

## **The complaint**

Mr B complains that The Prudential Assurance Company Limited ( Prudential) transferred the administration of his annuity income pension plan to another company without his consent.

Mr B says that Prudential has breached its contract with him as he didn't agree for his plan to be transferred.

## **What happened**

In 2010 Mr B purchased an annuity income pension plan with Prudential.

In March 2019 Prudential wrote to Mr B to inform him that it intended to transfer some of its annuity business, which included his annuity plan, to another company. It told Mr B that he could object to that proposal, and he could make representations to the High Court which would be considering the transfer proposal. Prudential also explained how Mr B could object.

On September 2019 Prudential wrote to Mr B to inform him that the transfer of part of its annuity business hadn't been approved by the High Court but that it was appealing that decision.

In October 2019 Prudential wrote to Mr B to update him and said it had lodged its notice of appeal.

In December 2020 the Court of Appeal considered the case and concluded there had been an error in the approach taken by the High Court, so the matter should be re-considered.

In February 2021 Prudential wrote to Mr B to inform him of the Court of Appeal's decision and explained that there would be a new hearing where the High Court would consider the transfer.

On 22 August 2021 Prudential wrote to Mr B again, to inform him of the proposed transfer of part of its annuity business, including his plan, to another company. It informed Mr B that he had the right to object and attend the approval hearing. Prudential also informed him that the hearing was due to take place in November 2021 and that if the High Court approved the transfer, it would become effective in December 2021.

Mr B contacted Prudential and said he didn't want his plan to be included in the transfer.

Mr B said that his purchase with Prudential was being challenged and it was unacceptable that he would have to deal with a company from another country instead of Prudential. Mr B said he didn't want his annuity to be transferred to another company (and one which was from another country) and said there was no advantage for him in the transfer taking place.

The transfer of part of the annuity business was considered by the High Court who approved it, with the transfer taking effect in December 2021.

Mr B complained to Prudential and reiterated that he hadn't agreed to the transfer and his view was that Prudential had broken its contract. He also said that Prudential was acting in breach of the contract and the Sale of Goods Act by transferring his plan.

Mr B noted that he had a right to object to the transfer and said he had sent two emails in August 2021 and October 2021, before the court heard the case.

Mr B also said he felt that the relationship between Prudential and the company the plan was proposed to be transferred to, was too close.

Prudential didn't uphold Mr B's complaint. It acknowledged that the key features document for his annuity plan didn't state that it could be transferred to another provider in the future. Prudential said in 2010, it wasn't aware that a transfer would occur, as the decision took place many years later.

Prudential said it was important to note that the terms and conditions of Mr B's annuity plan hadn't changed and wouldn't change. It said Mr B would receive the same income from the new company, as he would've received if Prudential had continued to pay his annuity.

Prudential said the legality of the transfer was tested and approved by the High Court and Mr B had been entitled to object to the transfer. It said all objections received were collated and considered by the court before the transfer occurred.

Prudential said it didn't require express permission to transfer Mr B's annuity to another company. And once the court had approved the transfer, his objection wouldn't have prevented his plan being transferred.

Prudential disagreed with Mr B's comments about the relationship between Prudential and the company his plan had been transferred to and noted that it did not share an office with that company.

In December 2021 Mr B's annuity plan was transferred to another company as part of a block transfer of business and the new company wrote to Mr B to confirm that it was now responsible for the administration of his plan benefits.

Mr B disagreed with Prudential's response to his complaint and referred his complaint to our service.

Our investigator considered Mr B's complaint but didn't think it should be upheld. She acknowledged that he was unhappy with the transfer of his plan and noted the background to the transfer taking place, including the correspondence sent to Mr B by Prudential informing him about the proposed transfer. The investigator also noted that the High Court had approved the transfer which took effect in December 2021.

The investigator said when Mr B agreed to accept the annuity and the associated terms, in 2010, Prudential didn't promise that his pension wouldn't be subject to a transfer in the future. And so, she didn't think that Prudential had breached the terms and conditions of the agreement by transferring his annuity to another company.

Mr B disagreed. In summary he said he couldn't accept the outcome and that there had been a change, in that he had to deal with a different company who he said wasn't accepting his emails.

Mr B said that Prudential had said in its literature that joining it was for the rest of his life. He referred to a document entitled “*5 reasons why you should choose Prudential for a secure future.*”

Mr B felt he had paid his money and not received what had been promised. He said he wanted his money returned and it was his human right to choose the provider of his plan.

As no agreement could be reached Mr B’s complaint was referred to me for review.

### **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 should outline at the outset, that as this complaint is brought against Prudential, I will only be considering its actions and not the actions of the other company who took over the administration of Mr B’s plan.

This is an informal dispute resolution service, and I will consider the actions of Prudential and determine whether overall I consider, on a fair and reasonable basis, it has acted incorrectly or treated Mr B unfairly, taking account of all applicable law, relevant regulatory rules and good industry practice at the time.

Mr B says Prudential has broken its contract with him by transferring the administration of his annuity to another provider.

Prudential says it didn’t need Mr B’s consent to transfer his plan to another company. It points out that the terms and conditions of Mr B’s plan remain the same. So, he will still receive the income from the plan each year. The only change is that the administration of his plan will be carried out by another company.

### The transfer of Mr B’s annuity plan to another company

I appreciate Mr B is very unhappy that his annuity plan was transferred to another provider without his consent. He feels strongly that Prudential has breached its contract with him, and he doesn’t want the benefits from his plan to be administered by another company, particularly a company that he hasn’t chosen.

Mr B has also referred to literature provided by Prudential which gives reasons why you should choose Prudential and says:

*“However, in such uncertain economic times you’ll not only want to ensure your money is coming from a company that’s financially secure but also will be around to keep paying you for the rest of your life. At Prudential you can rest assured we’re well placed to look after your money for the long term.”*

I consider this to be marketing material produced by Prudential, so I don’t think it is contractual in nature. I also don’t think this is a promise by Prudential to remain as the provider of the plan for the rest of the plan holder’s life. I think it is saying, in effect, that Prudential is a well-established company that is likely to be around for the long term and so it is suggesting that is less risky than a newer, less well-known company.

I note that a consumer will make their choice to take out a plan for different reasons and one of those reasons may well be how well known the company providing the plan is and its

reputation. Mr B has expressed that the nationality of the company providing his plan is very important to him and he wanted to remain with Prudential.

However, this type of transfer; of numerous plans administered by one business, to another company doesn't require each plan holder's consent.

I can see in practical terms why that is the case, as there may be several reasons why a business will want to buy or sell part of its business to another company, in order to stay viable and profitable. And taking that decision would be a legitimate exercise of its commercial judgement. So, it wouldn't be feasible to have contracts with its plan holders which prevented this from ever happening - even though it may not be something that is envisaged by either party at the time the contract is taken out. Here Prudential has pointed out that Mr B's plan was taken out in 2010, several years before the proposed transfer was put in motion.

I note that there is nothing in the terms and conditions of Mr B's plan which expressly refers to the transfer of the administration of the plan to another company but nor is there anything there to say it can't happen. So, while I consider the benefits provided by his plan are expressly stated, I don't think there is a guarantee in the terms and conditions about which company will provide those benefits.

However, as this change was made without the consent of the plan holder, Mr B, I have considered what protections were put in place to protect his interests and the interests of other affected plan holders.

I note that Prudential confirmed in the correspondence under "Key information" that "*The proposed transfer will not affect your benefits or the terms and conditions of your annuity.*" So the new provider would pay Mr B the same annuity benefits on the same dates.

I am satisfied on balance that Prudential followed a process (under The Financial Services and Markets Act 2000) which is there to protect the interests of plan holders in this type of situation.

The transfer process required the approval of a High Court Judge, and it also involved a financial regulator; the Financial Conduct Authority (FCA). I consider that to be an important protection.

As part of the process the High Court would also hear from an independent expert who would review the likely effect of the transfer on plan holders. I can see that an independent expert was appointed here and drafted a report which was submitted to the court.

I take into account that the High Court decided on the re-consideration of the proposal, to approve the transfer. The objections of policyholders were made available to the High Court but ultimately it decided to approve the transfer. Accordingly that transfer came into effect in December 2021.

On that basis I don't think that Prudential has acted incorrectly by transferring the administration of Mr B's plan as part of a bulk transfer of business.

Has Prudential treated Mr B fairly?

I can see that Prudential first explained that it was proposing a transfer of part of its business, which included Mr B's plan, in March 2019. I am satisfied that it explained the process and what it would mean for Mr B, and it also explained how he was able to object.

I am also satisfied that Prudential kept Mr B updated with what was happening at each stage and informed him about the court hearings taking place as a result.

I note that in August 2021 Prudential reiterated how the proposed transfer would impact plan holders and that the process would involve the High Court considering the transfer proposal.

In a paragraph entitled “Key Information” it informed Mr B “*you have the right to object to the proposed transfer and attend the approval hearing.*”

It also set out the key protections for plan holders in that letter which included:

- *The appointment of an independent expert whose appointment has been approved and reconfirmed by the PRA (in consultation with the FCA), to review the likely effect of the proposed transfer on policyholders;*
- *Keeping you informed and giving you the opportunity to raise any concerns or objections you may have. Copies of all objections will be passed to the High Court, the FCA and the PRA for consideration and will also be made available to the Independent Expert;*
- *Approval of the transfer by the High Court. (It gave details of the location and the date of the hearing). The High Court will consider the views of policyholders, the Independent Expert, the FCA and the PRA before reaching a decision on whether to approve the proposed transfer; and*
- *Ongoing review by the FCA and the PRA*

Prudential also explained that the details of the proposed transfer were contained within a legal document called the Scheme and it provided a summary of the Scheme and directed Mr B to where he could access the full document and further information about the transfer.

As the hearing was due to take place in November 2021 and this letter was sent to Mr B in August 2021, I am satisfied that Prudential gave him a reasonable period of notice to enable Mr B to make his objections.

So as I consider that Prudential gave Mr B information at each stage of the process and a reasonable amount of notice of what was happening next and explained how he could object, I don't think it has treated him unfairly here.

In any event, I note that the benefits and terms and conditions of Mr B's plan remained the same following the transfer. So, accordingly he shouldn't have been adversely affected.

### Summary

I appreciate that Mr B feels strongly that he should be able to choose the provider of his plan. And having chosen Prudential, he was upset that his provider was then changed to another company without his consent. However, I have to consider whether Prudential has acted incorrectly here and whether it has treated Mr B unfairly.

I note that the transfer wasn't limited to Mr B's plan – it was the transfer of a whole section of Prudential's business and that transfer was examined and approved by the High Court, with the involvement of an independent expert and the regulatory authorities.

I am satisfied that Prudential informed Mr B about the process and gave him notice of what was happening and how to object.

So, overall I don't consider that Prudential has acted incorrectly or treated Mr B unfairly.

### **My final decision**

My final decision is that Mr B's complaint against The Prudential Assurance Company Limited is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 April 2024.

Julia Chittenden  
**Ombudsman**