

## **The complaint**

Mr M has complained that The Prudential Assurance Company Limited (Prudential) sent his whole pension to the Official Receiver (OR) following his bankruptcy.

This should not have been the case. The pension was made up of both protected rights (PR) and non-protected rights (NPR) elements. The PR element should have been retained for the benefit of Mr M.

Mr M has stated he was not intending to take his pension for another 5 years or so, however that option has “now been taken away” with the loss of future growth.

## **What happened**

In June 2022 the OR contacted Prudential requesting the NPR pension monies due to Mr M following a prior bankruptcy. The documentation issued to Prudential noted clearly that any benefits accumulated by Mr M as protected rights (or funds built up after date of bankruptcy) should not be sent.

In July, August, and September 2022 there were numerous communications between Prudential, the OR, and Mr M regarding sending the pension monies to the OR.

The entire pension fund (PR and NPR elements) was sent to the OR. This error came to light in September 2022.

In an attempt to resolve the situation Mr M was in contact with the OR in September and October 2022. During this period Mr M requested the OR send the PR element of his pension fund directly to his bank account. Whilst the OR agreed to do this, they noted that they would require a breakdown of the pension fund (identifying PR and NPR elements) from Prudential before this could be done.

A complaint was made to Prudential about their error on 4 October 2022.

Throughout October and November 2022, the OR and Prudential were also in contact, with the entire pension fund subsequently returned to Prudential on 16 November 2022. This was confirmed to Mr M by the OR the following day, with Mr M being paid an amount of around £150 to cover the interest earned by the pension monies whilst they were held in the OR client bank account.

On 18 November 2022 Prudential issued their response to Mr M’s complaint. This apologised for time taken to respond, apologised for an information request not being actioned appropriately, acknowledged the delay in responding to the OR, and offered £500 to cover the distress and inconvenience caused.

Prudential also explained that to ensure Mr M had not lost out financially, once the funds had been received from the OR, the PR element of the pension would be backdated to reverse the incorrect encashment and put Mr M back into the position he would otherwise have been in.

On 10 January 2023 Prudential contacted Mr M to confirm funds had been received back from the OR on 16 November 2022 and that work was being undertaken to reinstate his policy.

On 27 January 2023 the total amount was re-applied to the policy and arrangements were made to send the NPR element back to the OR.

£20,128.90 (after tax) was paid to Mr M on 30 January 2023 to cover the PR element of his pension. The following day Mr M confirmed funds had been received however questioned if the correct amount had been sent and taxed correctly.

On 31 January 2023 Prudential issued an additional response to Mr M regarding his further complaint points. This response letter confirmed the PR funds had a value of around £27,000 with the net payment being around £20,000 due to tax being deducted at source. It was confirmed that any overpayment of tax could be reclaimed from HMRC.

The impact of the delays caused by Prudential were also considered. The letter noted that without delays / errors, payment would have been made to OR on 28 July 2022. Had Mr M been informed at that time it was assumed it would take 5 working days for him to get in touch and request the PR element be paid out. Following this, payment would have been made in another 5 working days – on 11 August 2022.

Had payment been made at this time (due to changes in investment values) a lower amount of around £19,800 would have been sent. The return on this amount from 11 August 2022 to 30 January 2023 (when the funds were actually received by Mr M) equated to around £600, giving a total return of approximately £20,430 - £300 less than Mr M had actually received. This difference was offered to Mr M by way of compensation, with an additional £750 to cover further distress and inconvenience.

Mr M rejected this offer and requested this service continue to investigate his complaint.

Our investigator concluded that whilst it was clear Prudential had made errors, their offer of redress was in line with what we would expect and put Mr M back into the position he would most likely be in had those errors not been made.

Mr M did not agree and re-iterated that it had not been his intention to encash his pension prior to Prudential's errors, and that as a result he had lost out on around 5 years of investment growth.

As no agreement was reached the case has been passed to me.

### **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.

Prudential have already accepted they made errors throughout the timeline of events detailed above. It has been accepted that the incorrect amount was sent to the OR, that there were delays throughout the process of sending the funds to the OR, reversing the transaction, re-instating Mr M's pension and in dealing with Mr M's complaints.

As such I do not need to investigate these issues further, this decision can focus on whether the redress offered by Prudential is appropriate given the errors made.

I would like to start by making it clear that the purpose of any redress instructions I give are to place a customer back into the position they would most likely have been in had a business not made an error. They are not intended to punish a business for any wrongdoing.

There are two elements to the redress offered by Prudential. Firstly, the amount offered to cover the distress and inconvenience caused, and, secondly, the amount offered to cover any actual financial losses Mr M suffered.

As a result of the issues faced by Mr M, Prudential have offered a total of £1,250 to cover the distress and inconvenience their errors caused.

Given the chain of events above and the extended timescales it took Prudential to rectify their errors, it is clear that a significant amount of distress and inconvenience was caused.

Mr M spent considerable time and effort in contacting both Prudential and the OM trying to rectify the issues and gain access to the PR element of his pension. As such it is reasonable to expect Prudential to award significant redress to compensate Mr M.

When considering an award for distress and inconvenience this service considers each individual case based on its unique circumstances. That said, we also provide guidance to both businesses and individual consumers regarding non-financial loss to try and ensure consistent outcomes. This guidance can be found here - <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>.

Having looked at the chain of events, their impact on Mr M and considered the guidance referenced above, I have reached the same conclusion as our investigator. I consider the total amount offered by Prudential to be reasonable in this instance. As such I am not going to ask Prudential to do any further in this regard.

The second element of redress offered by Prudential was to cover the financial losses incurred by Mr M because of their errors.

It is clear from the evidence on file that the OR was entitled to ask Prudential to send them the NPR element of the pension. At that point Mr M had two options for the remaining element of the pension.

Firstly, he could retain the remainder in the pension and utilise the funds as he saw fit at some point in future. If this option were selected the monies would have remained invested within the Prudential pension and benefitted from any investment growth until they were withdrawn.

The second option would be for Mr M to request the PR element of the pension be paid out to him directly. Monies would be encashed and no longer benefit from investment growth, but they would be available to Mr M to use as he saw fit.

Prudential's offer of redress is based on this second option.

The offer calculated the date at which the NPR element would have been sent to the OR had there not been any delays. From that point Prudential allowed 5 working days for Mr M to contact them and ask for the funds, and a further 5 working days for them to send the funds to Mr M. Using this timescale Prudential calculated that Mr M would have in fact received a lower amount at this earlier date of 11 August 2022.

However, whilst a lower amount would have been received, I would expect Prudential to make allowance for the fact that this amount should have been received by Mr M over 5 months earlier than actually occurred.

Prudential calculated the lost interest / growth on the lower amount over this 5-month period as being around £600. When this £600 was added to the lower encashment figure from August 2022, the total was £301.21 higher than the actual encashment figure received by Mr M in January 2023.

As such, Prudential offered Mr M this amount in addition to the £1,250 detailed above.

The process detailed above is in line with what I would expect a business to do where a delay has occurred as it accounts for both the changing values of the pension fund and the delays suffered by the consumer in accessing their capital.

Overall, I agree with the findings issued by our investigator and consider the redress amount offered adequately returns Mr M to the position he would most likely have been in had Prudential not made any errors. This is based on the assumption that had Prudential not caused any delays, and sent only the NPR element to the OR, Mr M would have made the same decision (to encash the PR element of his pension) at that time.

As part of submissions to this service, particularly in response to the findings issued by our investigator, Mr M has stated that it was his intention to retain the PR element of the pension for a further 5 years, and that due to the chain of events above he has lost that opportunity and the subsequent growth on his pension monies.

It is important to be clear that it would not be reasonable for me to tell Prudential to pay an amount of redress to cover lost investment growth over a future 5 years whilst Mr M also has access to the lump sum released from the PR element of his pension. Any investment growth could only have been earned if the funds had been retained within the pension.

It is impossible for me to know for certain what would have happened had Prudential not made their initial error and in such circumstances, I base my decision on what I consider most likely given the weight of evidence available and the principles of fairness and reasonableness.

Firstly, when faced with the decision about keeping or encashing his pension once funds were returned in January 2023, Mr M did choose to take the funds. As such it is not unreasonable to assume he would have made the same decision in August 2022.

From the evidence on file, I can see that Mr M was in touch with the OR in September and October 2022. At this time the OR had already received the entirety of the pension funds with the communication trying to resolve the issue. Mr M was trying to get the OR to send the PR element of the pension monies directly to himself, providing bank details to enable this. As such, again it is not unreasonable to conclude that Mr M did indeed want to receive the PR element of his pension as a lump sum.

The complaint final response letter issued to Mr M by Prudential on 18 November 2022 noted that once the funds had been returned to Prudential by the OR the encashment of the PR would be reversed – returning that portion to the correct investment fund as though the error had never been made. The letter went on to explain that Mr M could claim the PR element should he wish.

Overall, I consider this letter to evidence that Mr M was made aware of the two options he had for the PR element of his pension – leave them in the Prudential pension to benefit from investment growth over time or claim the monies and use them as he saw fit.

Having been provided with this information in November 2022, Mr M chose to receive the funds as cash in January 2023.

I appreciate Mr M's comments that he had lost faith with Prudential and as such felt he had no choice but to encash the PR element of his pension. However, the fact remains that he did have the option to retain the monies within his pension and it was his choice to encash.

As such I do not consider it reasonable to expect Prudential to provide both access to the capital and the growth that could have been achieved by retaining it in the pension.

Whilst I am upholding this complaint, I do not believe any further action is required of Prudential as their offer of redress is fair and reasonable.

### **My final decision**

I am upholding this complaint however believe the offer already made by Prudential is fair. If it has not already done so, Prudential should make the required payments to Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 July 2023.

John Rogowski  
**Ombudsman**