

complaint

Miss S' complaint relates to a mortgage endowment policy she was sold in 1992. The policy was sold by a third party business and The Prudential Assurance Company Limited is the product provider.

Miss S is unhappy with the service she has received from Prudential in relation to the policy administration and her questions and enquiries regarding the policy. In particular, the information she has been given has often proven to be wrong and contradictory. Miss S has also suffered broken promises of return telephone calls and when the policy matured, the payment was delayed.

background

Prudential upheld Miss S' complaint in part. It accepted that the level of service it provided to her had been below that which she should have received. As such, it offered her £150 to compensate her. It also offered to pay interest on the late maturity payment. Miss S wasn't satisfied and referred her complaint to this service.

Both myself and an ombudsman colleague have issued provisional decisions on this case. The content of my provisional decision of 21 December 2018, containing an extract of my colleague's findings, is attached to this decision and forms part of it.

In summary, we concluded that the level of service Miss S had received was significantly below that which she was entitled to expect and receive. As such, we decided that the amount of compensation should be increased to £400.

In relation to the matter of whether Miss S was sent a letter by Prudential which included a deadline date for making a complaint about the sale of the policy, I was satisfied that the letter of November 2006 was sent and did include a deadline date. I was also satisfied that the evidence indicated that the letter was not returned to Prudential.

The letter was sent to the same address as all of the other letters that Miss S acknowledged receiving and there was no evidence of it being returned. I concluded that it was most likely that it was also received, albeit that Miss S may not have realised its import at the time and kept it. From this I concluded that Prudential had provided correct information about the deadline date to the selling business and that it wasn't responsible for Miss S' mis-selling complaint being time-barred by that business when it shouldn't have been.

Prudential acknowledged receipt of my provisional decision and confirmed that it had no further comments or information to provide.

Miss S said that the £400 compensation for the administrative issues was acceptable. However, in relation to my conclusions about the correspondence sent and received, Miss S considered that my conclusions were one-sided. She commented that I had accepted that Prudential didn't receive a letter from her when it said it didn't, but assumed that she did receive a letter from it when she said she didn't. Miss S questioned why, if only one letter was to be sent with this important information in it, Prudential didn't send the letter so that it had to be signed for or do some form of follow-up on it. She asked how it not doing such things is acceptable. She also reiterated that she didn't receive the November 2006 letter.

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 can appreciate Miss S' comments about the correspondence that was exchanged between herself and Prudential. It is known that some letters are lost in the post. So what I have to do is decide on balance, whether it is more likely than not that a letter was sent and received. I know that Miss S thinks that I am simply accepting what Prudential has said, but I am not affording her the same courtesy. That is not the case, I am happy to accept that Miss S remembers sending Prudential a letter about stopping using her financial adviser and that she doesn't remember receiving the November 2006 letter. However, where Prudential are concerned there is additional information. All of its correspondence, both sent and received, is recorded in its records as and when it happens. As such, we know with a high degree of certainty what letters it received and what it sent.

I can never be 100% certain that letters were posted by either party to a complaint or whether they were or weren't received. I have to decide, based on the evidence I have available to me; whether it was more likely than not that they were posted and/or received. I am happy to accept that Miss S sent Prudential a letter in 2005 about her IFA. If we were to have evidence of the address it was sent to and that address was correct, I would usually say that on balance the letter would have been received. However, we don't have a copy of the letter to establish it was correctly addressed and we know that it wasn't logged as received by Prudential at the time. This combination of evidence, on balance, makes me conclude that it's more likely than not that the letter wasn't received.

When it comes to the letters that Prudential sent Miss S, we know that they were sent and that they were sent to the correct address. There is also nothing to indicate that they were returned as undelivered. In addition, Miss S has said that she received all of the annual letters, apart from the relevant one with the deadline included in it. This combination of evidence indicates, on balance, that it is more likely than not that it was received.

Miss S has asked why, if the letter was so important, why it was not sent by a method that required proof of receipt or why it was not followed up. The simple answer to that is that the regulator didn't require that to be done. I would agree, from a consumer's point of view, such actions would have been helpful. However, as it wasn't a requirement the regulator placed on product providers at the time, I can't find that Prudential did anything wrong in not doing so.

I know that this is not what Miss S wants to hear, but I haven't been persuaded to change my conclusions. I remain satisfied that it is more likely than not that she received the deadline date letter in late 2006.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement of the complaint, I order The Prudential Assurance Company Limited to pay Miss S £400 for the Under the rules of the Financial Ombudsman Service, I am required to ask Miss S to accept or reject my decision before 4 March 2019.

Derry Baxter
ombudsman

provisional decision	
complaint about:	The Prudential Assurance Company Limited
date of decision:	21 December 2018

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background

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One of my colleagues considered the service issues Miss S had suffered in his provisional decision of 4 October 2018. An extract of that decision is below explaining his conclusions.

'That is I think that an award for the trouble and upset caused is merited. However I think the extent and repeated nature of the errors and delays experienced by Miss S merits an award of £400 (less any amount already paid for trouble and upset but not any amount for late payment).'

I have read the whole file. I don't think I need to repeat what happened here. There were a number of serious, confusing and troubling errors on the part of the business. Miss S is, like others, entitled to reasonably prompt and accurate responses to reasonable questions and a reasonable level of service. Of course errors will arise from time to time. That is unavoidable when a large organisation is involved in great volumes of transactions every day.

However what I have described above isn't what happened here. A series of errors and delays affecting almost every contact between Miss S and the business seem to have happened. Why that should be I do not know. It does however happen from time to time. In particular, there are two features which specifically cause me to say a higher award is justified.

One is that, as I have said, the errors seem to have happened in more than one area - time barring, correspondence and communications generally and maturity. The other is that it took too long, in my view, for the matters to come to a head and the business to recognise what was happening.

However for a number of reasons awards made for trouble and upset caused tend to be modest. More information on the subject is available on our website. The award is intended to be a "marker" for the trouble caused rather than a cash payment for, say, time spent. For the occasional and one off errors and delays, in addition to interest for late payment, an award of the sort first suggested by the business might well be appropriate. However I think the cumulative nature of the issues (and therefore the cumulative loss of confidence in what the business says) mean £400 is the appropriate level to award.'

In relation to the issue Miss S raised about being informed, or not, of a deadline to complain about the advice she received to arrange the endowment policy, my colleague considered that there was at that time insufficient information to reach a conclusion. He asked for further information and comment.

Both parties have now provided their comments in relation to my colleague's provisional decision. I have also requested some further clarification from Prudential.

For clarity, Prudential is unable to provide the actual letters that were sent to Miss S over the years. It has, however, provided details of the dates and key contents of the re-projection letters, templates for them and confirmation of what addresses it held for Miss S and when.

This information shows that Miss S was sent letters telling her that there was a high risk of her policy not paying out the amount it was targeted for from February 2003. This warning was repeated in February or March 2004, 2005 and 2006.

Prudential has said that when the regulator introduced new rules in 2004 that would allow life companies to introduce deadline dates for a policyholder to make a complaint about their endowment policy, it decided not to do so. However, in August 2006 it changed that decision and began an exercise to issue deadline dates to all policies where deadlines could be set. Miss S' policy was included in this exercise and so a second high risk warning letter was sent to her in November 2006. This was effectively the 2007 annual re-projection letter sent early and it told Miss S that she had a deadline to complain of 22 June 2007.

The November 2006 letter was the only one that the deadline date was included in. This was because the Prudential then went back to its usual schedule for issuing re-projection letters from 2008. As the deadline had already expired by that point, it wasn't documented again.

Miss S has provided copies of the letters she was sent by Prudential for February 2006 and later dates. She has said that she didn't receive the November 2006 letter. She has also questioned why she was sent two letters in 2006 and is suspicious that this was not the case and effectively, Prudential have made up this information, as it was not in line with the sequence of the other letters she received.

Miss S also pointed out that the deadline date on the template Prudential provided for the November 2006 letter was different to that which she had been told earlier by Prudential. She said that this was the fourth or fifth time that the date had changed and in her mind proves that one was never sent.

In relation to the matter of renewal commission being paid to the financial adviser that sold her the endowment policy, Miss S repeated that she had told Prudential in 2005 that no longer looked after the policy. She also confirmed that her current IFA was not involved with her endowment policy and she has no idea why it made enquiries about it.

my provisional findings

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

I am in agreement with my colleague's findings and reasoning in relation to the matter of the service Miss S received from Prudential. There were multiple failings and oft times repetition of those failings. As such, I also consider that the compensation in this regard should be increased to £400.

In relation to the payment of the renewal commission for the policy, it would be normal for that to continue to be paid to the selling agent throughout the term of the policy. The exception would be where the policyholder told the product provider that the adviser was no longer 'servicing' (involved with) the policy. I note that Miss S has said that she wrote to Prudential in 2005 to tell it that was the case for her policy, however, Prudential has no record of that happening. Without such notification, I can't see that Prudential did anything wrong in this respect.

I now turn to the outstanding matter of Miss S being provided (or not) with a deadline date to complain about the sale of her policy by. Miss S has said that she didn't receive the November 2006 letter from Prudential and that she doubts it was ever sent – she thinks Prudential is lying about this.

I would firstly confirm that it is not unusual that a product provider can't provide copies of the actual letters that were sent to its policyholders. Given the volume of such letters most providers had to send, many made the decision to simply keep template letters and the policy-specific information that was put into those templates. It would not be appropriate to penalise Prudential for that decision, as it was one that it could reasonably make. I would also confirm that I have seen not just what Prudential has to say about these letters, but it has also provided us with screen prints of its computerised records. I see no reason to doubt those records.

Miss S has said that she doesn't think that the deadline date letter of November 2006 was actually sent. This is because she has no record of it in her papers and also because it was not sent when she would have expected her next update letter.

In relation to the issue of date of the letter, I can understand that it could look unusual for one letter to be sent three months early. However, Prudential has explained why this was. It decided in the summer of 2006 to provide deadline dates, which wasn't something it had done before. As such, any policies that could have a deadline date set, were worked through from that date and deadline letters sent. In Miss S' case, this mean that her annual re-projection letter was sent slightly earlier than expected. Given the circumstances, I see no reason that it being sent slightly early should raise concerns about the authenticity of the records.

Miss S has been given different dates relating to the time limits for making a complaint at various times. I don't think any of them were wrong, but there may have been a lack of explanation surrounding them. The time limit rules that apply to her making a mis-selling complaint to her financial advisers require two things. The first is that she was sent a letter telling her that there was a high-risk of a shortfall on the policy. The first such letter was sent to Miss S in 2003. She then had to receive a deadline date, which had to be at least three years from the date of the first high-risk warning letter and six months in the future.

This would have meant that Miss S could have been time-barred from February 2006, if Prudential had sent her a deadline date by August 2005. However, at that time Prudential wasn't intending to invoke time limits on complaints, so it didn't send a deadline date. When it changed its mind about time-barring complaints it sent a letter as soon as was practically possible. This was November 2006 and a deadline of June 2007 was set – more than three years from the first high-risk letter and just over the required six months in the future.

Overall, having examined the evidence I am satisfied that Prudential did send Miss S a deadline letter in November 2006. Given that Prudential went back to its usual schedule for issuing re-projection letters after that, the next one was not sent until after the deadline that had been set had expired. As such, the deadline wasn't mentioned again in subsequent letters.

I have noted Miss S' comment about the date in the template letter that Prudential sent to this service. That letter was not a copy of a letter sent to her and was sent to us for information purposes so we could see what the letter would have looked like and where the deadline date would have been documented. This was not a date that related to Miss S' policy.

That said, the special rules for mortgage endowments require that the consumer *receives* the warnings and information, not just that it is sent. Miss S has said that the November 2006 letter wasn't received. I have looked at Prudential's records and, as I have said above, I am satisfied that it was sent to Miss S. I am also satisfied that the address Prudential had on file for Miss S was the correct one.

Now I know that not all items of post sent are received, but the vast majority are. Miss S hasn't mentioned that she had any postal issues around that time and she does seem to have received all the other letters Prudential sent her. In addition, Prudential has no record of the letter having been returned. Whilst Miss S may not have realised the importance of the letter, I am satisfied that it was most likely received by her.

Overall, I am satisfied that a deadline date was communicated to Miss S in 2006 and that the letter it was contained in was most likely received by her. As such, I don't consider Prudential provided incorrect information about this to the selling adviser or that it's responsible for her complaint to that adviser being time-barred when it shouldn't have been.

my provisional decision

My provisional decision is that I intend to uphold this complaint in part. I consider that for the service issues The Prudential Assurance Company Limited should pay Miss S £400 compensation.

Derry Baxter
ombudsman