

complaint

Mr W complains about the service he's received from The Prudential Assurance Company Limited.

background

Mr W is both a trustee and one of several beneficiaries of a discretionary trust. The trust was set up in accordance with his late mother's will. The trust had invested money with Prudential.

In 2016 a decision was made to wind up the trust. Mr W says Prudential failed to provide clear information to enable him to withdraw his segment of the trust. This included information about which forms of identification were acceptable, particularly as Mr W resides outside the UK. Mr W says delays in him receiving payment were caused by Prudential and have caused him a financial loss.

Mr W complained to Prudential who responded and agreed that they had caused some delays. Their response said if things had progressed as they should, Mr W would've received his payment on 9 August 2017 (rather than 19 September 2017 as it was). So they proposed and paid redress to Mr W. This totalled £294.31. It was made up of 8% simple interest on the payment amount between those dates, as well as a refund of the transfer charge and a gesture of goodwill payment of £175. This was paid to Mr W in November 2017.

One of our investigators didn't think the complaint should be upheld. He concluded there were some failings in the service provided by Prudential, but that the offer they'd made was fair. He didn't recommend they needed to do more. Mr W doesn't agree and asked for an ombudsman to review his complaint.

On 30 October 2018 I issued a provisional decision. Following on from this there was further communication between Mr W, Prudential and our service. So to draw everything together I issued a further provisional decision on 22 January 2019. Both these provisional decisions are attached to and form part of this decision.

Mr W responded and made a variety of further points. Prudential responded and said they had nothing further to add. Now both parties have had the opportunity to respond, I can go ahead with my decision.

my findings

I've reconsidered 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 deviate from my provisional findings. I understand this will be disappointing for Mr W, so I'd like to explain why.

Mr W's response to my most recent provisional decision indicated that he thought I hadn't placed enough weight on certain documents or that I'd not fully appreciated their importance. With all due respect to Mr W, it is for me to decide the weight I wish to place on any given piece of evidence. And whilst I acknowledge he and I see things differently, my role requires that I apply my judgement to make my decision.

Similarly, Mr W has indicated that he has made a Subject Access Request (SAR) to Prudential as he wants to submit all the information they hold for my consideration. It is again my decision as to when I feel I have enough information upon which to base my decision. I'm satisfied both Mr W and Prudential have had ample opportunity to present evidence and arguments and that I am now in a position to issue my decision.

As I've previously explained, we are an informal dispute resolution service. A more forensic approach to dealing with the dispute would be achieved through court proceedings. I've considered the complaint within the framework of what I consider to be fair and reasonable in all the circumstances. On occasions this might mean I'm not providing the level of detail that Mr W would like, but that is just a reflection of the informal nature of our service and isn't intended as a discourtesy.

Before the assignment of the trust into the segments for each beneficiary, as trustee, Mr W is eligible to complain on behalf of the trust. And after the assignment, Mr W himself is a customer of Prudential and able to complain in his own right. For simplicity, I've looked at his complaint as a whole and proceeded with my decision on this basis.

My thoughts and reasoning are included within the attached provisional decisions. So I'll only provide further commentary where it's necessary to address the additional points Mr W raised in response to my provision decision dated 22 January 2019.

the date of receipt

Mr W doesn't accept that the documents sent to Prudential on 23 May 2017 weren't received until 15 June 2017. He thinks the burden of proof to evidence the date of receipt is on Prudential, who he thinks should seek further evidence from Royal Mail. Mr W has provided strong evidence of proof of posting and doesn't feel Prudential have provided strong evidence for their position.

I've listened carefully to both parties in relation to this issue. And I again acknowledge it is unusual for something posted first class to take so long to reach its recipient. But for the reasons outlined previously, I remain of the opinion that Prudential aren't responsible for delays between 23 May 2017 and 15 June 2017 as there is insufficient evidence to persuade me that the documents in question were received prior to that date.

time taken to assign the trust into segments

Prudential took from 15 June 2017 until 5 July 2017 to assign the trust into its respective segments. This represents 15 working days. The trust was to be divided into several segments. And some of those segments related to individuals who resided outside the UK. As such I think 15 working days is a reasonable time considering the work that would have been involved. Particularly with regard to the verification of documentation originating outside the UK which may have been less familiar to Prudential's staff.

I understand Mr W feels five working days would be a generous time period for this work to be completed. But Prudential would have presumably been dealing with numerous requests from many customers, not solely Mr W's, and I just don't think the 15 days it took is an unreasonably long time.

Mr W has highlighted Prudential's initial response to his complaint which says "*I am sorry for the delays we have caused in processing the assignment of your policy and, ultimately, in paying your monies.*" He says this is evidence that Prudential did cause delays.

I understand Mr W's scepticism of Prudential changing their position. But as I explained in my provisional decision, I don't think it's unfair for Prudential to conduct a further review in the course of dealing with Mr W's complaint and to come to a different outcome as a result. Particularly as Prudential's position is that they have already compensated Mr W for a greater delay than they are responsible for, but they aren't seeking or asking that any of what they've already paid be returned.

Mr W further points out that Prudential's letters dated 5 and 19 July 2017 must be incorrect. These letters said that he had been assigned his segment of the policy. Mr W says that had that been the case, Prudential would be in breach of Anti-Money Laundering (AML) requirements. This is because at that point they didn't acknowledge that they held the correct identification for him.

I think it's quite reasonable that Prudential completed all the required work to assign the trust, pending the approval of their AML requirements. So that once the documentation was received everything could promptly be processed. I can't see that Prudential stopped working on 'assigning' Mr W's segment of the policy whilst mistakenly awaiting the documentation they already had. So whilst I'm confident Prudential wouldn't have allowed an encashment of the segment until they had satisfied their AML requirements, I don't think they caused delays in the assignment itself.

Mr W points out that until assignment, the trust is the customer of Prudential and as such there was a requirement for his solicitor to deal with Prudential about this matter. He would like some of his legal costs reimbursed.

But I'm still not persuaded that chasing up missing identification is something that requires the involvement of a solicitor. So I don't think Prudential need to consider reimbursing any of the legal fees incurred.

discretion over the six month deadline

Mr W says that neither the 2007 nor 2017 Money Laundering Regulations stipulate a six month time limit in relation to the validity of documents. It's up to an individual business how they choose to satisfy themselves of their AML obligations. This is a business decision for Prudential and not something I would seek to interfere with.

Mr W also says that Prudential did apply discretion when assigning his segment of the trust after finding they had his identification in early August 2017. He points out that it was already beyond six months old at that point. On this basis he feels it is unreasonable for Prudential, given the circumstances, not to allow the same discretion in relation to his withdrawal request.

I've thought carefully about this point. But in terms of the assignment, it became apparent that the documents were within the six month period of validity when Prudential received them on 15 June 2017. So on that basis, I don't think Prudential's decision was unreasonable. I'm sure it was preferable to Mr W that Prudential dealt with it in that way, rather than re-requesting more recent identification for the purposes of assignment.

But I don't think that this necessarily means they have to do the same in relation to the withdrawal request. This wasn't made until 15 August 2017 and again the decision as to how to meet their AML requirements is one Prudential are entitled to make.

what should have happened?

Where a business makes a mistake, I expect them to try to put their customer back in the position they would've been in, had the mistake not happened. Mr W has provided his own detailed account of what he believes should have happened. This concludes that Prudential are responsible for 88 days of delays.

But as I disagree that Prudential are responsible for the delays that he has used as the basis for what he thinks should have happened, it won't add any value for me to provide further commentary.

Mr W has also challenged what I've set out as to what I think would've happened, were it not for Prudential's error of not realising they had Mr W's identification. I've thought carefully about this point. I acknowledge the communication Mr W references between his solicitor and Prudential, and I have re-reviewed it. Mr W says this is evidence that he would have requested a withdrawal as soon as possible. He has also reiterated that this was always his intention and has highlighted that Prudential would have accepted photocopies of identification for the purposes of a withdrawal.

I've considered this, but the first time making a withdrawal is mentioned, is in Mr W's call with Prudential on 15 August 2017. This call seems to have at least in part have been prompted by Mr W receiving a statement that day which is referenced in the call. As I acknowledged in my provisional decision, I don't dispute that in looking at what would have happened, Mr W could have made his withdrawal within July. But taking everything into consideration including the reasons set out in my provisional decision of 22 January 2019, on the balance of probabilities, I don't think he would have done.

It follows that for the reasons I've previously set out, I don't think Prudential need to do more.

my final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 April 2019.

Richard Annandale
ombudsman

copy of provisional decision

my provisional findings

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

Mr W has made considerable submissions in bringing his complaint. And whilst I don't intend to respond in similar detail, I have read all his correspondence and taken it into account when making my decision. So if I don't mention any particular point or piece of evidence it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. I hope Mr W doesn't take this as a discourtesy; it is just a reflection of the informal nature of our service.

Before the assignment of the trust into the segments for each beneficiary, as trustee, Mr W is eligible to complain on behalf of the trust. And after the assignment, Mr W himself is a customer of Prudential and able to complain in his own right. For simplicity, I've looked at his complaint as a whole and proceeded with my decision on this basis.

November 2016 to March 2017

In my provisional decision I set out why I didn't think Prudential were responsible for delays between November 2016 and March 2017. Mr W has said that whilst he still disagrees he is prepared to concede on this part of the complaint. As such I have no further comments to add on this point.

March 2017 to May 2017

In my provisional decision I explained why I didn't think Prudential were responsible for delays between March 2017 and May 2017. Neither party challenged this in their responses and so again I have no further comments to make on this point.

May 2017 to June 2017

Mr W's solicitor 'M' sent Prudential his deed of assignment and associated identification documents on 23 May 2017. Mr W has kindly provided proof of posting to show this was sent on that date. I accept that this is when the documents were sent first class to Prudential.

Prudential say they didn't receive these documents until 15 June 2017, which Mr W doesn't accept. He says it's far more likely that they received them shortly after the 23 May 2017. In support of this he has provided a report from Royal Mail which shows that within the relevant time period over 93% of first class mail was delivered the following day.

I asked Prudential about their procedures for incoming mail. They explained that all incoming mail is scanned into their system on the day of receipt. The only exceptions to this are when there is insufficient information to identify the correct customer within the documents (clearly not applicable to Mr W's case). Or if there was some sort of system failure that prevents the scanning. In both of these instances Prudential say the documents would be manually stamped with the date of receipt.

Prudential have also supplied a screen shot of their system which they say shows the documents were scanned in on 15 June 2017. Mr W disagrees and says he doesn't accept the date on the document is proof of the date of receipt. He's highlighted a letter to him from Prudential dated 19 July 2017 which had a date at the bottom of 23 August 2017. He also says he phoned Prudential himself and was told they wouldn't definitively be able to say when the letter was received. So based on this he doesn't accept Prudential's explanation.

I've carefully considered this point. I agree it is unusual for something posted first class to take so long to reach its recipient. I accept a call handler may have told Mr W they couldn't say when they

received the document. But I find Prudential's response to my enquiry about their incoming post procedure more persuasive.

Prudential have also explained that the letter Mr W refers to shows that date as it was rescanned into their system when they received it following Mr W sending it back to them as an attachment to his letter dated 17 August 2017.

Taking all of this into consideration, I don't think Prudential are responsible for delays between 23 May 2017 and 15 June 2017. This is because on balance, I'm not persuaded there is sufficient evidence to show they received the documents before that date.

15 June 2017 to 5 July 2017

Mr W says that the assignment of his segment of the trust taking until 5 July 2017 is an unreasonable delay. He thinks this should have taken no more than five working days.

Prudential have explained that they don't have a set timescale for dealing with segmented assignments of this nature. But they felt that the time taken wasn't unreasonable given the amount of documentation that needed verification and the work required to assign each segment.

In the circumstances of this complaint, I agree that this isn't an unreasonable delay. So I don't think Prudential need to do more in relation to this point.

5 July 2017 onwards

Prudential wrote to M on 6 July 2017 explaining that the trust had been assigned into its various segments. They also said they required some further proof of address for Mr W. It is now accepted that this was incorrect and that Prudential already had the identification they needed. Asking for it again was an oversight on their behalf.

Prudential wrote to Mr W on 19 July 2017 confirming that his segment had been assigned to him and providing some information about making a withdrawal. On 4 August 2017 in a phone call between M and Prudential, the mistake was discovered and Prudential acknowledged they did have Mr W's identification documents.

Where a business makes a mistake our approach is to, as far as is possible, put the consumer back in the position they would have been in, had the mistake not happened.

If the mistake hadn't happened I think Prudential still would have written to M on 6 July 2017 and Mr W on 19 July 2017 confirming assignment of his segment, but obviously not requesting further identification. This would have left Mr W in the position of needing to obtain, complete and return the relevant forms to make his withdrawal.

Mr W contacted Prudential on 15 August 2017 by phone to find out how to make a withdrawal. He says he didn't do so sooner because he knew that Prudential wouldn't have allowed him to make a withdrawal until the issue around his identification had been resolved. And whilst this was resolved on 4 August 2017, the delay between then and his contact with them on the 15 August 2017 was because he was on holiday.

Although Mr W says he would have made the withdrawal request as soon as he could, I've also considered what other evidence there is from around the time to support that. Mr W either knew or ought to have known that the identity documents he sent in in May 2017 'expired' at the end of July. (It is a requirement that they are dated from within the last six months and the bank statement he submitted was dated 31 January 2017.)

He had access to the anti-money laundering documents (where this requirement was set out) and his own submissions support he was aware of these as he says they formed part of his reasoning for not asking about a withdrawal sooner.

Even if Mr W was under the impression that he could have used the same identification for both the assignment and his withdrawal request, there was an imminent deadline of the end of July 2017. This deadline was in place because of the six months of validity on the bank statements provided. They were approximately four months old at the time of posting and by the date of receipt they had only around six weeks of validity remaining.

M wrote to Mr W on 10 July 2017 to let him know about Prudential's request for further identification. And although this was followed up by M on his behalf in July, I can't see that there was any particular urgency or that Prudential were made aware that Mr W urgently wanted to make a withdrawal. Particularly in the context of the pending 'expiry' of his documents at the end of that month.

Prudential say they had no indication from Mr W ahead of his contact on 15 August 2017 that he wanted to make a withdrawal. Mr W's complaint is made with the benefit of hindsight, particularly with regard to the exchange rate between the British pound (GBP) and Euro – which impacted on how much he went on to receive. Indeed Mr W's email to M dated 23 August 2017 included *"To conclude, everything seems to be progressing well, except for the disastrous fall in the exchange rate of the British Pound against the Euro £100 = 109 Euros compared to £100 = 142 Euros a few months ago."*

I don't think the language used within that email indicates that Mr W was particularly unhappy with the way things were progressing at the time. I find this evidence persuasive as to his feelings at the time. His main concern seems to be with the fall in value of the British Pound and the impact of that.

Mr W has also detailed that he wasn't able to give instructions to Prudential during early August 2017 as he was on holiday. And points out that he acted promptly upon his return, contacting them on 15 August 2017.

I accept, were it not for Prudential's mistake, it might have been possible for Mr W to act very promptly to make a withdrawal request after learning of the assignment of his segment shortly after 19 July 2017. And that this could have been prior to the 'expiry' of his identification documentation at the end of July. But as Prudential explained during their call on 15 August 2017 – they would request these documents again for a surrender of the policy – which would have impacted on the already tight time schedule. And this combined with Mr W's inability to give instructions whilst away on holiday means I'm not persuaded this is something that would have happened sooner than it did.

Taking everything into consideration, irrespective of Prudential's mistake, I'm not persuaded that Mr W would have made his withdrawal request sooner than he did on 15 August 2017.

Prudential say they were only in a position to process Mr W's withdrawal on 4 September 2017 when they received all the correct forms and documents. This was after initially declining Mr W's request as he resubmitted the bank statements from January 2017, which by that time were beyond the six month limit.

Prudential's form says that payment can take up to ten working days to reach the recipient. I therefore would have expected this to show in Mr W's account on 18 September 2017 at the latest. Mr W received his payment on 19 September 2017, only one day later.

Prudential's initial complaint response offered and paid compensation as if the withdrawal should have been paid on 9 August 2017 (a delay of 41 days). This included a refund of the transfer charge, 8% interest on the amount between those dates and £175 as a gesture of good will.

I don't think it is unfair for Prudential to conduct a further review in the course of dealing with Mr W's complaint. So regardless of how their initial compensation was calculated, I've considered whether it has resulted in a fair outcome.

I'm of the opinion that Prudential have already compensated Mr W for far longer delays than I think they are responsible for. So it wouldn't be fair to ask them to do anything more. I agree that Prudential were only in the position to process Mr W's withdrawal on 4 September 2017. As I've explained above, despite his current position, I'm not persuaded Mr W would have requested the withdrawal sooner than he did, irrespective of Prudential's error.

Mr W has pointed out that the compensation doesn't take into account the costs of calls and postage he incurred, the costs of his solicitor dealing with Prudential about their initial mistake, nor the fall in value of the British pound (GBP) against the Euro (as he is based in France and doesn't have a GBP bank account.)

I've thought about these points and whilst I understand Mr W had certain obligations to the trust in his capacity as trustee. I don't think this extends to M liaising with Prudential with regard to the missing identification. I can't see that there is a requirement for a trained legal professional to deal with such a matter. And if Mr W's instructions to M extended to include them doing so on his or the trusts behalf – I don't think Prudential are liable for the costs Mr W incurred.

My role is to step back and look at all that's happened and the complaint as a whole. And looking at everything in the round, I think the compensation already paid to Mr W – for 'delay and inconvenience' which at the time the business overstated - is sufficient to reflect losses arising from the difference in exchange rates between 18 and 19 September 2017 and the cost of calls and postage in bringing the complaint. So I don't intend to ask Prudential to do anything more.

copy of provisional decision

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. Having done so, I don't currently intend to uphold it. I know this is very important to Mr W, so I'd like to explain why.

Mr W has made considerable submissions in bringing his complaint. And whilst I don't intend to respond in similar detail, I have read all his correspondence and taken it into account when making my decision. So if I don't mention any particular point or piece of evidence it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. I hope Mr W doesn't take this as a discourtesy; it is just a reflection of the informal nature of our service.

Before the assignment of the trust into the segments for each beneficiary, as trustee, Mr W is eligible to complain on behalf of the trust. And after the assignment, Mr W himself is a customer of Prudential and able to complain in his own right. For simplicity, I've looked at his complaint as a whole and proceeded with my decision on this basis.

November 2016 to March 2017

Mr W says his solicitor 'M' first tried to contact Prudential for information in November 2016 and that they didn't receive a satisfactory response until March 2017. Prudential say they have checked their systems and have no record of any contact from M until March 2017.

I've also considered that M, in their email to Mr W dated 2 March 2017, make reference to an 'unhelpful reply' received from Prudential through another business. So it is possible M had been seeking information in the first instance through a third party. But in any case it is clear M thought they had enough information by 2 March 2017 with regard to what forms of identification were required.

I don't think there is evidence to support that Prudential are responsible for providing Mr W (or M as his representative) with poor service within this time period.

March 2017 to May 2017

It appears that between March and May Mr W was in the process of obtaining certified copies of suitable identification and forwarding this to M. M submitted this along with a 'deed of assignment' form to Prudential on 23 May 2017. So I don't think this period of time was subject to delays caused by Prudential.

June 2017 onwards

Prudential say they received M's correspondence on 15 June 2017. And whilst it appears to have taken a few weeks to reach them, I don't think this can fairly be blamed on Prudential. This correspondence included a certified copy of one of Mr W's bank statements.

On 5 July 2017 Prudential wrote to M and confirmed that Mr W's segment of the trust had been assigned to him – but said they still needed proof of address for him.

On 19 July 2017 Prudential wrote to Mr W to say that his segment of the trust had been assigned to him and provided some instructions about how to make withdrawals.

In a phone call between M and Prudential that took place on 4 August 2017, Prudential said they had Mr W's certified proof of address and that it must've been missed previously prior to their request on 5 July 2017. Prudential have now acknowledged that this was an error on their part.

Where a business makes a mistake, I would expect them (as far as is possible) to put the customer back in the position they would've been in had the mistake not happened. I think all sides are in agreement that Prudential made an error in failing to realise they had Mr W's certified proof of address on 15 June 2017. But in the circumstances of this complaint I don't think this has caused Mr W a loss or led to further delays.

The initial instructions from M were to assign Mr W's segment of the trust. Prudential confirmed this had happened in their letters of 5 and 19 July 2017. So I don't think the error impacted on the assignment of the trust. But for Mr W to make a withdrawal, he had to submit a further form. Prudential received this form from Mr W on 23 August 2017 which was dated 17 August 2017.

I've looked at the form Mr W submitted and it states in relation to the identity requirements that the proof of address needs to be 'current'. And 'current' is further defined as "*within the last six months*". I think this is clear and I think it is a decision for Prudential as to which forms of identification they deem necessary to satisfy their regulatory obligations. The proof of address Mr W submitted was a bank statement dated between 31 December 2016 and 31 January 2017, along with a covering letter from the bank dated 15 February 2017.

So by the time Mr W submitted his withdrawal request, the statement was already more than six months old and therefore not acceptable to Prudential. There was then further contact between Mr W and Prudential which resulted in him submitting further documents to satisfy the six month requirement. This was received by Prudential on 4 September 2017 leading to settlement being made on 19 September 2017.

Following their further review of the complaint Prudential say they were only in a position to process Mr W's withdrawal on 4 September 2017. And from everything I've seen, I'm inclined to agree. Mr W submitted his withdrawal request on 17 August 2017, so he was always going to have to provide a more up to date proof of address. As the statements he'd previously provided were six months old at the end of July 2017.

As it stands Mr W has been compensated for a delay between 9 August and 19 September 2017, had his international transfer fee refunded and been provided with £175 as a gesture of goodwill. I agree that the delay between 4 September and 19 September is longer than the five days Prudential say the process should take. And I also accept that Mr W incorrectly being told he hadn't submitted the right documents would've caused some trouble and upset.

Prudential also say that the amount Mr W would've received on 4 September 2017 is the same as what he went on to receive on 19 September 2017. But the delay he has been compensated for is longer than the delay I think Prudential are responsible for. And the compensation they've paid is greater than what I'd recommend in these circumstances. So for these reasons, I don't think it would be fair for me to direct Prudential to do any more.