complaint

One of Mrs D's attorneys (Mr B) has complained on her behalf about the actions of The Prudential Assurance Company Limited when a request was made for a partial withdrawal (£30,000) from a bond. Mr B is also unhappy that Prudential refused to speak to Mrs D's nominated financial advisor.

background

Mr B explained that in March 2017 he was appointed attorney for Mrs D. He decided that it would benefit her to have some of her money placed into an ISA, due to its tax-efficiency. He wanted to do this before the end of the financial year. There was also a need for some money to fund Mrs D's arrangements. He arranged for Mrs D's financial advisers to contact Prudential about withdrawing funds from the bond – it did this on 21 March 2017. Mr B has said that Prudential incorrectly told the financial adviser that it would need the signatures of all of the trustees to make a withdrawal. The letter Prudential sent to the financial adviser on 24 March 2017 enclosed the withdrawal form. It didn't mention anything about the trustees needing to sign the form, although there was an area on the form for them to do so if required.

Three days later the financial advisers called Prudential to ask how to complete the withdrawal form. Unfortunately I haven't been provided with a recording of this call and there is no detail on Prudential's records about what it said, so it is possible that the firm of financial advisers was told the trustees needed to sign the withdrawal form in this conversation. The financial advisers completed the form, had Mrs D sign it on 31 March and returned it to Prudential the same day. The trustee's signatures were not on the document and no evidence of an attempt to obtain them has been provided. The withdrawal form was received by Prudential on Monday 3 April 2017.

Prudential has now said that this was all it needed to process the withdrawal. However, it made another mistake and asked for further documentation.

Mr B has said that subsequent to this, Mrs D's firm of financial advisers called Prudential on 4 April 2017. He has said he was told by the financial advisers that Prudential had refused to speak to it because it was no longer entitled to act for Mrs D. Prudential was unable to trace such a call being made to it. Prudential, however, admitted that this was not correct as all the paperwork for the new adviser to be appointed hadn't been received, so the old one should effectively have still been in place.

Prudential responded to the complaint about its actions on 3 May 2017. It offered to have the withdrawal completed if the attorney's still wanted to go ahead with it – confirmation was requested. Prudential also asked for further information so that it could consider whether redress was due, and if so, what.

On 14 May 2017 Mr B confirmed that they didn't want the withdrawal to proceed, (in the meantime a full surrender of Mrs D's policy was requested and processed).He confirmed that the purpose of the withdrawal of funds was to fund a 2016/17 ISA and to meet immediate cash needs. He said that they had made alternative arrangements to provide for the cash needs and the ISA opportunity had passed. Mr B went on to confirm that had the money been withdrawn when requested, there would have been no tax liability on it and they had missed the tax efficient growth of not being able to use the ISA. Due to changes in Mrs D's circumstances, Mr B anticipated that she would be a higher rate taxpayer in 2017/18 and so there would be a tax liability of up to £6,000 on the withdrawal of £30,000. He also estimated that the loss on the ISA would be £4,679, assuming an annual yield of 5.5%, the investment would remain in place for 12 years and Mrs D would pay 40% tax on the growth.

Prudential responded to Mr B shortly thereafter. It said that it didn't consider that the loss had been quantified and asked for further information about Mrs D's investment activities in the previous tax year and the then current one, along with details of the ISA that was going to be used. Prudential also acknowledged that the handling of the withdrawal had added to the situation that Mrs D found herself in. It sent her £200 for any added upset or inconvenience it had caused her.

Mrs D didn't accept the £200 sent to her. Mr B gave further explanation regarding Mrs D's situation. He said that following a change in Mrs D's medical situation she was facing a significant change to her circumstances. She had attempted to draw money from the redirected income from the inheritance bond in order to take advantage of un-used lower rate tax bands for the year to 5 April 2017. She started the process in mid-March, which Mr B acknowledged wasn't ideal, but was driven by matters beyond her control. He repeated that Mrs D's firm of financial advisers was told that the trustees would have to sign the withdrawal form.

In its final response to Mr B, Prudential concluded that no financial loss had been proven to have occurred. It did, however, accept that Mrs D had missed out on the opportunity to invest in an ISA for the 2016/17 tax year. It remained satisfied that the £200 it had offered previously was sufficient to compensate Mrs D for its poor service.

Mr B referred the complaint to this service. One of our investigators considered the complaint and upheld it. Prudential didn't accept his opinion about the case and asked that it be referred to an ombudsman for decision.

my provisional findings 24/10

I issued a provisional decision on 24 October 2018. In that document I explained my conclusions and the reasons for having reached them. An excerpt of my findings is below.

'*The compensation Mr B has asked to be paid is to compensate for the loss of investment growth and tax efficiency of the £15,240 that could have been invested in an ISA. Also, that Mrs D had incurred a greater tax liability than she would have done, had the withdrawal of funds happened over two tax years rather than one. In order for me to be able to compensate Mrs D for a loss, I have to be satisfied that a loss has been incurred and that Prudential is responsible for causing that loss.*

I have considered the administration provided by Prudential prior to the withdrawal form being received by it on 3 April 2017. It seems to me that Prudential provided the form within a reasonable period of being asked for it by Mrs D's financial advisers. The advisers then called Prudential to ask for help to complete it. Mr B has said that the financial advisers were given the wrong information at this point and told that the trustees' signatures were required. I haven't seen any contemporaneous evidence of this. Nor does it appear that the firm of financial advisers was misled by that information if it was given it, because they didn't obtain any of the trustees' signatures on the form. It simply had Mrs D sign it, as was right.

There were several days between the telephone call and Mrs D signing the form, but given that Mrs D was living in a nursing home due to her medical situation, I don't think the time *lapse indicates anything other than it took time for the financial advisers to see Mrs D. It appears that the form was sent to Prudential on the same Friday it was signed and Prudential received it in the post on Monday 3 April.*

At this point Prudential did make a mistake. It could have begun processing the request, but instead asked for more information. When considering a complaint, I must try to determine what position the consumer would have been in but for the mistake by the business. In this case, the situation would have been that the processing of the partial withdrawal would have been started.

However, such withdrawals are not instantaneous, even if the processing had started on the day the form was received by Prudential. It would usually take a few days for a withdrawal, surrender or maturity on a unit-linked fund to be done, especially so at the end of a tax year when businesses are so busy because of people wanting things done before the end of the tax year. In addition, there would also usually be a few days for the money, once withdrawn from the bond, to go through the banking system and be credited to Mrs D's account. This would all have to take place before Mrs D or her attorneys could have reinvested any of the money in an ISA.

Given the withdrawal form wasn't received until 3 April 2017, I don't consider that there was any real possibility that the instruction for the withdrawal could have been processed and the money paid out before the end of the tax year. As such, the £30,000 that Mrs D wanted to withdraw before the end of the tax year, would always have, for tax purposes, been a withdrawal in the 2017/18 tax year. As for investing into an ISA, again, I don't consider this could have happened before the end of the tax year. As such, even though Prudential subsequently delayed the processing of the request, which ultimately resulting in the request being cancelled, I don't think it resulted in a financial loss to Mrs D.

Prudential did make some mistakes after the request for withdrawal was received. It has acknowledged this and offered Mrs D £200 to compensate her for any upset or inconvenience it caused her. I think this is reasonable in the circumstances and I don't propose to make any additional award.'

Prudential confirmed that it had no comment to make on my provisional decision. It did, however, confirm that its normal service standard for processing withdrawals is five working days. It also confirmed that the payment made from the bond, when the subsequent withdrawal was made, was made using the BACS payment system.

Mrs D didn't accept my provisional decision. He said that he is not sure why they would have thought Prudential asked for the trustee signatures unless, in fact, it had. The passage of time between the form being received by the financial advisers and getting it signed had nothing to do with the lack of access to Mrs D. Rather it was due to them trying to work out how to complete the withdrawal. He has said that he spoke to the trustees – his wife and brother-in-law – the latter of whom lives abroad, which meant that they couldn't get both signatures in good time. He has said that he spoke to the trustees as, although Prudential was wrong about how to complete the form, the line of least resistance would have been to acquiesce to its request.

In relation to the money from the withdrawal, Mr B said that Mrs D had a cash ISA. He believes that had the funds been in Mrs D's account on the morning of 5 April 2017 they could have been deposited into the ISA the same day. As such, Mr B maintains that

Prudential's actions mean that Mrs D was unable to take advantage of the 2016/17 ISA allowance.

my findings

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

I have considered what Mr B has said, but I am still not persuaded that there was any real likelihood of the withdrawal request would have been proceesed in time for the money to be available to Mrs D in time for her to reinvest it before the end of the tax year, even into a deposit based environment.

I say this as the end of the tax year is very busy for investment companies and I find it unlikely that any requests at that time would be processed in significantly less than service standards. As payments from the bond appear to be sent via the BACS system, that would have necessitated the withdrawal forms being received and the processing commencing eight to ten working days before the end of the financial year. Given that the initial enquiry about making the withdrawal was only made eleven working days before the end of the tax year and the relevant forms had to be produced, sent to Mrs D's financial advisers, be completed, signed and returned, it seems very unlikely that any withdrawal would have been available for reinvestment before the end of the tax year.

Whilst I understand Mr B's strength of feeling about this matter, I don't consider that Mrs D suffered a loss from the admitted errors made by Prudential. I am also still satisfied that the £200 Prudential offered Mrs D is sufficient to compensate for the errors that occurred after the withdrawal form was received. If Mrs D would like to accept that payment, she or Mr B should contact Prudential direct.

my final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 13 December 2018.

Derry Baxter
ombudsman