

complaint

Mr M, the son and personal representative of the late Mrs M ("Mrs M"), has complained to The Prudential Assurance Company Limited about the amount of death benefit paid in February 2016 under a policy taken out on her life by her mother in 1914.

The policy became fully paid-up in 1970 when she stopped premium payments. But, given the premium was only one penny per week, he doesn't think Mrs M would have done so knowingly. Prudential hasn't provided evidence that she intended premiums to stop at that time. He says she may have received advice from Prudential to do so, or its agent failed to continue collecting her premiums. In any event, Prudential should have warned her that premiums had ceased and about the effect on the future death benefit of the policy becoming fully-paid.

If Mrs M had continued to pay these premiums for the maximum paying term to age 75, the amount due on her death would have been £897. Mr M says Prudential should pay a more realistic death benefit given Mrs M paid premiums to this policy for 56 years and it had use of a fully paid value of £31 for a further 46 years before she died.

background

Mrs M's mother took out a non-profit whole life policy on Mrs M's life in 1914. Mrs M was aged one at the time. For a weekly premium of one penny, the policy provided life cover on an increasing scale up to ten pounds and fifteen shillings after the first 20 years.

Once Mrs M reached age 21, it appears the policy became her property and converted to a with-profit whole life plan. Her premium receipt book confirms she paid the annual equivalent premium of four shillings and four pence at each policy anniversary in March. Based on her age at outset, the full value of the policy was payable on death providing Mrs M maintained premium payments to age 75.

But a policy endorsement she received dated July 1970 indicates that she paid her last premium in March 1969 and it became fully paid-up in March 1970. The endorsement also confirmed that the sum assured changed to thirteen pounds, two shillings and three pence. By then, the policy had attracted bonus additions which were 'frozen' at seventeen pounds and seventeen shillings. Therefore, its value when premiums stopped was £30.97 in today's terms. As Mrs M paid no further premiums, the value of the policy remained unchanged until she died.

If Mrs M had continued premiums to age 75, Prudential estimated that the death benefit in 2016 would have been £897. This includes a significant final bonus which the policy didn't qualify to receive when it was made fully-paid in 1970.

The complaint was considered by one of our adjudicators, who felt it couldn't be upheld.

Briefly, she said there was insufficient evidence that Prudential advised Mrs M's mother to take out the policy in 1914 or recommended Mrs M to stop premium payments in 1970.

Mrs M did receive a policy endorsement at that time which confirmed the sum assured as thirteen pounds, two shillings and three pence, with attaching bonuses of seventeen pounds and seventeen shillings. The adjudicator thought it was reasonable to believe Mrs M would know from this that the total value of her policy at that time was £30.97. Also, given she

didn't pay any more premiums, and the policy no longer participated in future bonuses, she could have anticipated that its future value would remain at £30.97.

In response, Mr M disagreed with the adjudicator's assessment. He said that:

- Mrs M had paid premiums of one penny per week for 56 years. He couldn't imagine why she would knowingly stop these premiums given she intended the policy to provide for her funeral expenses;
- he expected Prudential to have retained more documentation given the policy only became a claim in February 2016, including confirmation from Mrs M that she wanted to stop premiums or evidence that Prudential had explained the implications of taking this course of action to her;
- given the value of the policy would have been £897 if she had continued premiums to July 1988, she wouldn't have stopped the premiums in 1970 which left the policy with a value of only £30.97;
- Prudential owed Mrs M a "duty of care" to advise her on the implications of stopping premiums from 1970;
- he expected Prudential to provide a copy of a covering letter that must have accompanied the policy endorsement to explain its contents;
- he wanted to see all the evidence Prudential had relied on to make their case for rejecting his complaint; in particular, its response to his letter dated 12 January 2017.

The adjudicator said she appreciated Mr M's point about the policy endorsement. But she was bound to accept that, due to the passage of time, Prudential will hold little documentation since the policy was taken out. She felt the endorsement was clear in setting out the revised benefits provided by the policy since 1970.

Mr M did ask the adjudicator to share recent correspondence she had with Prudential on the matter and I agreed that he could see this. In response to the points made by Prudential in that correspondence, Mr M said that:

- one piece of paper - the endorsement - is merely a record of Prudential's 'figure work'. It's unsatisfactory to accept that it's done everything possible ;
- there is a contractual obligation to hold information on file for a policy that was still in force in February 2016. He doesn't accept that Prudential can 'side-step' the issue of recording what Mrs M agreed to do with the policy in 1970;
- it's for Prudential to substantiate its innocence in this matter which it hasn't done;
- he's made claims that haven't been answered satisfactorily. Prudential has not produced any evidence which supports their position;
- this matter could have been resolved practically a long time ago. He's never claimed that the policy should cover Mrs M's funeral costs. But Prudential should honour the bonus accruals and offer a reasonable settlement.

As no agreement could be reached, the complaint has been referred to me for review.

findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including his most recent submissions in March 2017.

Although Mr M has engaged in lengthy correspondence with the adjudicator on this matter, I have confined my assessment to the issues that materially affect the outcome of his complaint.

I should emphasise that this service doesn't act as a court of law and we don't cross-examine witnesses, except to clarify issues with the two parties.

Prudential is obliged under the Financial Conduct Authority (FCA) Dispute Resolution (DISP) Rule 3.5.11 to provide all relevant information to this service on request. I have asked Prudential to look again for any further documentation for Mrs M's policy and it has confirmed that nothing more is available. I must accept in good faith that it has adhered to this Rule. I can't audit its internal records to verify whether or not it has provided everything it holds on this policy. Neither can I produce evidence where I'm told none exists.

As such, I decide this complaint on the evidence that *has* been presented by each side. But the onus does lie with Mr M to persuade me, on balance, that his version of events is the more likely. I note he requested the adjudicator to provide a copy of all the correspondence she's exchanged with Prudential and I agreed that he should receive this. In my view, Prudential's email to the adjudicator in January 2017 largely consisted of matters of opinion and interpretation, not fact, which doesn't materially influence my view of this complaint.

It's important to note that the policy was originally taken out by Mrs M's mother. Before the introduction of the Financial Services Act 1986 there was no specific requirement for Prudential to ensure that this policy was suitable for her.

Since the implementation of the Act, there has been a duty on financial businesses to *know their customer* if it did provide advice. But I'm not able to apply the requirements of the Act retrospectively to 1914, or to 1970. So there's no evidence which would show specifically why Mrs M's mother took out this policy whose proceeds would have been paid to her if Mrs M died before age 21.

I appreciate Mr M has questioned why Prudential can't produce evidence which would show that Mrs M knowingly stopped premiums and that she was made aware of the impact on the policy benefits of doing so. Only Mrs M would have known why she came to stop paying premiums to her policy in 1970. But, sadly, we are now unable to obtain her version of events.

I accept that Mrs M's mother decided in 1914 to make some financial provision for Mrs M or her family. The policy, however, was taken out over 100 years ago and remained in force until February 2016. But, as plan had been fully-paid since 1970, it's not surprising that very little documentation exists other than basic policy information which confirms the amount Prudential was obliged to pay from the policy whenever Mrs M died.

While I don't dispute that Mrs M intended the policy to insure against her funeral costs, there's no evidence for this. Hence, I can't safely conclude that, for this reason, Mrs M would have wanted to maintain full cover under the policy indefinitely.

Also, I must consider, on balance, whether Mrs M had knowingly stopped premium payments to this policy, whether she had been notified of the impact this had on the policy benefits and whether her estate received the correct death benefit from it in February 2016.

If the agent stopped collecting premiums from her, the premium receipt book does confirm that it remained her responsibility to ensure premiums are paid on time. Specifically, it states that: *“The omission of any agent to call will not be admitted as an excuse for non-payment; therefore any Policyholder in arrear should take his premium to the Agent or, if there should be a difficulty in communicating with him, application should immediately be made to the District Office or District, or to the Chief Office, Holborn Bars, London, EC1.”*

Mr M has suggested that Mrs M would not have knowingly made a whole life policy she intended to cover her funeral costs fully paid-up whose premiums were the equivalent of 22 pence per month in today's terms.

Mrs M does appear to have changed address in 1968. But she did pay the next two annual premiums, so I don't think this was a cause of her stopping premiums. Also, I can't imagine why Prudential would have encouraged her to stop payments given the policy had been 'active' for 56 years.

Her premium receipt book confirms that Prudential would notify her if premiums stop before the policy was forfeited for a reduced sum assured. This information was given in the policy endorsement. The terms and conditions also allowed her to restore the full benefit of the policy before March 1971 on payment of the premium arrears and evidence of good health but she doesn't appear to have done so.

In the meantime, Prudential sent Mrs M a policy endorsement in July 1970 which confirmed that the sum assured and bonus additions would be fixed at thirteen pounds, two shillings and three pence and seventeen pounds, seventeen shillings respectively. In my view, it's reasonable to believe that Mrs M could not have expected the value of her policy to increase if she didn't pay any more premiums. So I think she ought to have known in July 1970 that the value of her policy was fixed at £30.97, and that this would be the amount payable on her death.

While Mr M has questioned the credibility of the policy endorsement, I'm satisfied it carried authority and confirmed to Mrs M that:

- she stopped the premium payments to the policy in 1970;
- the sum assured, plus accrued bonuses was 30 pounds, 19 shillings and three pence (or £30.97 in today's terms)
- no further bonuses (annual or final) would be allocated to the policy and, therefore, the amount payable on death would be the current policy value of £30.97.

I don't know what other interpretation could be put on its contents.

This was a small “industrial policy” taken out by Mrs M's mother on her own initiative which was inherited by Mrs M at age 21. I don't know why Mrs M stopped paying the policy premiums in 1970. The likelihood is that she made this decision herself and there was no obligation on Prudential to advise her against doing so. Accordingly, I wasn't expecting Prudential to hold a written record from 1970 explaining her reasons for stopping premiums. But it rightly notified her of the impact of this on the policy benefits in the endorsement.

Mr M hasn't claimed that Mrs M continued premium payments to the policy since March 1969 or suggested how much death benefit it should have paid.

All things considered, I don't think Mr M has provided sufficient evidence which persuades me that Mrs M stopped premiums to this policy on advice from Prudential and that Prudential failed to notify her that the value of her policy would remain fixed at £30.97 from 1970 until she died.

Based on the evidence that is available, I've no reason to believe that the policy paid anything other than the correct death benefit in February 2016.

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 Mr M to accept or reject my decision before 22 June 2017.

Kim Davenport
ombudsman