

complaint

Mr N's complaint concerns a policy held with The Prudential Assurance Company Limited. He says the business allowed the surrender of the policy to a third party without his agreement.

background

The complaint was reviewed by an adjudicator who thought it shouldn't be upheld.

He acknowledged that the signature on the surrender form for the policy was different to the one originally given on the application form. But, looking at the circumstances as a whole, he was satisfied that the other checks and measures Prudential had taken were sufficient.

He noted that the business had written to Mr N saying that it had received instruction to surrender the policy but it couldn't be paid to a third party. In addition, Prudential had also paid the surrender value back into the account from which the premiums had been paid. The adjudicator concluded that it was reasonable for the business to assume that Mr N would be the eventual recipient of the money.

Mr N disagreed with the adjudicator's opinion. He said that Prudential had confirmed to him that it shouldn't have paid out to a third party. Yet it had paid the money to a company account that he had no connection with. The policy was held in his sole name so Prudential had incorrectly paid-out the money incorrectly.

As no agreement could be reached, the complaint was passed to me to review.

Having done so, I was inclined to reach a different conclusion from the adjudicator's. In brief, I thought Prudential had acted incorrectly in making payment as it did.

There were a number of factors that led me to this conclusion. Primarily, I thought the signatures on the application and surrender forms were sufficiently different to have prompted the business to make further checks to ensure it was paying to the correct party.

But there were also further background circumstances that I thought should've put Prudential on notice that greater care was required. These were;

- The initial request for payment to be made to a third party.
- The fact that Prudential never spoke with Mr N about the matter, other than to obtain the security information. As far as I could see there was never any reason given for why Mr N couldn't handle matters. And I noted the security information was given incorrectly in part (the wrong date of birth was partly given on the first call made to Prudential).
- No consideration appeared to have been given as to why Mr N apparently did not have an account into which a cheque could be paid. I thought this was sufficiently unusual for someone of his age that it could've been an indication of possible insolvency, etc.
- Although payment of the surrender value was made to the account from which premiums were paid, this wasn't an account in Mr N's name.

Ultimately all this taken together led me to conclude that Prudential hadn't adequately ensured payment was made correctly and Mr N was out of pocket as a result.

My thoughts were put to Prudential, which responded to say, in brief;

- It didn't accept that it had not afforded due care and diligence when paying the settlement of the policy.
- It issues many cheques in the name of a company. Although it had paid the proceeds to a third party account, it did so with what it believed was Mr N's genuine authority. This was strengthened by the fact that it was an account known to it, from which the premiums had been paid, and Prudential had included Mr N's name on the cheque payee line.
- In respect of the point that it was unusual for a policyholder to not have an account into which the proceeds could be paid, this wouldn't have been a requirement for it to check. However, the situation was not uncommon. It could equally be questioned why the premiums had not been paid from a bank account in Mr N's name.
- There was no reason why Mr N couldn't consider action against the parties who he believes made the claim.

my findings

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

I've noted all that Prudential has said in response to my view that it failed to carry out adequate checks before making payment on Mr N's policy. But I remain of the opinion that there were sufficient irregularities in the surrender process that, taken in the round, it should reasonably have been put on notice that something wasn't right.

Had it acted in light of those irregularities I think it's fair to say that payment wouldn't have been made to the third party. And Mr N would've therefore been able to properly claim the surrender value.

I'm conscious that this view could be seen to some extent as having been formed with the benefit of hindsight. Some of the points I've noted above about the irregularities – such as Prudential never speaking substantively to Mr N (or whoever may have been passing themselves off as Mr N), or Mr N's apparent lack of any sort of account into which the money could be paid – could be seen as being of significance only in light of what is now known about what is likely to have happened with the claim.

But ultimately I think that even if the *only* irregularity had been the difference in the signatures (which were provided only five years apart) this would still be sufficient to support a finding that Prudential failed to take adequate steps to ensure that payment was made to the right party.

my final decision

For the reasons given, my final decision is that I uphold the complaint.

I direct The Prudential Assurance Company Limited to pay Mr N a sum equivalent to the policy's surrender value, plus interest at 8% simple from the date of surrender to the date of settlement.

If Prudential deducts income tax from the interest it must provide Mr N with a tax deduction certificate so any tax overpaid can be reclaimed, depending on the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 October 2015.

James Harris
ombudsman