19 January 2024 with Prudential it replied on 6 March 2024 saying it had contacted the ‘legal policy owner’ to address those concerns. I understand that in error Prudential wrote to the financial adviser who had advised on the policy at the outset

rather than the 'legal policy owner'. I can see from Prudential's letter of 17 January 2024 sent to the financial adviser it confirmed that the policy had been surrendered, and the claim was processed directly.

Mrs B has said this evidences the fact that Prudential weren't aware of the 'legal policy owner'. However, I note in its response to the complaint Prudential explained that one of its file notes incorrectly stated that the trustee making the complaint was the original financial adviser, so it responded to the financial adviser in line with that. It then established it did have authority that it could correspond with the trustee on behalf of the trust and apologised for its error.

In recognition of the confusion caused in its response to the complaint it sent a cheque for a further £175 which I think is fair and reasonable under the circumstances. I say this because I'm satisfied it's a plausible reason for the mis-directed correspondence and was most likely an administrative error rather than anything more serious in it not knowing who the 'legal policy owner' was or that it follows that Prudential's administrative error had any impact on what happened at the time of the surrender. It's clear the financial adviser written to was the original financial adviser. And while the information Mrs B was seeking about the surrender of the policy might have been delayed in being addressed because of this, I can't see that any detriment was caused over and above that, and Prudential has apologised for this and offered £175 for the distress caused. So, I don't think Prudential needs to do anything more.

I appreciate Mrs B's opinion that 'good faith does not trump or excuse negligence of lack of due care and attention in the handling of a significant financial transaction'. But for the reasons given, I don't think Prudential were negligent or didn't act with due care and attention in the handling of the sale of the policy.

Administration of the attorney

Mrs B has said that the Special Power of Attorney ('SPOA') Deed didn't comply with section 25 of the Trustee Act 1925. It said this was because the SPOA granted power to multiple trusts, failed to specify the trusts to which it applied and was not accompanied by a board of resolution that authorised its making. The Trustee Act 1925 does allow for multiple trusts in a single instrument. And the SPOA deed did allow for the delegation in respect of all trusts;

'...necessary for the efficient administration of trusts and other assets managed by the Principal [Trustee T].'

So, it applies to all trusts managed by Trustee T. And Trustee T didn't require board resolution. Trustee T adopted the model articles of association as per section 20 of the Companies Act 2006. Article 5 allows a company express power to appoint a person as power of attorney. Because of this no specific board of resolution was needed to enable Trustee T to grant power of attorney so even if Prudential had made enquiries about a board resolution it would have been correctly advised that none was necessary.

Mrs B has said they are aware of other cases where Prudential incorrectly surrendered investments with Trust T when they had already been reassigned to Trustee P. But we only look at complaints on an individual basis, so I am only considering the merits of this particular complaint.

Overall, I don't find that Prudential acted incorrectly in allowing the surrender of the trust's policy and paying out the proceeds as instructed. In the absence of any notice of the change of trustee, it was reasonable for Prudential to assume that Trustee T was still the legal owner of the fund. The legal owner has the right to instruct the fund manager to liquidate the fund and to receive the proceeds. It seems clear to me that Trustee T knew the

instruction had taken place and was happy for the surrender to proceed. On the basis of what Prudential knew at the time, the funds were correctly paid to Trustee T. Ultimately, Mrs B's loss did not arise from the payment of the surrender proceeds to Trustee T, but from Trustee T's subsequent decision to transfer the funds to Trustee P. That is not a decision for which Prudential can be accountable and is not, as I say, an act that I am able to investigate or consider.

As I've said above, it's not clear to me why Trustee T proceeded with the surrender request at a time when it knew it was no longer trustee, only in order to then transfer the funds to Trustee P in any event. But that doesn't form part of this complaint and is not something I am able to consider. It follows that I don't uphold Mrs B's complaint. I appreciate she will be disappointed. It's clear she feels strongly about it, and I would like to thank her for the time and effort she has spent in bringing it. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given, I don't uphold Mrs B's complaint about The Prudential Assurance Company.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 October 2025.

Catherine Langley
Ombudsman