

The complaint

Mr B has complained that The Prudential Assurance Company Limited didn't pay the ongoing advice charge (OAC) from his pension plan to his financial adviser when it should, and then deducted this from his plan in one lump sum in January 2023. This amounted to £6,304 and, as a result, Mr B's plan value dropped considerably. Mr B considers that Prudential should cover these fees due to its mistake.

What happened

Mr B's financial adviser contacted Prudential in November 2022 to say that they hadn't received their OAC since January 2020, and following its investigation into the matter, Prudential established that, when Mr B had moved to that new financial adviser, the OAC had incorrectly been removed from the plan.

Mr B then completed an Adviser Charge Instruction Form in November 2022 which authorised Prudential to reinstate the 0.75% OAC from his pension funds, which were held in two separate accounts.

Prudential then backdated the missed OAC to January 2020 for one of the accounts, and to February 2020 for the other, which amounted to a total of £6,304. This was deducted from Mr B's pension funds in January 2023.

Mr B complained in the same month, but Prudential replied to say that the backdated fees were due to his financial adviser and that, as his plan would have reduced by the amount deducted in any case, he hadn't been financially disadvantaged.

It then reviewed the matter, and although it maintained its overall position on the lump sum deduction to cover the OAC, it offered Mr B £50 in respect of the distress and inconvenience that the matter would have caused him.

Dissatisfied with the response, Mr B referred his complaint to this service. One of our investigators considered the matter, but didn't think it should be upheld. He said the following in summary:

- Whilst he acknowledged that the lump sum deduction would have been a shock to Mr B, this payment would always have been taken, albeit more gradually over the last couple of years. And so Mr B's plan value is unlikely to have been financially disadvantaged by the amount being taken in one deduction.
- He didn't think Mr B's request that Prudential cover these fees was fair as Mr B had agreed to pay the OAC from the outset. It wouldn't be fair to require Prudential to pay them instead.
- Prudential had acknowledged the error it had made, and the investigator thought that the £50 offer of compensation was fair in the circumstances.

Mr B disagreed, however, saying that Prudential had made the error in not paying the fees

for years, and although it initially didn't uphold his complaint, it then changed its stance and offered him £50 for the error.

Mr B considered this to be unsatisfactory, given the lump sum deduction from his pension pot. As such he requested that the matter be referred to an ombudsman for review.

I issued a provisional decision on the matter on 31 May 2023. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons, albeit with caveats which I set out below.

I don't think it's disputed that Mr B agreed to pay the OAC to his financial adviser, and as such I think it's fair to say that the charges would always have been taken from his pension funds. I understand why Mr B would have been shocked at the reduction in his pension fund value when the deduction was taken as a lump sum, but as both the investigator and Prudential have said, this money would always have been taken, but at different points and in smaller sums.

That the OAC deduction has been taken in one lump sum from Mr B's pension value in January 2023 rather than being backdated to when the OAC would have been taken in smaller sums since 2020 may well have worked in Mr B's favour.

But I do nevertheless think that Mr B should be offered the option of having his policy reconstructed as if the OAC deductions had been made when they should have been, rather than the amount being taken as one lump sum. This will then place Mr B precisely in the position he would otherwise be, but for Prudential's error.

And so, in response to this provisional decision, I'd be grateful if Mr B would indicate as to whether he would like Prudential to do this.

I've then thought further about the £50 payment Prudential made to Mr B in respect of the distress and inconvenience the matter will have caused. I think it's fair to say that Prudential acknowledged the error and took steps to correct in it a timely fashion (albeit in a manner with which Mr B disagrees), but the lump sum deduction for fees was sizeable and the immediate reduction in the value of his pension fund has clearly caused Mr B considerable concern. And I can understand why.

So, along with the prospect of reconstructing Mr B's pension fund as set out above, I think an overall payment of £100 (including the £50 offered by Prudential if it's already been paid) is probably more appropriate here."

In response, Mr B said he still wasn't happy with the proposed £100 award. He said that the two big issues for him were that Prudential initially denied that it had made any mistakes, but then changed its mind and said that it was human error on its part – which was totally unacceptable.

Mr B further said that the significant amount which was withdrawn from his pension also wasn't acceptable.

He added that he hadn't accepted the £50 settlement offer made by Prudential – rather it had just sent it straight to his bank account after making the offer.

Mr B said that it was a poor state of affairs from a big company such as Prudential.

Prudential also responded to say that the OAC was backdated on a monthly basis rather than just being taken as a lump sum. It could see how its previous wording might make it appear as if the amount had simply been taken as a lump sum in January 2023, but it confirmed that it had been appropriately backdated.

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 noted the responses from both parties and would comment as follows.

I'd firstly acknowledge Mr B's disappointment with the proposed outcome. I understand his frustration at what's happened, and that he continues to feel aggrieved at what he considers to be both Prudential's change of position on whether it had done anything wrong, and the amount which was taken from his plan as an unexpected lump sum.

But I don't think it's the case that Prudential denied that an error had occurred when it stopped the OAC in the first place. Its change of position related to whether it was upholding Mr B's complaint and an amount it was willing to pay in respect of the distress and inconvenience the matter had caused to Mr B.

I think it would have been helpful for Prudential to have specifically apologised for the error and the upset this had caused Mr B in its initial letter - and then to make an appropriate offer of compensation - rather than simply saying it was sorry that Mr B had had "cause for complaint" and following this by confirming that it nevertheless wasn't able to support Mr B's complaint. Clearly an error had been made, and this was Prudential's.

But I do also have to take into account that it did then review its position and issued what I consider to be a more appropriately concessionary letter, in which it acknowledged that the error had been made, that it was upholding Mr B's complaint in that regard, and that it would be paying him £50 in respect of this. It also said that it aimed to provide an excellent level of customer service and that it hoped that, if Mr B needed to contact it again, he would see an improvement in its service.

So I think that, whilst Prudential made the initial mistake relating to the OAC and then could have tried to resolve the matter in an initially more apologetic and appropriate manner, it did then do so once it had reviewed the complaint.

Given the error with OAC and Prudential's initial handling of the matter, I therefore thought that the amount which it should pay to Mr B should increase. This was also intended to take into account the concern which Mr B would quite understandably have experienced at the significant lump sum withdrawal.

But I did also need to take into account the steps which Prudential had taken to resolve the error itself. And whilst this amounted to a concerning lump sum withdrawal for Mr B, it did nevertheless aim to put Mr B, and his pension plan, into the position he would otherwise have been had the error not been made and the OAC payments had been paid as intended.

And to reiterate my comments from the provision decision, the deduction of the OAC was always something which should have taken place – and so there ought to have been an overall neutral position for Mr B and his pension funds.

And so my conclusions on the amount which Prudential should pay to Mr B remain unchanged. Taking account of the circumstances here and the types of award we might make in other similar circumstances, I think the amount is appropriate.

But my remaining concern, as set out in the provisional decision, was that the lump sum withdrawal may not reflect the position of Mr B's pension plan had the OAC payments been made when they should have been. And that's why I proposed that Prudential reconstruct Mr B's plan on that basis.

But in response to the provisional decision, Prudential has confirmed that the payments have been properly backdated, and, as I understand it, this means that my intention as set out in that decision has already been fulfilled.

Putting things right

Overall, my conclusions remain the same as those set out in the provisional decision. The Prudential Assurance Company Limited should pay to Mr B a total of £100 (including the £50 already paid).

My final decision

My final decision is that I uphold the complaint and direct The Prudential Assurance Company Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 July 2023.

Philip Miller
Ombudsman