

The complaint

Mr R has complained about delays by The Prudential Assurance Company Limited in making a pension transfer to his self-invested personal pension (SIPP).

What happened

In March 2020 Mr R, through his financial adviser, started the process to transfer money from his Prudential retirement account to his SIPP. There were delays in completing the transfer, and it didn't complete until 11 May 2020.

Prudential accepted it had contributed to some of the delay, and paid Mr R £150 for the inconvenience caused. It also said it was willing to compensate him for any financial loss he'd experienced, subject to production of calculations to demonstrate the loss.

But Prudential considered Mr R's fund had benefited from the delay. While he'd remained invested in the Prudential fund, it had received a positive unit price adjustment (UPA). If there had been no delay, Mr R wouldn't have remained in the fund and wouldn't have received the adjustment. Prudential considered this should be taken into account in the assessment of any loss.

Mr R considered it was unfair for Prudential to try to remove the benefit of the UPA and referred the matter to this service.

Our investigator considered the complaint should be upheld. He concluded that all parties were in agreement that the funds should have been available for investment on 1 May 2020. Prudential's five working day timescale for making the funds available meant the date for encashment should've been 27 April 2020. The investigator said a valuation of Mr R's pension should be carried out, on the basis of encashment on 27 April, rather than 24 April as suggested by Prudential.

The investigator considered the £150 paid for inconvenience was fair.

Prudential didn't agree with the investigator's conclusions. It maintained that Mr R had benefited from the delay. It said it was willing to compensate him if he could show that any loss on the value of his SIPP was greater than the benefit he'd received from the UPA.

Mr R, through his adviser, didn't agree with Prudential's response to the investigator's conclusions.

Both parties asked for the complaint to be reviewed by an ombudsman, so the matter was referred accordingly.

A provisional decision was issued on 28 October 2021, in which the reasons as to why the complaint should be upheld were set out. The following extract from the provisional decision sets out that reasoning in detail:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

The investigator set out in detail the events leading up to the transfer, and the various delays that occurred during that time, so I won't repeat them here. But from what I've seen, it seems both parties agree that if there hadn't been any delays the money would've been available for Mr R's SIPP provider to invest on 1 May 2020.

But I considered that the better - and fairer - way to consider this, and to establish at what point the funds would have been disinvested from the existing pension fund had no delays been incurred, and then reinvested, is from the other way around. In essence, rather than using 1 May 2020 as the date at which point the funds could have reinvested, identify the actual date at which they would have been invested, had no delays been incurred.

This involves taking into account what would have happened from 17 April 2020, when Prudential's documentation requirements were satisfied.

At this point, the process for selling the existing units should have begun. Prudential had the request for three further working days before acting upon it, up to 22 April 2020 – which was within its service standard of five days – at which point the “sell down” should have begun.

Prudential has said that this would have taken until 29 April 2020, but it remained unclear at what point in that process the funds would have actually been sold, and so effectively removed from the “account”.

And so we've asked Prudential as to what the “sell down” process in fact entailed to gain a better understanding of what would happen to the funds during that period.

In response, Prudential has reiterated that Mr R wouldn't have been financially disadvantaged if the funds had been disinvested before 27 April 2020. It has said that a sale of £1m worth of units on 27 April 2020 would have meant disinvestment of 567,859 units, whereas the number of units disinvested on 5 May 2020 resulted in 567,536 being sold. It said that, as a result of the delay, Mr R retained an additional 322 units, which as at the end of September 2021, was valued at £666.15.

If the sale had occurred on 24 April 2020, this would have meant disinvestment of 581,395 units – an additional 13,858 from Mr R's plan.

It therefore maintained its stance that the delay has therefore benefited Mr R.

And this may well be the case. But I think to demonstrate to Mr R that this is the reality of the situation, Prudential should still supply him with a breakdown, with unit selling and buying and how this would have translated into monetary sums, as to what would have happened if no delays had been incurred and the existing units were sold down as they should have been after the process began on 22 April 2020. The most likely date for this seems to be 23 April 2020, given what Prudential said before about the date the units were sold after the actual “sell down” process had begun. The notional timeline should also then factor in the date that the units would have been bought in the new fund – and again, a reasonable assumption is that Prudential would have adhered to the same timescale as it actually then did, within its service standard, to buy the units in the new fund.

And if, using the unit values Mr R would have received through the “selling down” and rebuying process having started on 22 April 2020, the current value of Mr R's SIPP is less than it would have been if there had been no delay, Prudential should compensate him accordingly. But if the value is greater than it would have been without the delay, no compensation will be due.

Putting things right

Prudential should obtain the notional value, as at the date of any final decision, of Mr R's SIPP, on the basis that the "selling down" process started on 22 April 2020, that the funds were effectively removed from the account as they would have been (as above, it seems this would have been 23 April 2020, but Prudential can confirm this) and were then reinvested in the new SIPP as they would have been in accordance with that revised timeline. If this is less than the actual value of the SIPP as at the date of any final decision, there's a gain and no redress is payable.

If it is more than the actual value of the SIPP, there is a loss and redress is due.

Any compensation amount should if possible be paid into Mr R's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr R hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to the likely income tax rate in retirement – presumed to be 20%, but I'm willing to hear alternative perspectives on this, given the size of Mr R's pension fund. So making a notional reduction 15% overall from the loss adequately reflects this.

As I've said above, irrespective of the "loss" status, Prudential should provide Mr R with a breakdown of its calculation so that he may satisfy himself of the calculation method used to determine the outcome.

I consider the £150 already paid by Prudential in respect of the inconvenience caused by this matter is reasonable in the circumstances. Mr R had been left feeling uncertain as to whether he's been financially disadvantaged by the delay, but the amount paid seems to me to be the right kind of sum to compensate him for this – separate as it is from any payment in respect of actual financial loss caused."

In response to the provisional decision, Mr R said the following, in summary:

- His understanding was that, as of the middle of November 2021, Prudential hadn't contacted IPM (the SIPP provider) to enquire as to the losses he had sustained.
- He was aware that Prudential had both a one day and four day sell down process for PruFunds and used them interchangeably.
- He therefore requested sight of the calculations of potential loss using both the one day and four days processes, along with a detailed justification for whichever one they deemed appropriate.

Prudential had nothing further to add, repeating its position that Mr R had benefitted from the UPA and that he was therefore better off.

Having considered the responses, I issued a further provisional decision on 3 February 2022, in which I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the previous ombudsman. I appreciate Prudential's position that there would have been no loss to Mr R, but I think this needs to be demonstrated by way of the proposed calculation. And I also think the fairest way to approach the calculation is to work forward from the point at which the "sell down" process would have begun on 22 April 2020, rather than working back from 1 May 2017. I think the latter method may be the source of confusion as to when the units would actually have been sold.

Using that timeline, Prudential will then be able to determine what would have been bought, and when, in the subsequent SIPP, and compare the current notional value on that basis with the actual current value.

I note that Mr R has said that Prudential operated two sell down processes, but as with the previous ombudsman, I think the assumption should be that the process, once begun, would have followed the same pattern as it then actually did – but with the starting date of 22 April 2020.

But I do agree that the calculation should be presented to Mr R in a clear and understandable format, as also proposed by the previous ombudsman.

I also agree that the sum of £150 already paid by Prudential in respect of the inconvenience caused to Mr R by this matter seems proportionate, given that any actual financial loss should be determined by the above calculation proposed by the previous ombudsman."

Prudential responded to say that it didn't dispute that delays had been caused regarding the partial transfer of Mr R's funds. It also submitted a call recording in which it asked the IFA to supply the information required from IPM to enable Prudential to calculate any loss incurred by Mr R.

The IFA had confirmed that he had this information from IPM and that he would forward it – but this didn't happen and this was the reason why the matter was referred to this service, Prudential said. During the call and in the final response letter, it had said that it would put Mr R back to the position he would have been in had the delays not occurred.

It further said that, as it had confirmed in its final response letter, it needed to take into consideration the positive financial impact caused by the delays, but it was awaiting the information from IPM which would be supplied by the IFA.

It also submitted calculations which it said demonstrated the gain for Mr R as a result of the delays. It requested confirmation that they were in the right format, using the sell down date of 22 April 2020.

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'm grateful to Prudential for sending a copy of the calculations it's undertaken in response to the provisional decision. I think to offer finality to both parties, and as the next logical step in the process, it's best if I offer further commentary on what it's done in the form of this final decision.

As far as I can tell, and on the basis that Prudential considers that, as part of the sell down process the unit encashment would have occurred on 22 April 2020 (as set out in the

provisional decision, it should confirm this to Mr R), the principle of the calculation seems reasonable.

But there is then the additional step of obtaining the notional value, which should be at the date of this decision, of Mr R's SIPP on the basis of the revised timeline.

I think it may well be the case, on the basis of the calculation provided, that this is will result in a "no loss" situation for Mr R, and I appreciate that Prudential will need to obtain the relevant information from IPM to ensure that this is the case. As such, I acknowledge its comments relating to previous attempts to obtain the relevant information. Mr R, and/or his IFA, would need to cooperate with any information request, or if required provide a letter of authority for Prudential to request the information, but I'm confident Mr R and/or his IFA will oblige.

And although Prudential has supplied a copy of its calculation in spreadsheet format, as I said in the provisional decision, it will also need to provide Mr R with a clear breakdown or explanation as to how it's arrived at its outcome.

Putting things right

My view on the manner of calculating whether loss has been caused to Mr R remains the same as set out in the provisional decision, as does my view on the amount already paid to Mr R in respect of the inconvenience and uncertainty caused by the delays.

My final decision

My final decision is that I uphold the complaint. I require Prudential Life Assurance Company Limited to undertake the above, and if compensation is due to Mr R, make payment accordingly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 April 2022.

Philip Miller
Ombudsman