

The complaint

Mr S complains that The Prudential Assurance Company Limited failed to treat him fairly when he wished to take some pension benefits in March 2023.

What happened

Mr S held pension savings with Prudential across three separate pension plans. But, for the purposes of this decision, I will treat the pension savings as being held in a single plan. Mr S' pension plan had been first opened in March 2001 whilst he was employed by a company that he left in October 2011. His selected retirement date was in 2028, however Mr S was entitled to take his benefits from April 2023 when he reached 55 years of age.

Mr S first got in touch with Prudential about taking his pension benefits in January 2023. He received some information about their value, and his options, in a letter Prudential sent to him later that month. On 8 February Mr S called Prudential to start the process of taking his pension benefits. Prudential arranged for Mr S to talk with one of its retirement agents on 1 March.

Mr S wished to take his pension commencement lump sum ("PCLS" – otherwise known as tax free cash) immediately and then place the remainder of his pension savings into a drawdown arrangement. When he spoke to Prudential on 1 March he was told, for the first time, that in order to proceed in that way he would need to transfer his pension savings into an alternative Prudential pension product. And he was told that Prudential only sold that pension plan to consumers via a financial advisor. It did however tell Mr S that other providers might offer drawdown arrangements without a consumer needing to take financial advice.

Mr S was unhappy that he needed to take advice, and that he hadn't been told of that requirement in the past. So he asked Prudential to log a formal complaint about what had happened. Since then, Mr S has taken financial advice, and has transferred his pension savings to another provider.

Prudential dealt with Mr S' complaint in two response letters. It accepted that it should have told him earlier that he would need to take financial advice before being able to transfer into its drawdown product. It thought that had caused a delay of 15 working days. But it didn't think it had been wrong to require Mr S to take advice before transferring into its drawdown product. Prudential sent cheques, totalling £200, to Mr S to compensate him for the inconvenience he'd been caused. And Prudential told Mr S that, if he transferred his pension savings within 30 days, it would calculate whether the delay had caused him to lose out.

Mr S didn't accept Prudential's offer so he brought his complaint to us. He says that he has returned the cheques he was sent uncashed. The complaint has been assessed by one of our investigators. She thought that Prudential's estimate of the delay it had caused was reasonable, and she didn't think that it was unreasonable for Prudential to decide how it would operate its pension drawdown product. But the investigator didn't think Prudential had done enough to compensate Mr S for the delay, so she set out what Prudential needed to do.

Mr S didn't accept that assessment. He thought that Prudential should additionally pay him compensation for the entire fall in the value of his pension savings between February 2023 and May 2023 when he transferred them to another provider. And he thought that Prudential should also refund the cost of the financial advice that he'd taken. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

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 S 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.

At the outset I think it is useful to reflect 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.

To inform my assessment of this complaint I have listened carefully to two phone calls that Mr S had with Prudential in February and March. It is clear from those calls that Mr S had a good understanding of how he wanted to use his pension savings when he reached 55 years of age. And I think it is important to note that there was no regulatory reason why Mr S must take financial advice before making that decision. Although his pension savings did benefit from a small guarantee relating to the PCLS he could take, their value meant that guarantee was less than Mr S would receive if the PCLS was paid normally.

But in saying that, I am not reaching a conclusion that Prudential was wrong to require Mr S to take financial advice before transferring his pension savings into its drawdown product. Generally I would think it reasonable that product providers are able to set the terms on which they are willing to offer a product. Prudential has taken the decision that the complexities of a drawdown arrangement mean that better consumer outcomes will be achieved if consumers are required to take financial advice. It is not for me to interfere with the approach Prudential has taken. So I don't think Prudential has done anything wrong in this regard. If Mr S wanted to make use of Prudential's drawdown product he would have needed to take financial advice.

On the call that took place in March 2023, when Prudential told Mr S for the first time about it requiring him to take financial advice, it was also explained to Mr S that other providers might not have a similar requirement. I entirely accept that the shock Mr S might have been experiencing, given what he'd just been told about needing financial advice, might have meant he didn't fully engage with that information. But I don't think that would lead to a reasonable conclusion that Prudential was responsible for Mr S' decision to make use of a financial advisor. So I agree with our investigator that those costs should not form part of the compensation I am asking Prudential to pay here.

When Mr S called Prudential in February 2023 he didn't explicitly say that he wanted to make use of a drawdown arrangement, even though that seems to have been his intention throughout. But I don't find any fault on his part for the way that conversation proceeded. Prudential was the expert here, and should have been aware of its requirements. The literature Mr S had been sent told him he could make use of a drawdown arrangement. And at no time did it tell him that financial advice was compulsory – in all cases it simply said that Prudential would recommend that advice was taken. So I think it was entirely Prudential's responsibility to make its requirements clear to Mr S before arranging the call to discuss taking his benefits – without having taken advice that call would be redundant for meeting Mr S' needs.

When Mr S was told about the advice requirement, in March 2023, he both took financial advice and transferred his pension savings to another provider. On balance I have no reason to think that he wouldn't have taken similar actions had the requirement been clearly set out on the first call. And it doesn't seem unreasonable to me that the timescales around the provision of the advice, and the transfer request, would have been similar. So I think the delay Prudential has caused to Mr S taking his pension benefits is the period between his call on 8 February, and him being given the fuller information on 1 March – a period of 20 days.

As I set out below, I think that Prudential needs to work out whether that delay has caused Mr S to lose out. I think its calculations will need to consider whether the transfer value of the pension savings would have been higher, had the transfer happened 20 days earlier. It will need to account for any better investment performance Mr S might have enjoyed had the delay not happened. And, if Mr S took his PCLS before, or immediately following, the transfer that payment will have also been delayed by 20 days.

There is no doubt that the initial lack of information, and the delay to taking his pension benefits, will have caused some distress and inconvenience to Mr S. As I said earlier, Prudential sent him two cheques totalling £200 for that inconvenience, although Mr S says they were returned uncashed. I think the amount that Prudential has offered here is reasonable and in line with what I would award given all the circumstances. So, if Prudential hasn't yet paid the £200 to Mr S, it should now do so as part of the compensation I am directing.

I appreciate that the redress I am directing falls short of what Mr S thinks is appropriate. But it is reasonable for Prudential to decide the terms on which it is willing to do business. It was Mr S' choice to engage a financial advisor – that might not have been a requirement of other firms as Prudential explained to him. So I don't think those costs should form part of the compensation I am awarding. But the poor information did cause a delay of 20 days in Mr S receiving his pension benefits, and so Prudential needs to work out whether that has caused Mr S to lose out.

Putting things right

As I've explained above, I think that Prudential caused a delay of 20 days in the transfer of Mr S' pension savings to the new provider. So Prudential needs to determine whether that delay caused Mr S to lose out by taking the following steps;

- Prudential should calculate what the notional transfer value of Mr S' pension savings would have been had that transfer taken place 20 days earlier. Should the notional value be higher than the actual amount transferred Mr S has suffered a loss and the difference should be paid to him as compensation.

- Prudential should also determine whether an earlier transfer would have given Mr S any additional investment gains, either through the market prices paid for any new investments he made, or through his pension savings being invested for the additional 20 days. It should calculate what Mr S' pension savings would be worth, at the date of this final decision (and accounting for any withdrawals Mr S made), had they been transferred 20 days earlier and invested in the same manner. If there is a loss that amount should also be paid to Mr S as compensation.

Prudential should pay into Mr S' pension plan with the new provider to increase its value by the total amount of any compensation set out above. 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 total amount into Mr S' pension plan, it should pay that amount direct to him. But had it been possible to pay 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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr S won't be able to reclaim any of the reduction after compensation is paid.

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

If Mr S took his PCLS either before the transfer, or within 30 days of it completing, I think it reasonable to conclude that payment was also delayed by Prudential's error. So if Mr S gave Prudential or the new provider an instruction for the PCLS to be paid within 30 days of the transfer completing Prudential should pay Mr S 20 days simple interest at a rate of 8% per annum on the PCLS that was paid to him. HM Revenue & Customs requires Prudential to take off tax from this interest. Prudential must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Additionally, unless it can show the cheques it sent to him have been cashed, Prudential should pay Mr S £200 for the inconvenience he has been caused.

My final decision

My final decision is that I uphold Mr 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 S to accept or reject my decision before 17 October 2023.

Paul Reilly
Ombudsman