

The complaint

Mr M complains that The Prudential Assurance Company Limited (“Prudential”) gave him incorrect information that led to a Pension Sharing Order providing an unfair transfer of assets to his ex-wife.

What happened

Mr M holds pension savings with Prudential. In January 2021 a degree absolute was granted ending the marriage of Mr M and his wife. As part of the financial settlement of that divorce Mr M agreed to the transfer of some of his pension savings to his ex-wife. The value of that transfer was set out in a Pension Sharing Annex, that was dated 22 September 2020.

But the Annex incorrectly identified Mr M’s financial advisor as the administrator of his pension savings, rather than Prudential. And Prudential says the Pension Sharing Order (although I have not seen a copy) set out the amount to be transferred in cash terms (at £315,000) rather than the percentage terms as required by legislation. So, in May 2021, it told Mr M that it was unable to implement the instruction and that he would need to return to Court for it to be clarified. I understand that process was arranged by Mr M’s ex-wife, and Mr M was not party to the revisions to the Order.

In July 2021 Mr M had some correspondence with Prudential. He told the firm that he didn’t agree with the changes that had been made to the Pension Sharing Order and asked the firm to delay its implementation whilst he sought additional instructions from the Court. In September 2021 Prudential wrote to Mr M. In the email, that I will discuss in more detail later in this decision, Prudential told Mr M how it would calculate the amount it would transfer to his ex-wife. And it set out the dates on which the calculation would be made. It asked Mr M to provide an updated Pension Sharing Order, showing the amount to be transferred as a percentage, before it could proceed.

A new Pension Sharing Annex was issued by the Court dated 13 October 2021. That Annex confirmed that the transfer to Mr M’s ex-wife should comprise 63.58% of his pension savings. Prudential set the effective date for the implementation of the order 28 days later, on 10 November 2021. The transfer was completed in early 2022.

Mr M’s complaint has been assessed by one of our investigators. He thought that Prudential had correctly implemented the terms of the Pension Sharing Annex. And he didn’t think that any of the communications Mr M had been sent by Prudential had been misleading. So he didn’t think the complaint should be upheld.

Mr M didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr M and by Prudential. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

As our investigator has explained to Mr M, it isn't appropriate for this Service to intervene in matters that have already been considered by the Courts. But I am able to look at whether Prudential has correctly implemented the instructions the Court provided. And I can look at whether any of the information Prudential provided to Mr M was incorrect, or misleading. Those are the issues that I will consider in this decision.

In my introduction I have explained a basic timeline of the Pension Sharing Annexes that was granted as part of Mr M's divorce proceedings. In summary I think the Courts acted on three occasions. The original Annex was granted on 22 September 2020. It appears that Annex was varied, to correct the pension scheme administrator, on 1 July 2021. And a further alteration to the Annex, to change the percentage being shared, was made on 13 October 2021.

The Annex that Prudential used when calculating the value of Mr M's pension savings that should be transferred was dated 13 October 2021. But I think it important to note that that document, containing the amended transfer percentage, was originally dated as at the date of the original Annex (22 September 2020). The date was altered by the Court by the addition of a stamped date, and authorising Court stamp. It therefore seems to me that the Court gave a clear direction that a new effective date should apply. So I cannot reasonably say that Prudential was incorrect when it concluded that the intention of the Court was for the Annex to be dated in October 2021.

Mr M had some correspondence with Prudential in September 2021. In that email Prudential explained that the valuation date for the Pension Sharing Order would be determined as the later of the date of the Decree Absolute or 28 days after the date of the Pension Sharing Annex. It told Mr M that it considered the date of the Annex to be 22 September 2020, and the Decree Absolute to be 20 February 2021 (although that date was incorrect and later amended by Mr M to be 20 January 2021). So it said, in line with the regulations, and in the absence of any appeal by Mr M, it would use the date of the Decree Absolute as the effective date for the order.

I think it is important that, at the time that email was sent, the revisions to the Annex that took place on 13 October hadn't been considered by the Courts. Mr M has said that Prudential should instead have referred to the amended Annex dated 1 July 2021. But I don't agree. Mr M had already told Prudential that it should disregard that Annex since it had been issued without his involvement, and was being appealed. So I don't think it unreasonable, when the email was sent in early September 2021, for Prudential to have concluded at that time that the relevant Annex for its consideration was dated September 2020.

I am satisfied that the Annex dated 13 October 2021 replaced any that had gone before. So, given that date was later than the date the Decree Absolute was granted, I think it followed from Prudential's email that the effective date would change. And following the advice provided in the email Prudential correctly calculated the effective date as being 28 days later, on 10 November 2021.

It seems clear, from the initial Court documents I have seen and Mr M's testimony, that his intention was for the pension share to be fixed at around £315,000. And that was Mr M's intent when he asked the Court to amend the share percentage. But I think the explanatory notes on the Pension Sharing Annex, and the information that Prudential had provided, were clear that the actual value of the transfer would vary depending on changes to the value of Mr M's pension savings.

So, like our investigator, I don't think that Prudential has done anything wrong. It seems to me that it was entirely reasonable for Prudential to conclude that the relevant Annex it should use when determining the effective date was issued on 13 October 2021. And I don't think the email it sent to Mr M on 7 September 2021 was misleading. That email told him that it would only use the date of the Decree Absolute, in the absence of any appeal by Mr M. And the email reminded him that the transfer value would be applied to an updated valuation once the Court had agreed the Pension Sharing Order.

I appreciate how disappointing my decision, and this situation, will be for Mr M. But it is not reasonable to expect me, or Prudential, to second guess the intentions of the Court. Should Mr M feel that Prudential's application of the Pension Sharing Order has resulted in an unfair outcome that would be a matter for him to raise with the Court where he might seek a further variation to the terms of the Pension Sharing Order. I think that Prudential's actions here were reasonably in line with the instructions it had been given under the terms of the Pension Sharing Order, and Annex.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against The Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 April 2023.

Paul Reilly
Ombudsman