

complaint

Mr B's complaint concerns how The Prudential Assurance Company Limited (the business) has dealt with his possible claim on the proceeds of a policy taken out by his great uncle. He says it has failed to undertake its responsibility to identify the correct beneficiary or beneficiaries of this policy, and has placed the onus on him to take legal responsibility for something which it's up to the business to sort out.

background

The background and circumstances of this complaint are set out within my provisional decision of 23 September 2015. A copy of this is attached and forms part of this decision.

The business accepted my provisional decision, and proposed solution.

Mr B said while the ombudsman's solution was a pragmatic one, he didn't feel able to accept it:

- He was being asked to accept half the proceeds without knowing whether this could compromise and confuse other potential beneficiaries
- He felt his stepmother might have a potentially greater claim to his share of the policy
- The business hasn't taken sufficient steps to try and discover the legitimate beneficiaries of the policy including those of his uncle's great niece
- He didn't accept the ombudsman's view that the business wasn't to blame for failing to track down potential beneficiaries much earlier
- He wants the business to track down his stepmother, and offered to provide it with likely contact details for her

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also carefully considered Mr B's new arguments.

Firstly, it's important to explain that the responsibility for ensuring this policy was paid out was the policy-holder's executor or estate. Providers are reliant on them to inform them when a policy holder has died; they then have a shared responsibility to ensure the proceeds are paid out correctly.

So I cannot agree with Mr B that the business is responsible for the failure to pay out on this policy. I also believe it used reasonable endeavours to try and clarify who to pay these proceeds to. I do not agree that it ought to have taken the extensive steps that Mr B outlines.

It's also important to explain my role in this complaint. Mr B primarily complained that the business had made unreasonable demands in expecting him to sign an indemnity waiver as a condition of making a pay-out to him.

This is the complaint I have considered, and I broadly agreed with him; hence my proposed compensation.

I have not, and could not have considered other potential claimants. I neither have the authority to do so, nor sufficient information to consider the issue satisfactorily.

It is for any such claimants to make their own representations to the business, and if appropriate refer a complaint to us, should they remain unhappy with the business's response.

Finally, as I explained in my provisional decision, my proposed solution to this complaint is to instruct the business to make the specified payment to Mr B in full settlement of any claim he might have on the policy. By definition this does not, and could not affect other potential claimants from seeking what they may believe is their rightful share of the proceeds.

I am satisfied that my provisional decision was fair and reasonable in the difficult circumstances of this complaint. It is for Mr B to choose whether to accept this. If he does so I instruct the business to make the payment as described.

my final decision

For the reasons given in my provisional decision, I uphold this complaint.

I instruct The Prudential Assurance Company Limited to pay Mr B 50% of the value of the pay-out originally due plus interest at Bank of England base rate from December 1994 to the date of this settlement. This is on the condition that Mr B accepts this in settlement of his complaint and that he waives any claim on the proceeds of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 November 2015.

Tony Moss
ombudsman

copy of Provisional decision

Complaint

Mr B's complaint concerns how The Prudential Assurance Company Limited (the business) has dealt with his possible claim on the proceeds of a policy taken out by his great uncle. He says it has failed to undertake its responsibility to identify the correct beneficiary or beneficiaries of this policy, and has placed the onus on him to take legal responsibility for something which it's up to the business to sort out.

Background

The business contacted Mr B in 2014 and said it had recently identified that he might be the beneficiary of a policy taken out by his great uncle whose proceeds had never been paid out.

Mr B signed the enclosed document and provided the business with a range of relevant information over a number of months, giving details about other possible beneficiaries. He asked several key questions about what he felt the business would need to do to ensure he was the only eligible beneficiary.

He said that, to his knowledge, there had been two beneficiaries from his great uncle's will: his father, who has since died, and a great niece. He believed she had also passed away but couldn't confirm his.

He provided what information he had about this niece and suggested the business needed to check if she was still alive.

He also said that his father's wife at the time, his stepmother, was still alive and he couldn't confirm whether she might be a potential beneficiary of this policy without speaking to lawyers and incurring significant costs.

The business ran a Department of Work and Pensions-check on the policyholder's niece which showed she didn't appear on its records. It didn't make any other enquiries.

He also said the business was to blame for only identifying that this great uncle's policy needed to be paid out more than 20 years after he had died.

He said it was completely unacceptable for him to be asked indemnify the business against future claims. It was its fault this was being dealt with so late, and it was its responsibility to correctly identify the beneficiaries of the policy.

The business has since admitted that it didn't deal with Mr B's correspondence in a timely or appropriate manner, and has paid him £200 in compensation for this. But it maintains it cannot pay out the proceeds from the policy without Mr B signing an indemnity form.

An adjudicator at this service didn't believe Mr B's complaint should be upheld.

He said that the business had contacted Mr B in good faith, and had made reasonable steps to try and identify the appropriate beneficiary.

He said he couldn't compel the business to undertake further investigations, and didn't believe it had done anything wrong in this regard.

As no agreement has been reached, this complaint has been brought to me for review.

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.

Firstly, I want to acknowledge that this is an unusual and difficult case in which I do not believe there is an obvious or perfect solution.

I am required to consider whether the business has done anything wrong, whether Mr B has suffered as a result of this mistake, and if so to put him back into the position he would have been in if this mistake hadn't occurred in the first place.

On all three issues I have to rely on limited information, take a view about the balance of probabilities, and to come to what I believe is a fair and reasonable decision in these specific circumstances.

the relevant issues

Mr B says it is the business's fault that it has only discovered that it hasn't paid out on this policy more than 20 years after his great uncle's died. I cannot agree.

It is the responsibility of the policyholder's executor/s to contact the business to inform it that the person had died. There is generally no other means for the business to discover this.

While there is no information dating back this far, I can see no reason to conclude that the business is responsible for its failure to pay out the policy's proceeds at the time.

The adjudicator said that the business contacted Mr B in good faith, seeking to pay out on this unclaimed policy. I agree, and I believe this should be acknowledged.

It also rightly asked Mr B to provide various details to establish/confirm he was a/the legitimate beneficiary of this policy.

Equally, Mr B provided extensive information in a timely fashion, identifying a number of important issues to alert the business to the possibility that he might not be a/the legitimate beneficiary.

As has been acknowledged, the business did not respond adequately or appropriately to the pertinent issues Mr B raised. It has since apologised for this and paid Mr B £200 in compensation.

I do feel that that its failure to respond, speedily or satisfactorily, to Mr B's valid questions has contributed to this issue requiring the ombudsman's involvement. In particular, it failed to respond to his repeated query about what 'normal circumstances hadn't been met', leaving Mr B in the dark about the precise reasons why it won't process his claim without his personal indemnity.

I assume the business means that it hasn't been provided with sufficient information to satisfy itself that Mr B is a legitimate beneficiary, and the sole one at that. In this situation it doesn't feel able to pay the proceeds to him, without his indemnity, as it would still be open to future claims from other potential beneficiaries (and could end up having to pay the claim twice).

This is a normal business practice and not something one would generally question, and it's understandable that the business would insist on this.

I also agree with the adjudicator that it wouldn't be fair or reasonable to expect, or instruct the business to take the considerable extra steps required to rule out all other potential beneficiaries. It would, inevitably, be a lengthy and potentially expensive process to establish the current beneficiaries of the policyholder's original beneficiaries' estates.

However, Mr B's stance is in my view, equally understandable.

The business approached him about this unclaimed policy. He has devoted a considerable amount of time in seeking to help it ensure it paid the money to the correct individual/s. He has, in effect, asked a number of key questions it should have asked.

He has rightly pointed out that it is practically impossible for him to prove he is the sole legitimate beneficiary for the same reasons that the business cannot do this.

In this unusual situation I do not think the business's insistence that he sign an indemnity waiver is reasonable or realistic. Given the modest size of the potential pay-out, I can see no reason why Mr B should accept this offer and lay himself open to the possible of legal action by other possible claimants.

As such I believe the business should've made Mr B a more realistic, pragmatic offer to settle what seems, on balance, a legitimate claim to some of the proceeds of the policy.

As I said earlier, I do not believe there is a perfect solution but the following seems to me to be fair and reasonable in the circumstances.

a settlement

From the evidence I've seen, it seems most likely that Mr B is only entitled to half, at most, of the proceeds of his great uncle's policy. His father was one of two nominated beneficiaries, so I can see no reason why Mr B would've been entitled to more than half himself.

I accept that his stepmother may have a claim on part of this, but I am not claiming this solution is ideal, or that it would affect the rights of any other legitimate claimants.

The business offered to pay the policy proceeds, if he signed the indemnity form, with the addition of interest based on the Bank of England base rate since the date the policyholder died in December 1994.

I think this is a fair offer. It is not primarily responsible for the failure to pay out on the policy, and I do not think it would be right to impose a higher interest rate on the payment.

I believe it is right that Mr B receives a fair share of the proceeds of this policy, and I don't think it is fair to expect him to indemnify the business against possible claims. However, if he accepts this informal settlement of his claim I don't think it would right for him to retain a potential right to or share in the policy's unpaid proceeds.

I accept that this will result in the business paying Mr B half of the value of the proceeds, and leaving itself open to potential claims for the whole of the proceeds in the future. However, in the alternative scenario, where it doesn't make any payment to Ms B, it is in all probability simply retaining all of the money itself.

my provisional decision

For the reasons above, I currently intend to uphold this complaint to the degree described.

I intend to instruct The Prudential Assurance Company Limited to pay Mr B 50% of the value of the pay-out originally due plus interest at Bank of England base rate from December 1994 to the date of this settlement. This is on the condition that Mr B accepts this in settlement of this complaint and that he waives any claim on the proceeds of the policy.

Tony Moss
ombudsman