

Ombudsman's Determination

Applicant	Estate of the late Mrs R (the Estate)
Scheme	Prudential annuity (the Annuity)
Respondent	Prudential

Outcome

1. I do not uphold the Estate's complaint and no further action is required by Prudential.

Complaint summary

2. The Estate's complaint against Prudential is brought by the late Mrs R's daughter, Ms R. The complaint is that Prudential was not willing to make payments to Mrs R following the death of her husband, Mr R, until it had received additional evidence of her identity. It had asked for a letter from the care home where Mrs R was residing (**the Care Home**) confirming her residency.
3. Ms R does not agree that the letter from the manager of the Care Home would verify Mrs R's identity. She says that Prudential should review its procedures and agree that it is not appropriate. She would like the money that was due to Mrs R to be reimbursed to the Estate, with compensation.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. In 2002, Mr R took out the Annuity with Prudential. Under the terms of the Annuity, a spouse's annuity was payable to Mrs R in the event that Mr R died before her.
6. On 27 December 2017, Mr R died.
7. On 4 January 2018, Ms R telephoned Prudential to notify it of Mr R's death. She said that she was an executor to Mr R's will. She also told it that she was an attorney for Mrs R under a lasting power of attorney (**the LPA**). Prudential said that it would take 30 working days to write to her concerning any benefits payable and its requirements

to arrange payment of those benefits. Ms R expressed dissatisfaction at this timescale.

8. On 5 January 2018, Prudential emailed Ms R. It asked for:-

- Mr R's death certificate.
- A certified or original copy of the LPA.
- Mrs R's full name, date of birth, national insurance number (**NI Number**) and the bank to which Mrs R wished payments under the Annuity to be made.

9. Ms R subsequently wrote to Prudential and provided it with Mr R's death certificate and a certified copy of the LPA.

10. On 23 January 2018, Ms R sent Prudential further information to enable it to verify Mrs R's identity.

11. On 29 January 2018, Prudential wrote to Ms R. It thanked her for providing Mr R's death certificate and the LPA. It said that:-

- The law required it to verify Mrs R's identity.
- It was unable to verify Mrs R's identity online. It requested a letter from the Care Home. It asked that this letter be on headed paper and that it confirm that Mrs R was residing there.

12. On 14 February 2018, Ms R telephoned Prudential to raise some concerns about its letter of 29 January 2018 and the telephone conversation of 4 January 2018. She said that:-

- She was unhappy that Prudential had initially notified her that it would take 30 working days to contact her concerning the benefits payable following Mr R's death.
- She was concerned that it could not verify Mrs R's identity electronically through HMRC and that it had requested a letter from the Care Home in order to do this.
- She did not consider it necessary for the address where Mrs R was residing to be verified as, due to the LPA, Mrs R's affairs were being dealt with by her.
- Other insurance companies had not considered it necessary to verify Mrs R's address in this way.

13. On 21 February 2018, Ms R wrote to Prudential to chase it for a response to the concerns that she had raised.

14. On 8 March 2018, Prudential acknowledged Ms R's letter of 21 February 2018. It told her that her concerns were still being investigated.

15. On 14 March 2018, Prudential wrote to Ms R in response to the points that she had raised during the telephone call of 14 February 2018. It informed her that, due to the nature of her concerns, it was treating them as a complaint. It said that it partially upheld her complaint as some aspects of the service if had provided were not satisfactory. However, it confirmed that it was unable to agree with all aspects of the complaint. It said that:-
- The 30 working days it had said it would take to respond was not acceptable. It had dealt with the matter as priority and responded on 5 January 2018.
 - Its letter of 29 January 2018 gave the impression that Mrs R was a third party. It apologised for any upset this had caused.
 - It agreed that the structure of the letter was very poor and contained incorrect information.
 - It needed to verify Mrs R's identity and address before putting the Annuity into payment. It had corporate legal responsibilities under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**the Regulations**).
 - It also had to comply with the requirements of the Financial Conduct Authority (**FCA**) in relation to knowing your customer. These would be satisfied if it had evidence of Mrs R's address.
 - It needed to comply with principles three and four of the General Data Protection Regulations (**GDPR**).
 - As Mrs R's identity could not be verified electronically, it required written confirmation from the Care Home that she was a resident.
 - It agreed that it was partly responsible for the delay in setting up Mrs R's payments from the Annuity. However, it did not agree that it was fully responsible, as the information that it had requested had not been provided.
 - It had arranged to pay £150 to Ms R in recognition of its poor standard of customer service. In addition, it was paying her £25 to cover the cost of her telephone calls.
16. On 19 April 2018, Prudential wrote to Ms R following a telephone conversation on 13 April 2018. It said:-
- It acknowledged Ms R had raised her concerns about its requirements with the FCA.
 - It still required the documentation requested in its letter of 29 January 2018.
 - It still needed to verify Mrs R's identity.
17. On 11 December 2018, Prudential wrote to Ms R to remind her of its requirements.

18. On 22 January 2019, Ms R telephoned Prudential to raise a complaint. She said that she was concerned that it had requested a letter from the Care Home.
19. On 6 February 2019, Prudential telephoned Ms R in response to her complaint. Ms R said that the provision of a letter from the Care Home was unnecessary from a legal point of view. She said that, if it did need to confirm the identity of Mrs R, there were other ways of doing this electronically.
20. On 8 February 2019, Prudential wrote to Ms R. It re-iterated the reasons for it needing a letter from the Care Home and refuted the suggestions that it had misinterpreted the law and was guilty of incompetence.
21. On 9 October 2020, Mrs R died.
22. On 27 November 2020, Prudential wrote to Ms R to confirm the benefit due from the Annuity together with instructions on how this could be claimed.
23. On 6 April 2021, Prudential sent Ms R a reminder as it had not received a response to its letter of 27 November 2020.
24. On 20 August 2021, Ms R provided Grant of Probate in respect of Mrs R.
25. Extracts from the Regulations, the FCA requirements and the GDPR can be found in the appendices.
26. **Summary of the Estate's position**
 - The Estate's complaint was about Prudential following correct legal procedures. The way it verified identities was incorrect.
 - The fact that Prudential was asking for evidence to verify Mrs R's identity suggested that it did not undertake the correct procedures when the policy was taken out.
 - Prudential had not verified Mrs R's identity with government agencies such as HMRC, the Department for Work and Pensions (**DWP**) and the NHS. Ms R questioned why this was the case when other organisations had been able to use this approach. In particular, she questioned why Prudential had deviated from the government's proof of identity checklist (**the Checklist**).
 - Ms R was concerned that Prudential was not following the rules set out by the Office of the Public Guardian (**the PG Office**) regarding the use of LPAs to protect someone who did not have mental capacity.
 - Prudential had ignored the LPA and had acted as if Mrs R had mental capacity. It had decided that the LPA was not sufficient and requested further documentation without any foundation. If financial institutions failed to recognise the purpose and legal standing of LPAs, then there was no point in having them.

- Ms R had contacted the PG Office and she said that it considered Prudential's actions to have been inappropriate.
- There was nothing to connect Mrs R to the address of the Care Home except paperwork signed by Ms R when she went there. Ms R questioned how a random letter with an address at the top of it signed by an unknown person could prove who Mrs R was. She said that this would only be possible if the address and her identity could be corroborated by other documentation such as a utility bill or bank statement.
- Any letter from the Care Home would not hold up in a court. In addition, such a letter does not appear as a suitable document on any proof of identity checklist on a government website or any other company's website.
- Ms R was concerned about asking the Care Home to provide a letter that could allow Prudential to take legal action against it in the future.
- Ms R had asked Prudential to make a donation to Alzheimer's Research should it accept that its policy in respect of LPAs was not in line with that of the PG Office.

27. **Summary of Prudential's position**

- It had no concerns over the LPA that Ms R had provided or her right to act on Mrs R's behalf.
- When the Annuity was purchased in 2002, identity checks were undertaken on both Mr and Mrs R. Birth and marriage certificates were seen and an address verification was undertaken.
- It was required to hold accurate and up to date addresses for its customers. This ensured that it complied with the GDPR and eliminated the risk of fraud. The GDPR did not define what it could and could not accept as evidence of a customer's address other than it must be accurate and up to date.
- It also needed to validate an individual's current address as part of its proof of identity checks, in compliance with the requirements under the Regulations.
- To satisfy this requirement, it used 'Call Credit'. This database holds information from UK banks and building societies. It used this database for the sole purpose of undertaking identity checks. Call credit confirms title, forename, surname and the current address of individuals. The address is verified against the electoral roll. It is for this reason that a resident in a care home would not verify. As an electronic verification was not possible, the letter from the Care Home was requested.
- HMRC, DWP and the NHS would be unable to verify an address without Mrs R's authority. In addition, it was not a procedure that it followed and not one that it believed that these agencies would appreciate it introducing given their existing workloads.

Adjudicator's Opinion

28. The Estate's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised below:-

- The Regulations, the FCA and the GDPR require that Prudential holds accurate and relevant records in relation to the people it is making payments in respect of. However, none of these are prescriptive. They do not explicitly state what information must be held and how this information must be gathered.
- The Adjudicator took the view that it was Prudential's responsibility to interpret these requirements and decide on its own security and data protection policies.
- Ms R had questioned why Prudential did not use the Checklist when looking to validate Mrs R's identity. The checklist that the Adjudicator believed Ms R was referring to was not specific to the pensions industry. While some of the information present may have been of relevance to the circumstances of this complaint, it was the Adjudicator's opinion that Prudential was not obliged to use it.
- Ms R said that the other insurance companies that she had dealt with did not consider it necessary to verify Mrs R's address in the way that Prudential had. In the Adjudicator's opinion, Prudential was not obliged to follow the policies used by other insurance companies. The key thing was that it had in place policies that were appropriate.
- The Adjudicator did not agree that the existence of the LPA meant that Prudential should not have requested information in respect of Mrs R. The Annuity was payable to Mrs R for the rest of her lifetime. So, despite the fact that Ms R was managing Mrs R's financial affairs, Prudential was required to validate Mrs R's identity as she was the beneficiary. In the Adjudicator's opinion, it was reasonable for Prudential to seek confirmation from the Care Home that Mrs R was a resident there.
- The Adjudicator agreed that the letter that Prudential requested was not conclusive proof of Mrs R's identity. However, he said that, in his opinion, it had some value in this respect given that other options, such as the provision of utility bills, were not viable.
- The Adjudicator noted that Prudential requested that Ms R obtain the letter from the Care Home. He did not agree with Ms R's comment that Prudential had ignored the LPA and had acted as if Mrs R had mental capacity. He had not seen any evidence that Prudential attempted to contact Mrs R direct to request the letter.
- Furthermore, the Adjudicator took the view that the letter that Prudential had requested would not have been difficult for Ms R to obtain. He noted Ms R's

comment that provision of the letter would have allowed Prudential to take legal action against the Care Home in the future. In his opinion, this was extremely unlikely. The Care Home was required to keep accurate records of who was resident. So, providing such a letter should not have caused it any concern.

- In summary, the Adjudicator said that, in his opinion, Prudential's request for Ms R to provide a letter from the Care Home confirming Mrs R's residency was reasonable. No maladministration had taken place in this respect. For this reason, he was of the view that Prudential could not be held responsible for the delay in paying benefits from the Annuity following Mr R's death.

29. The Estate did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

30. Ms R provided her further comments which do not change the outcome. She said:-

- Her mother made the LPA so that she did not have any problems with her finances if she no longer had mental capacity. Prudential had not followed the spirit of the LPA.
- Prudential had made up and deliberately misinterpreted rules so as not to pay out Mrs R's annuity. It had confirmed that it had verified Ms R's identity, which the PG Office had advised was all it was required to do.
- In conversations with her, the PG Office had not changed its view that Prudential was in the wrong in not accepting how the LPA and her role as Mrs R's attorney work. It had said that LPAs cannot be ignored.
- Prudential had requested that a letter from the Care Home be provided. However, such a letter would bear no legal validity. The Care Home only knew who Mrs R was because she told it, and it had accepted the LPA. It was as if Prudential were asking the Care Home to provide legal verification of the LPA. The Care Home was not regulated to do this.
- Mrs R had been deprived of access to her money, which she needed to pay for her care.

31. I note the additional points raised by Ms R, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

32. The Estate's complaint concerns Prudential's request that Ms R provide a letter from the Care Home confirming Mrs R's residency.

33. I do not agree that Prudential ignored the LPA when it asked Ms R to provide a letter from the Care Home confirming that Mrs R was a resident. Nor do I agree that it had "made up" and "misinterpreted" rules so as to not pay out Mrs R's annuity. It had, correctly, confirmed Ms R's identity as it was due to make a payment to Mrs R and

Ms R was responsible for looking after her finances. However, Mrs R was the beneficiary, and the annuity was payable for her lifetime. For this reason, I am satisfied that Prudential was reasonable in requesting the information that it did.

34. I acknowledge that other insurance companies that Ms R has dealt with may not have requested a letter from the Care Home. However, I find that it is the responsibility of each insurance company to interpret the relevant rules and regulations and come up with its own approach to ensure that it is compliant. I consider the approach adopted by Prudential to be reasonable.
35. I note Ms R's concerns about the legal validity of any letter from the Care Home. She also said that she had provided the details that the Care Home held concerning Mrs R. When looking to validate an individual's identity, it is not always possible to find a single document that achieves this. It is common for a number of documents to be used for this purpose. I am satisfied that a letter from the Care Home, as requested by Prudential, had some value in this respect. Together with other documents such as the LPA, it would have helped paint an overall picture for Prudential.
36. Ms R said that Mrs R had been deprived of access to the money that was due to her from the Annuity. While I recognise that she did not receive this money, I do not find that Prudential was responsible in this respect. For the reasons I have given, I find that its requirement for the provision of a letter from the Care Home was reasonable. I am satisfied that this letter should not have been difficult to obtain.
37. I note that Prudential acknowledged some concerns in relation to the quality of its communications and that a £175 payment had been offered to Ms R in recognition of this. I am satisfied that the sum offered is sufficient in the circumstances. Should this payment not have been accepted yet, and Ms R now wishes to accept it, she should contact Prudential directly.
38. I do not uphold the Estate's complaint.

Anthony Arter

Pensions Ombudsman
31 January 2022

Appendix 1

Extract from the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

“Part 3 – Customer Due Diligence

Chapter 1 – Customer due diligence: general

Timing of verification

30 (2) Subject to paragraph (3) or (4), a relevant person must comply with the requirement to verify the identity of the customer, any person purporting to act on behalf of the customer and any beneficial owner of the customer before the establishment of a business relationship or the carrying out of the transaction.”

Appendix 2

Extract from the Financial Conduct Authority requirements

“Firms must satisfy us that they have robust governance, effective risk procedures and adequate internal control mechanisms to manage their financial crime risk. Some firms will also have further obligations placed on them by law.

[...]

The approaches that you should take involve assessing the risks that your business may be used for the purposes of financial crime and then mitigating those risks effectively through:

- identifying your customers
- understanding your relationship with them
- monitoring the way they use your services to identify anything suspicious.

Your systems need to be appropriate and proportionate to the nature and scale of your business. There is no 'one size fits all' approach that we expect firms to adopt.“

Appendix 3

General Data Protection Regulations

Article 5 of the GDPR sets out seven key principles which lie at the heart of the general data protection regime.

Principles three and four require that personal data shall be:

- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.