

## **complaint**

Mr and Mrs L complain The Prudential Assurance Company Limited breached its own rules by waiving the 28 day notice period when they surrendered their investment plan. They also say Prudential took instructions from their adviser without their authority.

## **background**

Mr and Mrs L had a Prudential investment plan. The terms and conditions of the plan say that if someone decides to cash in their investment Prudential will apply the unit price on the 28<sup>th</sup> day after it receives the instruction and then it'll make the payment. On 20 February 2017 Mr and Mrs L's adviser spoke to Prudential and following this call Prudential agreed to waive the 28 day notice period.

Mr and Mrs L's surrender instruction was received by Prudential on 23 February 2017 and the process of surrendering the plan started that day, with the proceeds being released on 1 March 2017.

The quarterly review of the expected growth rates (EGR) took place at the end of February and there was a unit price adjustment (UPA) which would have increased the value of Mr and Mrs L's plan. Had the 28 day notice period not been waived, Mr and Mrs L's plan would have still been in force when this happened and the surrender value they received would have been higher. Mr and Mrs L think Prudential should pay them the difference between the actual surrender value they received and the higher value they would have received if the notice period not been waived.

Our investigator didn't think Prudential had done anything wrong. Mr and Mrs L didn't agree. In summary they say:

- Prudential breached its own rules by waiving the 28 day notice period. It shouldn't have put their adviser in the position where he could act the way he did.
- Prudential shouldn't have accepted an instruction from their adviser without making them aware of what was happening or checking they had given the instruction to the adviser and getting their agreement to the change in conditions in writing.
- They question Prudential's motives in agreeing to waive the 28 day notice period and ask if it was aware a large bonus was about to be added to the fund.
- The adviser never told Prudential there was any urgency to the withdrawal and this was an assumption made by Prudential.

## **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 don't think Prudential has done anything wrong. I'll explain why.

There has been a lot of discussion about the conversations that happened between Mr and Mrs L's adviser and Prudential on 20 February 2018. But ultimately, by the end of the second call, there was an agreement between the adviser and Prudential that the 28 day notice period would be waived. The email the adviser sent Mr and Mrs L after the second call confirms "*Prudential have accepted a request to waive the 28 day rule.*" While Mr and Mrs L may not have seen this until after Prudential had already received their surrender

instructions and started the surrender process, it does show that as far as the adviser was concerned, he'd made a request that had been accepted.

Whether it was the adviser or Prudential who introduced the idea of waiving the notice period, or whether the adviser actually said there was any urgency to the withdrawal doesn't matter. What matters is that they reached an agreement that this would happen. The adviser could have turned down Prudential's offer if he didn't think the notice period should be waived or if he wanted to check with Mr and Mrs L before confirming the instruction.

I think that by offering to see if the 28 day notice period could be waived, Prudential was trying to be helpful. It's unlikely the front line staff would have any knowledge of the outcome of the EGR review or whether the UPA would go up or down, so I don't think there was any sinister motivation behind this offer. And while the terms and conditions of the plan do say the notice period will apply, I don't think there's anything wrong with Prudential offering to do something different, if both parties agree to this.

This brings me to whether Prudential should have accepted Mr and Mrs L's adviser's instruction to go ahead and waive the notice period. As far as Prudential was concerned, the adviser was acting on behalf of Mr and Mrs L, as their agent. So it was entitled to accept an instruction from him as if it were an instruction from Mr and Mrs L. There wasn't any requirement for it to get written confirmation from Mr and Mrs L that this is what they wanted to do. It wasn't as if the adviser was making a request for the plan to be surrendered (Mr and Mrs L did have to make this request in writing) or even asking for the proceeds to be paid elsewhere. By accepting the adviser's request all Prudential was doing was paying the money to Mr and Mrs L sooner.

The timing of the surrender request was unfortunate and I understand why Mr and Mrs L feel they've lost out. But had things gone the other way and their plan reduced in value, I think it's unlikely they would be complaining about what Prudential had done.

Mr and Mrs L have also referred to a conversation that took place between their adviser and Prudential on 27 February, after their surrender request was received. They say this shows their plan was still in force when the UPA happened and suggests their surrender request was received later than Prudential says it was.

I've seen Prudential's copies of Mr and Mrs L's surrender paperwork and this is all dated (I'm assuming by its scanning system) 23 February 2017. And I think this can be relied on as accurate. Prudential has explained the surrender process started on 23 February but it wouldn't be complete until five days later – 1 March. The plan would appear to be active on Prudential's systems until the surrender was complete. But the value Mr and Mrs L would receive would be that on the date their surrender request was received. I'm satisfied the surrender process had already started on 27 February and Mr and Mrs L's plan wasn't in force when the UPA happened.

**my final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 24 September 2018.

Claire Allison  
**ombudsman**