

complaint

Ms D believes the delays in paying the maturity proceeds of an endowment policy by The Prudential Assurance Company Limited caused her to incur unnecessary court and overdraft costs and interest. She is seeking recovery of these costs.

background

I issued my provisional decision of this complaint in February 2015, a copy of which is attached. In summary, I was not minded to uphold Ms D's complaint. I explained that I had not seen sufficient evidence Prudential should be responsible for the court costs Ms D had claimed. I considered Prudential should pay any overdraft costs Ms D incurred as a result of the late payment, subject to her providing evidence of these.

Prudential responded to say it accepted my findings.

Ms D however disagreed with my provisional decision. In brief, she argued:

- The reference to a date of March 2013 in the estimate of costs relates to a separate legal issue raised through the courts by her second husband.
- That issue was the subject of a separate court hearing which lasted three days concluding at the same time as the separate hearing about the Prudential policy.
- Ms D had no way of defending the proceedings as the maturity process was outside her control.
- She provided the court with written evidence of the Prudential delay, her complaint to the Prudential about it, her inability to pay her ex-husband on time from other sources and details of her ill health. However, nothing made any difference - in legal terms, the payment was late.
- If she had attended court with representation to defend her case it would have made no difference to the outcome. This would simply have incurred more costs she couldn't justify or afford.
- All the costs claimed were accrued by her second husband prior to the hearing date. This was for the preparatory work by his solicitor, the court application fee and booking extended barrister time.
- Her ex-husband exercised his legal right when payment was late.
- The hearing was simply to claim his costs from Ms D that he'd already incurred by the time Prudential paid the maturity proceeds.
- It was Prudential's duty to pay the maturity proceeds promptly. But it repeatedly wrote to the wrong address and sent the wrong forms.
- The simple fact remains that if Prudential had acted promptly and efficiently the maturity proceeds would have been paid on time and the court costs relating to this matter would have been impossible for her ex-husband to claim as he wouldn't have had grounds for any application.
- Since being medically retired her former employer has restructured. So Ms D has found it difficult to track down who is responsible for providing the relevant information about the retirement details.
- Although Ms D is still pursuing this with the relevant parties, she does not believe the information will be available by the time a final decision is issued.
- As this is less important than her claim for the court costs, she will not continue to pursue this matter.

- Ms D accepts that the award for distress and inconvenience is a matter of judgement. But she believes in making no further award there is no recognition of the stressful and difficult times she suffered compounded by the actions of Prudential.
- She does not believe I have acted fairly or taken account of her ill health, and have discriminated against her in asking for evidence she is not able to provide.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have considered carefully the points Ms D has made in response to my provisional decision. And I have listened to her telephone conversation with the adjudicator.

I appreciate this is a difficult and sensitive issue for her. I also understand she is not in the best of health.

However, while I can empathise with the position in which she finds herself, I must also remain impartial. In particular, I must decide her complaint on the basis of the available evidence.

As I acknowledged in my provisional decision, it is clear there were flaws in the way Prudential dealt with the maturity of the endowment policy. However, to award compensation over and above what Ms D had already been paid, I have to be satisfied there is sufficient evidence to support this.

I have noted what Ms D has said about the part of the estimate of costs that dated from March 2013. She has explained this was in respect of a different court action that was heard around the same time as the Prudential maturity payment.

However, although I understand this point, it does also emphasise the key issue. This is that there is little independent information about what brought about the hearing into the maturity of the endowment policy. In particular, what caused the hearing to take place, and what factors the judge took into account when making the ruling.

Ms D says her second husband started proceedings as soon as the payment was delayed beyond the 30-day timescale allowed by the court. However, although I understand this point, it is not clear to what extent the judge was made aware the delay was outside Ms D's control.

I also note the date for the costs start from 28 June 2013. But this was after the maturity monies had been paid to Ms D. It is therefore not clear when the application was made by Ms D's ex-husband to the court to enforce payment. If Ms D's ex-husband had put things into motion immediately after the 30-day deadline, I would expect to see this reflected in the costs. It is also not clear whether, if payment had been made to him by 28 June, the proceedings would still have gone ahead.

I also note the judge ordered Ms D to provide evidence of the maturity value. However, Ms D had been informed of this when Prudential first wrote to her about two weeks before the maturity date. It is therefore not clear to me why this had not been made available to the court before the hearing took place.

In correspondence with Prudential, Ms D said her ex-husband's legal advisers had estimated what the maturity value should be. This was greater than the sum paid. As such, it had been suggested Ms D had already received some money from the policy, or that not all the premiums had been paid.

So it seems there were other areas of uncertainty about the maturity value, apart from the date it was paid. It is plausible these would also have been grounds for Ms D's second husband to seek a hearing.

The judge also ordered Ms D to pay interest because her second husband's share of the maturity monies had not yet been paid to him. However, it is not clear why this was. The payment had been made to Ms D in accordance with her instructions about four weeks earlier. Given Ms D would have known the importance of paying this sum to her ex-husband, it is not clear why this had not happened.

I have also considered Ms D's points about why neither she nor her legal representative attended the hearing. I appreciate she was advised not to do so on medical grounds. Also, she did not want to incur additional legal costs herself. I note she believes the decision would have been the same in any event.

As I explained in my provisional decision, without having a clear understanding of how the judge came to make the ruling, it is not possible for me to say for certain that submissions by Ms D, or on her behalf, would not have made a difference.

In the circumstances, it remains my opinion that I have not seen enough evidence in this case to require Prudential to pay the court costs Ms D has incurred. In order to do so, I must be sufficiently persuaded that Prudential can be held reasonably responsible for the costs. While I have given very careful thought to what Ms D has told us, I regret there is insufficient clear evidence for me to make such an award. I appreciate this will come as a disappointment to Ms D.

I accepted there could be grounds for Ms D to be compensated for any overdraft cost she had incurred. However, this was subject to evidence of the charges.

In response to my provisional decision, Ms D has referred to the difficulty she has had in obtaining this. I understand there has been a restructuring of her former employer which has made this more difficult.

But I am also mindful this information is not something we have asked for recently. I referred in my provisional decision to Ms D being asked for the evidence in February 2013. However, on reviewing the file it seems that the adjudicator first requested it a month earlier. As such, it has been outstanding for well over a year.

I regret, in the absence of any definite evidence of the costs incurred, and that these can be attributed to Prudential's error, I am unable to make an award.

I also note Ms D's comments about my view that Prudential was not required to make a further payment for the trouble and upset she has experienced. Prudential had previously paid her £150 when it accepted it had delayed the maturity payment. The adjudicator believed a further sum was appropriate because Prudential had written to her second husband's solicitor with details about the policy.

Although I understand the overall circumstances concerning Ms D and her second husband, I can only make an award if I think Prudential has done something wrong. For the reasons I have explained, I am satisfied it was entitled to write to the legal representative of Ms D's former husband in light of the court order that had been made. It therefore remains my view no further payment for trouble and upset is due.

my final decision

I do not uphold the complaint, and I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms D to accept or reject my decision before 1 May 2015.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Ms D believes the delays in paying the maturity proceeds of an endowment policy by The Prudential Assurance Company Limited caused her to incur unnecessary court and overdraft costs and interest. She is seeking recovery of these costs.

background

The complaint was considered by one of our adjudicators, who felt the complaint should succeed. Briefly, he argued:

- Prudential had paid interest together with a distress and inconvenience sum in respect of the delayed maturity payment.
- The late payment of the proceeds however meant Ms D incurred the additional court costs she has claimed.
- Prudential's processing of the maturity payment was subject to delays and errors and so it should reimburse the costs incurred.
- As Ms D had retired on health grounds and there would be a delay in receiving benefits, she was relying on the policy proceeds to maintain her standard of living after the maturity date.
- Subject to evidence of the losses, Prudential should meet Ms D's overdraft and interest costs until the maturity monies were received.
- Prudential should pay an additional £250 for the distress and inconvenience caused to Ms D by disclosing information unnecessarily to her ex-husband.

Prudential disagreed. Briefly, it said:

- Ms D only made it aware of the consequences of late payment after she was in breach of the court order.
- It is unaware of what the costs ordered by the court relate to.
- It has seen no evidence of the overdraft costs claimed.
- It was allowed to disclose information to Ms D's ex-husband's solicitor under section 35 of the Data Protection Act.

As no agreement about the dispute has been reached, I have been asked to decide the outcome.

my provisional findings

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

Ms D held an endowment policy jointly with her first husband. Although they had been divorced several years before, the policy was still in their joint ownership. Therefore, when it matured, both parties needed to sign the relevant documents to allow payment to be made.

It is not in dispute there was a delay of around three months after the maturity date before payment was finally made. Although this was in part because Ms D's ex-husband resided abroad, it is also clear there were errors made by Prudential.

When making the payment, Prudential added interest at the rate we would usually apply when a customer has not had access to their money. This would normally be sufficient compensation for late payment. However, Ms D has claimed for other losses she believes she has suffered. This is the issue that remains in dispute.

Although the endowment policy in question was owned by Ms D and her first husband, it is my understanding it had been made the subject of a court order in 2009 by Ms D's second husband. I have not seen precise details of this, and Ms D has told us these are confidential. However, it appears Ms D's second husband was given a right to some of Ms D's portion of the maturity value.

Although Ms D says she told Prudential about the 2009 court order in the run up to the maturity date, I have not seen definitive evidence to support this. Nevertheless, there was still a duty on Prudential to complete the maturity process with due promptness. So if Ms D has incurred additional costs because it failed to do so, I consider Prudential would still be liable for these.

However, the concern I have is whether the legal costs Ms D is claiming can be attributed to the delayed payment. I am not currently persuaded they can.

The maturity date was 22 April 2013, but was not in fact paid until 21 June 2013. Ms D had asked for payment to be made to her partially by electronic transfer, and the remainder by cheque. Prudential complied with these requirements.

Ms D has provided a copy of a court order that was issued on 15 July 2013. This required Ms D to produce evidence of the maturity value of the Prudential endowment within seven days, and evidence she had paid half of the premiums since July 2009. It required Ms D to pay her second husband 25% of the maturity value. It also stated she should pay her ex-husbands costs.

There is also a schedule of Ms D's second husband's costs, and it is these Ms D is claiming back from Prudential. However, it seems that part of the costs relate to the period up to March 2013. This is before the policy was due to mature, and so it is not clear why Prudential should be held responsible for these costs.

In addition, it seems that part of the reason for the matter being referred to the court was because no maturity monies had so far been paid to Ms D's second husband. Ms D has told us that the court was aware of the maturity date of the policy, and granted a period of a month for this to be paid to her ex-husband as this was considered to be a reasonable timescale to finalise the maturity.

However, Ms D had received the maturity proceeds on 21 June 2013. Given she must have been aware that part of these should be forwarded to her second husband, it is not clear why this had not taken place by the time of the court hearing.

Also, it is apparent Ms D did not attend the hearing where the award for costs was made. She has told us this was upon legal advice, because of ill health. However, I note the order has been made on the basis that Ms D was aware of her need to attend the hearing. Therefore, it is not clear to me that the judge knew about Ms D's health issues, but decided to go ahead with the hearing anyway.

Further, because Ms D did not attend the hearing, and I understand was also not legally represented, there is a lack of information about what the judge took into account when making the award. It is also the case this presumably meant no arguments in Ms D's favour would have been presented. It is therefore plausible that Ms D did not take the opportunity of mitigating her losses.

Given the lack of definitive evidence about how the award for costs came to be made, I am currently not convinced it would be fair and reasonable for Prudential to be liable for meeting these.

I next move on to consider Ms D's claim for costs she has incurred through having to arrange an overdraft. The adjudicator asked her for evidence to support the claim in February last year. However, so far Ms D has not provided this.

On balance, I am satisfied that if it can be shown Ms D had to make financial arrangements because of the late payment, it would be reasonable for Prudential to reimburse her for these. But any claim must be backed by the relevant evidence. Therefore, if Ms D wishes to still pursue this point, she should provide evidence of the overdraft, and also of her ill health retirement, when responding to this

decision. In the absence of suitable evidence, I cannot see how Prudential could be required to pay any compensation.

Finally, I turn to the adjudicator's view that Prudential should pay Ms D £250 for the distress and inconvenience she will have been caused because it wrote to her second husband's solicitor. However, I am not persuaded it was acting inappropriately by doing so. Prudential has explained it had been made aware of the order for costs made against Ms D. It therefore felt it necessary to issue the letter to ensure compliance and respect for the court order. It also seems Prudential discussed its proposed action with Ms D's solicitor.

In the circumstances, I am not persuaded it was unreasonable for Prudential to take the action it did. Nor am I persuaded this caused Ms D any trouble and upset.

I am aware Prudential has already paid Ms D £150 for the distress and inconvenience caused by the late payment. On balance, I am not persuaded a further payment is merited.

my provisional decision

For the reasons explained above, I am currently minded to uphold this complaint in part. I am not persuaded Prudential is liable for the legal costs awarded against Ms D. Prudential should refund any overdraft charges and interest Ms D has incurred, subject to Ms D providing documentary evidence of these and that they can be attributed to the late payment of the maturity proceeds.

I now invite the parties to let me have in writing any further submissions they may wish to make within one month, after which time I will issue my final decision.

Doug Mansell
ombudsman