DRN-3667648

The complaint

Mrs F complains about the delay applied to a switch of her pension funds by The Prudential Assurance Company Limited (Prudential). Mrs F says she was forced to cancel the switch of her funds to cash because of the 28-day delay. She decided to make the switch at a later date.

Mrs F says the delay applied to the switch resulted in a financial loss as the value of the fund went down significantly in that period. She also says Prudential was inconsistent in its application of this 28-day period as it wasn't applied when she switched her funds in September 2020

What happened

On 2 March 2020 Mr F contacted Prudential on his wife's behalf, to ask about switching her Pru Growth Funds to cash. He was informed that a 28-day waiting period would be applied to the sale, but the price would be locked in on that day.

On 6 March 2020 Mr F contacted Prudential on his wife's behalf. Prudential's representative informed him that the switch from the Growth Fund would take four days. Prudential then subsequently contacted Mr F and informed him that its customer representative had made an error and that the information provided had been incorrect.

On 17 March 2020 Mrs F cancelled the switch of her funds to cash.

Mrs F complained to Prudential about the conflicting information she and her husband had been provided about switching her funds to cash. Prudential upheld her complaint in its response letter of 4 April 2020 and paid Mrs F £75 compensation.

On 15 April 2020 Mrs F instructed Prudential to switch about half of her funds to cash. That switch was completed on 14 May 2020.

On 30 July 2020 Mrs F transferred about £81,000 of her pension plan to another provider.

On 2 September 2020 Mrs F requested the rest of the fund to be switched to cash. The switch was settled the next day.

Mrs F then made a request to transfer her plan to another provider on 7 September 2020.

At the end of September 2020, both Mr and Mrs F complained to our service about the switch of funds in their pension plans. Mr and Mrs F said they were given conflicting information and they felt that Prudential had applied the 28 delay inconsistently and to their disadvantage.

The transfer of Mrs F's pension plan was completed in October 2020.

Our investigator investigated Mrs F's complaint about the delay in switching her units to cash and upheld the complaint in part.

Prudential said Mrs F received information about switching funds when she took out the plan. It said it had reviewed a number of calls made by Mr and Mr F and it acknowledged it had provided some incorrect information on 6 March 2020. However, it said it had taken steps to rectify this by informing Mr and Mrs F of the correct time period shortly after.

Prudential said it had allowed Mrs F to cancel her instruction and it had paid Mrs F compensation of £75 for the incorrect information, and for the delay in recording her complaint. It also noted there was a distinction between what happened with a switch and what happened with a transfer of the plan to a new provider.

The investigator said that Prudential wasn't responsible for the advice to take out the Retirement Account. The investigator considered that Prudential had provided information when the application for the Retirement Account was made which informed Mrs F about the 28-day delay.

The investigator noted that Prudential had agreed to pay £50 for the incorrect information provided on 6 March but he noted that the information provided on 2 March was also incorrect. He noted Mrs F had been informed that the price would be locked in, which wasn't the case, as the price was determined later on at the end of the 28-day period. The investigator felt that had caused Mrs F to start the switch process which she then cancelled.

The investigator also thought that, as Prudential had then taken only one day to switch the funds in September 2020, it had acted inconsistently. He said that had increased the upset caused to Mrs F because she had felt that the 28-day period had been applied unnecessarily in April 2020.

So, the investigator said that Prudential should pay Mrs F a further £100 for the trouble and upset caused to her.

Both parties disagreed with the outcome reached by the investigator.

As no agreement could be reached the complaint was referred to me for decision.

I issued a provisional decision where I reached the same decision as the investigator and upheld the complaint in part. But I gave additional reasoning for my conclusions and further clarification in relation to the compensation.

The following represents an extract from my provisional decision, and forms part of this final decision.

<u>What I've provisionally decided – and why</u>

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

Mrs F and her husband have both made complaints about the switching of units in their Retirement Accounts to cash, but this decision relates only to Mrs F's complaint, as their complaints have been looked at separately.

I should also make it clear that this decision refers to the application of the 28-day waiting period to switches as that is the matter originally complained about, and other issues around the transfer of the Retirement Plan to another provider are separate to this particular complaint- and are being addressed separately.

Mrs F says that Prudential shouldn't have applied a 28-day delay to the switch of her funds to cash and the result of doing so was a loss to the value of her plan, because the value of the units reduced during that time. She also says that it acted inconsistently and only applied the delay when it was of advantage to Prudential.

Prudential says it was entitled to apply the waiting period under the terms and conditions of the Retirement Account. It acknowledges some incorrect information was given to Mrs F, both directly, and via her husband. But, it says, the £75 paid in compensation for the trouble and upset caused to her and for the delay in recording her complaint, is sufficient compensation.

<u>Prudential's role with regards to Mrs F's pension plan</u>

Mrs F says she wouldn't have taken out the plan if she had been aware of the delay in switching her funds which left her in the position of not knowing what price she would receive until the switch took place.

I think the first thing to consider is the nature of Prudential's role here. Mrs F was sold the Retirement Account by a third-party adviser, not Prudential, who was the provider. That adviser would have been responsible for ensuring the plan was suitable for Mrs F and drawing her attention to the key features and the risks posed by the plan. Whereas Prudential , as the provider of the plan, had to ensure the information it provided was clear, fair, and not misleading. I therefore set out my assessment on this below.

<u>Was Prudential entitled to apply a 28 delay to switches out of PruFunds?</u>

The terms and conditions set out how the Retirement Account works, and have a section dedicated to PruFunds in Part B. Under the title "What are PruFunds?" it describes them in the following way:

***PruFunds** are With-Profits Funds that operate under special rules relating to the sharing of profits and the **smoothing** of investment returns. They make up part of our With-Profits subfund,into which the premiums from a number of different types of policies are paid.*

It then goes on to explain, at section 11, that a 28-day waiting period applies in certain circumstances. It says:

*11.1 When **PruFund units** are cancelled, there may be a 28-day waiting period before the cancellation takes place. This is to protect the With-Profits sub-fund and, therefore, the interests of all With-Profits policyholders and shareholders.*

*11.2 The 28-day waiting period automatically applies when you switch out of **PruFunds** unless you are switching from a **PruFund** where a **capital guarantee** payment has been made on that fund in the previous 28-days.*

11.3 The 28-day waiting period may also apply if you:

*11.3.1 take a **transfer payment** or **drawdown transfer** from your Retirement Account;*

*11.3.2 buy an **annuity**;*

*11.3.3 take an occasional **UFPLS** from your **Pension Savings Account**;*

11.3.4 set up a new regular payment out of your Retirement Account;

*11.3.5 take an occasional payment from your **Pension Income Account**.*

If the 28-day waiting period applies to any of the scenarios in section 11.3 then we will tell you at the time you give us your instruction.

The terms also explain, at 11.4, that:

*Where a 28-day waiting period applies the **unit price** used is that at the end of the 28-day waiting period.*

In addition, there is further explanation as to what happens when a switch is made. In relation to PruFunds, the terms and conditions say:

*12.2.1.4 where a switch is to be made out of a **PruFund**, at the end of the 28-day waiting period referred to in section 11.2, the exit proportions calculated in 12.2.1.2 are applied to the relevant **PruFund**; then*

*12.2.1.5 the **PruFund units** in 12.2.1.4 are then sold at the **unit price** at the end of the 28-day waiting period, with the sale proceeds allocated in the target proportions calculated in 12.2.1.2.*

So, I am satisfied that the terms and conditions applicable to Mrs F's Retirement Account entitled Prudential to apply a 28-day waiting period in respect of switches from PruFunds.

I consider the reasons for this are also set out in the terms, which explain that PruFunds are with-profit funds that operate under special rules and that the waiting period is in place to protect other with-profits policyholders. That is to prevent, for instance, a large number of policyholders suddenly exiting the fund when there is a downturn, so that the "smoothing" of returns within the fund can function properly and the remaining policyholders aren't disproportionately affected.

And, as I consider Prudential was entitled to apply the waiting period to switches from PruFunds, I don't think it would be appropriate to award compensation for any reduction in the value of those funds as a result of applying that waiting period.

<u>What information did Prudential provide to Mrs F and what did it say about switching funds?</u>

I can see that Prudential provided a number of documents to Mrs F following receipt of her application and prior to its completion. Those documents explained how the Retirement Account worked and included the key features document and the terms and conditions for the Retirement Account, which I have already referred to.

They key features document explained that there were a number of different investments including smoothed funds. It looked at whether investments could be changed and said:

"You can have as many investments as you want and you can move money between them. With the Smoothed funds you can only make one switch in to or out of them every three months and once you've requested this switch you can't cancel it. There's a 28-day waiting period for switches out of these funds and the price used to buy or sell units in the fund will be based on the price at the end of the waiting period."

So, I am satisfied on balance that Prudential made it clear at the outset that a 28-day waiting period would be applied to switches of PruFunds, And, as I have said, I consider it was entitled to do so according to the terms and conditions of the Retirement Account. I don't think therefore that the initial information it provided was unclear, unfair, or misleading.

However, having carefully considered the phone calls made to Prudential, I consider the information it subsequently provided to Mrs F via her husband on 2 and 6 March 2020 was incorrect and misleading. Initially Prudential said that the price would be locked in at the date of the switch request, which wasn't the case, and it then gave the wrong time period .

Prudential acknowledged at an early stage that it gave Mrs F incorrect information. In addition, I accept Prudential identified in the second phone call that it had given incorrect information and then corrected those mistakes by contacting Mr and Mrs F to explain it had given incorrect information.

But I think those errors resulted in Mrs F requesting a swich with a mistaken understanding of how the process worked and then cancelling that switch once she became aware that the 28-day period would be applied. I consider this would have caused her some trouble and upset.

These errors were then compounded by Prudential carrying out the switch requested on 2 September 2020 without applying the 28-day waiting period. It has explained that this was as a result of human error and given the terms and conditions state that the waiting period will be applied automatically for a switch of PruFunds, I accept that it was an error.

I don't agree with Mrs F or her representative that the 28-day waiting period wasn't applied on purpose on that, or other occasions, to advantage Prudential.

For the sake of consistency, I could have asked Prudential to undertake a calculation, to determine whether Mrs F would have been better off if the usual 28- day delay period had been implemented on 2 September 2020. But, as I understand it from Mr F, the value of the fund went down during that period, so I don't think that would serve any useful purpose here. As I understand Mrs F would've been worse off if the 28-day period had been applied.

<u>Instructions given to Prudential</u>

Mrs F has said she always gave the same instruction to "sell and transfer" but didn't receive the same outcome. She also questions the explanation provided by Prudential in correspondence and has said that explanation is inconsistent.

Mrs F says Prudential set out, in a letter in 2021 explaining what had happened, that the 28-day period wasn't applicable in March 2020 but in March 2020, it had said that the period did apply. Mrs F also says Prudential had also said in that correspondence that the waiting period didn't apply in September 2020.

I think when Prudential said in its correspondence that the 28-day waiting period wasn't applicable in March 2020, that was in the context of the cancellation of the switch request. It wasn't applicable because the switch had been cancelled by Mrs F and therefore, as the switch was no longer happening, there was nothing to which a waiting period would apply.

In relation to what happened in September 2020, there was a switch request at the beginning of September and then a transfer request, later in September, to transfer the remaining value of the plan to a new provider. Those are different types of action and I take into account that the 28-day waiting period applied automatically to switches, but not to transfers. I think that is why it wasn't applied to the transfer from Mrs F's Retirement Account in July 2020.

Mrs F says her instruction was always to "sell and transfer" but an instruction to transfer all, or part of a pension plan, to a new pension provider is generally more complicated than a switch and involves the new provider of the new plan. So, instructions received to sell units in a fund and transfer that amount, or switch, to cash, are not the same as a transfer of the plan to another provider. I also note that when Mrs F first complained to Prudential, she referred to a sales request rather than a transfer request.

So, I don't think on balance that there was a proper "transfer to a new provider" type of request in March 2020 which Prudential should have treated as such. And Prudential has explained that sort of request would have been treated differently to a request for a switch from one fund to cash.

This is also supported by the terms and conditions for the Retirement Account which I am satisfied treat the two types of request differently, as they state the 28-day period applies "automatically" to a switch out of PruFunds but that it "may" apply in other situations. I also note section 27 of the terms says:

"We will facilitate a transfer out as soon as reasonably practicable after we have received all of the documentation we require."

<u>Is the compensation paid to Mrs F sufficient for the trouble and upset caused by Prudential?</u>

Prudential paid Mrs F £75 in compensation for the incorrect information provided it on 6 March 2020. That also included an element to compensate for the delay in recording her complaint. So, perhaps around £50, represented compensation for the incorrect information provided. But as the investigator has correctly identified, incorrect information was also provided on 2 March 2020 that the price would be locked in. That information would've provided some reassurance to Mrs F, So, I think it would've caused some upset when she subsequently became aware that wasn't the case, and she would have to wait until the end of the 28-day period to find out what unit price she would receive.

In addition, when Prudential made this further error at the beginning of September, I think it would've had caused confusion for Mrs F and it would've appeared to be inconsistent with Prudential's previous actions. So, understandably Mrs F was left with the (incorrect) impression that the 28-day period shouldn't have been applied in April and I think that would have caused her further trouble and upset.

I also note that Prudential has looked at what happened on 3 September 2020, as a separate complaint, has explained this was an error and hasn't awarded any further compensation on that issue. And, I understand why this was treated as a separate complaint because it occurred after the first complaint had been made to the business. But I think that an inconsistency in the application of that waiting period is very much linked to Mrs F's complaint about the 28-day waiting period and whether it should have been applied.

I consider the inconsistency in how it was applied, albeit as a result of human error, increased the trouble and upset caused to Mrs F by the incorrect information given originally, for the reasons I have already set out. So, on that basis, I think it is fair and reasonable to add an extra element of compensation for that issue, rather than deal with it as a separate complaint, together with an additional element for the incorrect information given on 2 March 2020.

Overall, I think an additional £100 in addition to the £75 already paid to Mrs F is fair and reasonable compensation for the trouble and upset caused to Mrs F.

Additional complaint about the pension transfer carried out in October 2020

I note that Prudential has separately considered the time it took to carry out Mrs F's pension transfer which was completed in October 2020. As I have said above, that has been treated as a separate complaint and investigated by Prudential. I understand some compensation has been paid to Mrs F and Prudential are in the process of carrying out a loss calculation.

I consider that is a new, separate complaint made about something that occurred after the subject matter of this complaint, and isn't closely linked, like the switch request made on 2 September 2020. So, I don't intend to comment on it further. It is a matter for Mrs F whether she accepts the compensation offered by Prudential in relation to that issue if she hasn't already done so. And if she doesn't, she may refer that additional matter to this service although there may be time limits that apply.

Putting things right

I consider Prudential should pay Mrs F a further £100 compensation for the trouble and upset caused for the reasons I have outlined above.

Both parties were given an opportunity to respond to my provisional decision with any further representations they may wish to make.

Prudential acknowledged receipt and accepted the provisional decision. Mrs F's representative acknowledged receipt of the provisional decision on her behalf and indicated they had no further comments.

I also asked Prudential to confirm whether the unit price had risen during the September period and therefore whether Mrs F would have been better off if the 28- day waiting period had been applied at that point. Prudential responded and indicated that there had been a slight rise in the unit price. So, Mrs F would have been better off by £229 if the 28-day period had been applied.

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.

Having done so and noting that neither party has made any further representations on the merits of the complaint, my decision remains broadly the same as set out in my provisional decision, which is reproduced above and forms part of this decision.

However, on seeking further information from Prudential it has become apparent that the unit price for Mrs F's fund rose very slightly between the 3 September 2020 and 30 September 2020, which is the relevant date had the 28-day waiting period been applied consistently.

So, that means Mrs F would've been better off if that waiting period had been applied to her switch. I have therefore asked Prudential to undertake a calculation to determine how much more Mrs F would've received when she switched her funds and it has indicated she would have received £229 more.

That additional amount would have been transferred with the rest of Mrs F's pension plan. So, that amount should be paid to Mrs F, together with any investment growth that would've been earned on this additional amount, if it had been transferred to her new pension plan in October 2020 up to the date of my decision.

Putting things right

I consider a comparison should be carried out between the amount Mrs F would have received if the 28-day waiting period had been applied to her switch on 2 September 2020 and what she actually received.

If there's a loss, then any investment growth that would have been made on that additional sum, by it being invested in Mrs F's new pension plan from the date of transfer to the date of this decision, should be added.

However, Prudential has already confirmed there was a loss, and has carried out a calculation adding 8% simple interest per year (net) to that additional sum, from the date of transfer to the date of calculation.

I think that rate of interest is likely to be more than the investment growth during that period. So, on that basis and for ease of calculation, I would also accept a calculation carried out with 8% simple interest per year added to any loss, from the date of transfer to the date of my decision.

If Prudential considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs F how much it's taken off. It should also give Mrs F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

However, if Mrs F would instead prefer an investment growth calculation to be carried out, she should contact Prudential.

The compensation amount should if possible be paid into Mrs F's current pension plan.

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 Mrs F as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mrs F hasn't yet taken any tax-free cash from her plan, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement presumed to be 20%**.** So, making a notional reduction of 15% overall from the loss adequately reflects this.

And as I have said in my provisional decision an additional £100 should be paid to Mrs F for the trouble and upset caused to Mrs F.

My final decision

My final decision is that I uphold Mrs F's complaint in part and The Prudential Assurance Company Limited should pay compensation to Mrs F as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 4 January 2023.

Julia Chittenden
Ombudsman