

## **The complaint**

Mr C complains that The Prudential Assurance Company Limited (Prudential) imposed an unreasonable 28-day delay in transferring the funds in his personal pension into a cash fund.

## **What happened**

Mr C called Prudential on 9 March 2020 as he was concerned about the effect the Coronavirus pandemic may have on the value of his personal pension fund. He asked for it to be converted into a cash fund and was advised he needed to complete a form and post it back, which he did.

After hearing nothing from Prudential, Mr C called them on 20 March 2020. But he said he was unable to speak with anyone at this time because he was in a queue for too long. His financial adviser called Prudential on 23 March 2020 and was told that the form Mr C completed hadn't been done properly and had been sent back to him. But this never arrived.

Mr C complained to Prudential about the delays and lack of contact. He said the value of his pension had dropped by about £24,000 during the time it hadn't processed his request to transfer into a cash fund.

Prudential agreed that it had received his transfer request form on 10 March 2020. It also agreed that it had promised, during the call on 9 March 2020, to telephone him if it found any errors in how he'd completed it. But it hadn't done this and just sent it back to him to be amended.

So Prudential agreed to treat his transfer request as though it had been correctly made on 10 March 2020 and backdated his fund value to that date. But it explained that the type of fund Mr C's pension was invested in had a 28-day delay period for any switch request, so this meant the transfer couldn't actually take effect until 7 April 2020, and the value of his fund would be calculated at that point. It did acknowledge that it should've advised Mr C of this delay when he called on 9 March 2020, but ultimately it didn't think the failures in the service it had provided had caused any additional losses to Mr C's fund value. This was because the 28-day delay meant the value of his funds would have dropped anyway.

In addition to backdating the transfer, it offered Mr C £150 compensation for the service failings it had recognised.

Mr C told Prudential that the compensation offered wasn't enough given the level of losses he'd experienced. He said that the 28-day delay was unacceptable, and the urgency of the situation meant he should've been advised how he could've protected his funds quicker.

Prudential agreed to raise its offer of compensation to £225 as Mr C should've been told of the 28-day period in his call to them on 9 March 2020. But it confirmed its offer of compensation was in recognition of the inconvenience it had caused, rather than the loss in value of his funds as it wasn't responsible for this. It also said its agent, on the call on 9 March 2020, wasn't able to give financial advice, so couldn't have advised Mr C what he should do with his funds. And the agent had offered to transfer him to one of its financial

advisers, but Mr C hadn't wanted this.

Unsatisfied with its response, Mr C referred his complaint to our service where one of our investigators looked into it. But having done so, our investigator didn't think Prudential needed to do anything more than it had already. He thought Prudential were able to impose the 28-day delay period before enacting the fund switch as this was laid out in the terms and conditions of the fund Mr C's pension was invested in. And he thought that even if Mr C had been told about the delay period in his call to Prudential on 9 March 2020, he didn't think it likely that Mr C would've done anything differently. So he thought Prudential were fair in backdating the fund switch to 10 March 2020 and implementing the 28-day period from that point. And he thought the £225 it had offered Mr C for the inconvenience it had caused him was fair in the circumstances.

Mr C didn't agree. He made a number of points, but in summary he said:

- It was unfair to just rely on a clause in the terms and conditions when coming to an opinion as they are one-sided, and non-negotiable.
- He didn't remember seeing the terms and conditions document and didn't have it in his possession.
- Even if he had read them, he wouldn't have foreseen the circumstances of an imminent serious drop in the markets and that the 28-day clause would be important.
- The terms and conditions say that switches "may" be subject to a 28-day delay, not that they "will", so given that he told Prudential of the urgency of the situation it could have proceeded with haste, especially given the fund switch was into cash, and no further investment arrangements were needed.
- Prudential went ahead with the transfer despite the errors it said he'd made on the application form, so he didn't understand why it couldn't have done this initially.

Our investigator considered what Mr C said but didn't change his view. He also sent Mr C a copy of the fund terms and conditions. He explained, in summary:

- Prudential was able to impose the 28-day period, and although the wording used was "may" this still allowed them to do this.
- He also passed on Prudential's explanation for why the 28-day period was necessary with respect to the type of With-Profits fund Mr C's pension was invested in.
- He was unable to consider a complaint that Mr C hadn't been provided with the correct information when the pension fund was incepted as this hadn't been raised previously, and Prudential would need to be given the opportunity to respond first.
- He also explained that Prudential had ultimately decided to accept Mr C's form and initiate the transfer, despite the errors, as a result of the complaint, and that it had recognised its own failings in the service it had provided. And this was ultimately what Mr C had wanted to happen.

Given all of this, the investigator remained of the view that Prudential's errors had not led to the financial losses Mr C suffered.

Mr C responded, in summary:

- He didn't believe he'd seen the terms and conditions booklet before, so it was unfair of Prudential to rely on different information than which he had, and as this was the crux of his complaint and he thought it should be considered.
- As he wasn't informed of the 28-day period in his telephone conversation, and he should have been, he had no reason to consider any alternative investment strategies as opposed to converting to cash.
- He was angry that Prudential didn't properly inform him of the process at the time, and therefore failed to give him the opportunity of considering alternative strategies.
- Had he been made aware of the delay to the transfer, he'd have either left his investments alone pending the markets settling down and possibly taken a short-term loan to cover his financial needs, or consulted his financial adviser on alternatives.
- He agreed that he'd wanted the transfer to be conducted as quickly as possible to avoid the anticipated drop in the markets, but the delay made the switch pointless as the markets had already fallen.
- The compensation offered didn't make up for the many thousands he'd lost.
- He didn't understand how Prudential were ultimately able to accept the incorrectly filled out application form when it initially said it was unable to.

Our investigator thought that Mr C's assertion that he'd not been given a copy of the fund's terms and conditions at inception was a new complaint about the sale process, so he couldn't consider it as part of this complaint. He also thought that Prudential, in its 28 May 2020 final response letter, had offered Mr C the opportunity to cancel the switch if he wished, or to transfer to an alternative fund. And as he hadn't taken it up on this offer, he thought it likely that he'd wanted it to proceed.

As no agreement could be reached the matter has been passed to me for a final decision.

### **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.

Having done so, I agree with the investigator's view, for broadly the same reasons, so do not uphold this complaint. I'll explain.

Firstly, I'm aware that Mr C doesn't think he was provided a copy of the terms and conditions of the fund at the point of sale. Therefore, he thinks it is unfair that Prudential is able to rely on these terms to justify its imposition of the 28-day delay to his transfer request as he wasn't in a position to know about it. And I can understand his point here. But I've seen the point of sale application form. And in this I can see that the 'Prufund Growth' flexible retirement plan was applied for and sold to him through the independent financial adviser Mr C was using at that time. And Prudential has stated that it didn't provide the advice to start the plan, and his adviser at the time was responsible for providing the key features and accompanying documentation.

So I'm satisfied that the sales and advice process is separate and distinct to Mr C's complaint against Prudential about what happened in March 2020. If Mr C has concerns about the suitability of the advice in 2016, the sales process or what was or wasn't provided to him, this should be raised as a separate complaint. These points will not be considered as

part of this decision.

Instead, I need to decide whether Prudential was fair when it imposed the 28-day delay period to Mr C's fund transfer, and if its offer to resolve things is fair.

### *The 28-day delay period*

When imposing the 28-day period, Prudential is relying on the terms and conditions of the With-Profits fund Mr C was invested in. I understand Mr C says he doesn't think he's seen these terms and conditions before he complained, but it is important for completeness and clarity that I include the relevant extract here:

Under the heading "What if you decide to move out of these funds?", the terms state:

*"You might decide to take money from your Plan for one of the following reasons:*

- to retire,*
- to switch to another type of fund,*
- to transfer your investment to another company, or*
- to cash in your Plan.*

...

*Any units we cancel as a result of switches, transfers or withdrawals from the PruFund Range of Funds may be subject to a delay of up to 28 days from the date of receipt of a request to cancel units. We'll use the unit price on the final day of the delayed period as the price of the units for these purposes."*

So I'm satisfied that the terms and conditions of the fund means Prudential were able to impose a 28-day delay to the transfer of Mr C's fund to cash. But I need to consider if I think it was fair to do so in these circumstances. And I do. The particular type of fund Mr C was invested in was held collectively across a large number of investors. And the ability to delay the valuation of the fund allowed the protection of the wider fund value and reduced the risk of greater volatility. This was particular to this type of fund. So whilst I understand Mr C's frustration that he wasn't able to protect his pension fund as quickly as he wanted, and his anxiety is clear from the recording of the calls on 9 March 2020, I'm satisfied that Prudential's implementation of the 28-day delay in these circumstances wasn't unfair.

But I do need to consider whether I think Mr C would've likely done anything differently had he been told about the 28-day delay in his call on 9 March 2020. I'm unable to say for certain what he would have done, so I have to decide, on the balance of probability, what I think is most likely having considered the circumstances at the time. And having done so, I don't think he'd have done anything differently. Mr C has told our service he wanted the funds released for a house purchase later in 2020, and releasing funds from his pension fund for this purpose is a reasonable, and relatively cost-effective move compared to, for example, a loan. And that Prudential offered in its final response letter to cancel or alter the transfer if he wished, but he didn't take it up on this offer, leads me to think it unlikely Mr C was able to raise the funds required in any other reasonable way.

### *Prudential's errors*

Prudential have acknowledged that it should've told Mr C about the 28-day delay term in his calls on 9 March 2020, and accepts it didn't call him back to discuss his transfer form as it said it would. So it agreed to treat his transfer application as if it has been correctly submitted on 10 March 2020, and calculate the fund value on 7 April 2020. I think this is fair.

It is clear that Mr C had taken reasonable steps to ensure the transfer application form had been completed correctly, and I'm satisfied he wanted the transfer to proceed on 10 March 2020. And given I've decided the imposition of the 28-day delay was fair, it follows that I'm satisfied the loss in fund value that he's experienced would've happened anyway, and Prudential's inaction didn't cause him any further financial detriment.

But Prudential did offer to increase its level of compensation to £225 to recognise the distress and inconvenience he'd been caused. I consider that this is also fair and generally in line with the level of compensation I'd think reasonable had the offer not been already made.

So, having considered all of the above, I'm satisfied that Prudential don't need to do anything more.

### **My final decision**

I require The Prudential Assurance Company Limited, if it hasn't already done so, to pay Mr C £225 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 June 2022.

Chris Riggs  
**Ombudsman**