

The complaint

Mr F and TM as SIPP trustees complain that The Prudential Assurance Company Limited used the incorrect unit price when calculating withdrawals from a Self-Invested Pension Plan (SIPP).

What happened

Mr F asked TM as SIPP trustees to withdraw units from his SIPP and TM as SIPP trustees emailed the instruction to Prudential on 16 March 2020. Prudential sold the units using the unit price on 17 March. Mr F and TM as SIPP trustees complained to Prudential that it should have used the unit price on the day it received the instruction – 16 March. Mr F says Prudential had told him before he decided to sell the units that the unit price used would be the unit price on the day Prudential received the instruction. Mr F complained this had caused him a financial loss that he hadn't expected.

Prudential said it couldn't trace any telephone calls from Mr F from before TM as SIPP trustees sent the withdrawal instruction. Prudential said it used the correct unit price as detailed in the terms and conditions of the SIPP but said it would pay Mr F £150 for the delay in dealing with his complaint. Mr F provided Prudential with further details of the dates and times he made his calls and Prudential reconsidered the complaint. Prudential then found a call Mr F made on 6 April and said that in this call Mr F had been told the unit price used would be the price on the date the request was received and said this was correct. Prudential didn't uphold the complaint but said it would arrange to pay the £150 referred to in its first response to TM as SIPP trustees.

Mr F and TM as SIPP trustees brought the complaint to the Financial Ombudsman Service where one of our Investigators looked into things. The Investigator thought that the terms and conditions of the SIPP confirmed the unit price Prudential would use for a withdrawal was the price on the day it received the e-mail instruction. And as Prudential had accepted it received the instruction on 16 March, the unit price for this day should have been used.

Prudential didn't agree with the Investigator and asked that an Ombudsman decides the complaint. Before I considered the complaint, I noted that there were three separate instructions sent to Prudential to sell units on 12, 16 and 19 March. All three of these withdrawals had unit prices calculated using the price on the day after the email instruction had been sent to Prudential. I therefore asked Mr F, TM as SIPP trustees and Prudential if they had any objections to me considering all three transactions as part of this complaint as all were dealt with in the same way. I received no objections, so I considered what happened at the time of all three withdrawals.

As I reached a significantly different outcome to the Investigator, I issued a provisional decision for both parties to consider. In my provisional decision I said I intended to say Prudential had dealt with the withdrawal requests fairly and explained why. Mr F didn't accept my provisional decision and provided a number of comments and documents for me to consider. I can confirm I've reviewed all of these comments and documents and I will address the relevant comments and documents in my final decision below.

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 crux of Mr F's complaint is that he made his decision to withdraw funds after Prudential told him it would use the unit price on the day it received the instruction. Unfortunately, Prudential has only been able to provide recordings of calls with Mr F that took place after the withdrawals had completed and calls with TM as SIPP trustees on 13 and 17 March.

The SIPP invested in a Trustee Investment Account with Prudential. This was a unit linked growth fund and not a with-profits fund, therefore many of the documents Mr F supplied after my provisional decision aren't relevant to this particular investment. And whilst Mr F has provided details of a decision made by another Ombudsman for me to consider, my decision is based on the circumstances of Mr F's case.

Prudential didn't receive an authority from TM as SIPP trustees to discuss the investment within Mr F until September 2020. This is most likely why Mr F's call or calls before 13 March weren't added to the case. Mr F wasn't authorised to provide instructions and Prudential wasn't authorised to provide him with any specific advice about the SIPP. However, taking into account the strength of Mr F's testimony I think it's likely he did call Prudential before 12 March, but without any other supporting evidence of what was said in any call, or calls, I'm not persuaded Prudential told Mr F the unit price would be calculated on the day the instruction email was sent. Prudential provided some recordings of calls made by Mr F, but these were made after all three withdrawals had been executed.

I've listened to the telephone calls TM as SIPP trustees made to Prudential on 13 and 17 March. In the call on 13 March neither TM as SIPP trustees discussed what unit price would be used. However, in the first telephone call on 17 March, Prudential confirmed to TM as SIPP trustees that the email request sent on 16 March had been received on 17 March at 08:52 and that the email request of 12 March was received on 13 March. In the second call on 17 March, Prudential confirmed it couldn't give a value of the withdrawal as it hadn't been calculated yet. In my opinion, Prudential made it reasonably clear to TM as SIPP trustees that the days it treated these instructions as received were 13 and 17 March respectively.

In his response to my provisional decision, Mr F says that one of the calls between TM as SIPP trustees and Prudential on 17 March was, by coincidence, with the first lady he spoke to after the unit price timing issue became apparent. Mr F says that Prudential has been unable to provide a recording of this call. Regardless of this, I'm satisfied that as Mr F says this call was made after the unit price matter had arisen, I can't reasonably conclude Mr F used this call to make his decision to withdrawal units.

Prudential were sent the email instructions before 5:00pm on 12, 16 and 19 March 2020 and used the unit prices on the day after it received the instructions to calculate the value of the withdrawals. So, I've looked at the terms and conditions of the SIPP to see if Prudential treated the requests as it should reasonably have done.

The terms and conditions of the SIPP state that withdrawals could only be accepted in writing and that the effective date for postal instructions is the day of receipt. Prudential said that at the time it was accepting withdrawal instructions by email, and that full surrenders, part surrenders and income requests are considered money movements. Prudential told us this was a 'concession', but that it's always used the same approach as it does for emailed switch instructions and if these are received by 5.00pm on a working day the effective day of receipt is the next working day.

Section 12 of the terms and conditions deals specifically with fund switches, but there's a separate section within the terms and conditions that deals with withdrawals, section 13. I've therefore considered what both section 12 and 13 say in respect of instructions received by email and how these sections rely on section 16.4 to determine the day a request is treated as received by Prudential

Section 12.2.5 (b) explains:

"In the following instances we normally sell the existing units and buy the new units as at the same date, using the unit prices for the working day we treat the request as having been received by us under section 16.4:

(i) Switches between Unit-Linked Funds..."

Section 13 explains:

"13.1 Withdrawals

... You can only ask us to sell units by sending a written request to Prudential, unless we agree to the request being in some other form."

13.2 Calculation of withdrawals

13.2.1 General

(a) The amount made available under section 13.1 shall ... be those applying on the day we treat your request as received in accordance with section 16.4."

Section 16 of the terms and conditions makes it clear that all notices must be sent by post, unless the relevant section says that another form of communication is acceptable to Prudential. Sections 16.4.2(c) and (d) detail how Prudential treat notices received by e-mail:

"(c) Subject to section 16.4.2(d), the effective date of any notice, request or information received by us by e-mail, fax or telephone by 5.00 p.m. (London time) on a working day, is that same working day..."

(d) The effective date of a request by e-mail or fax which involves switching units between funds (see section 12) and which is received by us by 5.00pm (London time) on a working day, is normally the next working day following the date of receipt..."

Although Mr F believes section 16.4.2(c) is more relevant to his withdrawals in this case, I've decided section 16.4.2(d) is the section Prudential was reasonably entitled to rely on in the circumstances of this case. I will now explain why.

The terms and conditions don't specifically explain how Prudential would deal with a withdrawal request made by email – only by post - but Prudential says it was accepting email requests at this time. I considered whether it would be fair and reasonable for Prudential to have treated the day of receipt as the day the emails were received, but I've decided that it wouldn't be. This is because it's reasonable to conclude that a withdrawal of funds requires a similar process to a fund switch, such as selling units, and, in my opinion, it's reasonable for Prudential to have relied on 16.4.2(d), rather than 16.4.2(c). Even though Prudential was accepting requests for withdrawal by email, in its telephone calls with TM as SIPP trustees Prudential confirmed the effective date of receipts for the instructions emailed on 12 March and 16 March were 13 and 17 March respectively. I appreciate Mr F says he was oblivious

to this, but TM as SIPP trustee were aware of it, and I'm satisfied Prudential acted fairly when it used the next working day after it received the email as the effective date of receipt and then used the unit prices for that day to calculate the withdrawal amounts.

Mr F says that the final response letter from Prudential said, "*You asked what date we would use for your withdrawal, which my colleague confirmed to you would be the date we receive your request to withdraw funds, which is correct.*" I've seen this letter, but I'm persuaded it's more likely than not Prudential was referring to the effective day of receipt here and not the day the email was received. Although I acknowledge Mr F places some weight to this letter, and has strong views in this regard, the call referred to was made after all the instructions had been made and executed. Without any evidence to persuade me Prudential told Mr F that it would use the unit price on the day an email instruction was received, I've decided to give more weight to the calls TM as SIPP trustees had with Prudential on 13 and 17 March, and the terms and conditions that explained to the trustees and Mr F what the effective date of receipt would be.

Mr F asked me to consider that Prudential upheld his complaint on two separate occasions. I've looked again at the two letters Mr F referred me to, but I don't agree that these letters upheld the crux of Mr F's complaint. Instead, the response dated 24 July 2020 explains Prudential had identified an additional issue and was able to uphold the complaint overall. It then went on to say the additional issue was that it had failed to respond to Mr F's complaint in a reasonable timescale. I referred to Prudential's offer of £150 for the delayed response in my provisional decision. I'm satisfied that this wasn't an uphold of the complaint as a whole as it only dealt with the delay in dealing with the complaint. As complaint handling is not a regulated activity this isn't something I can address in my decision. Mr F says he hasn't accepted the £150, but if he now wishes to accept it, he can contact TM as SIPP trustees or contact Prudential direct. The letter Prudential sent Mr F on 17 December 2020 only referred to the delay in dealing with the complaint and didn't uphold of the crux of Mr F's complaint.

My final decision

I've decided that The Prudential Assurance Company Limited acted fairly and reasonably when it used the effective date of receipt to calculate the unit price on Mr F's SIPP when TM as SIPP trustees emailed the withdrawal instructions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and TM as SIPP trustees to accept or reject my decision before 22 March 2023.

Paul Lawton
Ombudsman