

complaint

The executors of the estate of Mrs S complain that The Prudential Assurance Company Limited incorrectly recorded her as 'gone away', meaning it couldn't send any information to her about her investments.

As a result, her daughter, Ms S, who was looking after Mrs S' affairs as her attorney, was left unaware of several investments and lost the opportunity to take steps to mitigate inheritance tax (IHT).

background

I issued a provisional decision on the complaint, a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought the complaint should be upheld. In brief, I was persuaded that Prudential's mistake in recording Mrs S as 'gone away' had led to Ms S having an incorrect understanding of her mother's IHT position, which in turn led to her losing the opportunity, as Mrs S' attorney, to take additional steps to mitigate the IHT liability.

I said that it was difficult to be certain what steps Ms S might've taken to mitigate the liability if she'd known of the other investments. So, I felt a fair solution to the matter would be for Prudential to pay half the IHT bill, as a reasonable compromise.

Ms S, on behalf of her mother's estate, accepted this. Prudential did not. It said, in brief;

- An IHT liability of around £40,000 for Mrs S' estate had been identified in 2001. As a result, a whole of life policy had been put in place specifically to address that liability.
- As the whole of life policy was already in place, there was nothing to suggest that if Ms S had later become aware of the investments any further action would've been taken in respect of IHT planning.
- The adviser who'd recommended the investments and the whole of life policy had contacted Prudential in 2008 to obtain information about the investments and there was no reason to think this hadn't been passed on to Mrs S.
- As such, Prudential weren't liable for any part of the IHT bill and the offer of £500 made in respect of its mistake remained fair in the circumstances.

my findings

I've considered all the available evidence and arguments, including the further submissions, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've not been persuaded to change my view as explained in my provisional decision.

Prudential's response to my provisional decision has very much focussed on the whole of life policy recommended to Mrs S in 2001 when a potential IHT liability of just over £37,000 was identified.

In short, Prudential feels that as this policy was already in place, if Ms S had been made aware of the additional investments and the resulting up-to-date IHT liability (which coincidentally, and despite significant changes in IHT nil rates and their application, was very near to the 2001 figure) she wouldn't have taken any further action.

But I don't agree. Even though the whole of life policy would've paid a sum outside the estate that could be used to meet the IHT liability (and I understand that it in fact did), I see no reason why Ms S would simply have accepted this and not taken further action if she'd been made aware of an amount of nearly £300,000 that would increase the IHT liability.

Ms S was acting as Mrs S' attorney and actively took advice in that capacity about Mrs S' situation in 2015. At that point it was calculated that there no IHT liability because of the lack of awareness of the Prudential investments. Had the correct size of the estate been known at that point I accept that a decision *could* have been taken to simply earmark the whole of life policy as the means by which to meet any liability. But having involved an adviser and with the estate significantly larger than in 2001 I think, on balance, it's more likely that Ms S would've been advised to take further steps to update the IHT mitigation and would've accepted that advice.

So, in summary, I remain satisfied that Prudential's error with Mrs S' address led to a loss of opportunity for Ms S to update the estate's IHT mitigation strategy. And I therefore think its fair that Prudential should pay compensation to reflect that loss of opportunity.

In respect of Prudential's point concerning the adviser's approach in 2008 to get information about the investments, we don't know what interaction there subsequently was between him and Mrs S. But by this point it appears that Mrs S was already demonstrating symptoms of the health issues that would eventually lead to Ms S acting with power of attorney. So, in all the circumstances, I don't think it would be fair to conclude that this intervention by the adviser should outweigh Prudential's responsibility to maintain its records correctly.

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 to the estate of Mrs S a sum equivalent to half the IHT bill incurred by the estate.

As previously noted, I'm not able to direct payments of compensation to an estate, but I hope that in the circumstances Prudential would also make payment of the £500 to Ms S if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S, on behalf of the estate of Mrs S, to accept or reject my decision before 11 January 2020.

James Harris
ombudsman

COPY PROVISIONAL DECISION

complaint

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As a result, her daughter, Ms S, who was looking after Mrs S' affairs as her attorney, was left unaware of several investments and so lost the opportunity to take steps to mitigate inheritance tax (IHT).

background

Mrs S sadly passed away in December 2017. A few months prior to this Prudential had contacted her via the Department of Work and Pensions (DWP) seeking to confirm her correct address. She held three investments for which it had been unable to provide annual statements for a number of years. Many years earlier, in 2004, Prudential had for some reason marked Mrs S' file as 'gone away' and although she'd contacted Prudential at that time to confirm that it had the correct address the record wasn't updated.

By 2017 Mrs S' affairs were being looked after by her daughter, Ms S, acting with power of attorney following a deterioration in Mrs S' health. Following Mrs S' passing Ms S, then as co-executor of Mrs S' estate, received information about the investments. It transpired that the combined value of the investments was around £280,000 and this led to Mrs S' estate exceeding her nil rate band. As a result, an inheritance tax bill of just under £40,000 was incurred.

Ms S complained to Prudential. It acknowledged its error and indicated that it would give consideration to paying the IHT bill. But having completed its investigation it concluded that only an offer of compensation – £500 – would be made.

Prudential didn't think it should be held responsible for the IHT bill. It noted that in 2008 Mrs S had appointed a new financial adviser who had contacted Prudential, with Mrs S' authorisation, asking for information on specific investments, including the three in question. Prudential provided the information to the adviser. It therefore felt it likely that the information would've been discussed with Mrs S and appropriate action taken if that had been Mrs S' wish.

Ms S didn't accept this and referred the matter to this service where our investigator reached a different conclusion to Prudential. She noted that Ms S had been granted power of attorney for Mrs S' affairs in 2009. So she felt that if annual investment statements had been sent to Mrs S as they should've been it was likely Ms S would then have been aware of the investments and would've taken steps to mitigate the potential IHT liability created by the investments.

The investigator therefore concluded that Prudential had a degree of responsibility for the IHT bill. But because it was likely Mrs S would've had some awareness of the investments she felt Prudential shouldn't be held responsible for the whole amount but should pay half as a compromise.

Prudential didn't accept this. It highlighted the steps it had taken to confirm Mrs S' address, culminating in April 2017 when it sent a letter via the DWP to which there'd been a response signed by Mrs S. Prudential felt that this indicated that Mrs S had still been involved in dealing with her affairs, despite Ms S acting as attorney by that point. Prudential therefore didn't feel it should be held responsible for any of the IHT liability.

As the investigator wasn't persuaded to change her opinion, the matter's been referred to me to review.

my provisional findings

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

Prudential has accepted that it made an error in marking Mrs S' file as 'gone away'. So my role in resolving this dispute is to decide what represents fair compensation for the error – is it Prudential's offer of £500, the investigator's suggestion of a repayment of half the IHT liability, or something else?

Prudential's offer is based upon its view that it's not solely responsible for the situation. It's highlighted in particular the contact made by Mrs S' financial adviser in 2008. It says this suggests Mrs S was aware, or ought to have been aware, of the investments and could therefore have shared the information with Ms S. Prudential also notes that as part of its attempts to confirm Mrs S' address the new financial adviser was asked to confirm it but failed to do.

I appreciate Prudential's points. But it remains the case that an error was made. And if that error hadn't been made then statements for the investments would've been sent each year. And from 2009, when she was granted power of attorney, Ms S would more likely than not have been become aware of the investments, regardless of what she might or might not have been told previously by Mrs S.

IHT was clearly a concern for Mrs S. Documentation from the time of the original recommendation of the largest of the three investments, in 2001, shows that it was discussed. Further, in 2015 when Ms S sought advice from her own adviser, the matter of IHT and Mrs S' estate were discussed. But it was determined at that point that the estate fell within Mrs S' nil-rate band because the three investments were not taken into consideration, as Ms S was unaware of them.

I appreciate that Prudential took steps to confirm Mrs S's address, writing to the various businesses involved in the recommendation of the investments. In 2009 it wrote to Mrs S' new adviser but, as noted, got no response. But it was then not until eight years later, in 2017, that it took the step of using the DWP approach, which immediately solved the problem. If this had been done sooner, it seems likely that it would've worked and Ms S, as Mrs S' attorney, would've been made aware of the investments and could've acted – for instance the outcome of her meeting with her adviser in 2015 might have been very different.

That said, it's very difficult to determine precisely what would have happened if Mrs S' address details had been maintained as they should've been. Ms S has provided some comment from her adviser that suggests that if Ms S had made it aware of the additional investments it would've recommended investing some of the money in AIM-listed shares to take advantage of Business Property Relief (BPR).

This would've meant that any invested money would be free of an IHT liability once invested for two years. The adviser acknowledged that this is a relatively high risk approach and so it would only have recommended investing around half the amount in question.

It strikes me as entirely plausible that this might have happened. But I am conscious of the risk involved and also the general uncertainty around what Mrs S might have known and when, and what she ultimately might have wanted to do. But even if the use of BPR had been too risky there remains the possibility that if Ms S had been aware of the investments even earlier, prior to 2015, there would've been other options available to explore in respect of IHT planning.

That being so, I think in all the circumstances the solution suggested by the investigator – that Prudential meets half the cost of the IHT bill – is broadly fair and reasonable.

my provisional decision

For the reasons given, but subject to any further submissions I receive, I currently think the complaint should be upheld and The Prudential Assurance Company Limited should pay to the estate a sum equivalent to half the IHT bill incurred.

I'm not able to direct payments of compensation to an estate, but I hope that in the circumstances Prudential would also make payment of the £500 if it hasn't done so already.