

complaint

Mr A complains about The Prudential Assurance Company Limited (Prudential). He's unhappy with Prudential's actions following a payment it made to him in error.

background

I issued a provisional decision on 2 September 2019. I've recapped the background below:

In 2017 Prudential contacted Mr A and advised that he had a Personal Retirement Plan with it from which a cash lump sum payment was available. Mr A made his Independent Financial Adviser (IFA) aware of the matter that made further enquiries on his behalf.

With the help of his IFA Mr A considered his options and later decided to take the cash lump sum payment Prudential said was available. Further to this Prudential paid Mr A a cash lump sum of £8,259.64 in April 2018.

In June 2018 Mr A received a letter from Prudential advising that the cash lump sum payment it made to him in April had been an error. Prudential explained:

- *the plan the cash lump sum payment didn't belong to Mr A*
- *following receipt of a change of address a plan was incorrectly identified as belonging to Mr A and a claim form was sent for the plan in error*
- *Mr A wasn't legally entitled to keep the money so it had to ask that he return it*
- *it was sorry for any upset or inconvenience caused*

Prudential said Mr A would need to repay the £8,259.64 overpayment. But Prudential also advised that if Mr A wasn't in a position to repay the full amount straight away he should let it know so it could help him decide the best way forward.

In July 2018 Mr A's IFA wrote to Prudential on Mr A's behalf to complain. In summary it said:

- *Mr A was very upset about being asked to repay such a significant amount of money he'd genuinely thought was his*
- *Mr A accepted Prudential made the payment in error but was unhappy with how long it had taken to identify the mistake*
- *Mr A had already spent most of the money he'd received on home improvements*
- *on 14 September 2017 Mr A had queried with Prudential whether it was confusing him with another person with the same name but never received a response*
- *Mr A had already planned to use the money he received to invest in a new boiler, help his daughter with rent, pay for a holiday, make a cash injection to his business and pay for a new bathroom*
- *Mr A no longer had the money to repay the amount Prudential was asking for. And to make such a repayment would cause Mr A severe financial hardship*
- *as Mr A's IFA's it would also be charging Prudential for the time it had spent on this matter since it hadn't charged Mr A.*

Prudential responded to Mr A's complaint via his IFA. In summary it said:

- *it had made a serious error making the cash lump sum payment to Mr A and was very sorry for what happened*

- *it had missed opportunities to correct matters before the claims process was completed*
- *Mr A had an annuity with it that was already in payment so it understood Mr A genuinely believed the plan it had written to him about was his*
- *Prudential would look to retrieve the overpaid money but explained an arrangement could be reached if Mr A contacted it directly*
- *Mr A's IFA was invited to send Prudential its invoice for time taken regarding the cash lump sum payment made in error and said every effort would be made to get this settled*

Prudential wrote to Mr A on the same day and asked again that he repay the cash lump sum payment incorrectly made to him.

Unhappy with Prudential's response Mr A with the help of his IFA referred his complaint to our service.

Following the referral of Mr A's complaint to our service, Prudential said that as a gesture of goodwill in recognition of trouble and upset caused it was happy to reduce the amount Mr A needed to repay by £759.64- from £8,259.64 to £7,500.

One of our investigators considered the matter and in summary said:

- *Prudential's error had caused Mr A and his family a lot of distress*
- *Prudential's request that Mr A pay back the cash lump sum wasn't unreasonable since the money wasn't his*
- *given the amount Mr A needed to repay she thought it was fair a reasonable repayment plan was arranged between Mr A and Prudential*
- *Prudential's offer to reduce the amount Mr A owed by £759.64 was fair but she also thought it should pay him £200 compensation for distress and inconvenience caused*

Prudential responded and clarified that its offer to reduce the outstanding debt by £759.64 was in respect of trouble and upset caused. As Mr A needed to return money to it its usual practice was to reduce the outstanding debt rather than send a further payment to him. Because of this Prudential didn't agree a further payment of £200 was reasonable.

Mr A responded and said there was no way to estimate the level of upset caused by Prudential's error. He said that given the grief caused to his family and especially his wife he wasn't happy with our investigator's view.

As no agreement could be reached the matter was referred to me for a decision. And my provisional findings were as follows:

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'm intending to partially uphold Mr A's complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of all the arguments made by both parties, I have limited my response to the issues I consider to be central to this complaint. That is to say:

- *whether it's reasonable for Prudential to request Mr A returns the money it paid to him in error*

- *whether the action Prudential has already taken and proposed to take in respect of the error it made is sufficient*

I should firstly say I have real sympathy for Mr A. There's no dispute about the fact that Prudential made an error with the £8,259.64 cash lump sum payment it paid to him. I have no doubt Mr A accepted the payment in good faith. Indeed I think the fact that Mr A enlisted the help of his IFA and made reasonable enquiries about the plan Prudential led him to believe belonged to him (which the cash lump sum payment was coming from), supports this.

When it later became apparent Prudential had made a mistake and paid Mr A money from a plan which wasn't his, Mr A was understandably extremely upset and very disappointed. Prudential without a doubt unfairly raised Mr A's expectations. This was also avoidable.

As Prudential has explained, it mistakenly mismatched details for Mr A and another customer which led to a plan being linked to him in error. This should never have happened and from what I've seen I'm satisfied Prudential recognises how serious this matter has been for all parties involved.

The issue I have to decide is whether the action Prudential has taken following its error is reasonable and satisfactorily resolves the matter considering everything that happened.

Upon identifying its mistake Prudential apologised for any distress and inconvenience caused to Mr A and confirmed the money Mr A had received in error would need to be returned.

Although responsible for what happened, I'm satisfied Prudential isn't bound by its error. In a situation like this, we aim to put a consumer back in the position they would have been in, had the correct action/information been taken/given at the outset. So for Mr A, the correct position is that the £8,259.64 cash lump sum payment he received in error should be returned to Prudential. Mr A was never entitled to the cash lump sum payment he received and so it wouldn't be fair for him to benefit from Prudential's mistake by keeping the money. Because of this I don't consider Prudential's request that Mr A return the money incorrectly paid to him to be unreasonable.

I don't underestimate the difficult position Mr A finds himself in now Prudential has requested he return the money he received. As has been explained in submissions to this service most of the money Mr A received from Prudential in error has already been spent in various ways. Because of this as well as the size of the lump sum payment Prudential has asked to be returned I can appreciate how concerned Mr A will be about the potential financial impact of this. And I'm sure this has in turn caused Mr A further worry.

I'm very sympathetic to Mr A's concerns and understand that repaying the £8,259.64 cash lump sum payment to Prudential isn't something he (or his family) can currently comfortably afford to do. But from what I've seen Prudential has been mindful of this and taken Mr A's difficult circumstances into consideration when suggesting a way forward. As part of its requests that the £8,259.64 be repaid, Prudential has said that if Mr A isn't in a position to repay the full amount straight away he's invited to let it know so it can work with him to decide the best way to repay the money. This is the level of accommodation I'd expect from Prudential in the circumstances so I can't reasonably conclude that Prudential isn't treating

Mr A fairly. I'd encourage Mr A to engage directly with Prudential (if he hasn't already done so) so a mutually acceptable and agreeable repayment plan be arranged.

In addition to its apologies and offer of a suitable repayment arrangement I see that Prudential has also recognised that its error resulted in Mr A's IFA carrying out unnecessary work on Mr A's behalf. Specifically Prudential said in its letter of 26 July 2018 to Mr A's IFA:

"Please send me your invoice for time taken in this regard and I will make every effort to see this is settled promptly (...)"

It's not clear whether Mr A's IFA has as yet provided Prudential with an invoice. However I think Prudential's offer to cover Mr A's IFA costs associated with its error is fair. I don't think Mr A should suffer any financial disadvantage in this respect.

Following the referral of Mr A's complaint to our service, Prudential has made an additional offer in respect of what has happened. As a gesture of goodwill it has said it would be prepared to reduce the amount Mr A needed to repay by £759.64. This would reduce the amount Mr A owed Prudential from £8,259.64 to £7,500. Given the level of disappointment and frustration Prudential's error has caused I think Prudential's concession here appropriately reflects the seriousness of what has happened.

Our investigator suggested that in addition to what Prudential has already done/proposed to do, it should also pay Mr A £200 compensation. It's really unfortunate what has happened here but I'm unable to agree with our investigator's recommendation. I think Prudential's apologies, repayment offer and significant reduction in the amount Mr A owes are sufficient and proportionate given its mistake. I think it's important to say at this point that my role here isn't to fine or punish Prudential for the error that has clearly occurred, but rather to look at how it has sought to address the issue and determine whether its approach is fair and reasonable.

I should also say that Prudential's offer to reduce the amount Mr A needs to return to it by £759.64 exceeds the level of compensation I would've considered awarding to Mr A if Prudential had made no offer at all. I consider Prudential's concession to be significant and a fair resolution.

While I'm not intending to direct Prudential to make the award Mr A would perhaps like, I do think it's entirely reasonable for Mr A to expect Prudential to provide clear, consistent and correct information. And it's unfortunate that in this case that didn't happen. I am genuinely sorry to hear of the impact that this has had on Mr A.

I don't underestimate or doubt Mr A's sincerity or strength of feeling in bringing his complaint to this service and I understand that my decision will likely come as a disappointment to him, but for the reasons I've explained I don't intend to ask Prudential to do anything further.

I invited Mr A and Prudential to comment on my provisional decision.

Prudential responded and said it had no further comments to make. Mr A responded and in summary said:

- he recognised the "serious approach and diligence" our service had given his complaint and was thankful for that

- he disagreed with my provisional decision and didn't think it took into account the distress Prudential's errors had caused his wife who'd come close to a breakdown as a result of what happened
- the whole experience had been extremely traumatic and would continue to have an impact going forward
- his former accountant had expressed an opinion on the matter saying Prudential should claim the overpayment on its insurance given its size as a company and the amount of money it already had at its disposal
- although he disagreed with my provisional decision he would ultimately accept it but that any payment due would have to be paid in small amounts over subsequent months and years

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, my decision remains broadly the same as before (and as set out above). That means I'm partially upholding Mr A's complaint for the reasons I've given. However I'll respond to some of the points Mr A has made following my provisional decision. While I won't be responding to every single point made, I have carefully considered all that has been said.

It's understandable why, given what Mr A has shared about the impact of Prudential's mistake, that he feels my decision doesn't go far enough in recognising the seriousness of what happened or appropriately compensating him for this.

I appreciate Mr A's strength of feeling. But as I said in my provisional decision I have genuine sympathy for Mr A and certainly don't underestimate how difficult this experience has been. Nor do I take it lightly that going forward it won't be a pleasant experience for Mr A having to repay the money he owes to Prudential. It's because of this I concluded that Prudential's apologies, offer of a suitable repayment plan and significant concession to the overall amount Mr A owes Prudential were fair and reasonable responses given the seriousness of what happened and its impact on Mr A.

I'm very sorry to hear of the distress Mr A says has been caused to his wife by what happened. I don't doubt this has been an incredibly difficult time for both Mr A and his wife. However I can only tell Prudential to pay compensation for trouble and upset experienced by their customer- and in this case that's Mr A, not his wife.

I'm afraid that in the circumstances I haven't been persuaded to direct Prudential to do anything in addition to what it has already offered to do. And as I explained in my provisional decision I'm unable to fairly conclude there are sufficient grounds on which Prudential should be required 'write off' the overpayment it made to Mr A.

my final decision

My final decision is that I partially uphold Mr A's complaint, to the extent that The Prudential Assurance Company Limited applies the £759.64 reduction to the overall amount Mr A owes for the overpayment and that a reasonable repayment plan is agreed between The Prudential Assurance Company Limited and Mr A so Mr A can repay the amount he owes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 November 2019.

Chillel Bailey
ombudsman