

## The complaint

Mr A complains that he has lost out financially due to Prudential Assurance Company Limited's failure to process the instruction it received from his Independent Financial Adviser (IFA) to fully crystallise the funds in his pension plan and take Tax Free Cash, on the day the instruction was given.

In particular he says Prudential told his IFA that the Tax Free Cash (TFC) requested on 16 March 2020 had not been affected by a Unit Price Adjustment (UPA) on 17 March 2020. But it then applied a Unit Price Adjustment to his TFC.

In order to resolve matters Mr A wants Prudential to pay him the difference between the TFC lump sum he received and the amount he would have received if a UPA had not been applied to it.

## What happened

On 16 March 2020, Mr A's IFA submitted a request to Prudential to fully crystallise the monies in Mr A's Retirement Account (RA) and release 25% TFC.

At the same time Mr A's IFA also submitted a request to increase the ongoing adviser fee it received.

Prudential contacted Mr A's IFA later that morning. It said:

*I have received your recently submitted request for your client [Mr A] to crystallise funds from his Prudential Retirement Account.*

*Due to the request being submitted with additional charges we would require our adviser charge instruction form to be signed and completed by the client. This is in relation to the increase in the monthly OAC charge. We currently hold 0.5% and the request has been keyed with an increase to 0.75%.*

*Please can you confirm if this has already been completed and sent to us as we are unable to authorise the payment without sight of this.*

In mid-March 2020 equity markets were falling significantly. In response Prudential applied a UPA of 11.7% on 17 March 2020 to its Prufunds. It is not in dispute that Prudential was entitled to apply a UPA. Mr A has made clear that he is not complaining about Prudential's decision to impose a UPA on the residual balance of his fund.

On 18 March 2020 Mr A's IFA emailed Prudential. He said:

*I keyed the tax free cash withdrawal on the retirement account on Monday morning – will that be affected by the UPA yesterday?*

Again, Prudential replied to Mr A's IFA on the same day. It said:

*Confirmation that as soon as you trigger the TFC the amount is locked in.  
Therefore the UPA would not be affect. (sic)  
The residual balance would have the adjustment.*

However, when Mr A received his TFC the UPA had been applied. Instead of receiving the £122,505 he was expecting, Mr A received a TFC lump sum of £108,216.

Mr A complained to Prudential. It upheld his complaint in part and apologised for the trouble and upset the incorrect information in its email dated 18 March 2020 had caused.

It said if Mr A's IFA hadn't requested the increase to the ongoing fee the request to crystallise the funds in Mr A's pension '*...would have been completed the same day. This means the TFC would have been based on the value of 16 March 2020 and would have been unaffected by the UPA.*'

But is said that, in-line with its terms and conditions, it needed Mr A's written agreement before it could increase the fees it paid to his IFA. It said it couldn't process the fee increase '*...and authorise the payment request until we received a signed Adviser Charge Instruction Form.*'

It noted that Mr A's IFA had sent the completed adviser charge instruction to it on 20 March 2020 and it confirmed that the crystallisation and TFC request had been processed at the next dealing point on Monday 23 March 2020.

However, as the UPA had been applied on 17 March 2020 the value of Mr A's pension pot had reduced and as a result the TFC Mr A received was also reduced in-line with the UPA.

Prudential said it felt it had processed the requests it received from Mr A's IFA '*correctly and within a reasonable time*'. But it said that before it sent the email to Mr A's IFA on 18 March 2021 it should have checked whether there were any outstanding requirements for Mr A, rather than providing a 'generic response'. It said the information in the email – that the UPA would not be applied to the TFC Mr A had requested – would have been correct if there hadn't been any outstanding information.

It paid Mr A £150 to compensate him for the 'provision of this wrong information'. But it said it was not willing to compensate Mr A for the shortfall in his TFC.

Mr A was not satisfied with Prudential's response and referred the matter to this service. Our investigator said he thought Mr A's complaint should be upheld. In summary he said he didn't think the amendment to the ongoing adviser fee should have stopped Prudential from processing Mr A's TFC request as he didn't see how the two requests were linked.

He noted that Prudential had said that it couldn't process the crystallisation request and the ongoing adviser fee at the same time. But he said he wasn't persuaded this was correct as the two transactions were not linked in any way.

Prudential did not accept our investigator's view. It also contradicted its earlier claim that: '*If there were no outstanding requirements this would have been completed the same day. This means the TFC would have been based on the value of 16 March 2020 and would have been unaffected by the UPA.*'

It now said that as Mr A didn't have enough money held in cash in his Retirement Account: '*Mr A's request was always going to be subject to a UPA as we required to sell down funds in order to make the TFC payment which takes up to 4 working days.*'

It referred to its terms and conditions which it said confirmed this point.

Our investigator re-considered Mr A's complaint in light of the new submissions made by Prudential. Having done so he said he wasn't minded to change his view.

He said that although he appreciated that Mr A did not have enough in his cash account to meet the TFC request, he was of the view that there was an expectation that if a customer requested their TFC on a given day the value of the lump sum would be based on the value of the fund on that day. He also noted that Mr A's IFA had also said that when other clients had made similar requests the value of the TFC amount was 'locked-in' on the day the request was made.

Prudential remained unhappy with our investigator's view and asked for the complaint to be considered by an ombudsman. It reiterated its view that '*... there was very little Mr A could have done to protect his investment and Tax Free Cash (TFC) withdrawal against the Unit Price Adjustment (UPA)*'.

It again referred to its terms and conditions, but it did not provide anything that set out a UPA could be applied after units had been sold. Instead it said:

*If we had everything we required to process Mr A's TFC payment the day we received the request (16 March 2020), trades would have been placed on day 1 (16th March 2020) and 5 days is allowed for the trade to settle (taking it to 20 March 2020). Therefore, Mr A was always going to be affected by the UPA with regards to his TFC payment and therefore, he was not entitled to the pre-UPA value.*

It also referred to a ten-day service level agreement, but it did not explain why it believed this was relevant to Mr A's complaint.

### **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, like our investigator, I think Mr A's complaint should be upheld. I'll explain why.

I carefully considered the points Prudential had raised in response to our investigator's view. In light of these comments I reviewed the terms and conditions Prudential had provided. Having done so I didn't find there was anything that set out a UPA could be applied after the units Mr A held had been sold. I therefore asked Prudential to re-check its position and refer me to the relevant section of its terms and conditions.

Rather than doing so, Prudential said:

*If you refer to the RA T&C's it clearly states the Daily calculation of the UPA, if you refer to page 22. Section 7, page 23 provides clarification regarding the Unit Price Reset.*

*With regards to trading times, Prudential work to a 10 day SLA for this transaction. A trading time can vary and definitive timescales are not found in the RA T&C's. I believe other Financial companies having experience of working with them, also do not publish specific timescales for individual trades. How the Pru Fund works is Prudential work to a 10 day SLA, when paying income or processing a transfer out.*

*The five day sell down which I have previously stated is correct and encompassed in the 10 day SLA.*

It also provided the contract note for the sale of Mr A's units to fund his TFC payment, dated 24 March 2020.

The contract note clearly set out that once the adviser fee form had been received by Prudential, on Friday 20 March 2020, the units were sold at the next dealing point, noon on 23 March 2020. The price of the units at the time the trade was placed was shown on the contract note.

In view of this I again asked Prudential to clarify its position. I explained that the claim Prudential had made that the UPA would have been applied even if the trade had been placed before noon on 16 March because a *'sell down of funds was required'* clearly didn't tally with the contract note it had supplied for the trade placed on Monday 23 March 2020.

I explained that, based on the evidence provided I could not see how its claim that, *'Mr A was always going to be affected by the UPA with regards to his TFC payment and therefore, he was not entitled to the pre-UPA value'* was correct.

I said, based on the evidence Prudential had provided, I was of the view that if a trade to sell the units to fund the TFC had been placed before noon on Friday 16 March 2020 it would have achieved the unit price as at noon 16 March 2020. As the UPA wasn't applied until 17 March 2020 I said it appeared Prudential was mistakenly claiming that the unit sale price could change during the settlement period when it said:

*If we had everything we required to process Mr A's TFC payment the day we received the request (16 March 2020), trades would have been placed on day 1 (16th March 2020) and 5 days is allowed for the trade to settle (taking it to 20 March 2020). **Therefore, Mr A was always going to be affected by the UPA with regards to his TFC payment and therefore, he was not entitled to the pre-UPA value.***

(bold is my emphasis)

I again asked Prudential to refer me to the section in its terms and conditions that set out that a UPA can be applied after a trade has been executed.

Prudential responded again. It accepted that its claims that a UPA would have been applied if the trade had been transacted on 16 March 2020 were incorrect. It apologised for 'confusing matters'.

It said:

*If the trade had been processed before noon on 16th then it would not have been affected by the UPA. The argument on this case was it fell out of Straight Through Processing (STP) before 12 noon on the 16 March 2020....STP can only be done when there are no outstanding requirements; otherwise the case drops out and must be processed manually.*

*One of the checks which will prevent a case from going through STP is an adviser charge linked to the TFC withdrawal, whether this is an ongoing charge or an initial charge.*

*This is in line with section 32.2 of our Terms and Conditions (T&Cs) which confirms we cannot take an adviser's instruction in relation to charges, which also confirms why we can take an adviser's instruction to crystallise Mr A's funds, but we cannot take their instruction to instruct changes to a charge.*

I am grateful that Prudential has now accepted that its claims that a UPA would have been applied even if the trade had been placed before noon on 16 March 2020 were incorrect. However, it is frustrating that I had to query this point three times before the business re-checked its position.

I have very carefully considered whether I think Prudential's position in relation to Mr A's complaint is fair and reasonable.

Having done so I don't think it has treated Mr A fairly in this matter. As our investigator set out, Prudential says that it couldn't process the crystallisation and TFC request and a change to the ongoing adviser fee at the same time. It appears this was due to its own internal processes, rather than any regulatory or legal requirement.

It appears that in this instance Prudential's processes did not adequately take account of the requirement to treat Mr A fairly. I don't think it was fair for it to have delayed processing Mr A's crystallisation and TFC request simply because of the way its own internal processes had been set up.

I have also taken into account that when Prudential emailed Mr A's IFA at 11.31am on 16 March 2020 it said:

*I have received your recently submitted request for your client [Mr A] to crystallise funds from his Prudential Retirement Account.*

*Due to the request being submitted with additional charges we would require our adviser charge instruction form to be signed and completed by the client. This is in relation to the increase in the monthly OAC charge. We currently hold 0.5% and the request has been keyed with an increase to 0.75%.*

***Please can you confirm if this has already been completed and sent to us as we are unable to authorise the payment without sight of this.***

(bold is my emphasis)

I think Prudential should have made it clear that the trade would not be *processed* at the next dealing point – noon that day – if it did not receive confirmation from Mr A's IFA that a signed adviser charge form had been sent, or the fee increase request was withdrawn.

I don't think the email Prudential sent was sufficiently clear. I am particularly mindful that it only says it will be '*unable to authorise payment*' and did not explain that the crystallisation and TFC request would not be processed. If this email had been clearer, Mr A's IFA could have taken action that would have enabled Prudential to act on Mr A's instruction to fully crystallise the monies in his Retirement Account and release the 25%TFC at the next dealing point (noon 16 March 2020).

By failing to act on Mr A's requests, until it received confirmation that he had agreed the adviser fee increase request, I think Prudential failed to treat Mr A fairly.

I don't think there was any legitimate reason for Prudential to fail to carry out Mr A's request, other than its own internal processes didn't allow it to do so.

In reaching this view I have taken into account that in March 2020 equity markets were falling rapidly. I think Prudential ought reasonably to have known that Mr A would not want his TFC request to be delayed (as there was a risk that the smoothed price on Mr A's fund might be reset due to market conditions). If it was unable to over-ride its internal processes and allow the TFC request to be processed on 16 March 2020, I think it should have made

every effort to contact Mr A's IFA and suggest he temporarily withdraw the adviser fee increase (or submit Mr A's approval) so that the TFC request could be processed that day.

I note that in its response to this service Prudential has referred to section 32.2 of its terms and conditions, but I haven't seen anything that says it wouldn't act on requests to crystallise funds and release TFC if there were unrelated 'outstanding requirements'.

Having very carefully considered this matter I think this complaint should be upheld. I think Prudential failed to treat Mr A fairly when it delayed actioning his request to crystallise his pension pot and release TFC because an unrelated request had been made at the same time.

### **Putting things right**

In order to put matters right Prudential should pay Mr A the difference between the value of the TFC lump sum payment it made, and the value of the TFC Mr A would have received if his request had been processed on 16 March 2020 and no UPA had been applied.

Prudential should also apply 8% simple interest per year to this payment to compensate Mr A for the loss of the use of this money.

If appropriate Prudential should also provide Mr A with a tax deduction certificate in respect of the interest.

### **My final decision**

My decision is that I uphold this complaint. In order to put matters right Prudential should pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 October 2021.

Suzannah Stuart  
**Ombudsman**