

The complaint

Mr M complains that The Prudential Assurance Company Limited failed to provide its agreement to receiving transferred pension benefits from his occupational pension scheme (“OPS”) in a timely manner.

What happened

I issued a provisional decision on this complaint in April 2023. In that decision I explained why I thought the complaint should be upheld and what Prudential needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

Mr M holds deferred pension benefits in an OPS. In March 2022 he requested a quotation from the OPS providing him with a cash equivalent transfer value (“CETV”) for his pension benefits. In line with normal practice that CETV was guaranteed for a period of three months.

Mr M engaged a financial advisor. He was required to take regulated advice before he could request that the pension benefits were transferred from the OPS to a personal pension plan that he held with Prudential. The advice process was completed, and Prudential was sent the necessary documents in order to confirm its acceptance of the proposed transfer on 19 May.

Prudential accepts that it failed to process that acceptance in a timely manner. It gave some incorrect information to Mr M in early June that reasonably led him to conclude the required confirmation had been issued to the OPS. But in fact Prudential didn't return the forms to the OPS until 16 June. By that time the guarantee on the CETV had expired and the OPS advised Mr M that his CETV had fallen by approximately £164,000.

Mr M complained to Prudential about the delay. Prudential agreed that it had failed to complete the transfer authorisation in a timely manner. So it told Mr M that, if he decided to make the transfer within the next 30 days, it would consider whether the delay had caused him to lose out. And it said it would pay Mr M £450 for the inconvenience he'd been caused.

Mr M asked the OPS for a revised CETV. By that time the transfer value had fallen by a further £57,000. And given those falls in value Mr M would have needed to restart the advice process with his financial advisor. So he didn't progress the transfer and instead brought his complaint to us.

Prudential has accepted that it didn't provide its acceptance of Mr M's transfer as quickly as it should have done. It says that Mr M submitted the required paperwork to Prudential on 19 May. But it wasn't completed by Prudential and issued to the OPS until 16 June. Mr M's CETV was only guaranteed until 3 June. But I think it is

reasonable to conclude that Prudential should have been able to complete its necessary acceptance of the transfer in the two weeks that preceded that deadline.

So that would lead me to conclude that, had Prudential acted in a timely manner, Mr M's transfer from the OPS would have completed at the guaranteed CETV. And that value would have been transferred into his pension plan with Prudential. So I think it would be reasonable to expect that to be the position that Prudential placed him into when it accepted causing the delay in the processing of the transfer.

A consumer is required to receive regulated advice before transferring defined pension benefits valued at more than £30,000. That was the advice that Mr M sought before requesting the transfer. But that advice is very specific to the consumer's circumstances, expected investment conditions, and the transfer value being offered by the OPS. So any change to any of those factors might mean that any previous advice would be inaccurate.

And that was the position Mr M found himself in once the CETV guarantee had lapsed following the delay caused by Prudential. The OPS advised Mr M that the CETV value had fallen by around 25%. So the significant fall in the CETV being offered by the OPS would call into question the validity of the advice that had been previously provided to Mr M based on the higher transfer value. I think it would have been reasonable for Mr M to be concerned that new advice, based on the lower CETV, might not have supported a transfer of his pension benefits.

Mr M had agreed to pay his financial advisor £6,675 for its advice. So I can understand why he might have been reluctant to repeat that process without any assurances from Prudential about the compensation it would offer him. I am entirely satisfied that, had nothing gone wrong, Mr M would have completed the transfer. I don't think his failure to proceed was as a result of any change of heart. Instead I think it was the significant change in the offered CETV that led Mr M to pause his transfer decision and proceed with his complaint. And in response to our second investigator's findings Mr M has confirmed that he does still want to proceed with the transfer.

Prudential had simply told Mr M that it would only consider whether its delays had caused him any loss once he had completed the transfer. But in order for the transfer to take place, Mr M would need suitable advice based on the CETV being offered by the OPS at that time. It is far from certain that the second advice, after Mr M had paid a second advice fee, would have concluded the transfer was suitable, especially when considering the significant reduction in the amount Mr M would receive in lieu of his guaranteed OPS benefits. And without any guarantees from Prudential that compensation would be paid for the fall in the transfer value, it would have been remiss for the new advice to be based on the previous CETV.

So Mr M was placed into something of a vicious circle. Prudential wouldn't commit to calculating, or paying, any compensation until the transfer had been completed. And Mr M couldn't know whether his financial advisor would have advised him to make the transfer at the new lower CETV. And by making the transfer, Mr M would have been taking an irrevocable decision. If Prudential later decided that it wouldn't pay any compensation, he'd be unlikely to be able to cancel the transfer and return his pension benefits to the OPS.

So I think it is right, through any final decision I issue along these lines – and of course subject to any further comments either party wishes to make - that I break that circle. Prudential has accepted that it unduly delayed Mr M's transfer. So I set

out below the compensation I will require it to pay. I think by doing that, if Mr M accepts any final decision along these lines, he would have the certainty he requires to seek appropriate regulated advice on the transfer to determine whether it is now appropriate for the transfer to proceed.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr M has said that he agrees with my provisional findings. And he has told us that he expects the cost of any new advice to be similar to, or slightly less than, what he was charged for the original advice.

Prudential has said that it doesn't agree with my provisional findings and provided some additional comments. Although I am only summarising here what Prudential has said, I want to reassure it that I have read, and carefully considered, the entire response.

Prudential has provided some further analysis of the timeline of Mr M's transfer request. It says he didn't get in touch about the transfer until four weeks of the twelve-week guarantee period had elapsed. And it says he didn't ask Prudential to confirm its acceptance of the transfer until the tenth week. It says that, although its SLA is for such confirmation to be issued within five working days, that would only have left six working days for the OPS administrator to complete the transfer before the CETV guarantee expired. So it thinks it unlikely that, even if it hadn't caused any delays, Mr M would have received the guaranteed CETV.

Prudential also notes the guidance provided by the regulator on transfers of defined pension benefits. It says that generally transfers of this nature are not in the best interests of consumers, and that view is often taken by us when considering complaints about transfer advice that has been provided. So it asks whether, as part of my assessment of the complaint, I have considered the advice that was given to Mr M to check whether it was suitable. It thinks the suitability of that advice is intrinsically linked to the outcome of this complaint.

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.

As in my provisional decision, 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.

And I repeat my reflections 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.

I've thought carefully about the additional information the Prudential has provided. But having done so I'm not persuaded that I should change the conclusions I set out in my provisional decision. But I would like to provide some further commentary on the matters that Prudential raised.

Generally, to transfer defined benefits of more than £30,000 from an OPS, a consumer is required to take regulated advice. The trustees of the OPS need to be satisfied that such advice has been taken. But, importantly, the current regulations do not require any advice to support a transfer – consumers are able to insist on a transfer being made regardless, so long as the regulated advice has been provided to them.

But there is no regulatory responsibility on the recipient of the transferred funds, Prudential in this case, to ensure that advice has been provided. It simply needs to confirm to the sending pension scheme that it is able and willing to accept the transfer and that it offers a legitimate pension arrangement. It was that confirmation that Mr M asked Prudential to provide.

I accept that Prudential had little involvement in the transfer until relatively late in the twelve-week guarantee period for the CETV. But, in my experience, that is not unusual. The majority of that time is usually taken up by the financial advisor formulating and presenting its advice to the consumer. Only once that is complete would a firm such as Prudential receive a request to provide confirmation of its acceptance of the transfer. And that was the request that Mr M made of Prudential on 19 May 2022.

Prudential acknowledges that it would expect to deal with a request of this nature within five working days. The guarantee on the CETV didn't expire until 3 June. So it seems to me that there was ample time for Prudential to complete the required paperwork, and for it to be sent and received by the OPS administrator. And at that point the CETV available to Mr M would have been fixed at the guaranteed value. I don't agree with Prudential's argument that the CETV would only be guaranteed if the transfer completed before the expiry date. The expiry date was simply for Mr M's acceptance to be received by the OPS, and for him to provide the required documentation.

I don't consider it necessary, or appropriate, to review the transfer advice that was given to Mr M. Mr M is not making any complaint about that advice, or the conduct of his financial advisor. So it seems that he is content that the advice he was given was suitable. But should, at a later date, he conclude that isn't the case he would make a complaint against his financial advisor. That complaint wouldn't involve Prudential, or suggest any wrongdoing by the firm in accepting the transferred funds.

So Prudential's responsibility here was clear. It needed to provide the transfer authorisation in a timely manner. It had no need to check whether Mr M had received regulated advice, or whether that advice was suitable. Prudential admits it dealt with Mr M's transfer request far out of line with its expected processing time periods. And that delay has potentially caused Mr M to lose out. So Prudential needs to put things right as I set out in my provisional decision, and repeat below for clarity with some minor amendments.

Putting things right

I am satisfied that, had the transfer acceptance been completed in a timely manner, Mr M's pension benefits would have been transferred from the OPS to his pension plan with Prudential. But those discussions, and the advice that was given to Mr M, were against a very different economic background. So in the redress I am setting out below, I need to take account of the fact that any new financial advice might lead to Mr M concluding that he shouldn't transfer his pension benefits from the OPS. I will therefore provide alternative redress for the two different scenarios.

The guaranteed CETV that Mr M was offered, and would have benefitted from had nothing gone wrong, was set at £620,580.21. As I will set out below, should Mr M decide to transfer his pension savings, I direct Prudential to augment any transfer it receives from the OPS so that the total added to Mr M's pension savings equals the historic CETV set out above. And that should therefore reasonably be used as the transfer value when a financial advisor is providing Mr M with any regulated advice on the suitability of the transfer.

Given the time that has passed, and the changes experienced in the economic outlook over the past year, I think that it would be appropriate for Mr M to seek new financial advice on the suitability of the transfer of his pension benefits from the OPS, even on the basis of the original CETV (with the difference being made up by Prudential). I direct Prudential to refund the reasonable costs of that new advice since it wouldn't have been required had the transfer completed previously. Mr M has confirmed that he expects that charge to be no more than he previously paid. So I will cap this part of the compensation at £6,675.

Following the receipt of that advice Mr M should consider whether or not he now wishes to transfer his pension savings from the OPS to his pension plan with Prudential.

Should Mr M decide to make the transfer from the OPS.

- Prudential should augment any transfer it receives from the OPS so that the total added to Mr M's pension savings equals the historic guaranteed CETV set out above, taking into account the investment returns it would have received had the transfer request been submitted by the CETV deadline, and it was then received in the pension plan after the actual amount of time it takes (should Mr M decide to proceed) the OPS administrator to transfer the funds in the future.
- Prudential should refund to Mr M the reasonable cost of any regulated advice he has received, up to a maximum of £6,675, regarding the transfer since his acceptance of this final decision, on the basis that I have set out above. I make no award regarding the original advice fee Mr M paid as that would have been incurred regardless had the transfer gone ahead in 2022.

Should Mr M now decide to not transfer his pension benefits from the OPS

- Prudential should refund to Mr M the reasonable cost (on the basis I have set out above and up to a maximum of £6,675) of any regulated advice he seeks and receives regarding the transfer following acceptance of this final decision (which has resulted in him deciding not to now transfer).

- Mr M would, in this situation, and for whatever reason, have made the decision to not transfer his OPS benefits, even in the knowledge that, by way of compensation payable by Prudential, he would receive the original CETV and the payment would reflect this having been invested when it should have been. And so I don't think an award in respect of financial loss or a refund of the original adviser fees would be warranted.

But if Mr M, and/or his adviser, conclude that he will be better off by not transferring his OPS benefits, even under the above circumstances, I do think there can be little doubt that Mr M will have been significantly troubled and inconvenienced by what's happened here.

As such, I think that, irrespective of whether Mr M decides to transfer, Prudential should pay him £300 in respect of this.

Prudential hasn't told us that it will be unable to augment the transfer value it receives. But should it now consider that to be the case, and it should therefore pay equivalent compensation direct to Mr M, Prudential should make urgent contact with Mr M so that information can be used to inform the financial advice he might seek and receive.

If that circumstance arises, had it been possible to pay the compensation into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age. I think it's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr M would have been able to take a tax-free lump sum, as I think likely here, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £375,000, plus any interest and/or costs / interest on costs that I think are appropriate. If I think that fair compensation is more than £375,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that, if Mr M decides to transfer his OPS benefits, fair compensation should be calculated as set out above. My final decision is that Prudential should compensate Mr M by the amount produced by that calculation – up to a maximum of £375,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £375,000, I recommend that Prudential pays compensation equal to the balance.

This recommendation will not form part of my determination or award in this final decision. Prudential will not have to do what I recommend. It's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to get independent legal advice before deciding whether to accept this final decision.

My final decision

My final decision is that I uphold Mr M's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 June 2023.

Paul Reilly
Ombudsman