

complaint

The complaint is made by the executor of the late Mr A's will. The complaint is that Prudential Assurance Company Limited (who I will just call Prudential) didn't pay the death benefit from a pension policy to Mr A's estate. Instead Prudential paid it direct to Mr A's wife.

background

Mr A died in September 2013. His executor contacted Prudential and asked it to pay the death benefit to the estate. But in February 2014 Prudential paid the money direct to Mr A's wife.

Although there was extensive correspondence between Prudential and Mr A's executor, the complaint wasn't resolved and was referred to us.

It was investigated by one of our adjudicators. He didn't uphold the complaint. In summary, his reasons were:

- Mr A's pension was set up in trust, with Prudential as the trustees. This meant the death benefit was not part of Mr A's estate.
- As trustees Prudential had discretion as to who to pay the death benefit to.
- Prudential had paid the money to Mr A's wife as it considered her financially dependent on him. The validity of the marriage wasn't material to its decision.
- Prudential had not acted inappropriately or outside of its remit as the trustees of Mr A's pension.
- The policy was appropriate for Mr A based on his circumstances at the time it was arranged.

Mr A's executor replied. He said:

- Prudential's discretion (as to who to pay the death benefits to) meant that it could do as it liked. That should be challenged and couldn't be legal.
- Prudential didn't make its decision based on the circumstances of the case – instead it ignored them.
- Its decision had caused Mr A's sister great distress.
- He was not seeking repayment of any expenses. But Mr A's wife had received some £44,500. That included £32,000 from Prudential which Mr A had expected to be paid to his sister.
- Prudential had said that it had investigated Mr A's circumstances at the time that the policy was arranged and it was suitable for him. But that was some 21 years ago and circumstances change.
- To say that the pension was held in trust and didn't form part of Mr A's estate was a contradiction – the trust is Mr A's will.
- Prudential had sent a cheque for £100 to apologise for the upset it had caused. But he'd never cashed the cheque and didn't feel able to pass that on to Mr A's sister. All he wanted was justice. Prudential had no idea of the hurt and financial distress caused to Mr A's sister. She'd lent her brother money, she hadn't expected him to die and she'd not taken steps to secure the loan legally.
- He wanted an ombudsman to review the case.

Mr A's executor also sent us an email that he'd received from Mr A's sister. He added:

- If Prudential had just acted in accordance with Mr A's will then there wouldn't have been a problem.
- Mr A wouldn't have known that the money he'd instructed his executor to send to his sister wouldn't be forthcoming.
- Mr A's sister couldn't afford to instruct a solicitor to force the sale of Mr A's house so that she could be paid the money she was owed.
- Prudential's decision wasn't fair. And Mr A's sister's distress at losing her brother had been compounded by the debt not being repaid.
- Mr A's executor had given money to Mr A's wife, believing that he would be able to pay Mr A's sister out of the death benefit that Prudential paid.
- Prudential had been allowed to '*ride roughshod over people's lives*' and its decision was illogical.

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've reached the same conclusions as the adjudicator.

I see what's been said about the pension policy not being suitable for Mr A. It was set up a long time ago and so the evidence surrounding the sale is, understandably, limited. We don't know whether Mr A had any doubts about taking out the policy – although if he did he doesn't seem to have raised them with Prudential before he died.

But, from what I've seen, I don't think that the recommendation to start a personal pension plan was unsuitable for Mr A at the time. Generally speaking, saving for retirement is likely to be a good idea. I've not seen anything to suggest that such advice wasn't appropriate when it was given.

I understand the point about circumstances changing. But the suitability of the policy must be judged based on an individual's circumstances *at the time* the advice was given. We can't use hindsight when assessing suitability. So I don't think any complaint that Mr A shouldn't have taken out the policy succeeds.

Turning to the death benefit, I can understand why Mr A's executor thinks that Prudential should have paid the money to him. That would have meant that he could have paid Mr A's debts as the will set out, including the money Mr A owed to his sister. She's very unhappy with the situation. She'd lent Mr A money which she'd expected to be repaid from his estate. But that couldn't happen as Prudential didn't pay the money to the estate. And that's left her in a difficult financial position.

I've taken all of that into account. But I don't think Prudential did anything wrong by paying the money to Mr A's wife. I've set out below why I've come to that conclusion.

Mr A thinks that Prudential should just have paid the money to him as Mr A's executor. But although Prudential could have done that it didn't have to – because as trustee it had discretion to decide who the money should be paid to. I see Mr A's point about the will being a trust. But the pension policy wasn't part of any trust arising under Mr A's will – it was the subject of a separate trust and outside the will.

Mr A thinks that Prudential can, in effect, do what it wants. But I don't think that's quite right. It's true that Prudential, as a trustee, has a fairly wide discretion. But the exercise of a discretionary power can be challenged on certain grounds.

Trustees must ensure that any discretionary decision is made properly and in line with the power that's been given. For example, the trustees need to make sure that the person the money is paid to is someone that is eligible for payment.

The member's booklet sets out how the pension policy works. There's a section headed '*Benefits on death before retirement*'. That says that if the member dies before his pension starts "*Prudential will have discretion as to whom the lump sum will be paid*".

That section also refers to the member nominating a person to receive the lump sum benefit. My understanding is that Mr A didn't make any nomination. And, even if he had, although Prudential would have had to take it into account, it wouldn't have been binding on Prudential.

I've also seen a copy of the rules which govern the policy. Rule 4 sets out that Prudential can pay a lump sum to or for the benefit of those listed. They include the member's surviving spouse or dependants as well as the member's estate. So it was open to Prudential to choose to make the payment to Mr A's wife as his dependant.

And in deciding who to pay the trustees must take into account everything that is relevant and nothing that isn't. The decision must be rational – that is, one that it's reasonable for the trustees to have reached.

On the last point, Mr A's executor has said that the decision (to pay Mr A's wife) was illogical. But just because Mr A's executor doesn't agree with what Prudential decided, that doesn't mean that Prudential's decision was irrational. So long as it was within the range of decisions that the trustees could have reached then it wouldn't open to challenge on the basis that it was irrational or perverse. .

In looking at whether Prudential took into account everything that it should have done, I've looked at the information that it had when it made its decision. I see that it did make enquiries about Mr A's family and that it was aware that Mr A owed money to his sister.

It's not for me to say if I agree with Prudential's decision – only whether the decision was made properly. I think it was. So it follows that I don't think Prudential did anything wrong.

my final decision

I don't uphold this complaint and so I don't make any award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A's executor to accept or reject my decision before 5 June 2015.

Lesley Stead
ombudsman