

The complaint

Mr M complains about a proposed transfer of his stocks and shares Individual Saving Account (ISA) to a PruFunds ISA.

Mr M complains that the information provided by The Prudential Assurance Company Limited (Prudential) in respect of investing in its PruFunds ISA, was unclear and misleading.

Mr M also says Prudential has mis-applied the ISA terms and conditions which he says allow him to transfer his ISA to a new PruFunds ISA without taking financial advice because he has already invested in a PruFund Fund within another product.

What happened

Mr M was looking to transfer his Stocks and Shares ISA to a PruFunds ISA. Prudential is the provider of PruFunds and Link Asset Services (Link) is the ISA plan manager.

In March 2020 Mr M contacted Link to ask about transferring his stocks and shares ISA. After that phone call he complained to Prudential. He complained that Prudential was refusing to offer him a non-advised ISA. Mr M also said that Prudential was preventing him from investing in the PruFunds ISA by requiring him to take financial advice. He said Prudential was saying, in effect, that he wasn't capable of making the decision to invest.

Mr M also complained about the information provided about the stocks and shares ISA on Prudential's website which he said was unclear and didn't indicate the ISA was only available via a financial adviser.

Mr M complained about the delay in handling his complaint and the difficulties he experienced when trying to send a secure message.

Prudential upheld part of Mr M's complaint and apologised for the delay in responding to his complaint correspondence and for any difficulties Mr M experienced in using MyPru to send a secure message.

It also acknowledged that the information on its website wasn't as clear as it could be and apologised to Mr M. Prudential said it had provided feedback to its marketing team regarding the link under the Open Ended Investment Company Funds (OEIC) and the reference to the stocks and shares ISA.

However, Prudential said due to the complexity of the product it no longer offered a non-advised ISA. It explained that after consideration and consultation with its regulator, it had launched an advised ISA provided by Link.

It said Link was responsible for all regulatory and legal aspects of the ISA and provision of customer services.

Prudential said it wasn't stopping Mr M from investing in the ISA but the only way to access the ISA was via a Financial Adviser. It said the advice could be obtained independently or by speaking to one of Prudential's Financial Planning Partners. Prudential also said that once the ISA has been set up Mr M would be able to transact on a non-advised basis.

Prudential said it had referred Mr M's concerns about the wording of the application to the ISA Plan Manager.

It apologised for any confusion caused to Mr M and for the delay in responding to his complaint. It offered £200 compensation for the trouble and upset caused and an additional £25 compensation for the telephone calls Mr M had made, which it said would be paid directly to his bank account.

Mr M disagreed with Prudential and referred his complaint to our service.

Our investigator considered his complaint and didn't think it should be upheld. She said Prudential had confirmed it didn't offer non-advised stocks and shares ISAs due to the complexity of the investment.

The investigator acknowledged that Mr M felt he didn't need to take advice before opening the ISA but said that not all customers would be aware of the risks with this type of investment.

The investigator said Prudential had to comply with its Financial Conduct Authority obligations when considering the implications of the risk for all of its customers. And, although she didn't doubt Mr M's ability to assess the risks himself, she would expect Prudential to treat all of its customers in the same way.

The investigator said Prudential was entitled to design its own terms and conditions and this was a legitimate exercise of its commercial judgment. However, she said our service would look at whether it had followed its terms and conditions fairly.

The investigator said she had looked at the terms and conditions of the Prudential ISA and she referred to term 3.3 which stated a customer must receive advice from a professional adviser when making a new investment into any PruFund Fund.

So, the investigator didn't think Prudential had acted outside its terms and conditions when it told Mr M the only way, he could open an ISA with it, was through a financial adviser.

The investigator also considered whether Prudential had made it clear on its website that it didn't offer non-advised ISAs. She noted that Prudential had accepted the information available on its website about ISAs could be clearer and it said it understood why Mr M may have found the information confusing.

The investigator noted that Prudential had provided feedback to its marketing team. She thought that was a fair response as it had acknowledged Mr M's concerns and it had taken steps to improve its application process.

She also took into account that Prudential had paid Mr M £200 in compensation plus an additional £25 to cover the cost of his calls. The investigator thought that was fair and reasonable in the circumstances because Mr M was made aware that he needed to take advice at around the time when he tried to apply.

Mr M disagreed with the investigator's conclusions. In summary he said:

- He said that he was already invested in PruFunds within his Retirement account. He referred to the application form and said he would have ticked the box on page 12 which states:

“an existing investor making further investment into a PruFund(s) in which I am already invested. I understand I do not require advice from a professional adviser to make this investment.”

- Mr M said he had always been aware that he was seeking to invest in a new product and that it would have different tax implications. But he was not convinced this was a reason for Prudential to require customers to use a financial advisor before setting up an ISA or retirement plan. He said if there was such a statement within the terms and conditions then it had been recently introduced.

- Mr M said he was also aware that an ISA is a different product from a pension and therefore has different terms and conditions, but he didn't agree that those products were invested in different funds. He pointed out there was a fund availability table which listed the funds available for Prudential's key products and listed several PruFunds (which Mr M set out) as being available for the Prudential Retirement Account and Prudential ISA.
- Mr M said the series of funds only related to the date on which the funds were purchased within that product. He also said he couldn't find evidence within the ISA literature of a fund titled "PruFund.../ISA."
- Mr M said he was aware that there are variations in the different products, but he didn't think that was relevant to his complaint. He also said it was common knowledge that the application form for each product would be specific to the product. Mr M said there was never any intention to use one form for both products as he was aware that they were different and had different terms and conditions. But he said what was common between them was their availability to invest in PruFunds.
- He referred to the definition of "New investments into PruFund Fund(s)" in the terms and conditions. Mr M said the defining factor in relation to whether an investment was new or not was determined by the funds it was invested in, and not the product.
- Mr M also referred to the definitions of "New Investor" and "PruFund Fund(s)" in the ISA terms and conditions. He pointed out "New Investment" means, in relation to the PruFund Fund(s), any transaction that would require advice to be taken or would otherwise trigger a need for LFI to assess the "appropriateness" of the PruFund Fund(s) for any client. These transactions being the first investment in any PruFund Fund (s) (emphasis added by Mr M). Mr M also listed the PruFund range of funds.
- He asked that an ombudsman consider the eligibility to open and transfer into a Prudential ISA without advice. He also asked that the ombudsman take into account that he had and still held, what he described as a very substantial investment, in Prudential PruFund Growth Fund that he had actively enhanced over time without advice.

As no agreement could be reached Mr M's complaint was referred to me for 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.

Mr M says Prudential has prevented him from transferring his stocks and shares ISA by requiring him to take financial advice, which he says is unnecessary and expensive. He says the terms and conditions didn't require him to obtain advice to transfer to PruFund Funds as he had already invested in a PruFund Fund by way of a pension product.

Prudential says it made the decision to require financial advice for the PruFund ISA because it considered PruFunds to be a complex range of products as they have a small life insurance policy attached to them.

Prudential in its response to Mr M said that it doesn't offer a non-advised ISA because it considers PruFunds to be complex. It has since clarified that it is possible to invest in Open Ended Investment Company (OEIC) Funds within an ISA wrapper without advice (depending on the share class).

In any event, I don't think the position with OEIC Funds has any significant impact on my decision because Mr M contacted the ISA plan manager and asked about PruFunds. In addition, he has explained that he was interested in transferring his ISA because he had already invested in PruFunds via his Retirement Account, which was a pension product. So,

I am satisfied that Prudential's response was addressing Mr M's intention to transfer his ISA and invest in PruFunds, for which it was the provider.

Application of ISA terms and conditions

I think the first thing to note is that the terms and conditions Mr M refers to are those that apply to a Prudential ISA. So, it follows that those terms apply to the ISA and *not* to other products.

Mr M refers to the definition of "New Investment" in the terms and conditions and has pointed out the transactions are defined as being "*the first investment in any PruFund Fund.*" He emphasises the word "any." He says, in effect, this wouldn't have been his first investment in a PruFund Fund as he was already invested in that type of fund via his pension product.

Prudential has said the ISA application form can be used both for new investments and by existing clients. It says once an investor has made their initial investment, with advice, they are then permitted to top-up, make a lump sum payment, transfer in, or set up a regular saver amount to the same Fund without needing further advice. But, if an existing PruFund investor wishes to invest into a different PruFund Fund, then they would need to seek financial advice for the initial investment into this new PruFund Fund.

Prudential also points out that pension products and ISA products are different products with different terms and conditions. So, it says the same Fund means the same ISA Fund.

I consider the *first* investment in any PruFund Fund means you haven't already invested in *that* PruFund Fund. So, I don't think already being invested in one PruFund Fund means you could transfer and invest in any of the other PruFund Funds, not least because those funds may well pose different levels of risk.

I think this is made even clearer in the second part of term 3.3 of the terms and conditions.

The first part of term 3.3 says:

When you make a New Investment into any PruFund Funds you must receive advice from a professional adviser. Subsequent investments into PruFund Funds in which you have already invested do not need to be advised, however may still be subject to an adviser charge.

The second part then goes on to say:

When you are an existing investor and wish to make a New Investment into a Fund(s) in which you are not already invested, you must receive advice from a professional adviser, who may make an adviser charge.

In addition, term 6.3 states "*we do not provide you with advice or discretionary management. You must contact your professional adviser if you wish to make a New or Initial Investment into the ISA.*"

So, as I have said, I don't think being invested in one PruFund Fund enables you to invest in another *different* PruFund Fund without advice.

Existing investment within a pension product

The next question is therefore whether being invested in a PruFund Fund in a pension product enables you to invest in the PruFund Fund with *broadly* the same name, held within an ISA.

I think it is important to note that these are two different products with different features and different terms and conditions. So, for example, advice you received to invest in a particular pension product with a particular fund, would not necessarily be relevant to an investment

into an ISA because different considerations are likely to apply. For instance, a pension is generally considered to be a long-term investment providing funds towards retirement and that might affect the level of risk a customer is willing to take.

In term 3.4 it talks about PruFund Funds and the reason why there needs to be a determination of a client's "demands and needs." I note the demands and needs for a pension product might be significantly different to those required from an investment product, such as an ISA.

In addition, a customer may well be advised against investing a number of products in the same fund because that could mean a real lack of diversification in their portfolio of investments, with perhaps a significant proportion of their portfolio being invested in one fund. If that one fund then performs poorly, it would have a disproportionate impact on their whole portfolio.

I note Mr M has said the terms and conditions don't specify that the PruFund Fund has to be invested in the same product. However, I can see "Investment" and "Account" are defined in the ISA terms and conditions as follows:

"Investment means shares held in the OEIC or units held in the PruFund Fund, as appropriate, held within your account."

And Account is defined as " *the investor account which we open for each ISA investor.*"

So, when we are talking about "the first investment" I think it is reasonable to conclude, on balance, that it means the first investment into units held in a PruFund Fund within an ISA account.

I also note that Prudential has said that the PruFund ISA Funds are not the same funds as the PruFund Retirement Funds because they are a different series of funds with different stock exchange identifying numbers and fund prices. As they are not identical funds, I think that would tend to support the conclusion that being invested in a Fund within the Retirement Account, even with the "same" name, would not constitute a fund in which you are "already invested" for the purposes of the ISA terms and conditions.

Overall, I don't agree with Mr M that the terms and conditions allow him to invest in a PruFunds ISA without advice because he had an existing investment in a PruFund Fund via his pension product. I consider in order to invest without obtaining advice, the investment had to be in the same Prufund Fund, and that PruFund Fund, in addition, had to be within the same product.

Did Prudential act unfairly in requiring financial advice to invest in a new stocks and shares PruFunds ISA

I agree with the investigator that Prudential is entitled to determine its own terms and conditions, but it has to apply those terms and conditions fairly.

Prudential has explained it has included a requirement for financial advice in respect of PruFund Funds because it considers that range of products to be complex. Mr M disagrees with that reason. However, I think the aim of trying to protect a consumer from investing at a risk level or for an amount, that was unsuitable for them is a legitimate one. So, while I accept some more knowledgeable or experienced customers may find this to be unnecessary, I don't consider that Prudential is unfairly applying its terms and conditions in Mr M's case.

And as I have said, I don't consider that because Mr M has already invested in a PruFund Fund, or even the "same" PruFund Fund, within a pension product, that he doesn't need to comply with this requirement. I consider the terms and conditions say financial advice is required unless you are already invested in that same PruFund Fund within an ISA. So, I don't consider on balance that Prudential has acted outside the terms and conditions in making this requirement.

Information on website

Mr M has complained that it wasn't clear from Prudential's website that financial advice was required to take out a stocks and shares ISA. Prudential has acknowledged that the information wasn't as clear as it could be, in particular in respect of the information on the OEIC funds, which referred to the stocks and shares ISA.

I think it would have been helpful to have clearly set out the requirement for financial advice on the website which would inform potential investors, such as Mr M. However, the website isn't the only source of information. I note there were other places that Mr M could find out this information. For instance, by contacting customer services, which he did, and on the application form which set out the different options for investing in the ISA and the requirements for advice. In addition, as the information was contained within the application form this meant Mr M was informed before making the commitment to transfer his ISA.

Prudential has also apologised, taken steps to improve the information provided and has paid compensation to Mr M for the trouble and upset caused by the lack of clarity in the information and the delay in responding to his complaint.

Overall, I consider the compensation paid by Prudential to be fair and reasonable compensation for the trouble and upset caused to Mr M, both for the lack of clarity and the delay in responding to his complaint. I note Prudential also paid £25 compensation for the phone calls Mr M made as he was unable to use a secure message

My final decision

I don't uphold Mr M's complaint against The Prudential Assurance Company Limited for the reasons I have outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 April 2022.

Julia Chittenden
Ombudsman