DRN-4257851

The complaint

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

Mrs F also complains that the charges incurred exceeded the amount she 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, Mrs F held two pensions – an FSAVC and a Personal Pension both with Prudential (worth approximately £2,300 and £60,400 respectively). The fact find states that she held £10,000 in cash (jointly with Mr F), and no other investments. Mrs F was stated to be self employed, her husband was already retired and in receipt of the state pension. 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 & Mrs F were recorded to have joint objectives which were stated to be to access a lump sum from their pensions of £57,731 as they wanted to buy a new car (£30,000), finish renovations on their home and for some special holidays.

A recommendation was made for both of Mrs 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. Mrs 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 & Mrs 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 they had previously been given and the charges incurred, both of which are the subject of this complaint.

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

My Provisional Decision

I issued my provisional decision on 30 June 2023. It said:

"Within Mrs 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 Mrs F believes that the advice she was provided was based on incorrect information in relation to her objectives, was unsuitable and that the charges applied to her plan exceeded what she was told they would be.

When considering whether the advice to transfer was suitable for Mrs F, I have considered what her objectives were most likely to have been at the time the advice was given. In their communications after the advice, Mr & Mrs F state that with hindsight they would have "only taken out the £96K pension pot [this was Mr F's personal pension plan] 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 & Mrs F's combined need for a lump sum – not least because they haven't spent the full amount of the tax free cash they accessed. That is, Mr & Mrs F wanted to access some of their combined pension assets as tax free cash but they didn't need the nearly £60,000 they ended up with.

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

Having considered Mr & Mrs F's joint objectives and their comments relating to accessing Mr F's tax free cash to support their objectives, I am satisfied that these could have been met without Mrs F needing to transfer her pension arrangements. I am not satisfied that it was in Mrs F's best interests to transfer her Prudential personal pension and FSAVC to a Prudential Retirement account and take the maximum tax free cash.

As outlined in the original investigation, the new policy incurred additional charges. There is no evidence of alternatives having been considered, including 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 Mrs F at the time of the advice. It is stated in the suitability report that Mrs F did not wish to take out an annuity. Whilst it would have been necessary to transfer her pensions in order to access her 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 Mrs F at a later date if required. I note that the information recorded at the time of the advice stated that when Mr & Mrs F's state pensions were in payment, this would meet their outgoings.

The recommendation to switch the Prudential FSAVC and personal pension plan 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 therefore uphold this element of the complaint.

Turning now to the level of the advice charge. Mrs F states that the advice charge applied on transfer exceeded what she 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 although higher than Mrs F's pension arrangements, provided her with an appropriate level of information explaining how the charges applied.

The personal illustration provided indicates that the initial advice charge would be 2.33% which equated to £1,466.88. Mr & Mrs F state in their complaint that they were told the charges would be £3,000 - £3,500 but were 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 Mrs F and her husband's recommendations, it appears that this was the combined advice charge for them both. I do not believe Prudential have acted unfairly or unreasonably concerning the level of the initial advice charge applied (although, for the reasons given above, I don't think the actual advice was suitable)."

Responses to my provisional decision

I have received a response from Prudential which states that they are disappointed with the decision and don't have more to add to what had been said previously. They reiterated that the advice was given based on what the client tells them at the time, and their position remains as previously stated.

Mrs F has also replied and stated that she has no further comment.

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 Mrs F should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

Fair compensation

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

I think Mrs F would have retained both her previous pension arrangements. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs F's circumstances and objectives when she invested.

What must Prudential do?

To compensate Mrs F fairly, Prudential must:

- Compare the performance of Mrs F's investments with the notional value if they had not been transferred. If the actual value is greater than the sum of the notional values, no compensation is payable. If the notional value is greater than the actual values, there is a loss and compensation is payable.

- Prudential should also add any interest set out below to the compensation payable.

- If there is a loss, Prudential should pay into Mrs 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 Mrs F's pension plan, it should pay that amount direct to her. 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 F won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mrs F is likely to be a nil rate taxpayer at the selected retirement age, so no reduction would apply in this case.

- If either Prudential or Mrs F dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mrs F receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest, it should tell Mrs F how much has been taken off. Prudential should give Mrs F a tax deduction certificate in respect of interest if Mrs F 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	Still exists and liquid	Notional values of the previous personal pension and FSAVC	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.

Notional Value

This is the value of Mrs F's investments had it remained in the previous arrangements until the end date. Prudential should calculate this value.

Any additional sum paid into the Prudential Retirement Account should be added to the notional value calculation from the point in time when it was actually paid in.

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. 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.

As the previous pensions were managed by Prudential I see no reason why it won't be able to calculate redress in line with the above approach. However, if Prudential isn't able to do so, it will need to determine a fair value for Mrs 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:

- Mrs F wanted Capital growth with a small risk to her capital.

- If Prudential are 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 her 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 Mrs F's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs F into that position. It does not mean that Mrs F would have invested 50% of her 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 Mrs F could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My final decision is that 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 F to accept or reject my decision before 30 October 2023.

Joanne Molloy

Ombudsman