

The complaint

In 2020 Mr F sought to liquidate all units in the Pru Fund held within his Self-Invested Personal Pension ('SIPP') with The Prudential Assurance Company Limited ('Prudential').

In the course of his pursuit he says he learnt, afresh, that Prudential applied a 28 days execution period to such transactions and that the execution price would be determined at the end of this period; that he was previously unaware of this and was given no indication of it when the fund was recommended to him (in 2018); that he would have invested differently at the outset if this was disclosed to him; that Prudential initially misrepresented this information to him and then it applied the notice period inconsistently to his liquidation instructions in March and September.

He seeks compensation for financial loss (loss of value) and for the trouble and distress caused to him.

What happened

On 2 March Mr F instructed Prudential to liquidate his holding in the fund. Prudential told him about the 28 days period and that the execution price is determined, and locked-in, at the time the request to sell units is submitted. He says he relied upon this and considered the 28 days period to be akin to a settlement period. On 3 March Prudential sent him confirmation that his instruction had been processed. In a subsequent email, on the same date, it confirmed that the execution price will be determined at the end of the 28 days period.

Mr F responded to Prudential on the same date. He queried why the email referred to determination of the execution price at the end of the 28 days period and why that conflicted with what he was told prior to his instruction – that the execution price is set at the point the instruction is submitted. He says he also considered it wrong that he could be expected to sell units in the fund without knowing the price at which they are sold until 28 days thereafter.

He called Prudential on 6 March in order to clarify the matter. Prudential concedes that it misinformed him during this call by telling him the time scale for the liquidation was four days, instead of 28 days. It says it identified this error promptly, called Mr F to notify him of it and, in recognition of its error, it offered to cancel the transaction – which was not ordinarily permissible and which Mr F agreed to. Mr F's description of this differs. He says cancellation was initiated by his enquiry, not Prudential's offer, and that he was led to believe such cancellation could not be guaranteed. The transaction was eventually cancelled.

Mr F says the fund's value fell by 11.5% around the time of the cancellation. By September he retained a dim view on its prospects and/or the prospects of maintaining his investment in the fund. He decided to liquidate all his units in the fund and instructed Prudential to execute this, despite remaining unhappy about the price determination at the end of the 28 days period. His instruction on 1 September was processed and completed the following day (2 September), and he has referred to evidence that the actual liquidation was executed on the instruction day (1 September).

Mr F says the prompt execution and completion timescale in September is what he expected

with his initial instruction in March and is what should have happened for that instruction; and that had his March instruction been treated in such a way he would have proceeded with it (instead of cancelling it) and he would have avoided the loss of unit value that ensued between both instructions. He acknowledges Prudential's concession of the inaccurate information he was given on 6 March – and its payment of £50 for the trouble that caused – but he says more should be paid for the trouble and upset caused in the case as a whole and that compensation for the loss of value he incurred remains outstanding.

Prudential says the events in March and September are to be addressed separately – it concluded the former prior to referral of the complaint to this service and it has provided us with a copy of its 4 November 2021 final complaint response for the latter. In the main, its position is as follows:

- Mr F was not misinformed on 2 March, he was correctly informed about application of the 28 days execution period. He had never been told anything different previously. He would have been aware of this process when his Prudential Retirement Account ('RA') was being set up and from the Key Features document and Terms and Conditions booklet he would have been issued at the time of sale of the fund.
- The misinformation given to him on 6 March has been accepted, it was rectified immediately and compensation has been given to him in this respect. The misinformation did not cause him a financial loss.
- With regards to Mr F's claim of inconsistency – between how his instructions were treated – they were handled differently because they were not the same type of instruction. In March (and in April) Mr F instructed a *sell down* of his units. The 28 days period correctly applied to that, and was applied to that. His instruction in September was for a *transfer out*, a different service level agreement of 10 working days applied to that, so the 28 days period was inapplicable.
- However, it accepts that the transfer out instruction should have been executed quicker than it was; the instruction was received on 3 September; it should have notified Mr F of any outstanding requirements within five working days but it did not contact him until 16 September; the necessary paperwork was received on 6 October and it should have issued the funds within 10 working days, but it did not do that until 23 October; overall, had it acted in a timely manner, the transfer out should have been completed by 7 October and it is sorry this did not happen. Furthermore, it has sent payment of £125 to Mr F for the trouble and upset this caused him, and it has undertaken to engage with the transferee firm in order to calculate whether (or not) a loss of growth in the transferred account has been incurred as a result of the delayed transfer out process – it will update Mr F as this progresses.

One of our investigators looked into the complaint and concluded that it should be upheld. He noted that the complaint is only against Prudential, and not against the third-party financial adviser who recommended the Pru Fund to Mr F, so he could not hold Prudential responsible for any alleged unsuitability of that recommendation. He also noted that the terms and conditions, and key features document, for the SIPP and in relation to the Pru Funds expressly provided for the 28 days waiting period and for the application of the unit price at the end of that period; and that the same applied to switches out of the *smoothed* type of fund that Mr F held.

The investigator's key conclusions were that Prudential was entitled to apply the 28 days period and that Mr F was informed about that; but Prudential applied it inconsistently in the unit sales that were instructed between March, April and September; Prudential also misled

Mr F, on 2 March, to believe the execution price was locked in at the time his instruction was submitted, when in fact the execution price was to be determined at the end of the 28 days period; overall, Prudential should pay Mr F an additional £100 for the trouble and upset he has been caused by these wrongdoings; but an award for financial loss cannot be made because Prudential did nothing wrong by applying the 28 days period.

Neither party accepted the investigator's view and the matter was referred to an ombudsman.

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.

Mr F's submissions extend to a complaint about the recommendation of the Pru Fund. As the investigator said, the present complaint is only about Prudential, as the SIPP provider. The matter of suitability (or otherwise) of the fund recommendation is one that concerns the third-party Independent Financial Adviser who Mr F says recommended the fund to him. If, as he says, he is unhappy that the recommendation made no mention of the 28 days period and/or if he considers the recommendation unsuitable for that reason or for any other reason, such matters are remote to Prudential.

Also as the investigator said, there is evidence of provisions for the 28 days period and application of the unit price at the end of that period (as the execution price) in the terms and documentation associated with the RA and the fund. On balance, they would have been issued to and agreed by Mr F in the course of the opening of his RA and investing in the fund. If he was unaware of this in March 2020, I do not consider that Prudential was to blame for that as it had previously given him information about it. If, as he claims, his units incurred a loss of value after March 2020 that he could have avoided, but for the 28 days period discouraging him from proceeding with the liquidation that month, I agree with the investigator's finding that Prudential cannot fairly be blamed for this because it was entitled to apply the 28 days execution/waiting period.

The specific matter of the *transfer out delay* does not appear to have featured in Mr F's complaint prior to Prudential's letter of 4 November 2021. It has clearly addressed the matter and it accepts that it caused a delay to the transfer of Mr F's account. There does not appear to be dispute over the £125 it paid him for the trouble and upset caused and it has committed itself and given what appears to be an undertaking, in writing, to engage with the transferee firm in order to determine whether (or not) the delay caused Mr F a financial loss in terms of any post-transfer reinvestment of his pension. The implication arising from the undertaking is that Prudential is prepared to compensate Mr F if a financial loss is identified and determined in this respect. Overall, and in this context, I do not consider it necessary to make any further finding or determination on this matter.

The issues that remain are Mr F's complaints about being misled during the calls in March and about Prudential's inconsistency in applying the 28 days period.

Available evidence is that whilst Mr F was told about the 28 days period prior to submitting his instruction on 2 March, he was also led to believe that the execution price would be set (and *locked in*) at the point his instruction was submitted, regardless of the 28 days period that was to follow. That was incorrect information. Even though relevant terms and documentation stated otherwise, Prudential remained responsible for giving accurate information to him and, in the circumstances, I can understand why he relied upon what he was told. Prudential would argue that its email the following day (3 March) rectified the matter, but the facts show that a more happened after 3 March – including further

misinformation on 6 March – before Mr F was put into an accurately informed position on how his instruction would be treated. In the process, the misinformation given to him on 2 and 6 March had to be corrected.

Available evidence also suggests doubt over Prudential's argument that the instruction in September differed from those earlier, hence the difference in treatment. Mr F initially instructed a sell down on 1 September, which was executed and completed by 2 September. He then instructed the transfer out on 3 September, as Prudential accepts. In other words, it appears that the sell down instruction was treated in isolation, as of 1 and 2 September, and that Prudential did not know it was leading to a transfer out request until 3 September. Prudential's email to this service, dated 15 June 2021, seems to support this conclusion. The email includes the following –

“... the switch requested on 1 September 2020 that settled on 2 September 2020 was processed incorrectly.

We should have adhered to the Retirement Account Terms and Conditions and a 28 day waiting period should have been applied. This switch was processed incorrectly by the processor as a result of human error.”

Overall and on balance, I conclude that Prudential misinformed Mr F on 2 and 6 March 2020, and that it also appears to have applied the 28 days period inconsistently to his instructions. It has already paid him £50 for the trouble caused by the misinformation on 6 March, which I consider to be fair compensation for that element.

For the trouble and upset caused by the misinformation on 2 March and for the uncertainty he would have reasonably perceived from the inconsistent application of the 28 days period, I agree with the investigator's finding that an additional £100 should be paid to him. Both issues would have caused him some, but not serious, trouble and upset – the execution pricing misinformation was corrected and, ultimately, resolved with cancellation of his March instruction around a fortnight after the instruction was given; and the quick execution of his September instruction appears to have been in his favour, it was executed between 2 days and was not exposed to price uncertainty over 28 days. In this context, I am satisfied that £100 is a fair award of compensation for trouble and upset caused by these issues – in addition to the £50 Mr F received for the 6 March misinformation issue.

Putting things right

Prudential must pay Mr F £100 for the trouble and upset caused to him as addressed above.

My final decision

For the reasons given above, I uphold Mr F's complaint and I order The Prudential Assurance Company Limited to pay him £100 for the trouble and upset caused to him (as addressed above).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 May 2022.

Roy Kuku
Ombudsman