

complaint

Miss B complains about The Prudential Assurance Company Limited (Prudential). She's unhappy with how Prudential settled the death benefits available under her late father's personal pension policy and has concerns about Prudential's decision making process.

background

Miss B has solicitors acting on her behalf so my references to Miss B should be understood to include her solicitors.

Having carried out its investigation into the death benefits available under her late father's pension and who'd receive this, Prudential wrote to Miss B with its decision. It explained that a lump sum death benefit of £22,343.66 was available, payable at its discretion. Prudential said that in exercising its discretion it had decided to pay 25% of the lump sum death benefit to Miss B, with the rest going to Miss B's late father's partner.

Miss B raised concerns about Prudential's decision. But Prudential explained that in line with the Scheme Rules its duty was to choose who received the lump sum death benefit available under her late father's policy.

Miss B remained unhappy with Prudential's response. She said she noted Prudential had discretion over who received her late father's death benefit and that it had decided to appoint her 25% share of this based on what it had described as full written factual evidence. But she also said that as the administrator of her late father's estate she was entitled to a copy of the evidence Prudential had relied on to ensure a fair decision had been made.

Prudential responded to Miss B and in summary said:

- the death benefits available under the late Mr B's pension arrangement didn't form part of his estate so Miss B wasn't entitled to a copy of the evidence it had been provided with or relied on
- it had gathered sufficient evidence to make the decision it had. Specifically it had sought evidence of financial dependency and interdependency on Mr B
- the Scheme Rules required Prudential to choose who'd receive the lump sum death benefit and it hadn't taken its decision lightly
- it had acted fairly and rationally and was satisfied it had made the correct decision

Miss B later raised a formal complaint about Prudential's decision. Prudential provided its final response on the matter and repeated that it wasn't able to provide Miss B with the evidence it relied on to settle the death benefits under her late father's pension.

Unhappy with Prudential's response Miss B referred her complaint to this service. One of our investigators considered the matter and said she didn't think Prudential had done anything wrong in the circumstances.

Miss B disagreed with our investigator and in summary she said:

- she accepted Prudential had discretion under which it could decide how to distribute funds but she wanted to know the basis of this decision to be satisfied it was reasonable

- she wanted to know how Prudential had reached its decision and for it to disclose any evidence relating to this
- she was concerned the evidence Prudential had relied on might be fabricated or untrue

As no agreement could be reached the matter was referred to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not intending to uphold this complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of the correspondence, arguments and comments made by both parties, I have limited my response to what I consider to be the issue central to this complaint. That is to say, whether Prudential was entitled to exercise discretion in deciding to whom the late Mr B's death benefit would be paid. And if so, did it exercise its discretion appropriately.

The applicable Scheme Rules set out that Prudential can decide to whom death benefits will be paid. Specifically the rules say:

"4. BENEFITS ON DEATH (...)

the Scheme Administrator may pay all or some of the Member's Fund as a lump sum to or for the benefit of any one or more of the following in such proportions as the Scheme Administrator decides:

- (i) any person, charity, association, club, society or other body (including trustees of any trust whether discretionary or otherwise) whose name the Member has notified to the Scheme Administrator in writing prior to the date of the Member's death;*
- (ii) the Member's surviving spouse or Civil Partner and any children and remoter issue of any of them;*
- (iii) the Member's parents and grandparents;*
- (iv) the Member's Dependants (...)"*

Regarding what is meant by 'Dependant' the Scheme Rules say:

"Dependant" means:

- (a) a person who was the Member's spouse or Civil Partner at the date of the Member's death;*
- (b) a person who was the Member's spouse or Civil Partner when the Member first became entitled to a pension under the Scheme;*
- (c) the Member's Child, or*
- (d) a person who, in the opinion of the Scheme Administrator, at the date of the Member's death:*
 - (i) was financially dependent on the Member;*
 - (ii) had a financial relationship with the Member that was one of mutual dependence, or*
 - (iii) was dependent on the Member because of physical or mental impairment."*

Based on the above I'm satisfied Prudential was acting in line with the Scheme Rules in using its discretion to pay death benefits to whomever it decided was a rightful recipient.

Turning now to whether Prudential took reasonable steps in using its discretion to pay the death benefit.

Prudential considered Miss B and the late Mr B's partner as potential beneficiaries. It did this having reviewed the documentation and information it was provided with from the relevant parties. And it was on the basis of what this evidence showed that Prudential determined the level of financial dependency or interdependency of Miss B and the late Mr B's partner in order to decide what proportion of the death benefit payment should be allocated to whom. As Prudential's letter to Miss B explained:

"We do not take this decision lightly, it's important that we carry out a full and detailed fact find before we consider each claim (...) we want to make sure we have gathered all relevant information to enable us to make an informed decision (...)"

I consider that it was firstly reasonable for Prudential to identify the death benefit beneficiary on the basis of which potential beneficiary (if any) was financially dependent on the late Mr B. And secondly, that the evidence from Mr B's late partner and Miss B that they met this test was reasonably applied by Prudential in reaching its decision about the level of payment paid.

I note that Prudential's letter to Miss B of 24 April 2018 outlined the type documentary evidence it could require upon which it would base any decision it made about the payment of the death benefit. So I'm unable to agree that Prudential wasn't sufficiently transparent about its process to determine who received the death benefit.

Miss B considers that because she's the administrator of her late father, Mr B's estate that she's entitled to see the evidence Prudential relied on to pay out the death benefit. I'm unable to agree. Miss B's father's pension was held under trust and this meant that the death benefits payable from it fell outside his estate. So it wasn't Miss B's role to decide where the death benefits were paid and on what basis. This was Prudential's responsibility. And as such it was for Prudential to satisfy itself who, based on the available evidence, were the rightful beneficiaries and to what extent. Prudential wasn't and isn't required to disclose the evidence it received from the late Mr B's partner to determine her death benefit entitlement. As well as not having to share evidence with Miss B, Prudential also isn't obligated to communicate its reasons for the decision it made.

I'm also mindful that other than Miss B's expression of concern that Prudential may have based its decision on fabricated evidence, I haven't seen anything to suggest that Prudential has been provided with persuasive evidence to support Miss B's claim that the death benefit may have been wrongly paid to her late father's partner.

I recognise that Miss B may feel very strongly that Prudential has made the wrong decision but I cannot second-guess its decision or substitute my own finding as to who the death benefit payment should be made to and by how much. Prudential is entitled under the Scheme Rules to make that decision and it is not for me to review that decision.

I do have sympathy for Miss B. I'm sure dealing with this complaint which stems from her father sadly passing away hasn't been easy. However I'm satisfied Prudential could distribute the late Mr B's death benefit using its discretion. And that discretion gives

Prudential the freedom to decide what should be done in a particular situation. I'm satisfied Prudential has used its discretion here in a fair and reasonable way. And that it's not obligated to disclose the evidence it relied on or the specific reasons for its decision. So it follows that I don't think Prudential has done anything wrong regarding the issues Miss B has raised.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 27 April 2019.

Chillel Williams
ombudsman