

The complaint

Mr H complains that the advice The Prudential Assurance Company Limited (“Prudential”) gave him to transfer his existing Prudential Personal Pension plan to a Flexi-access drawdown plan was unsuitable.

Mr H is represented in his complaint. But I’ll only refer to him in my decision.

What happened

Mr H has held a personal pension plan with Prudential since 1992. He received an unexpected tax bill for £3,600, £1,600 of which was due straight away. The remaining amount was due in 6 months’ time. He wanted to raise funds to pay this.

Mr H had recently received a letter from Prudential advertising their advice service. So he contacted Prudential to ask for a meeting. And met with an adviser on 28 December 2015 to discuss releasing money from his pension. His partner was also present at the meeting.

Prudential said they thought Mr H’s entire tax bill was due immediately. They said that their records indicate that the tax bill was due in full. And that their adviser could only go by what Mr H told him. So their advice was based on that.

At the time of the advice Mr H was self-employed. The Prudential personal pension plan was his only pension plan and was worth around £85,000.

Mr H said that he thought the advice he was getting was free as he’d been a Prudential customer for a long time.

A fact find was conducted during the initial meeting. This covered Mr H’s assets. These were a mortgaged buy-to-let property which he rented out. And a cash ISA with a value of £3,000. No other personally held assets were listed in the fact find.

The fact find also noted that the £3,000 Mr H had in savings was lower than he wanted. It said he wanted to have at least £6,000 just in case he had another unexpected bill. It also noted that Mr H had a monthly disposable income of around £180. But that he tended to use this to cover work expenses.

A second meeting between Mr H and the Prudential adviser took place on 18 February 2016. The adviser wrote to Mr H on 24 February 2016, enclosing a copy of the Suitability Report. This stated that Mr H’s main objective was to access a capital sum of £7,000 from his pension to pay off his tax bill and to add to his emergency funds.

Mr H was advised to transfer his existing pension to a Flexible Retirement Plan. And then crystallise £28,000 of his fund so that he could take £7,000 of tax-free cash. He was also advised to take £6,800 of income from the plan to pay contributions back into the Flexible Retirement Plan over the next three years to build another tax-free lump sum at retirement.

Mr H went ahead with the advice.

In October 2019, Mr H complained to Prudential through his representative. Amongst other things, Mr H said:

1. He felt the standard of advice was unreasonable and the pension drawdown was inappropriate.
2. He was under the impression the advice he'd been given was free of charge as he was a long-term customer of Prudential.
3. He felt the adviser should have recommended contributions to his pension should have ceased to allow a chance for reserves to build up for the next tax bill.
4. He shouldn't have been moved to a completely different investment fund.
5. He should be treated as a vulnerable client, as he is illiterate, and therefore relied very heavily on the advice given verbally by Prudential.

Prudential issued their final response letter on 25 November 2019. They didn't uphold his complaint. They said:

1. The recommendation their adviser had made was suitable.
2. The initial meeting had been free of charge. And there was no charge for receiving the recommendation. But a product charge had been payable. Prudential also said they could evidence that Mr H had been made fully aware of the Initial Advice Charge at the initial meeting.
3. They'd considered other options, for example existing savings or taking a loan. But that the alternatives hadn't been acceptable to Mr H.
4. They'd determined Mr H's attitude to risk at the time of the sale as low to medium risk. And that the fund they'd recommended met his requirements. They said the previous investment fund was no longer suitable for him.
5. They said that they'd never been made aware that Mr H was illiterate. They noted that his partner had attended both meetings.

Unhappy with Prudential's response, Mr H complained to this service. Our investigator felt that his complaint should be upheld. She didn't think that the advice Prudential had given him was suitable. She felt that if Prudential had advised him to leave his pension alone and use money from his savings and disposable income to pay his tax bill he would've done so. To put things right, she recommended that Prudential put Mr H as close as possible to the position he would have been in if he had been given suitable advice. She said that she felt Mr H would've remained in his existing funds within his Prudential personal pension.

Prudential didn't agree. They said that from the information their adviser had been given, the most viable option Mr H had to meet his objectives was to take the tax-free cash. They said that his existing pension wouldn't have met his needs and objectives.

As agreement couldn't be reached, this case has come to me for a review.

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'm going to uphold it. I'll explain why.

When we look at a complaint about the suitability of advice we consider if the recommended actions were suitable for the consumer at the time of the advice, in light of the information we know about the consumer and the product. Prudential say that their advice was suitable. But Mr H says it wasn't.

We don't only need to consider whether the recommended actions were suitable for the consumer's circumstances at the time. We also need to ensure that businesses act in the best interests of the consumer.

From the information I've seen, I consider that Prudential did take reasonable steps to establish Mr H's financial situation and investment objectives. But I'm not persuaded that they then used this information to recommend the most suitable course of action for Mr H to meet his objectives. This is because I'm not persuaded that the advice they gave Mr H was cost effective compared with other options that might've been available to him. So I don't believe the advice was in Mr H's best interests. I'm also not satisfied that Mr H was aware of the charges, although I acknowledge that Prudential did cover charges in their written communications with him.

What other options did Mr H have to meet his objectives?

Prudential said that Mr H wanted to increase his emergency savings by around £3,000. And pay his £3,600 tax bill. So I understand why they felt that Mr H needed to access around £7,000 in cash. But I don't agree that there weren't other more suitable options for Mr H than the recommended course of action they recommended. The advice recommended to Mr H had an initial cost of around £4,000. On the face of it, it seems entirely inappropriate to recommend a course of action to free up £7,000 that costs a customer £4,000.

Prudential disagree. They said: *"While the main objective is to raise £7K of TFC the advice is much wider than this. The client has been provided with holistic pension advice on his full fund of circa £85K and also his existing pension contributions because the existing product did not offer a Drawdown option"*. They also said that further vesting advice would be provided without additional charge if it were needed in the next two years.

I've not seen any evidence that Mr H said he needed to build up his emergency fund immediately. So I asked Prudential why their adviser didn't consider cheaper alternative ways of building it up. Prudential said: *"the advice is wider than simply providing £3,600 for an emergency fund. He would need to stop pension contributions for 18 months before he had the required emergency fund amount. We would not think it good advice for someone to be left for this length of time without an adequate emergency fund and to lose out on tax relief contributions for 18 months"*. But I'm not persuaded by this argument given the cost of the advice. I consider that if Mr H had been fully aware that the recommended course of action would cost him around £4,000 he wouldn't have agreed to it.

In reality, only £1,600 of the tax bill was due straightaway, with a further £2,000 due six months later. So from what I've seen, Mr H could've temporarily paused his pension contributions, saved some of his disposable income or taken a small loan to cover the £600 shortfall. But Prudential said that Mr H told them his whole tax bill of £3,600 needed to be paid immediately. They said that this meant pausing his pension contributions wasn't a viable solution as it wouldn't have resolved the problem in time. Prudential also said that Mr H was uncomfortable getting a loan to pay part of his tax bill. And they said: *"It would not necessarily be cheaper to take a loan as the client would require advice to access his pensions at some point in the future, as a result he would have to pay the advice charges at that point anyway, so taking a loan out would actually work out more expensive in the long"*

run as he would have the loan charges plus the advice charges which if the fund value increased in the interim period would be even higher". So, from what I've seen, Prudential didn't make it clear to Mr H that getting a loan could be considerably cheaper than the course of action they were recommending. Or that the other alternative options may be more cost effective. On balance, I don't consider that Mr H would necessarily have needed to take advice to access his pensions, so I'm not persuaded by Prudential's argument.

Based on what I've seen, I consider that Prudential placed too much emphasis on Mr H's stated need for additional emergency funds. And not enough emphasis on other methods of accessing the additional funds he needed to pay his tax bill. So I'm not persuaded that the advice they gave was suitable. I consider that he had other viable options that would've been suitable.

I'll now consider whether the charges for the recommended course of action were made clear.

Were the charges clear?

Mr H has literacy issues. From what I've seen, I'm satisfied that Prudential weren't made aware of this. I also note that Mr H had his partner present at both meetings with Prudential. As no one made Prudential aware of these issues, it wouldn't be fair or reasonable to hold them responsible for not knowing.

However, Mr H said he believed that the advice he was getting was free because he was a long-term customer of Prudential. Prudential said: *"Charges are clearly documented on several documents including the illustration and at the end of the SR. It is a mandatory part of the sales process to go over and explain these documents to the client"*. But I've seen no evidence that it was verbally made clear to Mr H exactly what fees he would be charged for accepting the recommended advice. I acknowledge that I can't know for certain what was or wasn't said during the two meetings.

I asked Prudential if their adviser ever explicitly stated the total £ amount of the initial charges. They said this was a mandatory part of any advice process. And that disclosure documents which confirmed the charging structure would've been provided at the initial meeting. They said: *"We are not required to have clients sign these documents and we do not make recordings of face to face meetings with clients – there would however have been an FRP application which should have included details of charges and been signed, although this appears to be disputed"*.

Prudential also explained why two different "Summary of Advisor Charges" documents (both undated) had been produced for Mr H. One stated that the total advice charge payable was £4,087.86. The other stated that the total advice charge payable was £3,611.86.

Mr H shared with this service a copy of Prudential's 1 March 2016 letter confirming they'd received the application form from his adviser for the Flexible Retirement Plan. It says: *"We contacted your Financial Adviser regarding some additional information we needed. [Name] at Prudential Financial Planning has now confirmed the following information-*

- Adviser charges for the Personal Pension Transfer Plan option were missing from the application form. Adviser charges will apply; a set-up adviser charge of 3.5% will be deducted from your plan and paid to your financial adviser and an ongoing charge of 0.5% per year paid monthly.*

Please take this letter as formal confirmation of the change we have made to the details on your application form Your plan will be set up to reflect this amendment. If any of this

information is incorrect, please contact us and your Financial Adviser immediately.”

Prudential said it appeared that there'd been an administrative error with regards to the charges. But that Mr H had all the other documents showing him the charges. So they felt he clearly knew he was being charged. They also said that they have nothing on record that Mr H was unhappy with the charges.

From what I've seen, the documentation wasn't as clear as it would normally be about the initial charges. There were two versions of the initial charging structure. And there was an error in the application form which meant that the set-up adviser charge of 3.5% was missing. Although I can't be sure how much verbal information Mr H was given about the charges at either of the meetings, on balance of probabilities I consider that he wasn't ever made explicitly aware of the charges. So, although I acknowledge that Prudential did provide charging information in the documentation to Mr H, I'm not persuaded that it was made completely clear to him what he would be charged for the advice he'd been given. And I consider that if he'd been made aware of the initial charges, he wouldn't have decided to follow the recommended course of action.

I'll now consider whether it was reasonable to move Mr H to a completely different investment fund.

Was it reasonable to move Mr H to a completely different investment fund?

Mr H said that he shouldn't have been moved to a completely different investment fund. The Flexible Retirement Plan that he'd been moved to was more expensive than his old plan. And didn't have the with-profits investment option Mr H had said he valued in his original pension plan. But it allowed the drawdown access Prudential felt Mr H required. And his old plan didn't.

Prudential said that they'd determined Mr H's attitude to risk as low to medium risk. And that the fund they'd recommended met his needs to access £7,000 of cash. They said their adviser looked at his other options but that none of them worked. And that his existing pension wouldn't have met his needs and objectives.

If I agreed that it was vital for Mr H to immediately access £7,000 of cash from his pension plan, I would consider that the move to the Flexible Retirement Plan was reasonable. But I don't agree. As I've said, I consider that there were a number of more suitable options available to him.

I consider that Mr H could've left his funds as they were and built a tax-free cash lump sum at retirement without the additional charges. So I don't think this advice was suitable.

Mr H had access to his ISA, his disposable income and potentially a loan. He could've also temporarily paused his pension contributions in order to save more money. Although there wasn't quite enough money in his ISA to cover the full tax bill, he had a number of other options to pay the remainder of the bill when it was due. So I don't feel that taking out a more expensive policy in order to access cash from his pension plan was the best option for him at the time of the advice. And I don't consider that he would've inevitably needed advice in order to access his pension.

Taking all the evidence into account, I'm satisfied that the advice Mr H received wasn't suitable for his needs. I consider that Mr H would've been much better advised to leave his pension where it was and find other ways to pay his tax bill.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr H would have remained invested in his existing funds within his Prudential personal pension. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

What should Prudential do?

To compensate Mr H fairly, Prudential must:

- Compare the performance of Mr H's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

Prudential should add interest as set out below.

If there is a loss, Prudential should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Prudential is unable to pay the total amount into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest it should tell Mr H how much has been taken off. Prudential should give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Flexible Retirement Plan	still exists	Prudential Personal Pension – With Profits Fund	date of investment	date of settlement	Not applicable

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Prudential totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because I'm satisfied that Mr H would've remained in his original Prudential personal pension plan if it wasn't for the advice to transfer.

My final decision

For the reasons given above, I uphold this complaint. I require The Prudential Assurance Company Limited to pay the amount calculated as set out above.

The Prudential Assurance Company Limited should provide the details of the calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 December 2021.

Jo Occleshaw
Ombudsman