

The complaint

Mr K complains about a Unit Price Adjustment applied to an instruction to take cash from his pension by The Prudential Assurance Company Limited (The Prudential).

What happened

Mr K complained about a Unit Price Adjustment (UPA) applied to his policy which meant he received about £20,000 less than he expected. He said that his IFA submitted an instruction to take cash from his pension before 12 noon on 16 March 2020 and the UPA was introduced on 17 March 2020 and should not have applied to his payment request.

An erroneous uncrystallised funds pension lump sum (UFPLS) request was made by the IFA, when there were Prudential system errors preventing the production of an illustration, which would have shown the error and meant the request would not have proceeded. A correct request for a 25% Pension Commencement Lump Sum (PCLS) was then made within 10 minutes and by 11.30 am on 16 March 2020.

He said the fact an erroneous instruction for a UFPLS was submitted before the correct request for a PCLS should not affect the validity of that request, which should have been processed at the unit price on 16 March 2020 without any UPA.

Prudential raised a query about adviser charges that would apply and this was clarified on 17 March 2020 and should not have affected the encashment and was confirmed before the UPA was applied.

Mr K said the delay in payment meant he missed the opportunity to pay money into his ISA for the tax year end and that he received a lower payment than he felt he should have based on the request made on 16 March 2020. The lower payment meant he had not managed to pay off his mortgage as planned.

The Prudential said a tax-free cash instruction was submitted via their digital account system on 16 March 2020. The system would have shown a value of around £167,000 but that would not be guaranteed until the instruction had been authorised. However at 11.20 am on 16 March an instruction for an UFPLS was submitted by Mr K's IFA. The IFA called at 11.25am on 16 March and asked for this to be cancelled and the tax-free cash request processed. The UFPLS was reversed and cancelled on 18 March 2020. However the error delayed the payment of the TFC. The Prudential said it should have been authorised on 18 March 2020 and paid no later than 25 March 2020. It paid a late interest payment at the rate of 8% per annum simple for the delay in payment to 16 April 2020, being (£755.85 net of basic rate tax) it also paid £150 ex gratia payment for trouble and upset.

It said that an instruction to trade a Prufund after 12 noon, including those required for a payment out that day, would be processed at the unit price at close of business the next working day. However it did not advise payment out instructions would be processed on the same working day if the instructions are submitted and received by 12 noon. Section 23 of the terms and conditions '*payment from your retirement account*' said that payments out would be processed when they have all the necessary information and as soon as is

reasonably possible.

The drawdown instruction submitted by the IFA on 16 March also included a request to increase the OAC. This required a form signed by Mr K or confirmation from the adviser that the increase should not apply. It also said it queried the rate of ongoing adviser charge (OAC) which delayed matters. The IFA confirmed it would not apply the increase in a call made on 17 March 2020. The Prudential said this prevented the instruction being authorised before the downward UPA was applied.

The prudential initially confirmed that had there been no errors or outstanding information the TFC would have been sold down and based on the 16 March 2020 unit price. It later retracted this and said it worked on a 10-day service level agreement. While it was possible it might have gone through it couldn't be guaranteed. But with the pandemic and tax year end increasing volumes it was less likely. It couldn't authorise the transaction until all queries were answered. It had 5 working days to deal with request but cancelled the UFPLS on 18 March, which was within 2 days, therefore the earliest the transaction could have been actioned was 18 March given also that the OAC was clarified on 17 March 2020. So the UPA could not have been avoided. It referred to its terms and conditions.

In relation to the interest payment it compared the fund values and confirmed these were lower than on the date it was actually authorised so Mr K wasn't entitled to more tax-free cash (TFC) and received interest.

My Provisional decision

I issued a provisional decision in this complaint. I said the following:-

Before I could make an award for financial loss or distress and inconvenience, I needed to conclude that the Prudential had made a mistake.

Mr K believed that due to a mistake or mistakes by the Prudential he had suffered a loss such that his PCLS was lower, due to the application of the UPA. In particular he says that the request submitted on 16 March should be processed by reference to the unit price on that date.

But I didn't agree for the reasons set out below.

I had considered all the papers that had been presented by both parties and relevant sections of the terms and considered the following.

1. Was the Prudential bound to deal with the request on 16 March?

I noted there was a screen shot for Mr K's retirement account showing a single income drawdown request for 25% of his pension with a crystallisation date of 16/03/2020 but with status shown as '**pending**'.

Section 15 of the terms was relevant here.

Section 15 Buying and selling investments

15.1 You or anyone else authorised may instruct us to buy or sell funds and other investments.

15....

15.3 Once we have received the instruction, this can't be altered unless we agree. If there are exceptional circumstances, as detailed in section 16, we will ask you for further

instructions.

15.4 If we receive the instruction by 12 noon on a working day, it will be processed on the same working day or as soon as reasonably practicable if this is not possible. If we receive the instruction after 12 noon on a working day or on a non-working day, it will be processed the next working day.

Mr K argued the PCLS instruction submitted on 16 March before 12 noon should have been processed on that day. But section 15.4 did not guarantee same day processing and was clarified by '*as soon as reasonably practical if this is not possible*'. The Prudential said that it wasn't possible because of the outstanding UFPLS instruction that needed to be cleared as did the confirmation of the requested increase in the OAC.

I thought Section 15.3 was clear that once an instruction was received *it cannot be altered unless the Prudential agree*. So the Prudential needed to agree to the cancellation of the UFPLS request. I could see from system records that the request to cancel was noted on 16 March and sent for action on that day, so the Prudential reacted quickly and there was no evidence of delay in this. I had also seen internal communication confirming the action had been cancelled, but this was after 17 March 2020 when the UPA was introduced.

As a request for a UFPLS would conflict with the request for a PCLS, I thought it was reasonable that it would need to be cancelled before the PCLS was processed.

So under 15.4 I thought it was ***not possible*** to process the request on the same working day for the reasons given above. I thought that meant that the request wasn't authorised on 16 March and could not create a binding agreement on that day and therefore fix the price on that day. Even if the Prudential had a discretion to back date the request to the 16 March, I could not see that it was required to do so under its terms, and it was not for this service to tell it how to run its business.

2. Was the error that caused delay the Prudential fault?

Mr K's IFA says that the request for a UFPLS was made in error as the Prudential system didn't provide an illustration until after the request was submitted. He also said that the Prudential later confirmed it was having system problems and this is why the payment was delayed. He felt Prudential should produce details from their system and proof of how they amend transactions, up or down as they could not find this in the terms.

In effect I thought it was saying the error is the Prudential's fault, because their system wasn't clear or was having problems, so I should hold them responsible for the consequence of the delay.

But I thought it was up Mr K's IFA to make the correct request. If it was not certain it could have called the Prudential for clarification. I didn't think any system problems caused it to make the wrong type of request. It was unfortunate and seems to have been a genuine error.

So I couldn't reasonably conclude that the mistaken request for a UFPLS was the Prudential's fault whether or not its system was having problems that later caused delays.

3. Change in adviser charges

I had seen exchanges between the IFA and Prudential saying the OAC was stated as an undiscounted rate but should have been the discounted rate. This was queried on 17th and the IFA confirmed that the discounted rate should be applied.

General

32. Taking instructions

32.1 We can take instructions from the financial adviser authorised by you in your application or whom you later authorise in a form acceptable to us. If you change financial adviser and stop instructions from your previous financial adviser, we can't take instructions from your new financial adviser until we have received your authority. We are not responsible for any losses which you may suffer if we haven't acted on your financial adviser's instructions because we didn't have your authority to act.

32.2 We won't take instructions from your financial adviser in relation to setting up adviser charges (except where they submit your initial application form as your agent), increasing adviser charges, changing your National Insurance number, a transfer payment or drawdown transfer from your Retirement Account, using the value of your Retirement Account to purchase an annuity from an insurance company or if you have died. These instructions must be made by you or your beneficiaries.

I thought Section 32.2 was clear that the Prudential would not take instructions from the IFA relating to increasing adviser charges, which would need Mr K's consent. There must have been some discrepancy for the Prudential to raise a query. So, as it says, it required the change to be confirmed before it actioned the PCLS, I thought that was reasonable and reflected the terms and conditions.

In the event the IFA answered the query re the OAC so that the PCLS could proceed, but this was on 17 March in the afternoon, so it could not have been treated as a confirmed request before the 12-noon cut off on 16 or 17 March.

So I thought that even if the UFPLS request had been cancelled sooner or no request and therefore error was, made it still would not have been possible to process the application until the increased OAC request was cancelled. That would mean the request would not have been processed until 18 March at the earliest.

No reference to a UPA

Mr K said that the PCLS request made no reference to the potential application of a UPA or price variation up or down and the amount should be fixed at the amount on that day (16 March 2020). I had also seen a projection which referred to the amount of tax free cash.

But I didn't think the projection or the on-screen confirmation needed to refer to the UPA. I said that because the account terms and conditions applicable to a Prufund investment (such as Mr K's) already allowed this. In particular Part B of the terms and conditions, which provided how the unit price, smoothing and price resets will operate. These are referred to in section 23 below and part B set out in part below.

23. Payments from your Retirement Account

*23.12 If you are invested in **PruFunds**, other conditions apply. Please see section 13 Part B for more information.*

Part B 7. Unit Price Reset

7.1 In certain circumstances we may decide to reset the unit price of a PruFund to protect the With-Profits sub-fund, and therefore the interests of all our With-Profits policyholders and

shareholders. This is likely to be when there is a large volume of money entering or leaving that PruFund. If we decide to reset, the unit price would be adjusted to be the same value as the unsmoothed unit price on that working day. That adjusted unit price will then continue to grow in line with the expected growth rate (subject to sections 4,5,6,7 and 8) from the working day after this unit price reset. The consideration of the criteria which may lead to a unit price reset applies separately to each of the PruFunds and applies to each fund in its entirety, encompassing all of our products under which units are held in each fund, not just the Prudential Retirement Account.

7.2 You will not receive individual notification of a unit price reset.

Mr K also argued that because the request was submitted on 16 March it should be processed by reference to the price on that day. But I had already considered why it wasn't possible to do so. I also noted the system screenshot shows the request as **pending** not as confirmed. So even if I was wrong in my conclusion, I didn't think the screenshot showed that the request had been accepted and can be processed on 16 March before 12 noon or was bound to be processed by the price on that day.

Mr K also argued that the application of the UPA created a cliff edge and to be fair the Prudential should process requests made before the UPA is applied.

I agreed that the UPA did create a cliff edge but that did not make it wrong. In Mr K's case he said he made the request before the UPA applied and therefore should not be subject to the UPA.

I noted the screenshot did quote a value for the cash. I considered if this implied that the value was fixed at the quoted amount. But the terms and conditions were clear that there are daily adjustments to the unit price and no notification will be issued of any unit price reset. So it would always be possible that the unit price would change before the payment was calculated. So I didn't think the screenshot value nor the submission of the request before the UPA was introduced meant the amount paid would be as stated.

While Mr K's request was submitted on 16 March it was not and could not have been accepted for processing before the cliff edge of 17 March for the reasons already given. It also seemed that even if the UFPLS request had been cancelled on 16 March the OAC would not have been clarified until after 12 noon on 17 March. So the application could not have been processed before the deadline for the application of the UAC.

I tested this by considering that this could mean that a request after 12 noon on 17 March (but before the introduction of the UPA at 4pm) could have seen an illustration showing tax free cash at a higher level than when the application was later processed, due to the introduction of the UPA later that same afternoon. But that was what the terms and conditions allowed.

Mr K's situation was similar in that the request was made on 16 March and he would say he believed a particular value to be correct. But by the time the queries about the OAC was resolved the value was different. Having considered the terms and conditions I thought that the Prudential was entitled to proceed in the way it did for the reasons given above.

So in conclusion for those reasons I didn't think the Prudential was responsible for the mistaken UFPLS request which caused delay to the PCLS. Even if I was wrong in that conclusion the PCLS processing would have been delayed by the query re the OAC and this wasn't withdrawn until after 12 noon on 17 March 2020. So even if there had not been a UFPLS request I didn't think the correct PCLS request could have been treated as a confirmed request before 12 noon on 16 nor 17 March.

However the Prudential had accepted it did make a mistake in not processing the PCLS request as though made on 18 March 2020. But that delay did **not** mean Mr K became subject to the UPA. Instead it meant that there was a delay in paying him his tax-free cash.

The Prudential had confirmed the value on the date it was actually processed was higher than if it had been processed sooner and therefore Mr K's tax-free cash wasn't lower than it should have been. It also compensated him for loss of use of his money due to the delayed receipt, by paying interest at 8% per annum simple. This is the rate this service would apply so the Prudential had paid interest at the rate I would have awarded had I needed to do so.

The Prudential also paid £150 for distress and inconvenience. Where the Prudential had made a mistake, as it accepts it had, I could make an award for distress and inconvenience. Such an award was not designed to punish the Prudential or compensate for financial loss (which is covered by the interest payment). Instead it reflected the impact of the mistake on Mr K. I could see that Mr K was disappointed that his tax-free cash is lower than he hoped, but I had already concluded that was not the fault of the Prudential so was not something I would have considered in making an award. However I could see that Mr K's IFA had to chase the payment and this was frustrating for Mr K. I thought the amount of £150 paid by the Prudential was fair and reasonable in the circumstances. So I didn't need to direct Prudential to do anything further.

For those reasons I didn't propose to uphold the complaint.

The Prudential made no further comment.

Mr K's IFA responded on his behalf at length. I have set out the comments in the what I've decided section below, as I have answered each point that is raised. I hope that makes it easier to track my responses and avoids repetition.

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.

I have considered the points raised by Mr K. Due to the number of points raised I have set them out below and added my comments in italics. However I have not changed my mind in the light of the additional points made on Mr K's behalf for the reasons set out.

1. Mr K says he has suffered a financial loss based on the transactions that keyed correctly on 16 March 2020 – single income drawdown. It said the crucial point was the date of the clients account screenshot, 17 March 2020 and the transactions in progress listed at the bottom. As can be seen a crystallisation for an amount of £671,525.28 for payment of 25% PCLS of £167,881.32, Dated 16/3/2020.

But I don't agree. This was considered in my provisional decision including the example of a request made when I said

'I tested this by considering that this could mean that a request after 12 noon on 17 March (but before the introduction of the UPA at 4pm) could have seen an illustration showing tax free cash at a higher level than when the application was later processed, due to the introduction of the UPA later that same afternoon. But that was what the terms and conditions allow'

So I think it is clear that the request made and shown in the screenshot did not fix the amounts to be paid as shown in the screenshot. For those reasons and the others set out in my provisional decision I didn't think Mr K was entitled to the amounts presented in the screenshot even if he thought he was.

2. Mr K said there were no other transactions showing, yet Prudential stated that they were not able to remove the incorrect UFPLS until 18 Mach 2020. Why did this not show in transactions in progress?

I don't know why the screen didn't show other transactions in progress, but that doesn't mean there were no other transactions in progress that conflicted with it. Whatever the reason I have already concluded that it was reasonable for the Prudential to need to clear off the first conflicting request before it could action the second, so it does not make any difference to my conclusions that the pending transaction was not visible.

3. Mr K's IFA says he would have seen the values shown onscreen and expected that this was the payment that he was to receive. There was nothing in Prudential's T&Cs or customer statements and illustrations that state that the imposition later of a UPA can alter this amount.

While Mr K may have seen the information, my provisional decision already considered why this amount was not fixed at that point and the powers that the Prudential had to vary this amount under the terms and conditions governing this contract.

4. Mr K had not seen any evidence from Prudential that this was the case and having read through their T&Cs in detail, it could not establish their ability to reduce a transaction in progress that had been agreed.

I think there is a difference between an instruction submitted and shown as pending and accepting the instruction. So I don't think the transaction was agreed and settled on the basis shown in the screenshot.

The screenshot reflects a request it does not show that it has been confirmed as being processed on the basis of the information set out nor that the amount cannot change.

Mr K referred to section 15 of the terms and conditions as evidence that the Prudential could not change what was paid. But I don't agree.

Section 15 says that 'once an instruction is received , this can't be altered unless it agrees'.

I think it is clear this is aimed at those giving the instruction not at preventing Prudential completing the instruction. I say that because the section relates to buying and selling investments and it would be impractical for a business to allow instructions to change investments to be modified after submission.

Further I have already commented on section 15.4 in my provisional decision and whether the Prudential was bound to complete the instruction on the same day (which would affect its price) so I have not repeated what I said again.

5. Was Prudential bound to deal with the request?

Mr K said the screenshot dated 17/3/2020 of Mr K's Retirement account showed the crystallisations as only one transaction outstanding as pending, a PCLS 25% and amount £167,881.32. No other transactions are listed as pending or outstanding. This was the transaction that was agreed

Therefore he said section 15 of the T&C's is relevant to Mr K's claim and section 15.3 is relevant. It states that it cannot be altered unless Prudential agree. There is no mention that a UPA can alter the amount agreed.

I have commented on the power to make a UPA in my provisional decision. It is clear that Mr K didn't have a right to what was shown in the illustration and that the Prudential did have a right to apply a UPA for the reasons in my provisional decision.

6. Prudential knew that the instruction was received in accordance with section 15.4 on the working day of 16 March 2020 before 12 noon, so it should be processed on the same working day, or as soon as practicably possible. There was no mention that a UPA can alter the amount agreed, and indeed it should not, as section 15.3 is very clear. Mr K would not have wanted the instruction altered.

I commented on this in my provisional decision so I have not repeated my comments here. Further section 7.2 of the terms applicable to the PruFund state that 'you will not receive individual notification of a unit price reset. – So it is clear he would not have been informed about this individually. But as set out in my decision it is clear the terms and conditions give the Prudential the power to apply one..

7. As stated in its previous correspondence, it knew that the transaction shown on the screenshot was never processed, and later Prudential admitted their systems were at fault. It referred to its letter to Prudential dated 16/9/2020 and the conversation with Prudential where it confirmed that the instruction had "gone missing" and asked the IFA to key this again. An extract from that letter is copied below.

"Unfortunately, due to a system failure the tax-free cash requested on the 16 March 2020 was not paid. I believe we should have escalated this failed payment and I regret you were advised to submit a new money out request which was received on the 7 April 2020."

Mr K said this showed that the fault is with Prudential, and from this they should honour section 15.3 and have paid the amount they had confirmed on the transactions in progress.

Mr K argues that the request to rekey showed it was at fault. But I do not agree. The Prudential had already accepted that issue and compensated for the delay based on what should have happened so Mr K had not suffered a loss due to that and the request to rekey it did not cause the UPA to be applied which was most likely due to either or both the other request and the OAC..

8. **Change in adviser charges**

Mr K says this should not have any bearing on the PCLS that Mr K would receive, as this is a matter for ongoing servicing not the payment of the PCLS. Having said this he quotes from Prudential T&C's General section 32 need further comment. Taking instructions parts 32.1 and 32.2.

Section 32.1 states that Prudential can accept instructions from the Financial Adviser.

Section 32.2 states that Prudential won't take instructions from the Financial Adviser – **but crucially it then states** (except where they submit your initial application form as your agent) – which it did. So, in fact, they had not needed to check this point in any case.

The point was also made that the advice to reduce the OAC was after 12 noon on the 17th. The correspondence with Prudential that the Ombudsman will have seen continually states that this call was on the 18th, until the CEO office got involved, when they confirmed it was 17th. No actual time is ever mentioned in any correspondence, and in fact its call with Prudential was recorded in its notes as at 10.30am on the 17th March 2020. It also called again the next day to be told that this information had been provided on the 17th. So, it was clear there was quite a lot of confusion at Prudential at this time.

Mr K argues that 32.2 meant that the adviser could change the OAC as it set up the account as agent.

But I don't agree. 32.2. says

'We won't take instructions from your financial adviser in relation to setting up adviser charges (except where they submit your initial application form as your agent), increasing adviser charges, changing your National Insurance number, a transfer payment or drawdown transfer from your Retirement Account,'

I think it is clear that the exception relates only to the initial application and setting up adviser charges not to subsequent changes in charges. I say that because I think that if the Prudential intended the exception to apply to all changes there would have been no need to place it in brackets at all or at that point in the section rather than at the end of the section, where it would clearly apply to all changes.

Mr K argues about the timing of clarification of the OAC and disagreements with the Prudential about the date this happened. My decision already assumed this happened on 17 March so the comments about the date has not affected my conclusions. I note also that Mr K's IFA accepts clarification was needed as it gave it.

9. No reference to UPA, payments from Retirement Account, Part B & Unit price reset

It provided details from the Prudential Adviser Website on Prudential's EGR and UPA's and it expanded Mr K's fund, to show the UPA's. It said it should be noted that the adjustment at 4pm on 17th March 2020 was a mid-term UPA and not a unit price reset, therefore section 7 that I had quoted in my provisional decision was not relevant. Section 6 was. However, as noted above nowhere in section 6 did it state that the imposition of a UPA affects a keyed instruction.

It had already demonstrated that section 15.3 states that Prudential cannot alter an instruction once received, and the transactions in progress on the 17th March 2020 show that there was only one transaction in progress. Not two.

With respect to the IFA's arguments about the application of section 7 vs section 6 applied and that it was a mid-term UPA and not a unit price reset so that section 7 did not apply but section 6 did, I asked the Prudential to confirm this. It said the Unit Price Adjustment (UPA) was applied as confirmed in section 7 of the Terms and Conditions of the Retirement Account.

But even if that I am wrong I don't think either section needed to say that a section affected a keyed instruction. I say that because the keyed instruction is a request, to action a disinvestment that is then actioned in accordance with the terms and conditions.

In relation to section 15.3 the section does not say the Prudential cannot change the instruction just that it cannot be changed without its agreement. But in any event I don't think Prudential was changing the instruction it was carrying it out as soon 'reasonably practical' and by reference to the unit price at the time of execution, which the terms and conditions make clear will vary from day to day.

But even if I am wrong in that it is agreeing to a change by making it. So either way that section does not prevent the Prudential settling instructions by references to prices of units that will change.

Section 4 of the terms makes clear that the unit price can change each working day for expected growth rates and also under section 5, 6 and 7. I have already considered how section 7 works. So it is clear that the unit price for the Prufund will most likely change each day and that as an instruction may not be processed on the day it is given (for the reasons I have already considered) it is very likely that the amount shown on the instructions will not be the same as those at the point the instruction is actioned..

10. Conclusion

Mr K also referred to the legal principle of causation.

Mr K gave the correct instruction to raise his PCLS which was done before the Mid-term UPA was imposed. The IFA incorrectly keyed the instruction initially as UFPLS but then immediately contacted Prudential to have the UFPLS removed and the correct PCLS was keyed. Prudential's transactions in progress showed on 17th March 2020 that only one transaction was pending, and their T&C's section 15.3 stated that this transaction *cannot be altered*. There was no confusion in the Transactions in Progress, and Prudential's T&C's do not state that a transaction can be altered unless they agree. There was no request to alter the PCLS keyed on 16th March 2020.

Prudential were unable to process the transaction, and after some 6 weeks asked that it was rekeyed so that Mr K could receive his PCLS. At that time, they paid him considerably less than the correctly keyed transaction on 16th March 2020.

The OAC was really not relevant as Prudential had no need to check this at that point, T&C section 32.2 *confirmed this*, however, the IFA confirmed in a call before 12 noon on 17th March 2020 that it could be reduced.

Its strong opinion was that neither Mr K or his IFA can be held responsible for the cause of Mr K's reduced PCLS. The cause of this lies solely with Prudential.

I have already commented on the meaning of section 15.3 and Prudential's ability to settle the instruction at the price that was different to that shown on the instruction, I have also commented on the fact it was reasonable to clear the first incorrect request before dealing with the second and that caused delay. I have also commented on the OAC. So I have not commented further.

Finally this decision is solely about whether or not the Prudential made a mistake that has caused Mr K financial loss. Neither Mr K or his IFA are the subject of this complaint and I am not able to make any finding as to whether either of them are at fault for the reduced amount of the PCLS. However in deciding that the Prudential is not at fault I have necessarily reflected on the interaction with steps taken by other parties without making any conclusions about fault.

For all those reasons and the ones set out in my provisional decision I have not changed my mind.

My final decision

I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 January 2023.

Colette Bewley
Ombudsman