DRN-4036357

The complaint

Mr F complains that The Prudential Assurance Company Limited (Prudential) provided advice based on information that was factually incorrect. He states that he was not provided with all the available options and relevant documents and as a result has drawn down his pension in a way that has caused him to lose out financially.

Mr F also complains that the charges incurred exceeded the amount he was told they would be.

What happened

In April 2019 Mr & Mrs F had a meeting with an adviser from Prudential. During this meeting a fact find was completed outlining Mr & Mrs F's circumstances and objectives, and their attitude to risk was assessed.

At that time, Mr F held three pensions – an FSAVC and a Personal Pension both with Prudential (worth approximately £7,400 and £96,000 respectively), and a defined contribution workplace pension scheme (worth approximately £58,500). The fact find states that he held £10,000 in cash, and no other investments. Mr F was already retired and in receipt of the state pension, and his wife was self employed. Their household income met their expenditure. The file states that Mrs F had confirmed her state pension entitlement and that when that commenced, the combined state pensions would be sufficient to meet their expenditure. Mr F's objectives were stated to be to access a lump sum from his pensions of £57,731 as Mr and Mrs F wanted to buy a new car (£30,000), finish renovations on their home and for some special holidays.

A recommendation was made for all three of Mr F's pensions to be transferred into the Prudential Retirement Account policy, invested in the PruFund Risk Managed 2 Series E which was a managed fund, designed to limit volatility by the use of smoothing. Mr F's policies were transferred in line with the recommendation. A proportion was invested in cash to allow for the maximum tax free cash to be taken at outset.

In 2020, Mr F's annual review was carried out by a different adviser due to their original adviser having left Prudential. During this meeting it came to light that Mr & Mrs F did not understand the advice given and the charges incurred.

The complaint was referred to this service and our investigator agreed with Mr F and upheld his complaint. As Prudential didn't agree, this case is with me for a final decision.

<u>Provisional findings</u>

I issued my provisional decision on 07 March 2023. It said:

"Within Mr F's original complaint there were a number of points raised relating to specific statements in the suitability report. I do not intend to address each point individually as they all pertain to the same ultimate point, that Mr F believes that the advice he was provided was

based on incorrect information in relation to his objectives, was unsuitable and that the charges applied to his plan exceeded what he was told they would be.

When considering whether the advice to transfer was suitable for Mr F, I have considered what his objectives were most likely to be at the time the advice was given. In his communications after the advice, Mr F states that with hindsight he would have "only taken out the £96K pension pot as this would have released approx. £23k and then continued to be invested, we have discussed this with [the new adviser] who agreed this may well have been a better option." I consider this to be a fair representation of Mr F's need for a lump sum – not least because he hasn't spent the full amount of the tax free cash he accessed. That is, he wanted to access some of his pension as tax free cash but he didn't need the nearly £60,000 he ended up with.

In coming to this conclusion, I have taken into account the fact find and suitability report, which recorded Mr F as needing a very specific tax free lump sum (£57,731) and the reasons why Mr F needed that amount. Mr F didn't question this at the time, so I recognise this may be a fair reflection of what he wanted. But I think, on balance, if the adviser had done more to explore Mr F's situation, it would have become apparent that Mr F didn't need to access all his tax free cash at that point or, for reasons that I will come on to, transfer all his pensions.

I think it was suitable for Mr F to transfer his Prudential personal pension to the Prudential Retirement Account policy. I say this because I'm satisfied the tax free cash he could take from that policy was, broadly, the amount he needed to take and because he couldn't have accessed that tax free cash and kept the remainder invested – which is what he also wanted – without transferring given drawdown wasn't available with his personal pension.

However, having considered the suitability of the transfer of Mr F's Prudential FSAVC and workplace pension plan, I am not satisfied that it was in his best interests to transfer these to a Prudential Retirement Account. As outlined in the original investigation, the new policy incurred additional charges. There is no evidence of alternatives having been considered, specifically the option of a stakeholder plan. Whilst it is accurate to say that the existing plans did not have the same options in relation to ongoing advice, drawdown and fund availability as the recommended Prudential Retirement Account, there is nothing to indicate that these were required by or important to Mr F at the time of the advice. It is stated in the suitability report that Mr F did not wish to take out an annuity. Whilst it would have been necessary to transfer his pensions in order to access his fund flexibly, there is nothing to indicate that it needed to be done at the time of the advice – this was an option that would have been available to Mr F at a later date if required.

The recommendation to switch the Prudential FSAVC and Mr F's workplace defined contribution to the Prudential Retirement account resulted in a more expensive plan. In my view, the reasons given for the transfer didn't justify incurring these charges, and I uphold this element of the complaint.

Turning now to the level of the advice charge. Mr F states that the advice charge applied on transfer exceeded what he had been told it would be. Having reviewed the file I cannot find evidence to support this assertion. The initial brochure provided sets out the charges applicable to lump sum investments and transfers, which was applied on a tiered basis. An example was included within the brochure based on a £150,000 investment, which was broadly in line with Mr F's own total transfer.

The personal illustration provided indicates that the initial advice charge would be 2.33% which equated to £3,727.34. This is not excessively higher than the £3,000 - £3,500 which Mr F states he was told it would be. Mr F states that he was charged in excess of £5,000 for *the transfer. The suitability report does indicate an initial advice charge of £5,294.22, however as the report combined both Mr F and his wife's recommendations, it appears that this was the combined advice charge for them both. I do not believe that they have acted unfairly or unreasonably concerning the level of the initial advice charge applied and do not uphold this element of Mr F's complaint."*

Responses to my provisional decision

I have received a response from Prudential which states that they are disappointed with the provisional decision but have nothing further to add to what they've previously said, which is that the advice was suitable given what was known at the time. I have not received a response from Mr F.

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 taken into account the response from Prudential, as no new information or arguments have been provided, I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr F would have retained the Prudential FSAVC and the workplace pension had he been advised correctly, however I cannot be certain that a value will be obtainable for what these would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr F's circumstances and objectives when he invested.

What must Prudential do?

To compensate Mr F fairly, Prudential must:

- Ascertain the proportions of the current value of Mr F's investment which relate to the Prudential FSAVC and the workplace pension scheme. This is the actual value.

- Compare the actual value with the notional values of the Prudential FSAVC and workplace pension if they hadn't been transferred and had remained invested where they were. If the actual value is greater than the combined notional values, no compensation is payable. If the combined notional values are greater than the actual value, there is a loss and compensation is payable.

- Prudential should add interest as set out below.

- If there is a loss, Prudential should pay into Mr F's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Prudential is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr F won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest, it should tell Mr F how much has been taken off. Prudential should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Prudential Retirement Account	Still exists and liquid	Notional values from previous pensions (the Prudential FSAVC and the workplace pension)	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date that relates to Mr F's FSAVC and workplace pension.

Notional Value

This is the value of Mr F's investment had it remained in his previous pensions (the Prudential FSAVC and the workplace pension) until the end date. Clearly, Prudential should be able to work out the notional value of Mr F's FSAVC. But Prudential will need to get information from Mr F's workplace pension provider for the other value.

Any withdrawal from the Prudential Retirement Account should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. Any withdrawal amount should be reduced so as to be in proportion to the amount that was transferred in from the Prudential FSAVC and the workplace pension. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Prudential totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the workplace pension provider is unable to calculate a notional value, Prudential will need to determine a fair value for Mr F's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr F wanted Capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr F's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr F into that position. It does not mean that Mr F would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr F could have obtained from investments suited to his objective and risk attitude.

My final decision

For the reasons given above, I uphold this complaint.

My decision is that The Prudential Assurance Company Limited should pay Mr F the amount calculated as set out above. Prudential should provide details of its calculation to Mr F in a clear, simple format.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 April 2023.

Joanne Molloy
Ombudsman