DRN-3736223

The complaint

Mr A complains about the way in which The Prudential Assurance Company Limited (Prudential) handled the transfer of his occupational pension scheme (OPS) benefits into a personal pension. He says, following an administrative error from the employer, the transferred amount was lower than had been expected.

He says Prudential delayed in making him aware of this reduced value and didn't issue a suitability report following the transfer to support its original recommendation. He says he wouldn't have transferred if he'd been aware of the lower figure and the delay meant he didn't have the chance to return the money to the employer and cancel the arrangement.

What happened

Mr A had been a member of his employer's OPS. In February 2020 he met with Prudential and followed its recommendation to transfer the OPS benefits into a personal pension style "*retirement account*." The transfer report that was issued to Mr A noted the total transfer value was £751,359.69.

However, when the transfer took place on 5 May 2020 only £633,328.28 was received by Prudential. The money was still invested around one week later, but Mr A says he wasn't issued with a new suitability report to confirm that the recommendation remained in his best interests.

In May 2020 Prudential contacted Mr A's employer to query the lower amount that was transferred. But because the employer said it would need some time to investigate the issue Mr A was paid his tax free cash lump sum (TFC) – which was around £30,000 less than he expected. This was confirmed in a letter from Prudential dated 23 June 2020.

The employer subsequently accepted that it had made an administrative error in combining the value of Mr A's Additional Voluntary Contributions (AVCs) and the "*money purchase underpin*" within the account total. It said the value of the AVCs was actually only £10,791.22 which was significantly different to the transfer value it had quoted.

It said the value of the AVCs, in addition to the main fund benefit, was the correct amount that should have been (and was) transferred. It asked Mr A to check if the Prudential adviser would still have given the same advice if the correct figure had been known, to decide what corrective action it could take.

Prudential subsequently confirmed its recommendation and issued a new report and illustration.
But Mr A complained about the events that had taken place. He said when the lower amount was transferred to Prudential, he contacted it to query the figure but was told more funds might follow. But he says he heard nothing further until August 2020 when the lower transfer value was confirmed as being correct and a new suitability report was issued. He said Prudential should have queried the lower amount when it was received from the employer and provided an updated suitability report so that he could have decided on the right course of action.

Mr A says that subsequent conversations with other advisers have suggested that he might have been disadvantaged by continuing with the transfer and that it shouldn't have occurred without an updated report.

Mr A says he now only has the option of joining the employer's stakeholder pension – which isn't as good as the defined benefit scheme he belonged to. His employer says it can't reinstate him back into the original scheme.

Prudential didn't uphold Mr A's complaint. It made the following points:

- It received the lower transferred amount from the employer on 5 May and invested those funds on 15 May 2020. Its adviser contacted the employer around 10 days later to question the figures but was told an investigation into the problem could take up to 50 days. The employer wasn't able to discount that further funds might be paid in respect of the transfer.
- Because of the length of time the investigation might take, Prudential decided to pay Mr A his TFC – something it wouldn't usually have done.
- It complained to the employer in July 2020 about the time taken to provide a response and eventually received a letter in August 2020 in which the employer admitted its administrative error.
- Its adviser had no way of knowing the error had been made in May 2020 – so it didn't think it had done anything wrong.
- It confirmed its original advice was still suitable and explained the extent of the error made by the employer when it wrote to Mr A in August 2020. This information was also conveyed in a video meeting with Mr A on 26 August 2020.

But Mr A wasn't satisfied, and he brought his complaint to us where one of our investigators looked into the matter. They said the complaint should be upheld making the following points in support of their assessment:

- They didn't think Mr A was complaining about the suitability of the advice to transfer his OPS benefits. The consideration here was the possible delay by Prudential in querying the lower transfer value which only seemed to have occurred after Mr A had raised an enquiry.
- They thought Mr A would still have gone ahead with the transfer if he'd known about the error sooner because his main objective was to clear his debts using the TFC.
- But they couldn't ignore that Prudential should have made Mr A aware of the lower transfer value much earlier so that he could have considered his options. They also thought Prudential should also have provided a revised suitability report to confirm the suitability of its advice.
- They thought appropriate compensation for Prudential to pay Mr A for the loss of expectation and inconvenience caused was £600.

Prudential accepted the investigators findings, but Mr A didn't agree with the outcome.
He said he thought this was Prudential's error and therefore expected it to pay him the difference between the transfer values.
He said his complaint was about Prudential's lack of advice in confirming the transfer was still suitable when the lower amount had been transferred. He said if it had produced a report at that time and not three months later it may have been possible to return the money to the employer and cancel the transfer. Mr A confirmed he had complained to the employer about the administrative error it had made.

Subsequently Mr A said he'd received letters from Prudential and the scheme provider who were blaming each other. He said he wouldn't have drawn down his funds if he'd known about the difference in values. He said he wanted his complaint to be referred to an ombudsman – so it was passed to me to review.

My provisional decision

In my provisional decision I said Mr A's complaint should be upheld but only in respect of compensation for the impact of the delay in Prudential providing an updated suitability report. I made the following points in support of my findings:

- It was clear that the higher transfer value quoted was an administrative error from Mr A's employer. The figure that was actually paid to Prudential was correct and represented the transfer value Mr A should have received.
- So I didn't think Mr A was entitled to the higher amount as that would put him in a better position than he ought now to be in.
- But I did think Prudential should have confirmed the suitability of the transfer soon after it received the lower transfer amount. I thought the delay in providing the report raised Mr A's expectations and didn't give him the opportunity to reconsider the advice before the transfer completed – and could be revoked.
- I thought the investigator's recommendation of £600 compensation for the impact of the delay of the report was fair and reasonable in the circumstances. But I didn't include compensation for the administrative error which I thought was made by Mr A's employer.
- I thought about what Mr A might have done if he'd know about the correct valuation earlier. But as I didn't think he could have cancelled the transfer or returned the funds, I didn't believe a revised suitability report would have made any difference to his actions.
- That outcome was based on the premise that Mr A didn't have any concerns about the suitability of the advice to transfer – which I said he should confirm in his response to the provisional decision.
- I also thought that as Prudential's recommendation was for Mr A to release *"as much cash as possible tax efficiently",* then it was more likely than not Mr A would have gone ahead with the transfer regardless – as that appeared to be the main driver for the transfer.

Responses to the provisional decision

Prudential had previously accepted the investigators assessment and recommended amount of compensation – so made no further response to my provisional decision.

Mr A also made no response to my provisional decision about this existing complaint, and provided no further submissions. But he said that, having read the report carefully, he would like a separate investigation to be undertaken into the original advice given to him to transfer his OPS benefits.

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.

And having done so I see no reason to depart from my provisional findings – so I'll set out my reasons below.

But I should first make it clear that, as Mr A has subsequently raised the question of the suitability of the original advice to transfer his DB benefits, we've set that up as a new complaint and the matter will be investigated separately. What I'm considering here is the question of Prudential's delay in making Mr A aware of the reduced transfer value and the delay in issuing him with a revised suitability report.

The transfer value error

Mr A's OPS transfer value consisted of the cash equivalent value of his defined benefits, as well as a separate account for his AVCs. However, the initial transfer value that Mr A's employer sent to Prudential included an additional £118,813.41 which was in fact an "underpin" of the defined benefit equivalent and had already been included in that figure. I'm satisfied that, having looked at all the documentation involved, this was an administrative error from Mr A's employer.

The letter the employer sent to Prudential in August 2020 explained what had happened and confirmed the transfer value should have been £633,328.28. I'm satisfied the additional funds were simply the result of including the "underpin" figure twice, so I think the amount that Prudential subsequently received was correct and I'm satisfied this was the value that Mr A was due. It wouldn't be fair to recommend that he should receive the higher value as that would put him into a better position than he should have been in.

But Mr A has complained that when Prudential became aware of the error it had a duty to tell him straight away and also to provide him with an updated suitability report – confirming that the advice to transfer was still in his best interests. So I have looked at Prudential's actions from when it became aware that the transfer value might have been incorrect.

The delay in issuing an updated suitability report

Prudential issued its first suitability report on 25 February 2020. The report concluded that a transfer was in Mr A's best interest. However, on 5 May 2020, Prudential received a significantly lower amount in respect of the transfer than what it had expected. Prudential did question this with the employer – whose response wasn't entirely clear and led to Prudential to believe further funds might still be provided. It was three months later before Prudential was able to issue revised illustrations and a suitability report. Prudential said that during that time it paid Mr A his TFC so that he wasn't disadvantaged – which wasn't its usual approach.

Mr A says that Prudential needed to make him aware of the lower transfer value straight away – along with a revised report – so that he could consider if the transfer was still in his best interests. He says he could have reversed the transfer if he'd known about the problem with the value immediately.

I don't think it would have been possible for Mr A to reverse the transfer in this case as defined benefit transfers don't usually offer cancellation rights – although the trustees might have reconsidered their position on that matter due to the administrative error they made. But I don't think Prudential was in a position to affect that.

However, I still think Mr A needed to be made aware of what had happened at the earliest opportunity, regardless of the investigation the OPS trustees said they would conduct, and I think he ought to have been made aware of how the reduced transfer value might have affected the overall recommendation to transfer sooner.

So, I've considered the impact this had on Mr A – which I think was significant. I think he would have been concerned for those three months that the transfer might not still be in his best interests, which I think would have caused him some distrust and worry. I note the investigator recommended that Prudential should pay Mr A £600 for this impact which Prudential said it was prepared to pay. In the circumstances I think this is probably a fair and reasonable amount to compensate for the delay in issuing a revised suitability report – with the consequences that had. But it's clear that the actual administrative error was made by the employer, so I haven't included an award for the impact caused by that error alone.

What would Mr A have done with an earlier revised suitability report

As I've said above Mr A would now like the overall suitability of the advice to transfer to be investigated separately – so I haven't considered any aspect of the suitability here. But, as suggested in my provisional decision, it is important to consider what action Mr A might have taken differently if he'd been provided with a suitability report in a more timely manner after the lower transfer value was paid.

I've considered that matter carefully and I've concluded that Mr A would still have gone ahead with the transfer. I say that because I think Mr A was always likely to have followed Prudential's recommendation throughout the process, after all he accepted the original recommendation. The revised suitability report that Prudential issued confirmed its original recommendation as it said, "*please note that the initial advice to transfer has not been affected by this change in value, and that the retirement modelling that has been re-done illustrates that there remains minimal shortfall risk in achieving our retirement plans as original noted."*

So, regardless of any separate investigation into the suitability of the advice, Prudential said in its addendum report that its advice was still to have transferred the lower value. I see no reason why Mr A wouldn't have taken that advice and concluded that the transfer was still in his best interests. So I don't think him not being made aware of the reduced transfer value quicker, or being provided with an updated suitability report as soon as the amount was transferred, would have changed his actions. I think he would, on balance, still have decided to go ahead with the positive recommendation Prudential set out in the revised report.

Putting things right

Prudential should pay Mr A £600 for the trouble and upset caused by the delay in making him aware of the lower transfer value and issuing a revised suitability report and recommendation.

My final decision

For the reasons that I've given I uphold in part Mr A's complaint against The Prudential Assurance Company Limited. Prudential should pay the amount set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 November 2022.

Keith Lawrence

Ombudsman