

## **The complaint**

Mrs C complains The Prudential Assurance Company Ltd delayed processing the transfer of her pension to True Potential. She says she's lost out financially because of them and had to delay her retirement plans because of their inaction. She now wants Prudential to cover the lost investment growth she believes she's missed out on had the money been invested with True Potential when it should have been. In addition, Mrs C also isn't sure the compensation Prudential have offered on the part of her upheld complaint looks reasonable.

## **What happened**

In April 2017, Mrs C took out a retirement account with the Prudential. At the time she invested in their Pru Growth Fund. Some three years later, Mrs C became concerned about the impact COVID was having on her investments. Having spoken to her adviser, she asked him to move her investment into Prudential's cash fund on 13 March 2020.

Less than a week later, Mrs C had a change of heart and asked her adviser to cancel the switch. On 18 March 2020, her adviser contacted Prudential and asked them to cancel the alteration. The terms of Mrs C's plan didn't allow switches to be changed, and Prudential didn't inform Mrs C or her adviser of this; both of whom were left under the impression that as the instruction had gone in, it had been acted upon.

When Prudential receive customer instructions to move monies out of the PruFund, there's a 28 day wait period before they action the request. Prudential settled Mrs C's fund into their cash fund on 14 April 2020.

At around the same time, Mrs C says her adviser explained he was leaving his existing organisation and moving to a new firm, True Potential. As Mrs C wasn't happy with the charges on her existing Prudential retirement account, she decided she would look at alternate providers. Mrs C explained that having undertaken her own research, she decided she wanted to move her pension to True Potential.

In August 2020, Prudential made a unit price adjustment to their PruFund. Mrs C subsequently contacted her IFA a week later to try and understand why she'd not seen her pension fund increase. After checking her pension account, Mrs C's IFA identified her funds were still sat in cash so contacted Prudential to understand what had happened. Having spoken to Prudential they logged the issue as a complaint on 10 September 2020.

After looking into her concerns, Prudential upheld Mrs C's complaint. They determined Mrs C had lost out financially having not been invested. They determined she should've been invested in the PruFund between 10 July 2020 (the earliest date Mrs C could have got back into the PruFund) and 11 September 2020. Having considered Prudential's resolution letter to her, Mrs C wasn't happy with their proposed settlement and asked them to look at the case again.

Mrs C re-contacted Prudential in February 2021 as she was concerned that having had her complaint re-opened on 18 December 2020, she'd heard nothing since. Shortly thereafter, Prudential issued their updated complaint response to Mrs C. Having looked at her case again, they decided the redress they'd offered should run from 10 July 2020 to 20 November 2020. The latter date was when her monies were eventually moved back into the PruFund. Prudential paid the redress into Mrs C's plan on 4 March 2021 and gave her an additional £250 to the £250 they'd already paid her for the trouble and upset they'd caused her.

Mrs C contacted Prudential a week later. She told them she'd originally planned to retire in September 2020, the point at which the complaint was originally raised. True Potential submitted a transfer request to Prudential on 16 March 2021 to move Mrs C's pension fund to them. On 1 April 2021, Prudential sent the transfer payment to True Potential.

Prudential told Mrs C they were upholding her complaint because of the poor experience and service she'd received from them. They said, however, as there wasn't sufficient evidence Mrs C was planning to move to True Potential back in September 2020, they weren't prepared to compensate her for any lost investment growth she could have received at True Potential had there not been delays in switching her fund. By the end of the complaints process, Prudential had increased what it had offered Mrs C to a total of £2,000 for the trouble and upset they'd caused her.

Mrs C was unhappy with Prudential's decision so referred her complaint to this service setting out the same concerns, specifically that Prudential hadn't done enough to recognise the inconvenience it had caused to her retirement planning and the potential financial loss that resulted from the delay in transferring to True Potential. The complaint was considered by one of our investigators. She concluded that Prudential hadn't treated Mrs C fairly. She also said, in summary:

- She thought there was sufficient evidence to conclude Mrs C was planning to retire when she said she was and was planning to move her pension away from Prudential. Her proposed redress reflected this.
- She thought the £2,000 that Prudential had offered Mrs C for the trouble they'd caused her was fair.

Prudential, however, didn't agree with the investigator's view. They said in summary:

- They didn't believe there was any evidence that Mrs C was planning to move her retirement account until they received the transfer request in March 2021.
- They felt had Mrs C wanted to retire in September 2020, she would have raised it within the original complaints process, but she didn't.
- Prudential also said that had Mrs C wanted to move her monies elsewhere, she could've done so at any time without having to wait for the complaint to be resolved.

The investigator was not persuaded to change her view as she did not believe Prudential had presented any new arguments that she'd not already considered.

Prudential asked for the case to be passed to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision explaining that I planned to uphold Mrs C's complaint. For completeness, I've set out the findings I made in full below.

### My provisional decision

*I have considered all the evidence provided and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm of the view that the fair and reasonable outcome is the complaint should be upheld in part. Whilst I appreciate Prudential may likely be disappointed with this decision, I'll explain why below.*

*What I don't think is in any doubt here is whether Prudential were right to uphold Mrs C's complaint about the service she received from them. Prudential have accepted the way they handled the PruFund switch to cash and back again, along with their follow-up communications about this, weren't as they'd wish. Mrs C told this service she wasn't sure the compensation Prudential offered on that part of her complaint looked reasonable.*

- 1) *Was the redress approach Prudential took in putting things right for Mrs C for the period up to 20 November 2020 fair?*

*When mistakes occur, it is important consumers are treated fairly when firms look to put things right. Put simply, that means the business must place the customer back into the same position, or as close to the same position they would've been in had the error not taken place. So, I first need to consider whether the solution proposed by Prudential places Mrs C as close to the same position she would've been in had the error of the delayed switch from cash to the PruFund not occurred.*

*Prudential conceded on their call to Mrs C they should've gone back to her IFA in March 2020 when they received his instruction to cancel the switch to explain they weren't able to action his cancellation request. However, despite not wishing to move into the cash fund, based on the instruction they received from Mrs C's IFA, the first switch from the PruFund to cash happened on the 9 April. The earliest time the cash could've been moved back into the PruFund was 10 July. That's because according to Prudential's terms, a new switch can't then take place until three months after the initial switch. The monies were eventually moved back, notionally, to the PruFund in November 2020. This timeline (July to November 2020) therefore follows the timeframe Prudential worked their redress to. Having looked at the loss calculation Prudential have shared with this service, their methodology follows an approach that I'm comfortable with and one that I would've asked them to take had they not taken the steps already themselves.*

- 2) *Does the Prudential need to go further to account for losses Mrs C says have occurred that relate to i) the delay in transferring to True Potential (lost investment growth potential) and ii) being unable to retire in September 2020?*

*There are several components to this part of Mrs C's complaint. To start with, I've looked at what evidence there is on the file that demonstrates Mrs C was actually planning to retire at the point she says. Mrs C has said it was always her intention to move away from Prudential when she heard her existing adviser was moving to True Potential. She says she's had a long working relationship with the IFA and having researched his new employer, she wanted to continue utilising his services when he moved to True Potential. She claims that had Prudential resolved her complaint sooner, it would've allowed her to move to True Potential in September 2020 when her IFA had started there. At that point, she says she'd have been able to retire. Prudential have said they've seen no evidence to prove Mrs C intended to move providers and, as such, shouldn't be liable for any lost investment growth opportunity she claims.*

*I've thought about Prudential's position carefully. Given Mrs C says she made the decision to move away from Prudential herself, she didn't go through a regulated advice process. Had she done, I would've asked to have seen the fact-find, suitability report and supporting*

documentation. However, as this was an individual decision on her part, it therefore follows that I wouldn't expect such documentation to exist. In addition, her retirement account was set up in April 2017 and contained only money purchase funds so Mrs C was under no obligation to obtain professional advice before making any decision to move away from Prudential. Without documentary evidence, I can therefore well understand Prudential's thought process in reaching the decision they did by not upholding the part of Mrs C's complaint that related to the lost investment potential. However, just because there aren't any advice records, it doesn't mean it was never Mrs C's intention to move. True Potential have confirmed to this service Mrs C transferred to them without any regulated advice off the back of a direct marketing offer.

As Mrs C didn't go through an advice process, I've looked at other evidence in helping shape my decision. I have seen an email that Mrs C sent to her IFA in September 2020. The FCA Register shows her IFA moved to True Potential on 25 August 2020. At that stage, Mrs C was seeking to understand what was happening with her retirement account. At that point a complaint was raised because there were clearly problems with her fund. When Prudential eventually resolved the unit price issue at the beginning of March 2021, she immediately moved her monies away. So, despite the lack of any advice documentation, I think it's clear that it was always her intention to move away from Prudential. But, for me to uphold Mrs C's complaint in full, I need to be satisfied whether delaying the transfer by six months was a reasonable thing to do. I'm not sure it was, and I'll explain why.

When a consumer complains, it's a fair assumption a firm will work to put things right in a reasonable time frame. So I think initially, it would be reasonable for Mrs C to delay moving her pension because she would've thought Prudential were taking care of her concerns. In addition, she most likely concluded given the Prudential would need to make amendments to her plan, it would probably be simpler to leave the monies where they were whilst they were undertaking that work.

However, I think there is a tipping point when most consumers would think "enough". Particularly where the impact of the delays are significantly impeding on the consumer's ability to move into a different phase in their life, in Mrs C's case, giving up work. So, whilst I think it reasonable that Mrs C initially allowed Prudential time to put things right, once the complaint had reached the end of the year and still not been resolved, I think that should've been the time at which most consumers would draw a line in the sand and explore what other steps they could take to move forward with their retirement plans. I'm of the opinion the end of the year is important for a number of reasons; firstly because Prudential should have resolved the consumer's complaint by November and I think it more likely than not, Mrs C was advised of that eight week deadline so, by that point, another month would've passed. But importantly, I also think it's at that point, Mrs C should've realised Prudential were struggling to put things right and delaying the transfer any further would only prolong her ability to retire.

In reaching that opinion, I've also thought about whether there were any barriers preventing Mrs C from moving her monies. We need to remember that when enacting a pension transfer, it's up to the consumer to select a new provider and give authority to that firm to approach the existing scheme. Whilst I'm cognisant the process was undertaken on a non-advised basis, Mrs C could have done that at any time. Whilst she may have made her wishes known to Prudential that she ultimately planned to move elsewhere, until such time as Prudential are provided with a fully completed transfer form, they would continue to manage her monies to the mandate Mrs C had given them. However, I've seen no evidence to suggest that Prudential were stopping Mrs C from moving her retirement account elsewhere at any time. I've also no reason to believe that if Prudential were asked to transfer the pension funds elsewhere, they wouldn't have done so.

*So, it therefore follows, that I believe Prudential should be held accountable for the lost investment growth potential Mrs C has suffered by her monies not being invested with True Potential. However, as I've already said, I think that potential loss should be capped from her complaint in September 2020 to the end of the year. And that's because, it's at that point when I think a tipping point would've been reached at which most customers would've drawn a line in the sand and requested a transfer rather than delay their life plans any further. I should acknowledge that what I'm doing isn't an exact science but, the principle is that I think Mrs C should have acted sooner and therefore I need to account for this somehow. In other words, I think Mrs C should reasonably have taken action with regards to her pension from 1 January 2021. My approach to redress, covered below, reflects this.*

*Finally, given the trouble and upset Prudential caused, they originally offered Mrs C £250 to say sorry. As Prudential then had to re-open her complaint, they subsequently gave Mrs C another £250 for the further trouble. Finally, they gave her an additional £1,500 for the inconvenience she'd suffered on her subsequent complaint. Having reflected on the impact Prudential have caused to Mrs C, I'm of the view the £2,000 they've already offered to her is a fair and reasonable amount. As such, I won't be asking Prudential to make any further payment in respect of the distress and inconvenience they've caused that resulted in the delays to Mrs C starting her retirement.*

#### Responses to my provisional decision

After reviewing my provisional decision Mrs C contacted this service and explained she had nothing further to add. However, Prudential explained they didn't agree with the provisional decision. They said they still believed there was a lack of evidence that Mrs C planned to switch her pension sooner. They also said in summary,

- There are similar cases to that of Mrs C where this service had rejected the complaints. Prudential said this service wasn't being consistent by upholding her case because on the other three cases they referred to, they felt the circumstances of the complaint were the same as Mrs C's case.
- Once they received the transfer request in March 2021, they moved Mrs C's monies promptly to True Potential and as such, don't believe she suffered any delays.
- They didn't feel the 'start date' that had been set in the redress section took account of a delay that wasn't their fault.
- They also sought clarification on the redress that had been set.

#### **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.

I've thought very carefully about Prudential's subsequent submissions. And, having reviewed the file again I fail to be persuaded by their arguments. So, it seems to me that Prudential's actions resulted in significant delays in Mrs C being able to move her monies elsewhere and start her retirement.

In September 2020, Mrs C had just turned 58 a few weeks earlier. There is correspondence between Mrs C's IFA and Prudential from November 2020 confirming Mrs C's intention of retiring having to be delayed. And, whilst it doesn't specifically state she was wishing to

transfer out of Prudential, once the unit prices had been resolved in March 2021, she immediately moved away. I think it's important to note at that point, her IFA was no longer working for his previous firm (the FCA Register shows he moved to True Potential on 25 August 2020). So, taking this into account along with the wider information detailed within the provisional decision, I find it more likely than not that she always planned to retire and transfer her monies away to her adviser who had joined True Potential. That's evident in the fact she did so once Prudential had corrected her units.

As I've already explained to Prudential in my earlier correspondence to them, I think it improbable her IFA would've still been getting involved at that point (November 2020) if there was no prospect of the money coming across to him. So with all this in mind, I think Mrs C would likely have transferred in September, shortly after her adviser moved firms, and it was only because she had to pursue a complaint that she paused doing so. My view was, and remains, that this wasn't unreasonable on Mrs C's part and that the date of her complaint is therefore a reasonable point from which to consider redress. However, as I've already explained, I don't believe it's fair for Prudential to carry the liability for the full six months of delays. That's because, as I highlighted in my provisional decision, Mrs C should have drawn a line in the sand and moved her monies sooner.

In their response to the provisional decision, Prudential highlighted three cases which they felt were almost identical to Mrs C's complaint. They said in those cases, this service had rejected the complaints and therefore, it would be inconsistent to apply a different set of standards to Mrs C's complaint by upholding hers. I've looked very closely at the three cases Prudential says are the same and whilst I agree there's similar themes running through those and Mrs C's complaint, I'm satisfied there are differences between the cases, especially in relation to the evidence relating to the complainants' intention to transfer, what the complainants would reasonably have done given the circumstances and the willingness of the receiving scheme to receive funds despite an ongoing complaint.

I'm satisfied Mrs C was planning on transferring and retiring and that her retirement was highlighted to Prudential. When the unit prices on her plan were corrected, she immediately followed through on what she said she would do – and that's transfer to True Potential to her adviser with whom she'd had a long relationship with. So, joining the dots, I'm satisfied it was always her intention to move to True Potential despite the lack of any paper evidence, which as I've already explained, was as a consequence of her going through a non-advised advice process.

In the provisional decision, I set out the proposed redress I considered was fair to recompense Mrs C for some of the delays she'd experienced. In their response Prudential explained they didn't believe the 'start date' of 10 September 2020 took account of the normal servicing standards they had to respond to transfer requests. In addition, they also explained that as Mrs C hadn't provided a correct national insurance number, that added a small delay to the processing timescales. Instead of using the day of her complaint as the 'start date', Prudential explained it would be fairer to use 28 September 2020. That would take account of the nine working days they need, the delays from Mrs C not providing the national insurance number and the time to pay the transfer monies away. Prudential explained that would've been the earliest they therefore could have paid the transfer, had Mrs C requested her monies be moved on 10 September as opposed to complaining on that date. I've thought about Prudential's request and I'm satisfied any transfer application would need to go through a handling process so, as I'm comfortable with their explanation, I have altered the start date in the redress section to 28 September 2020.

In summary, as Prudential has not presented any new arguments that I've not already considered, it therefore follows that I uphold Mrs C's complaint for the same reasons that I

set in my provisional decision above. I have, however, slightly adjusted my approach to compensation following Prudential's comments.

## Putting things right

In assessing what would be fair compensation, my aim is to put Mrs C as close as possible to the position she would probably now be in if she had been able to move her funds to True Potential.

It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs C's circumstances and objectives.

## What should Prudential do?

To compensate Mrs C fairly Prudential should:

Compare the performance of Mrs C's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

If there is a loss, Prudential should pay into Mrs C's pension plan, to increase its value by the amount of the compensation. Prudential's payment should allow for the effect of charges and any available tax relief. Prudential shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Prudential are unable to pay the compensation into Mrs C's pension plan, they should pay that amount direct to Mrs C. 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 Mrs C won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs C's actual or expected marginal rate of tax at her selected retirement age.

It's reasonable to assume that Mrs C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs C 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%.

Provide the details of the calculation to Mrs C in a clear, simple format.

Income tax may be payable on any interest paid. If Prudential considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs C how much they have taken off. Prudential should also give Mrs C a tax deduction certificate in respect of interest if Mrs C asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest

Prudential Retirement Account Plan	Switched to True Potential	True Potential's 'Growth' portfolio	28 September 2020	31 December 2020	8% simple per year on any loss from the end date to the date of settlement
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### **Actual value**

This means the actual amount of Mrs C's Prudential Retirement Account Plan at the end date.

### **Fair value**

This is what Mrs C's Prudential Retirement Account Plan would have been worth at the end date had it produced a return using the benchmark.

Prudential should in their calculation use the value of what Mrs C's fund would have been on 28 September 2020 had all units been switched from Cash to the PruFund.

Any withdrawal from the True Potential Plan should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if you total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

Mrs C had intended to switch her plan to True Potential in September 2020 and retire shortly thereafter. I've capped the redress to the end of that year as I believe that's the point at which the consumer should've concluded it wasn't in her best interests to delay her retirement plans any longer.

If it hasn't already done so, Prudential should pay the £2,000 it offered Mrs C for the distress and inconvenience it caused, which I think is fair and reasonable in the circumstances.

### **My final decision**

My final decision is that I uphold the complaint and that The Prudential Assurance Company Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 April 2023.

Simon Fox  
**Ombudsman**