

## **complaint**

Mr and Mrs B and the estate of Mrs B's late mother, also Mrs B, (who I will refer to as Mrs SB to avoid any confusion) ('the estate') bring this complaint about The Prudential Assurance Company Limited ('Prudential')'s handling of the late Mrs SB's critical illness claim under a payment protection insurance ('PPI') policy.

## **background**

Mr and Mrs B took out a loan along with the late Mrs SB. Mr and Mrs B bring this complaint along with the estate of the late Mrs SB on the basis that the late Mrs SB had PPI which didn't pay out critical illness benefit when it ought to have done. The view of those bringing this complaint was that the PPI covered the late Mrs SB for sickness, critical illness and death benefit, and that although a disability claim was paid, had Prudential paid critical illness benefit then the outstanding loan (that the late Mrs SB was party to with her daughter, Mrs B, and her daughter's husband, Mr B) and arrears would have been lower. They are also helped in bringing this complaint by the late Mrs SB's son. Additionally they say that the late Mrs SB wouldn't have suffered with the worry and distress of the debt, as Mr and Mrs B continued to do after Mrs SB had passed away. The complainants argue that a critical illness claim would have cleared the outstanding loan balance earlier and stopped arrears from building up.

The further background to this complaint is that Prudential were the underwriters of the critical illness and life benefit elements of the policy, and Lloyds General Insurance Limited ('Lloyds Insurance') were the underwriters of the sickness cover provided by the policy.

The essence of this complaint is that Prudential should have paid out critical illness benefit when the late Mrs SB became ill with a critical illness under the PPI. Prudential's view was that it hadn't done anything wrong: it said it couldn't pay a critical illness claim until the late Mrs SB's illness was confirmed as a critical illness in line with the PPI policy terms. Prudential said both the sickness claim and death claims were paid, and that it hadn't made any mistakes with the management of the claims. It made the point that the lender had already offered (and now has paid) £3,100, which was the amount of loan arrears that had had to be paid by Mr and Mrs B in order to remove a bank charge on a property after the late Mrs SB had passed away. Prudential also said it would pay £250 because of its delay in responding to the complaint.

Our adjudicator who investigated this complaint concluded that it should be upheld in part. She didn't think Prudential had been unfair not to have paid the critical illness claim. She said no claim for critical illness had been made at the time and she found that Mrs SB's illness had been diagnosed as a 'critical illness' after the sickness claim had already been paid. To put things right she considered that Prudential should put the loan account in the position it would have been in on 30 September 2010 if the critical illness claim had been paid then.

Prudential said it would consider a backdated critical illness claim from September 2010 until Mrs SB passed away in June 2011. But it said that due to the way the loan had been managed after Mrs SB passed away and the arrangements that had been made for clearing the debt and arrears, no further sums were actually payable. Mr and Mrs B and the estate of the late Mrs SB didn't accept this assessment and asked for the complaint to be passed to an ombudsman.

After the adjudicator's assessment and when the complaint was passed for further review by another adjudicator before being passed to me, it was noted that the late Mrs SB wasn't in fact insured under the PPI policy. This has now been confirmed by Prudential and I understand accepted by those bringing this complaint, but they remain dissatisfied by the way their complaint has been responded to.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When this complaint was brought to us it was assumed that the late Mrs SB was covered by the PPI and until recently this is what all parties thought was the position. But recently Prudential has confirmed that the late Mrs SB wasn't in fact named on the policy, only the other parties to the loan were –Mr and Mrs B. I apologise that this has only recently come to our attention, as it has to Prudential. It has now become apparent that Prudential made an error when it met the late Mrs SB's sickness and death claims, since she wasn't covered by the PPI policy. It follows from this that it wouldn't make sense to conclude that Prudential is at fault for not paying out any critical illness benefit under the policy.

I have nevertheless looked into the facts in order to satisfy myself as to whether or not any compensation might be due because of matters raised in this complaint. This complaint stems from the fact that the PPI, which it was assumed the late Mrs SB had, covered her for disability, unemployment and critical illness benefit. But even if she'd been covered, a point also until recently overlooked was that under the PPI connected to the loan, cover ended when the policy holder reached 65. I understand the late Mrs SB was 62 when she took out the loan and would have reached 65 in early 2007, which was before she became unwell. This means that even if the late Mrs SB had had PPI, she wouldn't have been covered when she became ill.

Yet, because of the mistaken assumption that the late Mrs SB had PPI, a disability claim for her was made in February 2009, which was accepted. The late Mrs SB was paid benefit for the maximum of 24 months under the PPI. The argument the complainants here make is that Prudential ought to have changed the benefit to critical illness. However, it seems to me that at the time Prudential did consider doing this. I say this because the available evidence is that it made enquiries of the late Mrs SB's GP about her claim in May 2009, including a request for clinical notes. Prudential says that no diagnosis was confirmed to support a critical illness claim until later and nor was a critical illness claim made at the time in any event.

In summary, even though I've formed the view that Mrs SB wasn't covered by the PPI, since this point has only recently been discovered I also looked at the substantive complaint points that have been raised. Having done so it seems to me that the late Mrs SB's illness was only diagnosed as one of critical illness at the end of September 2010 - albeit it was suspected before that in January 2010 by her GP.

After Mrs SB passed away in June 2011 a death claim was made. Prudential assessed this in line with the PPI terms and conditions and paid around £12,000, which represented the outstanding balance of the loan, but not arrears of interest.

During this complaint, after our adjudicator's assessment, Prudential agreed to consider a backdated critical illness claim from September 2010 to June 2011 when the late Mrs SB

passed away. But when it looked into how the late Mrs SB's financial position would have been affected had it paid out a critical illness claim in September 2010, it concluded that in fact her estate would not have been in a different position. That was because some of the outstanding arrears were written off by the lender after the late Mrs SB passed away. In addition the lender refunded the remaining loan arrears subsequently paid by Mr and Mrs B.

Even if the late Mrs SB had been covered, and had a critical illness claim been paid at the end of September 2010, this would have paid off the outstanding loan balance, but not the loan arrears. I understand the account accumulated further arrears from 30 September 2010 to 20 June 2011. Mr and Mrs B are unhappy about this. But I understand the arrears were partly written off and partly cleared, and subsequently any arrears paid were refunded. So had a critical illness claim been paid on 30 September 2010, the end result would not now have been any different.

I appreciate that a critical illness claim not being made or paid at the time may have caused upset, because loan repayments still needed to be made. Whilst I understand it must have been a very upsetting time for the late Mrs SB, and for Mr and Mrs B as parties to the loan, I have not awarded any compensation for trouble and upset (over and above the £250 Prudential has already offered). I think Prudential ought to have picked up the fact that the late Mrs SB didn't have PPI cover – only Mr and Mrs B as first and second named borrowers did. However, I also take into account that the sickness and death claims were paid, when in line with the PPI terms they shouldn't have been. Further, the loan arrears were either written off or subsequently refunded; and an offer of £250 has also been made by Prudential for trouble and upset.

Overall I do not consider I need to make a compensation award for this complaint. However, I do apologise that the fact that the late Mrs SB wasn't covered by the PPI was not identified earlier either by us or by Prudential when this particular complaint was referred to us and set up. Any outstanding issues about the associated loan, and PPI cover, are beyond the scope of this decision, or have already been covered under separate complaints, or are not issues I am able to comment on.

### **my final decision**

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B and the estate of the late Mrs SB to accept or reject my decision before 2 March 2017.

Claire O'Connor  
**ombudsman**