

## The complaint

Mr M complains that The Prudential Assurance Company Limited (“Prudential”) switched his pension holdings from equity funds to its cash fund when he turned 75. He says this was contrary to what it had told him it would do. He is also unhappy with the switch date, and value, used.

## What happened

Mr M had a personal pension with Prudential. The terms of the pension allowed Mr M to choose a selected retirement date – when the pension benefits would become due. The terms explained that shortly prior to that selected date, the pension funds would be moved to Prudential’s cash fund. The selected date could be postponed at the plan holders request. But the terms explained that the selected date needed to be before the plan holders 75th birthday. And if Prudential was not notified of a selected date, it would assume this to be the plan holder (Mr M’s) 75th birthday.

Prudential has provided copies of correspondence between it and Mr M from mid-2010. This indicates that the selected retirement date was initially Mr M’s 65th birthday. But with that date approaching Mr M asked to defer retirement. It was confirmed in that correspondence that the selected retirement date had been changed to Mr M’s 75th birthday. The letters again indicated that, at age 75, the pension savings would be switched to ‘cash’.

Prudential sent Mr M a letter in January 2020, titled ‘Your retirement options’. This noted that he was approaching age 75 and needed to make some decisions regarding his pension as the contract ended at that point. It said, Mr M would lose some options at his 75th birthday and be unable to switch between funds after that date. The letter also included a fund value illustration, which noted Mr M’s assumed retirement date was his 75th birthday (approximately six months from the letter). It also included a message saying Prudential had ‘made a change’, and said *“When you took out your plan we said we’d automatically move your funds into the Cash Fund on your selected retirement date, but we’re no longer doing this.”*

Prudential sent Mr M another letter in May 2020, this time titled ‘Retirement notification’. This said it needed to speak to him about his plans – reiterating his contract was ending at age 75 – and noted it had written to Mr M about this previously. The letter again explained he would lose some options at age 75, including not being able to switch funds after that point, and asked that Mr M contact Prudential as soon as possible. An updated fund value illustration was enclosed which again noted an assumed retirement date of Mr M’s 75th birthday. This included the same message given previously about the change Prudential had made – that the funds would not automatically be moved to cash on the selected retirement date.

On 13 July 2020 Mr M sent Prudential a secure message, in response to its earlier letters. He said he held a self-invested personal pension (SIPP) with another provider and it was his intention to transfer his Prudential pension to his SIPP. But he didn’t want to do so at that point due to market volatility and wanted to wait and keep his funds invested as they currently were. He also mentioned having received a dealing form from Prudential, but that this didn’t give the option of making any choices regarding when his funds were switched to

cash, or at what price and asked how he could give instructions about this. In response Prudential simply said he could send in a completed form when he decided to transfer the fund.

Mr M's 75th birthday passed, but his Prudential pension remained invested in equities.

In October 2020, Mr M asked Prudential for confirmation of how much of his Lifetime Allowance his pension had accounted for on his 75th birthday.

Prudential sent the requested information. It also sent Mr M a separate letter in October 2020, saying that, because he had reached aged 75, his pension had now been switched to its cash fund. It included a statement showing the change. This showed the date of the change had been backdated to take place on Mr M's 75th birthday. And the value of the fund used for the switch was the value on Mr M's birthday, £60,021.34.

Mr M complained to Prudential. He was unhappy that his pension had been moved to the cash fund. He said this was done without his authorisation, ignoring the preference he set out in his secure message and was in contradiction to what Prudential had said in its letters to him.

Prudential said, while Mr M was not obliged to take his pension benefits at age 75, his contract was only written to that point. So, it said it hadn't made an error by moving the funds to cash at that stage. It said the information sent to him about not automatically switching to cash was not applicable to him as he had reached age 75. It acknowledged though that this was misleading. And it also accepted it had made an error by not processing the fund switch until October 2020 – several months after Mr M's birthday. But it didn't think it was wrong to use the unit price from Mr M's birthday – saying this was the only price and date it could use. In recognition of the distress caused by its poor service, Prudential said it would send Mr M a cheque for £150.

Unhappy with this response Mr M asked our service to consider his complaint. Initially he said he was unhappy that Prudential was enforcing a rule that it had not made him aware of. And he felt it had been dishonest in saying the switch automatically happened at age 75 – as evidenced by this not being carried out until several months later.

One of our Investigators looked into matters but felt the offer made by Prudential was fair.

Mr M did not agree. He said he didn't think the original terms of the agreement were relevant given the changes to the pension landscape since. And he said he didn't believe there was a rule that required his pension be converted to Prudential's cash fund at the end of the contract on his 75th birthday. He also questioned why such a rule would exist if he didn't have to take benefits – as he'd be able to continue to hold his savings, just not add to them at contract end. But if such a rule did exist he said Prudential had lied in the statements it had made to him about the fund not switching to cash and he felt its systems were not fit for purpose as the switch hadn't happened when it apparently should have.

Our Investigator's opinion remained unchanged. So, the matter was passed to me to consider and decide.

I asked for additional information from both parties before reaching my decision. This included asking Mr M what he'd have done differently if the letter he was sent in January 2020 hadn't indicated his pension savings may not automatically switch to Prudential's cash fund.

Mr M said, at the end of 2019, he was aware that his investment with Prudential would have

to convert to cash on his 75th birthday. So, he began to make preparations to transfer the value to his SIPP and had completed the draft paperwork in January 2020. And he only didn't go ahead because of the letter, indicating his savings could stay invested in equities.

I issued a provisional decision in May 2022 explaining that I didn't intend to uphold Mr M's complaint and felt that the offer already made by Prudential was fair. Below are extracts from my provisional findings, explaining why I thought this.

*Mr M said in response to our Investigator's opinion that he didn't feel the original terms of the contract were still relevant. And he didn't think that there was a term or rule that meant his pension savings needed to switch to a cash fund on his 75th birthday. However more recently he has said he was aware at the end of 2019 that such a condition existed, and he'd begun making plans in the knowledge of this. These statements are somewhat contradictory.*

*I don't agree with Mr M that the original terms of his pension are not relevant. They form the basis of the agreement between the parties.*

*Mr M has suggested these have been changed and replaced over time. And it is true that when a financial product is held for a significant period of time, certain terms are likely to be varied. But that doesn't mean original terms are no longer important – particularly if some of the terms aren't altered.*

*Here I'm satisfied, from the evidence provided, that it was part of the original agreement that the contract for Mr M's pension would end on his 75th birthday. And it was a term of the agreement that, on his selected retirement date, or if no selected retirement date was chosen on his 75th birthday, when the contract ended, the pension savings would move into Prudential's cash fund.*

*I haven't seen anything that suggests either of those terms were varied. And the information I've seen indicates that they were reiterated more recently. The letters from 2010 that I've seen, when Mr M deferred his selected retirement date, talked about moving to the cash fund at age 75. And the letters sent in 2020 by Prudential were clear the contract was to end on Mr M's 75th birthday. So, I'm satisfied that this was still a condition of Mr M's pension.*

*Mr M has said Prudential acted without his authorisation and against his wishes when switching his savings to the cash fund. But I'm satisfied that Prudential didn't need authorisation to make this change, as it was a term of the contract that this would happen. And it was executing that term, which formed part of the agreement, when taking this action. Mr M has also mentioned that he believes Prudential should've elected not to apply this term, particularly given the uncertainty caused by the pandemic and the impact this had on fund values. But I don't think Prudential was obliged to disregard the term or that it has acted unfairly by sticking to it.*

*So overall I'm satisfied that it was always the case that Mr M's pensions savings were due to switch to the cash fund on his 75th birthday, if he hadn't retired prior to that, and I think Prudential has acted in line with the agreement when making this switch.*

*I do however think that Prudential has made errors here.*

*Prudential acknowledges that it made an administrative error when Mr M reached his 75th birthday. This was because it left the funds invested in equities, when they should've been moved to the cash fund. Prudential has explained this was due to changes it was making to its system. I think this explanation is reasonable. And as I've said, I'm satisfied that the pension savings should always have moved to the cash fund on Mr M's 75th birthday.*

*To put this right, when the error was discovered, Prudential switched the savings to the correct fund using the values from the date on which this should've happened. And I think that is fair. I know Mr M is unhappy with this, because of the differing market conditions on the two dates, but this is what should always have happened. So, Prudential's actions to address this put Mr M's pension in the position it should always have been in.*

*The other errors made by Prudential were in the correspondence sent to Mr M in January and May 2020. And, in its response to his secure message in July 2020.*

*The two letters did make it clear that the contract was ending on Mr M's 75th birthday. But they also both said, "When you took out your plan we said we'd automatically move your funds into the Cash Fund on your selected retirement date, but we're no longer doing this." There was no distinction drawn between the contract end date and Mr M's selected retirement date. And the letters didn't caveat the change by saying if the selected retirement date was at age 75 this change was not relevant or applicable. I don't think this was a distinction or difference Mr M could reasonably have been expected to have remembered – given how long ago the pension started. So, I don't think Mr M could've reasonably realised this change didn't apply to his situation. And so, I think the information given was misleading – which Prudential acknowledged in its final response – and led Mr M to believe his funds could stay invested in equities, rather than moving to cash.*

*This was compounded by Prudential's response to the secure message Mr M sent it in early July 2020. In that he said he wanted his funds to remain invested in equities for the foreseeable future in the hope that market conditions would improve – and was clear about that. But Prudential didn't address this, or say that this would not be possible, which I think it should reasonably have done. It simply said Mr M could complete the relevant form when he wanted to transfer. And I think the meaning of this was unclear and that it was reasonable for Mr M to assume this meant, when he wanted to move his pension savings to cash or his fund to another provider. And, Mr M was still, I think understandably, mistakenly under the impression that his savings remaining invested in equities beyond his 75th birthday was possible and that his pension would remain as he had requested.*

*So, I think Prudential has not communicated clearly with Mr M – an error on its part. And this has led to a misunderstanding about what would happen to Mr M's pension.*

*Although misleading information was provided, that doesn't mean that I think Prudential should've let the funds remain invested in equities beyond Mr M's 75th birthday. I'm satisfied that this wasn't an option under the original contract. And although Prudential has provided unclear information, that doesn't mean it has to make an incorrect statement true.*

*But I have had to think about what would've happened if Mr M hadn't been given misleading information – if no error hadn't happened.*

*By the time Prudential failed to clarify the situation via secure message in July 2020, there was little that Mr M could've done differently. His pension savings were already scheduled to move to the cash fund later that month. And I don't think, he'd have done anything differently at that stage, if Prudential had corrected the previous misleading information, and his pension would've converted to the cash fund on his 75th birthday.*

*Likewise, I'm not sure Mr M would've done anything differently in May 2020, if the letter sent at that point had clarified the earlier mistake. At that time, the value of his fund had fallen significantly, due in large part to the pandemic. And I think it's likely, had Prudential corrected the misunderstanding then, Mr M wouldn't have made any changes at that time – in the hope that the market might recover prior to his savings moving to the cash fund. So, the pension savings again would always likely have moved to cash on his 75th birthday.*

*So, what is left for me to consider is what would've happened if the misleading information hadn't been provided in January 2020.*

*Mr M has said he took his main pension and state pension approximately ten years prior to the events complained about. He says, at the beginning of 2020, in addition to his Prudential pension he also held his SIPP and another small pension. He has said these three plans were uncrystallised. And he wanted to keep them that way, and fully invested, for the rest of his life for inheritance purposes. Mr M says in January 2020 he was looking at transferring his Prudential pension to his SIPP, in the knowledge it would move to cash on his 75th birthday. While also intending to transfer his other small pension to his SIPP in February 2020 (as a transfer would not be possible prior to then while an ongoing dispute was resolved). Mr M says the only reason he didn't transfer his Prudential pension in January 2020, was that he received the letter from Prudential with the misleading information, indicating it could remain invested in equities.*

*I'm conscious though that Mr M didn't mention, when complaining to Prudential, that it had been his intention to transfer his pension to his SIPP in January 2020. Or that he'd begun the process and the letter he'd received had changed those plans. Nor was that mentioned when the complaint was initially brought to our service. Indeed, Mr M's complaint at times has focused on not being aware that his pension savings were going to move to the cash fund. And Mr M hasn't been able to provide any documentation to show he was in the process of transferring his Prudential pension in January 2020. He has said he disposed of this when he decided not to go ahead. But without it, it is difficult to say a transfer would have been instigated but for the letter from Prudential. I'm also very aware that, from January 2020, market conditions became volatile, and the value of Mr M's pension fund began to fall - a trend which continued over the next several months. Which does suggest there could be an element of hindsight as to whether this was something he would have done.*

*Mr M has provided evidence to show that his other personal pension was transferred to his SIPP in February 2020. But I'm aware there were other issues around that pension that may've prompted the transfer. And I don't think this necessarily is enough to say he had firm plans to transfer his Prudential pension at the same time.*

*The secure message Mr M sent to Prudential in July 2020 said he had intended to transfer his pension to his SIPP. But that message, as I say, was sent in July, almost six months after Mr M has told us he intended to transfer his pension. And it went on to say that the reason Mr M had decided to delay was recent market volatility and that he could afford to wait to see if his fund value recovered – rather than the letter received being behind the decision.*

*Taking everything into account, I think it is difficult, on balance, for me to say that Mr M had firm plans to transfer his Prudential pension in January 2020. So, I can't say that the misleading information in the letter Prudential sent caused him to act differently to how he otherwise would've.*

*I'd also add that, even if I did think he'd have acted differently, I can't say with certainty that he has been caused a loss. The letter Prudential sent with the misleading information was dated 29 January 2020 and would've been received by Mr M after that date. So, I think it's reasonable to assume that the transfer would not have taken place before February 2020. Prudential has provided evidence that the transfer value of Mr M's pension on 1 February 2020 was £65,098.18. And on 1 March 2020 this had fallen to £60,306.69. Given the administrative work that would've needed to be completed it is likely the transfer would've taken several weeks. So, this would likely have happened closer to 1 March 2020 – with the fund value being towards the lower figure (which was not dissimilar to the value that has since been moved to Prudential's cash fund, where I understand it has remained and is still available to transfer). And the SIPP that Mr M has said he intended to transfer his pension to would've likely been impacted by the same volatility and value fluctuations as his personal pension was.*

*While I don't think Prudential's errors have led Mr M to act differently than he otherwise would've done, I do think it was likely upsetting to later find that he'd been provided misleading information. Prudential offered Mr M £150 for the distress and inconvenience caused by this – and I understand it sent him a cheque for this amount. In the circumstances I think that offer is fair. Again, while it would've been upsetting to find out some of the information he'd been given was incorrect, Prudential promptly explained what had gone wrong and what the correct position was, once the complaint was made. I know Mr M disagreed with what Prudential said but it isn't responsible for the ongoing frustration caused by this disagreement. So, in the circumstances, as I think a fair offer has been made, I don't currently intend to require Prudential to do anything more.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Prudential said it was satisfied with my provisional findings and had nothing further to add.

Mr M strongly disagreed with my provisional decision. He was unhappy that I had asked him what he'd have done differently in January 2020 but had decided on balance I didn't agree that he would've transferred his pension at that time but for the letter Prudential sent. He was unhappy with my interpretation of his response and said I had included information that was untrue – the reference to an ongoing dispute in respect of his other small pension – as he said no such dispute existed. Overall, he felt how I'd dealt with this was unfair and that, if I was going to reach this conclusion, the question was unnecessary. So, he thought I should remove all references to this from my final decision.

Mr M reiterated he didn't think the original terms of the pension agreement were relevant due to changes in legislation – and provided links to articles to support this. And in any event, he disagreed with me that there was no evidence of a change to the relevant term, as the letters Prudential had sent him had talked about making a change.

Mr M also said, instances where I'd given my opinion was pure speculation, should not form part of my decision-making process, and showed a lack of knowledge.

Overall, he remained of the opinion that Prudential had made an error and felt it was in fact in breach of contract. So, he considered my provisional decision to be unfair.

## 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.

The role of our service is to provide an informal independent review where there is a dispute between parties. We look at the information and evidence available and make our findings on a fair and reasonable basis. My role in making a decision on the complaint is the same – to give my opinion on what is fair and reasonable. This often means deciding and explaining what I think *on balance* is likely – particularly where information is in dispute or incomplete. While I understand Mr M considers this to be speculation and disagrees with my interpretation of certain information, I don't agree this makes it inappropriate for me to make findings on this basis. Ultimately, he has asked our service to look at his complaint and provide our independent opinion.

I understand Mr M is also disappointed that I asked for additional information from him but didn't then find in his favour. Again, as part of my role, if I consider additional information is required in order to fully and fairly consider the complaint, I can ask either party for this. My role is then to consider this information as part of reaching my decision. But that doesn't mean I will necessarily agree with the party I have requested information from.

Here I thought additional information was required and that to proceed without asking for this would've been unfair. While I appreciate Mr M has said he was reluctant to provide this and is now very disappointed with my provisional findings in relation to this, I can't agree it was inappropriate to ask for the information. And I also don't agree it should not form part of my decision – as I consider it relevant to the outcome.

Mr M says I've invented reference to a dispute between he and the provider of his other small pension. And on further review, I accept I was incorrect to refer to it as "a dispute". When providing information about what he would've done differently in January 2020, Mr M referred to a "saga" involving the other pension provider. I'm aware of the issues the other provider has faced and that it was being taken over at the time. And I understand now that Mr M's reference to the "saga" was in relation to the issues the provider itself was facing, rather than issues between he and it. So, there was not a dispute between Mr M and the provider and the indication I made of a dispute was incorrect, for which I apologise. But, overall, this doesn't make a difference to my findings.

All of the information I've seen confirms that the pension contract between Mr M and Prudential was only written to, and was due to end on, his 75<sup>th</sup> birthday. And the terms and conditions I've been provided indicate that, if a 'selected retirement date' had not been chosen prior to his 75<sup>th</sup> birthday, when he reached his 75<sup>th</sup> birthday, and the contract ended, the pension funds would be switched to being held as 'cash'. And that this was part of the contract ending. I'm still of the opinion that these terms are important as they form the basis of the agreement between the parties. And unless those terms were changed, I think Prudential was right to act in line with them.

Mr M has disputed that there is no evidence that those terms changed as the letters sent by Prudential in January and May 2020 said it had 'made a change'. So, he thinks this evidences that the terms were altered, and Prudential has acted in breach of contract. But Prudential has explained that those letters were in relation to what would happen at the 'selected retirement date' if one had been chosen before the contract ended. Not what would happen when the contract ended, at 75, if no 'selected retirement date' had been chosen. And so, I don't agree that the letters Prudential sent show that the relevant terms – that the contract ended at age 75 and, at that point at the end of the contract, that the fund would be transferred to 'cash' – were amended.

Mr M has again referred to numerous changes in pension regulations. And I again acknowledged there have been significant changes to relevant legislation. But once again I haven't seen anything that suggests any of these changes meant the contract between Mr M and Prudential did not end at age 75 or that, when it ended, Prudential was not able to act in line with the agreed terms, and transfer the fund to 'cash'.

So, I remain of the opinion that Prudential has acted correctly when saying the pension needed to be transferred to 'cash' as a result of Mr M reaching his 75<sup>th</sup> birthday. And I don't agree it is in breach of contract.

As I said in my provisional findings, I accept that Prudential made mistakes. The transfer to 'cash' was not processed when it should've been. But by subsequently backdating this transfer, Prudential has put the account in the position it should always have been in.

And the information given by Prudential about the 'change' it had made was unclear. But that doesn't mean Prudential needs to make incorrect or unclear information true or do something that it wouldn't otherwise have done. Rather I have to look at the impact of that information.

Mr M has reiterated that it was his intention to transfer his Prudential fund to his SIPP in January 2020 and it was only because of the contents of the letter Prudential sent him that he didn't do so at the time. And he is unhappy I have suggested this was with the benefit of hindsight and felt it was reasonable that he had not retained any documentation that supported this. And I agree, I wouldn't necessarily have expected him to keep paperwork he'd filled for a transaction he chose not to complete. But, as I explained in my provisional findings, I haven't seen anything to show that potentially transferring his money away from Prudential to a SIPP was mentioned at all prior to July 2020. So while I know this will come as a disappointment to Mr M, for the reasons explained in my provisional decision, I still don't think I can say on balance that a transfer would have taken place, but for the unclear information provided by Prudential.

And with that in mind, I remain of the opinion that the offer made by Prudential in respect of the distress caused by its errors is fair in the circumstances of the complaint. So, I don't require it to do anything more.

### **My final decision**

For the reasons I've explained I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 September 2022.

Ben Stoker  
**Ombudsman**