

The complaint

Mr A says The Prudential Assurance Company Limited (Prudential) provided poor/deceitful advice; applied a market value reduction to his personal pension fund incorrectly when he switched to another provider; and caused him considerable stress and inconvenience.

What happened

Mr A met with a financial adviser from Prudential in January 2020. The objective was to access lump sums from his Prudential personal pension and his Clerical Medical (CM) stakeholder pension. He needed the funds to purchase a new home.

The options available to Mr A were discussed. But during the meeting, he says the adviser incorrectly told him he had to receive advice to switch his pension elsewhere and there would be a penalty charge for transferring to another provider. He was led to believe a drawdown policy with Prudential was the only way in which he could meet his objectives.

Following the meeting, Mr A spoke with the Pensions Advisory Service and was informed the advice he'd been given was incorrect. He then decided to arrange for his Prudential pension to be switched to CM, so his funds would be together, and he could take lump sums as he wished. He arranged this himself and informed the advisor he no longer required his services - so, no advice fee became payable.

Mr A wanted the switch from Prudential to CM to be completed prior to the end of the 2019/2020 tax year. By partially withdrawing funds in 2019/2020 he could maximise use of his tax allowance for the year. He planned to take the rest of the funds for his home during the 2020/2021, when he would have the benefit of a refreshed tax allowance.

The switch was completed on 1 April 2020 and as a result, Mr A says he was unable to access all the funds he required prior to the end of the 2019/20 tax year. Prudential acknowledged it had delayed the process and the switch ought to have been completed on 8 March 2020.

As a result of this delay, there were several impacts on Mr A, including:

- A reduction in the fund value switched to CM.
- Income tax charged at a higher rate than otherwise would've been the case during 2020/21.
- Significant time lost and stress caused.

Prudential's offer of redress has evolved over time. As things stand now, it's accepted it made an error and tried to put thing right for Mr A with the following offers:

- £1,392 to purchase the additional units, which would've been secured had the switch been given effect on 8 March instead of 1 April 2020.
- £25 interest paid for the late payment of the first tranche drawdown.
- £700 for the stress and inconvenience caused.

- £2,520 for the increased income tax liability.
- £142.28 simple interest (8%) paid for the loss of use of the above amount taxed.

Mr A noted the amount paid for the increased tax liability was satisfactory compensation. However, he remains unhappy overall with Prudential's offer in three areas.

Firstly, he feels the financial loss as a result of the delay in switching his Prudential funds to CM hasn't been fully compensated. The total difference between the transferred value on 1 April 2020 and the correct value on 8 March 2020 was £2,917. But Prudential's offer was for £1,392. Mr A thinks the balance between these figures of £1,526 should also be paid.

Secondly, Mr A doesn't feel the £700 paid for the stress and inconvenience is enough. He said countless calls and emails to Prudential, with long waits on hold combined with the stress of purchasing a new property, had a significant impact on his mental health. Mr A has also informed us he suffers from a severe case of Obsessive-Compulsive Disorder (OCD) and this heightened the impact on him of what happened.

Finally, Mr A says he feels Prudential's adviser acted unprofessionally by providing incorrect information and it's a matter of principle that further action be taken in relation to this.

Prudential accepted that it got things wrong, in particular causing a delay in the switch of Mr A's pension funds to another provider. It accepted this had significant consequential impacts on him, including financial detriment, trouble and upset. But it felt it had put things right.

The Investigator didn't uphold Mr A's complaint. He thought Prudential had offered Mr A fair compensation. He also thought that in relation to matters such as the engagement between Mr A and one of Prudential's advisers, based on the available evidence he could only conclude there'd been a misunderstanding between parties.

Mr A disagreed with the Investigator. In particular, he wanted the matter relating to the impact of the delay in switching his funds from Prudential to CM to be reconsidered. So, his complaint has been passed to me to review. I issued a further provisional decision last month. Neither party had any new evidence or arguments. As such, I see no reason to depart from my last findings and conclusions.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr A's complaint, but not to the extent he'd like. In my first provisional decision I highlighted an aspect of Mr A's complaint that hadn't been fully addressed. I'm satisfied based on responses to my first provisional decision that Prudential needs to conduct further calculations with regard to the redress he's due. I'll explain why.

In board terms there's agreement between the parties about most of the basic facts of the case in terms of what went wrong and when. So, there's nothing to be gained from rehearsing those matters in detail. The main differences between Prudential and Mr A concern the extent of redress that should be awarded and the interaction between its adviser and Mr A. I'll deal with these matters in turn.

The reduction in the value of the pension funds transferred from Prudential as a result of the delay it's accepted responsibility for

Prudential accepts the switch of Mr A's funds should've been completed on 6 March 2020. A couple of days later these would've been invested by CM as per his instructions. But this didn't happen until 1 April 2020.

As a result of the delay in the switch of Mr A's pension fund, there was a reduction in the transfer value from £82,360 to £79,442 – around £2,918. This is understood by both parties.

However, when Prudential offered £1,392 to compensate Mr A he thought this was unfair. He wanted a further £1,526 to make up the difference between the fund value he could've received and what was actually switched. The Investigator explained why it wouldn't usually be that straight-forward.

The money released from Mr A's Prudential pension was to be invested across 11 funds, according to an agreed percentage share of the money being switched into each. Each fund had a separate unit price to show its value. And each was subject to its own movement according to the markets. So, there were a lot of moving parts to take into account with any redress. The price of a unit changes daily, upwards or downwards. It's also important to note that as Mr A's funds were to be invested as a set percentage to each fund, the relative value of the 11 funds to each other was also dynamic.

So, as the Investigator noted, if Prudential paid CM £2,917 today, to account for what the switch value ought to have been on 8 March, this wouldn't purchase the correct number of units in Mr A's funds with CM, because the prices have changed. It would either not purchase enough or purchase too many. The purpose of compensation is to put Mr A into the same position he would've been in now, or as close as reasonably possible, had Prudential's errors not occurred.

Prudential liaised with CM and confirmed how many units would've been purchased, had it sent the correct fund at the correct time. It identified the difference compared with the units that were purchased. A calculation was then undertaken to find the amount needed to ensure Mr A had the number of units he would've had, if the switch hadn't been delayed. This produced the loss figure of £1,392.

Mr A has now had an opportunity to review the methodology used by CM in advising Prudential what was the appropriate level of redress required.

The Investigator said that if Prudential paid a further £1,526 to Clerical Medical, as Mr A had wanted, it would've bought more units than he would've had if no error occurred, which would put him into a better position than he would've been in, which is not the purpose of compensation.

Generally, when asking businesses to compensate for investment losses due to delays in switching, this methodology is reasonable.

However, Mr A had made an argument which hadn't been addressed by Prudential. The following extract from his complaint to this Service makes his point (**bolding is my emphasis**):

“[Prudential] have accepted liability for the delay in transferring the funds and have accepted that £82,359.91 should have been transferred and yet they have only transferred the original sum of £79,442.20 and the sum of £1,391.88 as financial compensation. This leaves a shortfall of £1,525.83 even if financial compensation hadn’t been due.”

*“It is one thing compensating me if I had missed out on potential growth of my policy due to their mishandling of the transfer but if there wasn’t any growth then surely the very minimum sum that I can expect is the full value of my policy (£82,359.91) at the date that they state the transfer should have been completed by. I shouldn’t be penalised if my Clerical Medical policy had seen a decline in that period, if indeed there was one, **especially as Prudential know that I had wanted to withdraw £56,000.00 of the £82,359.91 as soon as the funds were received by Clerical Medical. Therefore 68% of the transferred funds (assuming full policy value of £82,359.91) would not have been subject to any potential decline, if indeed there was any, in my Clerical Medical policy value. Is it not my right to have at least the full policy value of my policy, as agreed by Prudential, regardless of how I choose to invest or de-invest my funds once they have been transferred?**”*

There’s merit in part of Mr A’s argument. He’s saying that had the switch of funds happened when it should’ve, he would’ve withdrawn them immediately (to a cash account presumably). Had he done this, then subject to whatever CM’s service levels were for acting on an instruction to withdraw funds, the value of the funds which came from his Prudential pot at that point would’ve been different to the assessment undertaken by CM and Prudential.

Prudential had already accepted an argument from Mr A with regard his tax liability, on the premise he wanted to draw funds across the 2019/20 and 2020/21 tax years. The delay of the switch inhibited his full plans and I can see it has provided redress in relation to his stated increased tax liability. But I don’t think this helps in terms of the timing of Mr A accessing funds in 2019/20.

I’ve seen notes of contact that Mr A had with Prudential during March 2020 in which he articulates clearly why he wanted the funds and how important timing was to him due to tax liability matters. But I can’t see in those communications any reference to divesting at a particular time, or similar instruction.

I also note testimony Mr A has supplied in support of his case which arguably undermines his position on this matter. For example, on 8 November 2020 he wrote to Prudential about the effect of the delay of the switch on his tax liability (bolding is my emphasis):

“Following your letter dated May 2020 I am writing to request redress in regard to the increased amount of income tax that I have had to pay in the current tax year (2020/2021). As you know I was not able to fully utilise my income tax allowance in the tax year 2019/2020 solely due to the delayed transfer of my pension funds by Prudential to Clerical Medical...it was crucial that I withdrew a large amount of my pension funds either side of the 2019/2020 tax year end so as to facilitate a house purchase...and I needed to utilise my income tax allowances to reduce my tax liabilities.”

*“In order to do this, **I needed to request a partial pension encashment of £56,600 from Clerical Medical prior to 5 April 2020. Unfortunately, as Prudential did not transfer my funds in a timely manner they did not arrive in time for them to be processed by that date and therefore I was only able to withdraw a partial encashment of £44,000 due to the balance in my policy.** As a result I had to withdraw £12,600 more in the tax year 2020/2021 than would have been necessary had Prudential transferred my funds in a timely manner. As my tax allowance was already accounted for with my planned pension partial encashment’s in the current tax year it meant that all of the additional £12,600 was liable for income tax at the rate of 40% rather than 20%...”*

Mr A indicates that for 2019/20 he drew on funds from his CM pension to make use of his tax allowance. I've seen information from CM that he drew £44,000 around the end of the tax year. This might suggest he wouldn't have taken the Prudential funds immediately they became available had they been switched on time. The additional funds he could've utilised from his Prudential pot for tax purposes was only £12,600. Further, he took the money from his stakeholder pension right around the close of the financial year – so why would he have acted any differently on timing had the additional funds been in his account?

Mr A responded to my first provisional decision in the following terms:

“...As you have highlighted, and is evident from my correspondence and subsequent cash withdrawals from my Clerical Medical account, I needed to withdraw £56,600 before the end of the tax year 2019/2020. Prudential have adequately compensated me for my increased tax liabilities as a result of their delayed transfer but I request that you recalculate with regard to any possible reduced loss of investment had the £56,600 from Prudential been available to withdraw immediately after 6th March rather than in April.”

“I was only able to withdraw £44,000 from my Clerical Medical pension as a result, which as you point out, means that at the very least £12,600 should not have been subject to further losses in investment. However, I contest that it should be the complete £56,600 that is considered as it was the Prudential funds that I had wanted to withdraw and not my existing Clerical Medical funds. Whether I re-invested these Clerical Medical funds or took any other course of action is not any concern of Prudential and does not mitigate, by luck, their responsibilities. The £56,600 from Prudential should, by their admission, have been available to be withdrawn from the 6th March and may not have been subject to as much loss of investment as was calculated by Clerical Medical at the eventual point of transfer. Following my reduced first withdrawal of £44,000 I still had to subsequently make a second withdrawal of the full amount (£56,600) owed to me by Prudential when the monies were eventually transferred...”

I couldn't agree with everything Mr A set out here. The funds he moved from Prudential to CM were invested as per his instructions. I haven't seen anything which shows such instruction was to move funds into a cash account or a near cash vehicle. And if there was a problem with executing any such instruction that would be a matter to address with CM. But I do think Mr A was stopped from accessing the maximum possible funds from his account in a tax-efficient manner due to the delay in the switch. Prudential now understands the point here and has made the following offer:

“At the time of calculating the redress for Mr A he had not taken the additional funds of £56,400 and had only taken the original £44,000 and therefore only this was taken into account. Looking at the information that Mr A has given us, he would have taken a total of £100,400 in April and May 2020.”

“We are happy to contact Clerical Medical again to see if there had been any further financial loss assuming that £82,359.91 had been paid to them in March 2020 and then assuming Mr A had taken an amount of £56,600 on 5 April 2020 and then taken another further £43,800 in May 2020. We would calculate this redress based on the current values of the policy and the difference in the unit prices that would have been bought. I understand that Mr A has taken further payments from the Clerical Medical policy and so we would assume he would still want to take those payments as well.”

I think this proposal is fair.

Prudential adviser conduct

Regarding Mr A's meeting with Prudential's adviser in January 2020. He says the adviser incorrectly told him he had to receive advice to switch his pension elsewhere and there would be a penalty charge for transferring to another provider. And that he was led to believe a drawdown policy with Prudential was the only way in which he could meet his objectives. He found out this was incorrect. He feels this is a very serious matter and is concerned that other customers are being treated in this way.

I thought the Investigator had got to the nub of the issue here. The incident Mr A complains about was a face-to-face meeting with no advice report produced, so I can only consider both sides testimonies and say what I believe is most likely to have happened on the balance of probabilities. I believe it's most likely there was a misunderstanding between the adviser and Mr A when discussing matters in this initial meeting, rather than there being any intention to deceive.

Mr A says he's dismayed this Service puts such a low value on the general public's right to trust and be treated fairly and honestly by financial organisations. I recognise he feels very strongly about this matter. But I must respectfully disagree with him here. Whenever we look into a complaint, matters of firms treating customers fairly, with due care and skill are uppermost in our consideration.

The role of this Service is to consider individual complaints against firms in an impartial manner, based on the circumstances and evidence available in each case. I can assure Mr A that is what I have done for his complaint.

Stress and inconvenience

When I'm considering a complaint like Mr A's, I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Prudential's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here. And I think that's what Prudential thought too.

I recognise Mr A's experienced problems in trying to switch his Prudential pension. I can see the delay caused by the firm had several impacts on him, both financial and in terms of the trouble and stress he suffered over an extended period. And in his situation, I've no doubt he felt the effect more acutely than many would've.

Prudential has apologised to Mr A for the things it's got wrong. It's tried to put him back in the position he'd have been in if things hadn't gone wrong. And it's offered £700 to compensate him for the distress and inconvenience it's caused him. That's considered a substantial award by this Service.

On balance, I think Prudential's compensation here is reasonable.

Putting things right

I require The Prudential Assurance Company Limited to liaise with Clerical Medical and conduct another redress calculation based on the proposal it's submitted in response to my first provisional decision. If this shows Mr A suffered an additional financial loss, then it will need to compensate him accordingly.

My final decision

For the reasons I've already set out, I'm upholding Mr A's complaint, but not to the extent he'd like.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 February 2022.

Kevin Williamson

Ombudsman