

complaint

Mr M represents the estate of his late father. He complains that The Prudential Assurance Company Limited ("Prudential") wrongly paid the death benefit from his late father's pension plan to his late father's partner.

background

Mr M does not agree with Prudential's decision to pay the lump sum death benefits from his late father's pension plan to his late father's partner. He says that as he, his brother and their mother were executors of the estate they should have got the death benefit.

Prudential sought evidence from the late Mr M's solicitor on who was financially dependent on the late Mr M. From the evidence given it made the payment to his partner.

Our adjudicator investigated the complaint. He did not uphold it. He said Prudential had applied the plan's terms and conditions. It had discretion as to who could get the benefit. It made appropriate enquiries before paying it. The payment was properly made.

Mr M, on behalf of the late Mr M's estate, did not agree. He said their late father's partner was not financially dependent on him. Payment should not have been made to her.

Agreement was not reached. So the complaint has been referred to me.

my findings

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

I was sorry to learn of the sad circumstances that brought about this complaint.

The crux of this complaint is whether Prudential was entitled to exercise discretion in deciding to whom the late Mr M's death benefit would be paid. And if so, did it exercise its discretion appropriately.

I note that the scheme rules set out that Prudential can decide to whom death benefits will be paid. The rules say:-

'BENEFITS ON DEATH

Should you die before your pension commences, then the value of your Member's account will be payable as a lump sum. You may nominate any person (or persons) to receive this lump sum. Whether or not you make such a nomination Prudential will have discretion as to whom the lump sum will be paid.'

So I am satisfied that Prudential acted in line with the scheme rules in using discretion to pay death benefits to whoever it decided was a rightful recipient.

But whilst I understand Mr M's point that the executors of his late father's will should have got the death benefit, this was *not* specified in the will. And even if it had been, Prudential would still have had discretion, under the plan rules, as to whom it paid death benefits.

So I now need to consider whether Prudential took *reasonable* steps in *using* its discretion to pay the death benefit to the late Mr M's partner. Prudential confirm they considered Mr M, his brother and the late Mr M's partner as potential beneficiaries. They did this having seen the late Mr M's will. And after getting a claim for death benefits from the solicitors for the late Mr M's estate on behalf of his partner.

Having considered the solicitors evidence that the late Mr M's partner was the only potential beneficiary financially dependent on him, it paid the death benefit to the late Mr M's partner.

It is not for me to decide whether or not the late Mr M's partner was financially dependent on him. Rather, the second part of my decision here must focus on whether Prudential acted reasonably in exercising its discretion to pay the death benefit to the late Mr M's partner.

In my view, it was, first, reasonable to identify the death benefit beneficiary on the basis of which potential beneficiary (if any) was financially dependent on the late Mr M. And secondly, that the evidence from the solicitors on behalf of the late Mr M's partner that she met that test was reasonably applied by Prudential in reaching its decision.

Apart from Mr M's status as an executor of his late father's will, I have not seen any persuasive evidence given to Prudential to support his assertion that the death benefit was wrongly paid to his late father's partner.

I have concluded that in exercising its legitimate discretion, Prudential acted reasonably to establish who should get the death benefit from the late Mr M's plan. It follows that I do not agree that Prudential erred in paying it to the late Mr M's partner. Or that *only* because they were executors of the late Mr M's will, Mr M, his brother and their mother should have received some, or all, of the death benefits.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M, on behalf of his late father's estate, to accept or reject my decision before 4 January 2016.

Terry Connor
ombudsman