

complaint

Mr P complains on behalf of his late mother's (Mrs P's) estate.

He's unhappy about the maturity value of her bond, managed by Prudential Assurance Company Limited, and feels it has been calculated incorrectly.

background

In February 2019, Mrs P sadly passed away. In March 2019, Prudential was notified of her death and a request was made to surrender her investment.

Mr P's unhappy because Prudential used the date of notification, as opposed to the date of death, to calculate the surrender value of her bond by which time the value had dropped. But because Her Majesty's Revenue and Customs (HMRC) used the date of death to calculate tax, Mrs P's estate has lost out twice by several hundred pounds.

Prudential hasn't upheld the complaint. In summary, it said it acted in line with its terms and conditions and therefore isn't responsible for any losses incurred by Mrs P's estate. It simply provided HMRC with details of the value of the bond as of the date of death as it was obliged to. And it worked out the surrender value using the date of notification in line with its terms and conditions.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- Prudential has dealt with the complaint fairly.
- Its terms and conditions under the heading "*Tax liability on final cashing in*" states:
 - "*In the case of a payout triggered by death, the calculation will be surrender value Immediately before death plus all previous withdrawals less the total amount you have paid in plus any excesses over the accumulated 5% allowances.*"
- Although the sale took place in 1992, any tax implication should've been considered before the encashment of the bond.
- It isn't Prudential's responsibility to advise on when – following the death of Mrs P – it might be the best time to surrender the bond.
- He appreciates Mr P's concerns about the different processes followed by Prudential and HMRC, but they are two different entities subject to their own rules.
- The industry regulator the Financial Conduct Authority (the FCA) is there for dealing with regulatory concerns, rather than our service.
- Although Mr P feels like he's lost out in the sum of £491, in this instance there's nothing to say that Prudential was going to use the date of death for calculating the surrender value of the bond.
- The loss is down to the stock market and not anything that Prudential has done.
- The terminal bonus applied is also at the discretion of Prudential.

Mr P disagreed with the investigator's view, and asked for an ombudsman's decision. In summary, he made the following key points:

- Prudential may have acted in line with its terms and conditions from when the investment was taken out in 1992, but 28 years on it doesn't mean they're reasonable now.

- He acknowledges the market caused the pay-out to be reduced, but thinks it's irrelevant, given that the date of death wasn't used to calculate the maturity value. And it's something that Prudential applied to this particular bond and not others
- HMRC only value the estate upon the date of death of the investor, and Prudential has to issue a chargeable gains certificate (CGC) for taxation purposes. He doubts Prudential will issue another CGC showing the maturity using the date of notification.
- Prudential's use of the date of maturity is at odds with HMRC. It's unfair that he has to pay tax based on the value of the bond on the date of death – but will actually receive a lower pay out based on the date of notification.

my 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 agree with the investigator's conclusions for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr P says, I'm unable to say that Prudential has done anything wrong by calculating the surrender value of Mrs P's bond using the date of notification, rather than the date of her actual death.

But before I explain why this is the case, I think it's important for me to recognise the strength of feeling Mr P has about this matter. And I'm very sorry for his loss.

He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading – it's not what I'm required to do – in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points.

My role is to consider the evidence presented by him and Prudential and reach what I think is an independent, fair and reasonable decision based on the facts of the case, rather than take any sides.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but perhaps unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I'm aware Mr P has questions about the technical calculations, but I'm not required to answer these, and my inability to answer particular questions doesn't prevent me from reaching a decision in this case either.

I should make clear from the outset that Prudential is a financial institution that helps people to invest their money, and is a wholly different institution to HMRC, which is a non-ministerial government agency primarily there to collect taxes. The two institutions are therefore separate entities, with separate purposes and governed by separate rules and regulations.

I appreciate Mr P feels that Mrs P's estate has suffered financially but it's through no fault of Prudential, and the investment could've just as easily made money but for the poor market conditions at the point it was notified of Mrs P's death.

In this instance I'm satisfied that Prudential has acted in accordance with its terms and conditions when calculating the maturity value. Although Mr P feels the terms and conditions might not be fair, I'm obliged to apply them as they were, at the time the bond was taken out, rather what they might be now for different investments. It's a fundamental way of ensuring fairness and consistency.

I note that Prudential issued a CGC, as it was obliged to – using the date of death – for HMRC which is separate to it using the date of notification for the purposes of calculating the bond maturity value. In other words, how much tax Mrs P's estate might have to pay is a matter for HMRC (not Prudential), which has simply provided the information based on the bonuses applied at the time of death.

Whilst I understand Mr P is unhappy that the maturity value is lower than what he expected, it's also important to understand that the figure wasn't guaranteed. And as I've mentioned, any 'loss' to the fund is likely to have been as a result of the markets rather than Prudential using the date of notification as the date of calculating the maturity value. I appreciate Mr P thinks this is irrelevant, but I don't agree because it's a different matter to the tax liability.

I understand that the surrender value has always been subject to change, and that upon surrender Prudential has provided a value which it felt fairly represented Mrs P's share of the fund for the time the plan has been in place.

I don't think prior to encashment there was any reliable way of knowing what that final figure might be, because it's subject to change and dependent very much on the final bonus, also known as the terminal bonus. So I don't think Prudential could've given Mr P any kind of guarantees as to the exact final value, and quite rightly so given that terminal bonuses are only attached on the date the funds are taken from the plan.

I appreciate the points made by Mr P about why he disagrees with Prudential's calculations, but I'm conscious that if the smoothing process leaves a surplus in the fund, the policy can receive a terminal bonus (although it's not guaranteed) – as a distribution of that surplus – and that's what has happened here.

This way, despite what Mr P says, I think it's likely that the bond received the value of the gains accrued by the fund whilst the plan was in force. However, I note both the annual and terminal bonuses are at Prudential's commercial discretion, and it's not something this service can interfere with. In other words, Prudential is entitled to decide – based upon recommendations from its actuaries – how much annual and terminal bonus it applies.

It has always been the case that the end value will depend on market forces, so the value given to HMRC for tax purposes isn't a guarantee of what Prudential is likely to pay out on surrender. I appreciate Mr P's point that he's effectively paying tax on something he'll never receive and that it's unfair. It might be something that he wishes to take up with HMRC, or even the FCA as it's not Prudential determining how much tax Mrs P's estate has to pay.

I appreciate the points made by Mr P and his frustration about what we can and can't consider, but any question of how the funds are managed and operated is a question for the industry regulator, the FCA, which – unlike our service – supervises the management of

funds and any question over whether Prudential has properly managed the with-profits fund is an issue for it to consider in its regulatory capacity.

Our service doesn't have a regulatory role. And so when we receive a complaint involving concerns about whether a fund has been managed appropriately, it means we're not generally in a position to carry out an investigation.

We can make the FCA aware of potential issues that are brought to us, but we don't represent individual customers before the FCA. If it was the case that the FCA had concerns about the fund and its management, it has the powers to investigate and take any action it considers appropriate.

In the event the FCA did identify issues and take action, it's unlikely it would contact individual(s) directly. Instead, it would be more likely to instruct the business to take action and contact policyholders itself.

If Mr P wishes, he could also contact the FCA himself with details of his concerns. But as I've said above, it's unlikely he'll receive a response setting out any action it may decide to take.

I appreciate Mr P will be disappointed I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I'm not persuaded to require Prudential to do anything.

my final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 May 2020.

Dara Islam
ombudsman