

complaint

Mr G, Mrs G's son and the personal representative of her estate, has complained that The Prudential Assurance Company Limited is unable to trace a policy held by Mrs G since March 1966 with a predecessor firm and isn't prepared to pay the policy's claim value since she sadly died in 2015.

Mr G has requested Prudential to pay the policy benefits and to compensate Mrs G's estate for failing to respond to his claim.

background

Mrs G's policy was arranged by her father in March 1966. Mr G has provided a Life Assurance Premium Certificate (LAPC) which confirms that the policy was a Family Bond providing a sum assured of 68 pounds, eight shillings, plus a seven per cent annual bonus of four pounds, 16 shillings for a single premium of seven pounds, eight shillings.

The LAPC doesn't indicate whether the policy is a whole life policy, an endowment policy or a fixed term bond, so we don't know whether the benefits are payable after a fixed term or on earlier death, or only on death.

Mr G has explained that similar policies were arranged for him, his sister and his father (Mrs G's husband) by his grandfather and that, on his father's death in 1992, a claim was made against his policy and the benefits were paid.

Prudential has confirmed that Mrs G's policy was originally set up, and administered, by its predecessor firm, whose book of business was transferred to Prudential in 2001. All policies inherited by Prudential were given new policy numbers. As it has been unable to locate a policy in the name of Mrs G, the likelihood is that benefits under the policy have already been paid out by 2001. If a policy still existed, and had a value, in 2001, there would be a record on its systems.

The complaint was investigated by one of our adjudicators, who initially felt that Prudential should pay Mr G £50 for failing to respond to his complaint even though, at first, it admitted it had taken over the administration of these policies since 2001.

But, on reflection, she thought the complaint should not be upheld, or compensation awarded, because Mr G had made a claim on a policy, and not a complaint, to Prudential between May and September 2017, and also because:

- Prudential would be expected to hold details of a policy which is still in force but not for policies that may have been cancelled or lapsed after a certain amount of time;
- this policy was a non-reviewable, single premium policy which is not likely to have changed since it was taken out over 50 years' ago. As such, while Prudential has confirmed that it carried out an extensive search, it has been unable to trace a policy in Mrs G's name and, therefore, it was probably not transferred to Prudential in 2001;
- the probability is that the policy had paid a claim before 2001;
- although Mr G has produced a LAPC for the bond, this isn't evidence of the policy or that it still exists with an available value;
- it was reasonable of Prudential to argue that it's obliged to retain policy information for six years after the policy has expired or been the subject of a claim. As this policy was taken out over 50 years ago and the transfer of business to Prudential took

place more than 17 years ago, she couldn't recommend it to recreate a policy if no record of it existed.

In response, Mr G disagreed with the adjudicator's assessment and said that:

- as the policy proceeds were payable on Mrs G's death in 2015, he couldn't see how Prudential could argue that the policy must have been claimed before 2001. No payment has been made to Mrs G's bank account for three years before her death. Besides, Prudential would not have known her bank account details;
- the Life Assurance Premium Certificate (LAPC) gives the 'Assured' and Life Assured' as Mrs G, so the policy paid the proceeds on her death. A similar policy held by his father, who died in 1992, paid a death claim on production of the LAPC;
- in arguing that the policy is no longer likely to exist, Prudential is assuming that its records are infallible;
- Prudential can't argue that, if the policy had been transferred to it in 2001, it would have written to Mrs G notifying her of that. But the policy was arranged by her father whose address was shown for correspondence and he died in 1975;
- If a policy sold to a woman in her 30s that pays the proceeds on her death, a record of it should be held for life;
- Both Mr G and his sister took out a similar policy in 1966 and they can only provide a LAPC for their policies even though no claim has been made (because they are still alive).

In further correspondence with the adjudicator, Prudential added that:

- the LAPC Mr G has provided is not policy document; it's a certificate the policyholder could present to the then Inland Revenue to claim any tax relief on the premium. It is not evidence of the policy and, if Mr G claims the policy pays the proceeds on death, he would need to produce the policy document which should still be available;
- Mr G has provided no evidence to confirm that the policy was a life assurance plan. The policy document would confirm the term of the policy and the event on which the benefits would be payable. If a claim payment hasn't been made under the policy, the policy document should therefor still be available;
- the policy was a fixed term investment bond, providing a claim payment at maturity after a specific term, or on earlier death. The policy term varied between 10 and 20 years, which is denoted by the first two digits of the policy number. Accordingly, Mrs G's policy had a term of 10 years, which meant it matured in 1976. If this policy was still in force and the proceeds were payable on death, the policy document should still be available to make this claim;
- this policy was a one-off product and, therefore, all policies sold would have matured by 1986. There may have been a few unclaimed policies after 1990 when this policy provider's business was transferred to another firm. It was, therefore, this firm, and not the original provider, that would have settled Mr G's father's policy claim;
- Prudential isn't responsible for settling a claim under this policy, either now or in 1976 and shouldn't be expected to retain any information or records for a product it didn't sell, responsibility for which was transferred to another business in 1990, over 28 years ago. For this reason, the complaint should not be made against Prudential.

When we put these points to Mr G, he replied that:

- it's unsatisfactory that Prudential has been able to provide a degree of information about the policy it wasn't able to give him when he complained in 2017 or when he first referred the complaint to our service. This shows a lack of transparency on its part;
- Prudential hasn't provided any documentation which shows that Mrs G's policy had a term of 10 years. If the policy provider had told him in 1993 (when he claimed under the policy held by his father) that the policy's term was denoted by the policy number, he would have claimed under it then and not when Mrs G died;
- his understanding that the policy was life assurance plan comes from the LAPC describing Mrs G as the 'Assured' and 'Life Assured';
- he can't locate a policy document and suspects it was lost in the mid-1970s, some time before his grandfather (who arranged the policy) died;
- the certificate has been held securely since 1975 on the understanding that the sum assured would be payable on Mrs G's death;
- it's unfair that a huge organisation can deny a policy still exists when he's produced a document that shows it existed. It can't safely conclude (without evidence) that the policy benefit has already been paid by a predecessor firm.

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

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

It's important to emphasise that I assess any complaint on the evidence that's been made available to me by each side and, if that evidence is conflicting or lacking, I decide whose version of events is the more likely on the balance of probabilities. But, as a rule, the onus lies with Mr G, the complainant, to prove his case.

Also, it's not my role to act as advocate for Mr G to trace a policy once held by Mrs G from which he believes a claim payment is still due.

Not surprisingly, Prudential has been unable to provide a copy of any literature for this product from 1966 and has relied on recollections of staff from its predecessor firm for information on the policy held by Mrs G.

I agree with Prudential's point that the Life Assurance Premium Certificate provided by Mr G is not evidence of the policy. Neither is the LAPC required, or sufficient in itself, to make a valid claim under it. That it remained in Mrs G's possession until she died doesn't mean a claim under the policy hadn't previously been made. It is the policy document that is evidence of the contract, and it is this document that needs to be produced for a valid claim to be met.

So, I'm inclined to agree with Prudential also that, if Mr G can't provide the policy document, the most likely explanation for this is that a claim has already been met under the policy. But I can't say whether this claim would have been paid in 1976, as Prudential suggests.

Prudential has said policy numbers for the plans held by Mr G and his sister (that had been set up for them in 1966 as well) signified that they would mature after 15 years. And, as neither of them died within this policy term, the proceeds would have been paid to them as a maturity value in 1981. This too would explain why they now only hold a LAPC - in all

likelihood, they would have been required to surrender their policy document to claim the maturity proceeds.

Likewise, if Mr G's father's policy would have paid a maturity value after a maximum term of 20 years, Prudential doesn't accept that his policy became a claim only when he died in 1992, 26 years after the policy was set up for him.

As set out earlier, we did put these scenarios to Mr G who says that neither he nor his sister has ever received a claim payment from their respective policies and that a claim under his father's policy was met following his death in 1992 on production of the LAPC alone. But I've seen no evidence of a claim payment being made under this policy at that time.

So, given the lack of evidence provided by either side, I must decide that Mr G's version of events is the more likely on the balance of probability for his complaint to be upheld.

I do sympathise with Mr G's position that he needs to show on balance that a claim payment hasn't been made under this policy. But, all things considered, given these policies were taken out more than 50 years ago, and may have been administered by four different businesses since 1966 (unless, as Prudential says, claims were met under all of them by 1986), no documentation now exists which indicates that Mrs G's policy is still in force.

I accept that the existence of a Life Assurance Premium Certificate (LAPC) does confirm that a policy was taken out for Mrs G in March 1966. But production of this certificate isn't evidence that the policy is still 'active' or that no claim has previously been made under it.

In all probability, a policy document would have been issued to Mrs G in March 1966. This is evidence of the contract, which she would be required to give up when making a claim under it. That Mr G is unable to produce this document would, on balance, indicate that a claim has previously been met.

I accept it's possible the policy document may have been lost; in which case, the provider would require the policyholder to complete a 'lost policy declaration' to establish proof of title in circumstances where a claim is payable. But there's no evidence in this case of a claim payment being due.

That the LAPC shows Mrs G as the 'Assured' and 'Life Assured' simply indicates that she was the policyholder whose life was insured. It doesn't indicate that the policy paid a claim only when she died, and not beforehand. An endowment policy or a fixed term bond would also show Mrs G as the 'Life Assured' to confirm that a claim was payable on her death, but only if she died before the policy matured.

On the other hand, while Prudential has argued that the number of Mrs G's policy denotes it would have matured in 1976, there's no evidence for that either. So, it's not possible to know whether and when the policy matured to determine the business against which Mr G should be complaining. Without some evidence that the policy number does denote the term of the policy, I can't be sure that it did mature in 1976 and that Mr G's complaint should be made against a business other than Prudential.

Nevertheless, the onus does lie with Mr G to prove his case on the balance of probabilities and, in my view, he hasn't provided sufficient evidence that a policy held by Mrs G remains in force and that a claim payment is still outstanding on it.

decision

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 G to accept or reject my decision before 1 March 2019.

Kim Davenport
ombudsman