

summary of complaint

Mr J, Mrs K and Mr L complain, as trustees of The Prudential Assurance Company Limited low-cost endowment policy, which was set up as an Interest In Possession (IIP) Trust by Prudential in December 2003. The trustees are unhappy that Prudential is unwilling to transfer the maturity proceeds of the plan into their two nominated accounts that they say they have set up specifically for the beneficiaries of two Discretionary Trust Deeds. According to the trustees, the Discretionary Trusts were created specifically for the policy complained about and for the benefit of the beneficiaries of the IIP Trust. In addition, the trustees have complained about the customer service provided to them by Prudential.

background to complaint

This complaint was investigated by one of our adjudicators. She did not recommend that the complaint be upheld, stating that she was satisfied the business had not done anything wrong by stating that it can only make the payment of the maturity proceeds in accordance with the IIP Trust Deed that it held. The adjudicator was also of the opinion that the IIP Trust Deed held by the business indicated that the beneficiary, under section 4 (j), should be a *'person'* and not a trust. With regard to the customer service aspect of the complaint, our adjudicator felt the £100 offered in light of the distress and inconvenience caused as a result of the business providing the trustees with incorrect information seemed fair and reasonable.

Mr J, on behalf of himself and the two additional trustees, rejected the adjudicator's findings. In response, Mr J commented that the adjudicator had interpreted the word *'person'* in layman's terms. He referred to the Trustee Act 1925 and stated that the IIP Trust Deed was subject to the provisions of English Law. Mr J stated that the Interpretation Act 1978 explicitly defines the term *'person'* as including *'a body of persons corporate or unincorporated'*. As such, Mr J reaffirmed his conviction that it is entirely within the scope of the IIP Trust Deed for the trustees to nominate the two accounts (Trust No1 Settlement and Trust No 2 Settlement) under Clause 4 (j) of the IIP Trust Deed. Furthermore, Mr J stated clause 7 of the IIP Trust Deed enables the trustees to have the full power to invest the policy in whole or part.

As agreement has not been reached on the matter, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

I should perhaps begin by stating that the Financial Ombudsman Service is tasked with resolving disputes quickly and with the minimum of formality. It is an alternative to the courts, but, as stated above, the determinations are made on the basis of what is fair and reasonable, which may not necessarily reflect a strict legal interpretation.

In essence, the outcome of the case turns on whether the business has done anything wrong by declining the request to transfer the maturity proceeds of the policy into the two accounts set up for the two Discretionary Trusts and nominated by the trustees. The trustees have provided both the business and our service with two separate Discretionary Trust Deeds (No.1 and No.2). The trustees and the beneficiaries of the two Discretionary Trust Deeds are the same as the IIP Trust Deed held by Prudential. Nevertheless, Prudential has

stated it will only pay out the maturity proceeds in accordance with the IIP Trust Deed that it holds on record.

I do not consider that Prudential is acting unreasonably by only abiding by the provisions of the IIP Trust Deed that it holds. It would appear that Prudential was not involved in the setting up of the two Discretionary Trusts and had no knowledge of their existence until around the time when the policy complained about reached maturity. I understand that the trustees have set up two specific accounts for the equal distribution of the monies for the benefit of the two beneficiaries of the IIP Trust. I also understand the reasons stated as to why the trustees do not wish for payment to be made to a “person”, as such. However, Prudential is not obliged to pay the maturity proceeds into the two accounts that the trustees have nominated.

My understanding of Section 4 of the IIP Trust Deed is that a nominated beneficiary under the trust may only be a “person” as opposed to two Discretionary Trusts. I appreciate that Section 7 provides the trustees with the power to invest the policy wholly or partly. However, I should state that the issue complained of concerns the transfer of the maturity proceeds of the policy, as opposed to the investment of the policy.

I have considered Mr J’s comments about the interpretation of the IIP Trust Deed and the relevant legislations. However, as stated previously, we provide an informal dispute resolution service, as an alternative to the civil courts. In deciding what is fair and reasonable in any particular case we have regard to the law – but, dependent on the circumstances, the decisions we come to are not necessarily the same as those a court would make. Although I have noted the arguments regarding the interpretation of the word “person”, I am not of the view that the stance taken by the business, or its own interpretation, is unfair or unreasonable. As with the adjudicator, I consider that the points raised by Mr J would appear to be matters of interpretation which would, in terms of their application for trust law, be better assessed by a court.

With regard to the customer service aspect of this complaint, I note that the business has agreed that it should not have asked the trustees for proof of the Discretionary Trust Deeds and that it provided the trustees with incorrect information. I also note that the business has subsequently offered £100 for its error and for any distress and inconvenience caused to the trustees. Overall, given the circumstances of the case, I consider this offer to be fair and reasonable.

my final decision

My final decision is that the offer made by The Prudential Assurance Company Limited is fair and reasonable. I simply leave it to the trustees to decide whether to accept it.

Philip Miller
ombudsman