

The complaint

Mr T complains that The Prudential Assurance Company Limited has unreasonably delayed dealing with his request to pay him his share of the uncrystallised funds pension lump sum (UFPLS) from his pension accounts.

What happened

Mr T has two pension policies with Prudential.

In or about 1988 Mr T was declared bankrupt and a Trustee in Bankruptcy was appointed at that time. Mr T acknowledges that the Trustee in Bankruptcy has an interest in the pension policy which was opened prior to the date of the bankruptcy.

The second pension account was opened subsequent to Mr T having been discharged from his bankruptcy.

In June 2021, Prudential sent the Trustee in Bankruptcy details of the pension policies. The letter stated that although the Trustee's interest was only noted in respect of one of the pension policies, the policies were linked which meant they both had to be taken together.

The Trustee in Bankruptcy signed the payment form attached to the letter to indicate that he wanted the UFPLS to be paid to him. He asked Mr T to sign and date the declaration on this payment form and return it to him. Mr T sought advice about the matter and after subsequent correspondence the Trustee confirmed that he only had an interest in the current fund value of non-protected rights in the policy and contributions made before the date of the bankruptcy. It was a matter for Prudential to confirm the split in the available funds when it made the payment under the policy.

On 23 August 2021, Mr T's representative wrote to Prudential, enclosing the correspondence from the Trustee in Bankruptcy, and asked it:

“Could you therefore let us know how you intend to apportion pre and post pension contributions between the bankruptcy fund and our client's retirement fund.”

Despite Mr T sending it follow up letters, Prudential didn't respond and Mr T complained. He then sent several further follow up letters because he hadn't received a response to his complaint and he referred his complaint to our service in November 2021.

Our investigator looked into the complaint. He contacted Prudential and on 25 March 2022 it sent Mr T a response to his complaint. It acknowledged that due to various systems issues it had been experiencing, delays had been caused to its production of manual calculations. It apologised for its poor service and sent Mr T a cheque for £400 by way of apology. It said that once it had resolved the issue it would contact him again with a final

response to his concerns. It said that whilst it could not provide a timescale it would ensure any work was completed as quickly as possible.

On 5 May 2022 Prudential sent the Trustee in Bankruptcy its response to the letter Mr T's representative had sent it on 23 August 2021. This letter set out the values bifurcation for both policies. The Trustee responded on 23 June 2022. It reiterated that because it only had an interest in part of the policy, it did not wish to realise the entire fund. It asked Prudential to send it the Uncrystallised funds form to enable it to drawdown the part of the funds in which it was claiming an interest.

Prudential sent the values bifurcation to Mr T on 29 June 2022. It explained that as the option of partial withdrawals was not a feature of his policies the matter had been referred to its technical team. If Mr T confirmed that he was willing to settle the benefits as UFPLS, Prudential could issue the withdrawal forms simultaneously to both Mr T and the Trustee in Bankruptcy.

Around this time, Prudential also indicated to Mr T that because his policy included protected rights worth in excess of £30,000 he would need to obtain written advice from an independent financial adviser before it would accept his instruction to pay him the UFPLS.

Mr T obtained advice from an independent financial adviser and on 26 July 2022 Mr T's adviser told Prudential that Mr T wanted to take the UFPLS. Prudential said it would send him the payment forms but no forms were issued. Our investigator asked Prudential why it hadn't issued the payment forms. It said that the matter had had to be referred back to its technical team.

Because of the passage of time our investigator issued his view about what needed to be done to resolve the matter. He said he was satisfied, on balance, that there had been undue delays by Prudential. He thought it should now pay the funds in the way that it needed to and that it should do this by 16 October 2022 and also provide its final response to Mr T's complaint by that date. He thought it shouldn't have to pay Mr T anything further for distress and inconvenience. It had already paid him £175 in July 2021 when he'd initially complained to it and a further £400 in March 2022. He thought this was in line with what our service would've awarded for distress and inconvenience he'd experienced.

Mr T said that Prudential had still not issued claim forms to him or made the payment. So, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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.

There have been several delays by Prudential here.

The response to the letter dated 23 August 2021

I've looked firstly at the letter dated 23 August 2021 which Mr T's representative sent to Prudential. That letter clearly set out certain important matters:

- *It requested an apportionment between the pre and post pension contributions between the bankruptcy fund and Mr T's retirement fund; and*

- *It enclosed a copy of the letter from the Trustee in Bankruptcy which explained that it only had an interest in “current fund value of non-protected rights amount and contributions made before the date of bankruptcy. Prudential will have to confirm the split in the available funds from the pension when they make a payment to us.”*

Having looked at this letter and the enclosure I’m satisfied that Prudential had enough information to comply with the request within a reasonable period of time – taking account of the fact that this was not a straightforward request and would have required manual intervention from the technical team.

Prudential didn’t send Mr T a response until June 2022 – which was ten months later. In its earlier letter dated 25 March 2022 Prudential had set out some of the difficulties it was experiencing with systems changes which it said had contributed to the delay. But, even accounting for systems issues, which can arise from time to time, I don’t think it was fair or reasonable that Mr T should have to wait for ten months to receive the values bifurcation he requested.

Prudential has paid him £575 (in total) by way of compensation for the delays he experienced here. I’ll comment further below on whether I think that is sufficient compensation for the distress and inconvenience Mr T experienced as a result of this delay.

I have noted that despite the delay Mr T’s fund remained invested throughout this period.

Delays issuing payment forms to Mr T

Prudential explained to Mr T that before it could issue him with payment forms to take his share of the UFPLS he would have to obtain independent financial advice. It said the reason for this was because Mr T’s pension contained protected rights and it was worth more than £30,000. In these circumstances, I don’t think Prudential did anything wrong when it required Mr T to obtain independent financial advice before it could issue payment forms to him.

Mr T’s representative confirmed to Prudential on 26 July 2022 that Mr T wanted to take the UFPLS. At that point in time the obligation to issue the payment forms passed to Prudential because, I’m satisfied on balance, it had all of the information it needed to issue the forms and, if they were in order, make the payments to both the trustee in Bankruptcy and Mr T.

Prudential has not done that – despite the deadline our investigator gave it. It said the reason for this is because it needs to refer the issue to its technical team. It has also said, more recently, that the reason relates to a requirement that the “full claims journey” has been completed including ensuring that the customer has gone through the full risk assessment journey, before it can issue any claims forms.

Prudential has recently informed us that it issued the claim forms to Mr T on 13 October 2022. Mr T says he has not received these forms.

Having looked at the history of events here, I don't think the explanations given by Prudential are acceptable. When reaching that view I've taken into account what Prudential said in its letter dated 25 March 2022 –

“We should have taken ownership of this from the start, responded to your request in a timely manner and provided you with the information you requested within our correct timescale.”

Even if the matter did need to be referred back to its technical team because calculations had to be updated, Prudential has had adequate time to complete its processes. I've also noted that Mr T, at Prudential's request, appointed an independent financial adviser to provide him with advice about his options. I'm satisfied, on balance, that Mr T and his representative have requested the necessary claim forms on several occasions. But, despite assurances that these forms have been issued, neither Mr T, nor his representatives, have received the forms. So, I'm not persuaded that Prudential has taken ownership of this matter or sought to comply with Mr T's instructions.

The repeated delays and inadequate explanations here have created additional administrative burdens on Mr T as he's had to progress his claim by making a significant number of follow up calls and letters to Prudential. It has agreed to issue payment forms but it hasn't done so. Mr T says he still hasn't received the forms. Prudential has presented excuses for not progressing matters and Mr T hasn't received the payment he requested. I don't think that is in line with what Prudential accepted in its letter of 25 March was how it should deal with Mr T.

Having thought about the protracted delays, distress and inconvenience Mr T has experienced here, I've provisionally decided Prudential should pay him an additional amount of £400 (£975 in total) by way of compensation.

Putting things right

In order to resolve this complaint I've provisionally decided that Prudential should now take the following actions:

- *Issue the payment forms, by recorded delivery, within 28 days of the date when Mr T accepts my final decision, to both Mr T (and if it has not already done so, to the Trustee in Bankruptcy) to enable them to seek payment for their respective interests in the UFPLS for the pension policies;*
- *make payment to both parties within 15 days of the date of receipt of the duly completed payment forms; and*
- *pay Mr T an additional £400 (£975 in total) by way of compensation for distress and inconvenience he experienced here.*

My provisional decision

For the reasons given above, I intend to uphold this complaint about The Prudential Assurance Company Limited.

I intend to require it to take the following actions:

- *Issue the payment forms, by recorded delivery, within 28 days of the date when Mr T accepts my final decision, to both Mr T (and if it has not already done so, to*

- the Trustee in Bankruptcy) to enable them to seek payment for their respective interests in the UFPLS for the pension policies;*
- *make payment to both parties within 15 days of the date of receipt of the duly completed payment forms; and*
 - *pay Mr T an additional £400 (£975 in total) by way of compensation for the distress and inconvenience he experienced.*

Mr T said he accepted the provisional decision.

Prudential also responded to my provisional decision. It said it issued a further final response letter to Mr T on the same date as I'd issued the provisional decision. In that response letter it had acknowledged that its "overall lack of communication" was "completely unacceptable" and had caused Mr T "a lot of unnecessary confusion distress and inconvenience." It said it had issued the payment forms to him on 13 March 2023 but he hadn't returned the forms.

Prudential offered him an additional £200 by way of compensation for distress and inconvenience. In response to my provisional decision it said it was willing to increase this to £400 (£975 in total).

In its letter to Mr T, Prudential had also offered to review his case after payment had been made to assess whether he'd incurred any financial loss as a result of its delays.

So, I now need to make a final decision.

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 considered the responses to my provisional decision and in particular what Prudential told Mr T, in its recent letter, it was willing to do after payment of his UFPLS had been made.

Neither Mr T nor Prudential has provided any new or additional information that causes me to change my view, nor the reasons for my view, that this complaint should be upheld. However, having read the response from Prudential, I have decided to amend the actions I require it to take to resolve the complaint. I'll explain why.

I wrote to Prudential and Mr T to explain that, having read Prudential's letter dated 6 April 2023, I thought it was fair and reasonable that Prudential had offered, after payment was made, to assess whether Mr T had suffered any financial loss as a result of the delay here. In light of that I said I intended to amend the actions I would require Prudential to take to resolve this complaint – to include a requirement for it to assess whether Mr T had suffered any financial loss as a result of its actions.

I noted that the initial request, to apportion pre and post pension contributions between the bankruptcy fund and Mr T's retirement fund, had been made on 23 August 2021. Whilst I thought there were steps that needed to be taken after that date before payment could be made – such as the bifurcation calculations by the technical team, the requirement for Mr T to take independent advice, complete the payment forms and for Prudential to process the payment – I said I thought these steps could reasonably have been completed within 3 months. So, I thought the payment could reasonably have been made by 23 November 2021.

For purposes of assessing whether Mr T had suffered any financial loss as a result of Prudential's delays, I thought it was fair and reasonable that the calculation should be based on the difference in the UFPLS Prudential would have paid out in respect of Mr T's interest in the two policies had that payment been made on 23 November 2021 compared to what it ultimately paid him.

I thought the calculation should take into account any necessary adjustments and deductions to the amount due to Mr T (e.g. income tax and any applicable charges). In addition, if the calculation showed that Mr T had suffered a financial loss, Prudential should pay him an additional 8% simple interest on the amount of his loss for the period from 23 November 2021 up to the date he receives the compensatory interest payment. If the comparison showed that Mr T had not suffered a loss as a result of the delay in payment, then no additional financial compensation or compensatory interest would be payable to him.

Prudential confirmed that it accepted my provisional decision and the proposed amendment to the actions I required it to take.

Mr T also accepted my provisional decision and the proposed amendment to the actions I required Prudential to take.

My final decision

For the reasons given above I uphold this complaint about The Prudential Assurance Company Limited.

I now require it to take the following actions:

- Issue the payment forms, by recorded delivery, within 28 days of the date when Mr T accepts my final decision, to both Mr T (and if it has not already done so, to the Trustee in Bankruptcy) to enable them to seek payment for their respective interests in the UFPLS for the pension policies;
- make payment to both parties within 15 days of the date of receipt of the duly completed payment forms;
- after the payment has been made, carry out a review to assess whether Mr T has suffered any financial loss as a result of the delay in payment. For the purposes of this calculation The Prudential Assurance Company Limited should compare:
 - the UFPLS (in respect of Mr T's interest in both policies) it would have paid Mr T, after making the necessary adjustments and deductions for income tax and any applicable charges, if it had made the payment to him on 23 November 2021; against
 - the actual UFPLS it pays him (in respect of his interest in both policies), after making the necessary adjustments and deductions for income tax and any applicable charges at the date of payment.If the calculation shows that Mr T has suffered a financial loss because of the delay in payment, The Prudential Assurance Company Limited should pay that amount to him as a lump sum together with 8% simple interest* on that amount for the period since 23 November 2021 to the date of payment of the compensatory interest. If the calculation shows that no loss has been suffered, no compensation or compensatory interest for financial loss caused by the delays would be payable; and
- pay Mr T an additional £400 (£975 in total) by way of compensation for the distress and inconvenience he experienced.

* If The Prudential Assurance Company Limited considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr T it should tell him how much it's taken off. It should also give Mr T a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 July 2023.

Irene Martin
Ombudsman