

complaint

Ms K complains on behalf of her late mother's estate. As personal representative she's unhappy she's being asked to pay back £11,000 of a sum paid to the estate in error by The Prudential Assurance Company Limited (Prudential).

She says the money has been withdrawn and shared out amongst the beneficiaries of the estate and Prudential isn't being understanding or fair in asking for the money back.

background

Ms K's mother had a life assurance policy with Prudential and Ms K was an executor of her will. After her mother passed away, Ms K wrote to Prudential to let it know. She asked for details of amounts payable and provided a copy of her mother's death certificate.

Prudential wrote to her acknowledging receipt of her letter. It said the amount payable under the policy would be in the region of £38,300. It requested some further information to enable it to pay out under the policy.

On 4 March 2016, Ms K wrote to Prudential giving further information and said her sister – also an executor - would also write with authorisation for payment to be made. On the same day, Prudential wrote to Ms K enclosing a cheque for £11,857.38. It wrote again on 17 March 2016 (after it had heard from Ms K's sister) enclosing a cheque for in £38,380.89.

On 29 April 2016, Prudential wrote to Ms K to say it had made a mistake. The cheque for £11,857.38 wasn't in relation to a policy for Ms K's mother. It was for another customer with the same name. It asked for the money to be returned.

Ms K told Prudential the money had already been distributed between the children and grandchildren of her late mother. It asked for evidence of that and sent its final response on 10 June 2016. It offered £857 in view of the poor service it had provided.

In October 2016, Ms K provided a copy of a bank statement showing two withdrawals of £5,000 as evidence that £10,000 of the £11,857.38 had been distributed. Prudential said it didn't think the statement was sufficient to show who the money was paid to or why. On 30 November 2016, as Ms K had sent no further evidence, Prudential requested the return of £11,000 having waived the £857.38 as 'compensation' for the error.

Ms K referred the complaint to our service.

One of our investigators looked into the complaint and didn't think it should be upheld. She said Prudential had contacted Ms K as soon as it realised its mistake and it was reasonable for it to ask for the money to be repaid. She said Prudential was prepared to arrange an affordable repayment plan and she felt the £857.38 it had offered as compensation for the mistake was reasonable in the circumstances.

Ms K didn't agree with the investigators view and asked that the complaint be looked at by an ombudsman.

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 agree with the investigator's conclusions for much the same reasons.

It isn't in dispute that the £11,857.38 payment was a mistake, so I won't comment further on that.

What's outstanding is whether or not it's reasonable for Prudential to seek to recover £11,000 from the estate. To help decide that, I've thought about whether it was reasonable for Ms K to think her mother's estate was due this money, and if so, had it been distributed before the mistake was brought to her attention. I've asked Ms K for further information to help with this but she hasn't provided anything further.

When Ms K wrote to Prudential, she included a policy reference. Prudential replied with the same reference saying what documents it needed, and how much was due under the policy.

Ms K wrote to Prudential with some of the documents on 4 March 2016 and said her sister would write too. On the same day Prudential sent her the cheque which caused this dispute. The covering letter showed the name of Ms K's late mother as the policy was for a customer with the same name. But I note that the policy reference was different, the amount of the cheque wasn't what Ms K was expecting, it was received very soon after she'd written (the cheque was paid in on 9 March 2016) and before Ms K's sister had written.

Ms K said the money withdrawn as shown in the bank statement sent to Prudential, was split between the beneficiaries of the will. £5,000 was withdrawn in cash on 10 March 2016 and a further £5,000 on 22 April 2016. Ms K has told us she still has the remaining £1,857.38. But other than that, there's no other evidence that the money was distributed to the beneficiaries.

Prudential sent a cheque for £38,380.89 for Ms K's mother's policy on 17 March 2016. So it's unlikely Ms K's mother's estate would've been finalised before then. I note the first withdrawal was made on 10 March 2016 (before the estate was finalised) and the second on 22 April 2016, after the correct cheque payment was made. It's not clear, why the whole amount wasn't distributed at once, or why the remaining £1,857 wasn't also distributed to the beneficiaries.

I appreciate Ms K said her mother suffered from dementia so it wasn't unusual to uncover things not previously known about, so the letter from Prudential didn't come as a surprise. But I think it would've been reasonable in the circumstances, for Ms K to have contacted Prudential to check that this was correct, and that the £38,300 she was expecting, was still coming – particularly as there was no mention of the £11,857.38 in her correspondence with Prudential at the time.

For the reasons set out above, I think it's fair and reasonable for Prudential to request repayment of the £11,000 it paid the estate in error. I'm mindful that Prudential has agreed to discuss an affordable repayment plan for return of the money.

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 the personal representative of the estate to accept or reject my decision before 10 July 2017.

Richard Hale
ombudsman