

## **complaint**

Mr B complains that The Prudential Assurance Company Limited (“Prudential”) gave him incorrect information about his entitlements to the proceeds of some pension funds. And subsequently he additionally complains that even when his entitlement was confirmed Prudential delayed making the payment to him.

## **background**

The background to this complaint was set out in the provisional decision I issued last month. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I didn’t think Mr B’s complaint should be upheld. I invited both parties to let me have any further comments and evidence. Prudential has said it has nothing further to add. Mr B has provided some additional comments.

Although I am only summarising here what Mr B has said, I have carefully considered everything he has said before writing this decision.

Mr B has explained that he is disappointed that I have reached a different conclusion to our adjudicator. He says that not upholding the complaint doesn’t seem fair given how incompetent Prudential were in this matter. And he thinks the company should be reprimanded for its behaviour as well as providing him with compensation to cover the costs he has incurred.

## **my findings**

I’ve once more 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 not persuaded to change my original findings and so I don’t uphold this complaint.

It would be useful to repeat part of what I said in my provisional decision. The role of this service isn’t to regulate or punish businesses. Instead we look at individual complaints to identify whether a business has done something wrong. And if that is the case we would look to place consumers back into the position they would be if the mistake hadn’t occurred. So in this decision I won’t be considering whether Prudential should be reprimanded for what has happened here – that is entirely a matter for the Financial Conduct Authority, Prudential’s regulator.

I understand that Mr B is disappointed with my decision. It is clear that Prudential has provided Mr B, and his Trustee in Bankruptcy, with incorrect information. But I don’t think that Mr B has lost out as a result of this. I think he is actually significantly better off than he would have been if the mistakes hadn’t been made. And Prudential has already paid Mr B £1,000 to reflect the trouble and upset he has been caused by this matter. I don’t think that, considering the gains Mr B has made in receiving the funds that would have normally passed to his bankruptcy estate, Prudential needs to do anything further.

**my final decision**

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 November 2018.

Paul Reilly  
**ombudsman**

## **EXTRACT FROM PROVISIONAL DECISION**

### **complaint**

Mr B complains that The Prudential Assurance Company Limited (“Prudential”) gave him incorrect information about his entitlements to the proceeds of some pension funds. And subsequently he additionally complains that even when his entitlement was confirmed Prudential delayed making the payment to him.

### **background**

Mr B held three pension plans with Prudential. He was declared bankrupt in 1996. Mr B’s Trustee in Bankruptcy (TiB) sought to recover the value of these pension plans from Prudential. But it was informed by Prudential, in 2015, that each pension formed part of a scheme that contained a protection clause. That would mean Mr B would forfeit any pension benefits as a result of his bankruptcy and so they couldn’t be claimed by the TiB. But at a later date, when the pension benefits became payable, Mr B would be able to ask for them to be paid to an alternate payee of his choice.

In June 2017 Mr B contacted Prudential to ask about the value of his pension benefits. He was given the values of the three plans. Mr B says that as a result he decided to make some expenditure and borrowed money from a family member in anticipation of his pension benefits being paid.

Around a week later Prudential identified that only one of Mr B’s pension plans actually contained the protection clause. So the value of the other two plans could be claimed by the TiB. Prudential wrote to the TiB to ask for confirmation whether it still retained an interest in these benefits. It confirmed it did and asked for further information on the benefits including the earliest date on which they could be paid.

Mr B complained to Prudential about the incorrect information he had received about which pension benefits were covered by the protection clause. And he asked that Prudential compensate him for the items he had purchased in anticipation of receiving the funds he had been told were due to him.

In July 2017 Prudential wrote to Mr B accepting that it had provided him with incorrect information about the benefits that were payable to him. But it didn’t think it should pay the remaining pension funds to him as they were due to the TiB. Prudential paid Mr B £750 in recognition of the loss of expectation he had suffered.

Mr B accepted the payment on account of the compensation he thought was due to him. And he then provided Prudential with further information about the purchases he had made in anticipation of receiving the benefits he had been incorrectly advised were due to him. He suggested that he was due additional compensation.

At Prudential’s request Mr B provided evidence of the purchases he had made. These purchases were made in the period between him receiving the incorrect information about his benefits, and Prudential correcting the mistake around ten days later. And at the end of August 2017 Prudential also paid to Mr B’s nominee the benefits that were due on the pension that was subject to the protection clause.

In September 2017 Prudential got back in touch with Mr B. It pointed out that it thought he had a duty to mitigate the losses he was claiming, and suggested his claim should be limited to any losses he incurred after re-selling the items he had purchased. But Mr B said, after the assistance of a solicitor, that he didn’t consider he had an obligation to mitigate his losses. He thought that the principle of “estoppel” applied in this matter.

Prudential rejected Mr B's claim of estoppel but reiterated that it might consider a payment to cover any residual losses Mr B incurred following the re-sale of his purchases. In response Mr B advised what he thought these losses would be, and proposed a settlement of £20,000, plus his legal costs, and a sum to compensate him for the trouble and upset this matter had caused him.

In November 2017 the Official Receiver, Mr B's TiB appears to have become aware of the purchases that Mr B had made – I assume that Mr B also made the TiB aware of his claim of estoppel. The Official Receiver considered that Mr B had a legal defence against any claim by his TiB on the two outstanding policies. So it advised Prudential that it no longer wished to claim an interest in these funds. But it did seek to recover the value of these plans from Prudential direct.

Later that month Prudential wrote to Mr B denying his claim for further compensation. It said it didn't consider it appropriate for Mr B to make the level of expenditure so soon after his call in June 2017. It confirmed that it wouldn't be paying his legal costs. And it reminded Mr B that he could bring his complaint to this Service if he wished. But Prudential paid an additional £250 (making a total paid of £1,000) to Mr B in recognition of the distress and inconvenience he'd been caused.

In January 2018 Prudential once again confirmed to Mr B that the TiB held an interest in his two remaining pension plans. It isn't clear to me why Prudential had failed to record and act on the letter it was sent by removing that interest around two months earlier. The following week the TiB wrote again to Prudential, and sent a copy to Mr B, confirming it no longer held any interest in these two pension funds. Mr B requested payment of these funds, and Prudential began its payment process.

Mr B was advised that he would receive payment of the remaining funds at the start of March 2018. But I understand that shortly before then Prudential received a further letter from the TiB repeating its intention to recover the value of these plans from Prudential direct. As a result Prudential delayed Mr B's payment by a further two weeks whilst its legal department considered the matter.

Mr B's complaint has been assessed by one of our adjudicators. He thought that it would be reasonable for Prudential to reimburse the legal costs that Mr B has been able to evidence. And he thought that Prudential should also pay some interest to Mr B to reflect the near two week delay in the final payment being made. But he didn't agree with Mr B's request that a further sum should be paid to reflect the distress and inconvenience he'd been caused.

Prudential didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

At the outset I would say that the role of this service isn't to regulate or punish businesses. Instead we look at individual complaints to identify whether a business has done something wrong. And if that is the case we would look to place consumers back into the position they would be if the mistake hadn't occurred.

In this case it is clear that Prudential has provided Mr B, and his TiB, with incorrect information. And that error dates back to 2015. At that time Prudential incorrectly identified that all three of Mr B's pensions plans contained the protection clause and so couldn't be included as part of his bankruptcy estate. And as a result of repeating that incorrect information in 2017 Mr B committed to making a number of large purchases in anticipation of receiving the value of his pension funds.

If Prudential hadn't made an error, two of Mr B's pension funds would have been claimed by his TiB. And so the amount he would have received from Prudential would have been far smaller. But as a result of the error, and the purchases Mr B made before the error was corrected, his TiB has felt it necessary to remove its interest from these two policies and so their value has been paid to Mr B. So it seems to me that as a result of Prudential's error Mr B has gained significantly – the value of these two pension policies amounts to almost £35,000.

I have considered that Mr B says he needed to take legal advice in order to persuade Prudential that these funds were due to him. But I don't agree. This service provides a free and impartial method of resolving disputes between consumers and financial institutions. It isn't normally necessary for consumers to take legal advice before bringing their complaint here. And although I appreciate that Mr B's complaint contains a number of unusual circumstances I'm not currently minded that it would be fair for me to require Prudential to pay the legal costs that Mr B says he has incurred.

Mr B has also asked that we consider, as part of this complaint, the time that it has taken for Prudential to pay these funds to him. And, due to the complexity of the situation, there were a number of steps that Mr B needed to take before Prudential was sufficiently satisfied that the funds were due to him.

As I said earlier, if Prudential hadn't made its initial mistake these funds wouldn't have been due to Mr B. So I don't find it unreasonable or surprising that on discovering this error Prudential wanted to be extremely careful to limit any liability this mistake might cause to it. And I think those concerns would have been heightened when the TiB wrote to Prudential asking that it made up any shortfall in Mr B's bankruptcy estate caused by it needing to remove its interest from these pension policies.

On balance, I don't currently think that Mr B has lost out as a result of the mistakes that Prudential made. I think he is actually significantly better off than he would have been if the mistakes hadn't been made. So I don't think that Prudential should pay any legal costs Mr B has incurred in resolving this matter. And although I accept there was a short two week delay in Prudential ultimately making the payment to Mr B I currently think that delay was reasonable given the unusual nature of this situation and the need for Prudential to ensure it was acting correctly.

I can see that Prudential has already paid Mr B a total of £1,000 to reflect the trouble and upset he has been caused by this matter. I don't currently think, considering the gains that Mr B has also made in receiving the funds that would have normally passed to his bankruptcy estate, that it is reasonable for me to ask Prudential to do anything further in this regard either.