

The complaint

Mr C has complained about the service he's received from The Prudential Assurance Company Limited in the process of accessing his retirement benefits. In particular, Mr C has said that Prudential unnecessarily delayed the process of providing him with information and then with financial advice, saying that if he'd been aware at an earlier stage that the process would take several months to complete, he could have sought assistance elsewhere.

What happened

I issued a provisional decision on this complaint on 3 September 2020, setting out my reasoning as to why I thought the complaint should be upheld. The content of that decision is set out below:

"I'm conscious that there's no small amount of disagreement between Mr C and Prudential as to what happened in this matter, and the timeline of events. But the following is my understanding of the basic undisputed facts of the case.

Mr C began discussions with Prudential about his and his wife's retirement options in the latter half of 2018, resulting in a request from Mr C to receive a call from a Prudential Financial Planning (PFP) partner - scheduled to take place in December 2018 – to discuss his options, including income drawdown.

Mr C was seeking figures relating to his pension – specifically about the terminal bonus which might apply – so he could make a decision about the best way to take his pension benefits.

Mr C encountered difficulties with Prudential's process, which resulted in it paying him £250 as compensation for the poor service he'd received.

Mr C received quotations on 7 February 2019, and upon learning the amount of terminal bonus which would be applied to his guaranteed benefits, he initiated a "mis-selling" complaint about the policy. That complaint has been dealt with separately.

Mr C decided to enter into drawdown rather than take the annuity offered to him. But largely due to ongoing discussions between Prudential and the Financial Conduct Authority (FCA) as to the requirements relating to financial advice where guaranteed benefits were involved, the process of Mr C entering drawdown didn't complete until July 2019.

Mr C then complained on the above detailed basis, but dissatisfied with Prudential's response, referred his complaint to this service.

Our investigator considered the matter and said the following in summary:

- *When Mr C initially contacted Prudential in December 2018, its licence for advice on this type of product was under review with the FCA. Although she could*

understand that this would have caused Mr C frustration, this was beyond the control of Prudential.

- *However, Mr C was informed that, although Prudential couldn't give advice at that time, he was free to seek independent financial advice. And this was something which he did, as on 23 April 2019 Mr C discussed the charges for the advice he was seeking – from a PFP partner – with Prudential. Agreement was then reached on a lower percentage charge.*
- *Once Mr C had met with the PFP partner at the end of May 2019, and following the completion of an application form for income drawdown in mid-June 2019, the drawdown arrangement was set up on 5 July 2019.*
- *The investigator noted that the policy value had reduced from that quoted in February 2019, but explained that this was because it remained invested until transferred into drawdown. She also said that this was a reasonable timescale for completion of the process, and that Prudential hadn't caused unnecessary delays here.*

Mr C disagreed with some of the information which the investigator had relied upon, saying the following:

- *He'd been seeking information about the terminal bonus applicable to his policy since August 2018, but received basic information packs relating to the forthcoming vesting date of his policy.*
- *He received no information about his actual pension in the call in December 2018. And although he was told he would receive this by post, he only received another projection.*
- *By the date of his planned retirement in January 2019, he still hadn't received the information he'd requested. Once he eventually received the information in February 2019, he informed his adviser that he wanted to enter into drawdown. He was told that this would take between six and eight weeks to set up.*
- *Although the quote he'd received said it was only guaranteed up to 1 March 2019, the adviser told him that, as the process had started, this would be guaranteed. But if the value increased, he would receive that additional benefit.*
- *When he spoke to his adviser in March 2019, he was told that his adviser was changing. And when he chased the progress with the new adviser in late March, he was told that the application was being processed.*
- *In April 2019, the adviser said that the process was nearly complete, and at this stage a reduced fee was negotiated for the advisory process.*
- *He was then informed in May 2019 that a new adviser was appointed to him. The new adviser explained to Mr C that the delay in processing the application was due to the discussions between the FCA and Prudential about this type of policy being transferred into drawdown.*
- *Mr C was told that the process would need to begin again and Mr C expressed his frustration at this. But new paperwork was signed in June 2019 and the drawdown plan was established on 5 July 2019.*

The investigator referred this back to Prudential for its further comments. It responded as follows:

- *In calls in January 2019, Mr C was still indicating that he was thinking of taking an annuity. But he was seeking quotations so he could refer the matter to the PFP partner.*
- *It had received comments from the PFP partner for the events from March 2019 onwards. The partner said that Mr C should have been told when the adviser*

changed that this was because of the policy comprising of “safeguarded” benefits. It was difficult to provide a timescale at that point for completion as such cases were being treated like defined benefit transfers. The case was being worked on in a queue. But it was unclear as to whether Mr C had been told this.

- Mr C would have been told in late March 2019 that the case was being worked on, but this entailed getting a “vesting pack” and putting the case together for assessment by a Pension Transfer Specialist (PTS). But at no time was Mr C told that an application form had been completed for him. Mr C must have misunderstood the process.*
- When Mr C was told that the case was waiting approval, this would have been by the PTS. But at this point, Mr C also commented that his wife would be transferring her pension as well, but that they were waiting for this to improve in value before doing so. There were further details which would be required before transferring Mr C’s wife’s pension, but when Mr C was told this, he was comfortable with the situation.*
- In April, the FCA agreed that guaranteed benefits policy transfers didn’t need to be assessed by a PTS and Prudential took the decision to refer all such cases back to the original advisers.*
- The case was worked as quickly as possible, taking into account the addition of Mr C’s wife’s policy transfer and the issues relating to the changing understanding of the requirement to involve a PTS in the process.*

The investigator considered that these comments endorsed her initial view and informed Mr C of this. But Mr C said that the original application form had been submitted in February 2019. Mr C also maintained that at no point had been advised to seek advice elsewhere and that he’d been invested in cash for the whole time instead.

The investigator told Mr C she’d look further into the issue of when the application form was submitted and whether – and when – he was told that there might be delays.

Prudential submitted a timeline for its discussions with the FCA, in addition to a comparison to determine whether any loss had been incurred due to the delay in transferring between March and July 2019.

The investigator contacted Mr C further, confirming what Prudential had told her, in that it was awaiting guidance from the FCA until May 2019. But she said in February 2019, Prudential decided to restart the advisory process for individuals who had reached their selected retirement date. To ensure this was done compliantly, such transfer requests underwent an “enhanced” process – which was why Mr C’s application was transferred to an alternate team.

When it was confirmed in May 2019 that such transfers wouldn’t require the involvement of a transfer specialist, Prudential took the decision to refer the applications to the original advisers. Unfortunately, the adviser who had previously been dealing with Mr C had left, and so the process needed to restart with a new one, including capturing some of the same details again. This would be expected in such a situation, the investigator said.

The investigator acknowledged that the delays weren’t the fault of Mr C, but also said that it seemed unlikely that Prudential could have done anything differently here – and that it processed the application as quickly as possible.

Mr C rejected this conclusion, however, saying that Prudential had conceded that it had suspended giving advice on transferring his kind of contract from November 2018 to

May 2019. He queried as to why it had accepted his application in February 2019, without ever informing him of this or warning him that there might be associated delays.

Mr C also said that, with regard to the proposed transfer of his wife's pension into drawdown, this was to proceed once his application had been completed. It was included as part of the negotiation on the advice fee to be paid.

Mr C concluded by saying that there was still no explanation as to why the original application with a quoted amount of £179,743 had reduced to £179,022. There was a loss of interest for the time that his funds had been "in limbo" for five months, for the process to then need to start again – and ultimately return a lower amount.

Mr C thought that the minimum Prudential should do was honour the originally quoted figure.

In a further conversation with the investigator, Mr C also said that he acknowledged that a delay might have been unavoidable due to Prudential's dealings with the FCA, but his fundamental complaint was that he wasn't told about this. Had Prudential done so, he could have acted differently.

As agreement hasn't been reached on the matter, it's been referred to me for review.

What I've provisionally decided – and why

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 have some sympathy with Mr C's position on this. As with the investigator I accept that the further guidance which Prudential was awaiting relating to these types of transfer would inevitably have caused delays. But on the balance of the available evidence, I'm not satisfied that Mr C was made sufficiently aware of this, and so given the opportunity to take alternative action.

Prudential has itself in its submissions to this service said that there must have been a misunderstanding as to how the process would work. But I don't think that this was any failure to grasp the situation on Mr C's behalf. I just don't think that the reality of the situation, with the likely delays which would be entailed, was properly conveyed to Mr C. As far as he was concerned, once he'd submitted what he justifiably considered to be an application in February 2019, the transfer was being processed.

It also might be expected that, if one adviser left and another needed to take over, then further fact finding would be necessary – although it's unclear to me as to why the details already recorded for Mr C wouldn't have been sufficient, given the nature of the proposed transfer and the "enhanced" compliance it was already apparently subject to. But the consequences of this shouldn't fairly be borne by Mr C. If further delays were incurred by a change of adviser, which may have caused financial loss, then I think Prudential should reasonably be asked to compensate Mr C for this.

I've also thought carefully about what's been said about the fee negotiation and the proposal to transfer Mr C's wife's pension. But I don't think this ought reasonably to have delayed matters. It's an aspect which was introduced specifically for the purpose of consideration of the fee which might be charged – not an integral part of Mr C's own pension planning. I therefore think it's likely that if he'd been given the choice between resolving his own transfer quicker or introducing that proposal for the sake of a lower fee, he would have opted for the former.

This does then lead me to the issue of what type of compensation would be due for a situation like this. Firstly, given his keenness to implement the drawdown arrangement and his chasing of the adviser(s), I think if Mr C had known that it could be many months before this happened, he would have sought advice elsewhere. And it's likely that the process could have concluded within six weeks of him submitting an application in February 2019.

Mr C has said that his funds were effectively in limbo during the period in question. According to the calculation undertaken by Prudential, there was a loss in plan value due to the delay of approximately £3,000.

So I think a reasonable outcome in this case would be as follows:

Prudential should determine the notional value of Mr C's subsequent drawdown plan as at 5 July 2019, but had the transfer happened (into whatever funds Mr C actually chose) on 14 March 2019 – this is the date Prudential has already used for the comparison it submitted to us, which seems reasonable to me.

Prudential should then compare this to the actual value which was transferred in July 2019. And if it demonstrates a loss, Prudential should uplift Mr C's current plan value by that percentage loss.

That payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the drawdown plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr C hasn't yet taken any tax-free cash from their plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss would adequately reflect this.

If Mr C has taken withdrawals from his drawdown arrangement, the same percentage loss should be applied to those, and an additional payment made directly to Mr C, with the addition of 8% simple interest to that loss from the date each payment was made to the date of settlement.

Mr C has also been caused no small amount of trouble and upset in trying to resolve this. I've noted how frustrated he's been at various points of the process – and I can understand why. So I think an additional payment of £200 ought be paid to Mr C in respect of this.”

Mr C responded to my provisional findings, saying the following in summary:

- The process to obtain what he thought was a fair outcome had been a long and hard battle and had taken almost two years.
- He'd been chasing Prudential for information relating to what he'd receive from his pension since October 2018.

- In order to make a decision as to whether to enter into drawdown or take an annuity, he needed to know what terminal bonuses would be applied, but he wasn't receiving the required information from Prudential.
- He wasn't discussing income drawdown with Prudential in December 2018 as Prudential had suggested. He was simply trying to obtain up to date figures.
- That process was, in Mr C's words, a "shambles" and Prudential paid him compensation as a result.

Prudential also responded as follows:

- It felt that Mr C was aware that he could have used another financial adviser at any time, and there was nothing on the file to suggest it had told him that once he had started the process with Prudential, he couldn't change adviser.
- It was therefore of the view that, if Mr C thought the process was taking too long, he could have referred it to another adviser at any time.
- It appeared that Mr C was concerned about the cost of other advisers as it negotiated a better deal for him. Prudential didn't think that this should be ignored and may have played a part in Mr C's decision to stay with its advisers.
- Prudential also confirmed that it wouldn't be possible to pay any compensation into Mr C's policy.

What I've decided – and why

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

I'm grateful to Mr C for his further comments on the background to this complaint. They appear to be consistent with my understanding of events as set out in the provisional decision.

I've also thought carefully about the points Prudential has made in response to the provisional decision. But having done so, I remain of the view that the complaint should be upheld, and for broadly the same reasons as I've previously set out.

Mr C could of course have referred the matter to another adviser at any point – I don't think he was unaware of this. But I think this rather misses the point. His expectations simply weren't managed appropriately, for the reasons I outlined in the provisional decision.

To reiterate, had he been told from the outset about the ongoing discussions with the FCA about advice requirements on guaranteed pension benefits, he could have taken the decision to seek advice elsewhere. And even at the point where he thought the process of drawdown was beginning – when he submitted the application in February 2019 – he wasn't warned that the completion date could still be many months in the future.

So as far as Mr C was concerned, the drawdown request was being processed and ought to have been completed shortly, and had he moved advisers, he would have needed to start the process from the beginning. I therefore think it's understandable that he was prepared to persist with Prudential in the hope that matters would be finalised in the near future.

And whilst I've also noted the comments relating to the negotiated reduction in the fee payable, I don't think this was the driving force in Mr C's decision making around taking his pension benefits. Given how keen Mr C was to access his benefits, and his demonstrable frustration at how long it had taken to even obtain information about the applicable terminal

bonus, I'm persuaded that if he'd known that he wouldn't have access to them for another six months after he'd submitted his application, he would have sought advice elsewhere.

I'm therefore still of the view that if Mr C has been financially disadvantaged by the delays incurred, he should be compensated for this by Prudential. And although Prudential has confirmed that it won't be able to pay any compensation to Mr C's policy, the direction as set out in the provisional decision allows for that possibility, and for the sum to be paid directly to Mr C with a notional reduction for income tax which would otherwise be payable.

My final decision

My final decision is that Prudential should undertake the calculation to determine compensation, along with paying Mr C an additional £200, as set out in the provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 October 2020.

Philip Miller

Ombudsman