

complaint

Mr and Mrs B's say The Prudential Assurance Company Limited (the Pru) should fully reinstate their endowment policy which was fraudulently encashed, and put back all the money stolen plus the equivalent of the premiums they would've paid if their direct debit had not been cancelled.

They're also concerned about how the fraud took place given the fraudsters were able to obtain their personal details, and the Pru agreed to pay the monies into an account they'd never owned.

background

Mr and Mrs B took out this endowment policy in 1999. It was fraudulently surrendered in 2008.

The Pru accepted Mr and Mrs B's policy was fraudulently surrendered by a third party and offered to reinstate it, putting back the £37,000 plus given to a third party on surrender. It said it would then add the growth and bonuses which would have accrued since then if the policy hadn't been surrendered.

It also said if Mr and Mrs B wanted to put back the £35,600 plus they should've paid in premiums since the surrender, it would put this amount back immediately if they agreed to a plan to pay this sum over a reasonable period of time.

After Mr and Mrs B brought their complaint to this service, the Pru also agreed to arrange for all the missed premiums to be backdated and applied retrospectively and to bear the cost of the backdated bonuses and growth to date

Mr and Mrs B didn't accept this offer, and said:

- The Pru allowed this fraud to take place and hasn't explained how the fraudsters obtained their account number nor has it explained why no checks were made to establish if they'd moved
- It admitted it was aware of this type of fraud across several accounts so why were no additional security checks put in place?
- They only became aware of the fraud, and that their direct debits had been stopped, when applying for a new loan recently - if this fraud hadn't occurred, they would've continued paying monthly premiums
- The Pru should therefore also make up the £35,600 plus they would've paid in if it hadn't cancelled their direct debit

An adjudicator at this service accepted Mr and Mrs B had only recently discovered the policy had been fraudulently encashed. But he felt they ought to have noticed far earlier that their substantial premiums were no longer being paid.

He felt the Pru's offer to allow them to spread the cost of making up the missed premiums was generally fair and reasonable.

But he also felt it should waive six months' worth of premiums and pay Mr and Mrs B £500. This is to reflect the distress and inconvenience caused by this fraud, and the trouble and upset arising from now having to find £35,600 plus worth of missed premiums in a short period of time.

Mr and Mrs B didn't agree, and said:

- Both parties should accept some responsibility - they accept they weren't diligent in checking their bank statements and noticing the direct debit had stopped but had no reason to check this
- As a compromise, they'd accept the Pru paying two years' worth of premiums as compensation for allowing the fraud to take place and the impact this will have on them going forward

The Pru also didn't agree, and said:

- The fraud was caused by a third party publishing names, addresses and personal details of company directors which allowed the fraudsters to use these details to change addresses and fraudulently claim funds from policies
- It followed the correct security checks and processes and wouldn't have been able to identify that the person calling wasn't Mr B and the address wasn't correct
- It's the customer's responsibility to ensure that premiums are paid, and Mr and Mrs B should've noticed when their sizeable direct debit was no longer leaving their account

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

my findings

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

Firstly, I'd like to explain that my role, and that of this service, is to consider whether a business has done something wrong and whether a consumer has suffered as a result of this mistake. If so, my objective is to put the consumer back into the position they would now be in if the business hadn't made a mistake in the first place.

I am satisfied the Pru is responsible for paying the proceeds of Mr and Mrs B's policy to a third party, and therefore needs to repay this money to them along with lost growth and bonuses since the surrender. It agreed to do this before this complaint was brought to us.

It was this fraudulent surrender which led to Mr and Mrs B's direct debit being cancelled without their agreement, and it seems clear they would've continued paying this monthly sum for the eight years since if not for this. In this context, they have clearly suffered as a result of the Pru's mistake as they now need to find more than £35,600 to put their fund back into the position it would now be if not for the Pru's mistake.

At the same time I agree with the Pru that Mr and Mrs B ought to have realised, at some point, that the monthly premium was longer being taken from their account, particularly given the sums of money involved.

Therefore, I've considered what feels fair and reasonable compensation taking account of the Pru and Mr and Mrs B's differing responsibilities and the likely trouble and upset this problem now creates for Mr and Mrs B.

Overall, I agree with the adjudicator that Mr and Mrs B ought to have checked their direct debits at regular intervals, and should've spotted this problem within six months. I also feel his proposed compensation is about right, taking account of both parties' arguments.

my final decision

I uphold this complaint and instruct The Prudential Assurance Company Limited to pay compensation as follows:

- Put back all the missing premiums, amounting to more than £35,600, and apply these from the date Mr and Mrs B would've paid them
- Add the bonuses and growth that would've been applicable, thereby making the policy's current value equal to that it would now be worth if not fraudulently encashed

It is, however, only required to do this if Mr and Mrs B choose to keep the policy and agree to pay the back payments minus the cost of six months' worth of premiums in an agreed timetable of no more than two years.

It should also pay Mr and Mrs B £500 for the trouble and upset it has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 11 November 2016.

Tony Moss
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