DRN-4651048

The complaint

Mr C complains that The Prudential Assurance Company Limited (The Prudential) gave him an incorrect fund value for his pension.

What happened

Mr C said his pension was due to mature in late 2023. The Prudential said his policy did not allow drawdown and he would need to take financial advice to transfer to another policy. He was referred by The Prudential to a financial adviser. During the first call with the adviser he confirmed that the current statement value as of 12 January 2023 was around £1,400,000.

He said he was advised to increase his expenditure to take full advantage of the substantial capital available. In March 2023 this value was revised to around £714,000. Inefficiency in transferring also caused another £17,000 of loss. The whole experience had adversely impacted his health.

The Prudential said it had caused a delay in the transfer and would consider if there had been financial disadvantage. It also sent £175 and later £200. It said had it not caused a delay it would have made payment on 7 April 2023 at the value effective from 31 March 2023. Instead it didn't pay until 27 April 2023 and the value effective from 18 April 2023 was lower. It assessed his loss as £9,443.74 plus interest of £7.44 net of tax. It also awarded £500 for trouble and upset and said it was sending a total of £9,951.18.

Mr C accepted the offer but said he still felt he was due compensation for his considerable loss arising from the incorrect valuation.

My provisional decision

I issued a provisional decision and said the following.

Prudential accepted it issued an incorrect transfer value and caused delays in the transfer of Mr C's pension policies. I did not therefore need to consider that further and could focus on the consequences.

Where there has been a mistake and delay I could consider an award for the financial loss and distress and inconvenience arising from that.

Financial loss

In assessing financial loss my aim was to put Mr C back as closely as possible into the position that he would have been in but for the mistake.

1. Firstly Mr C accepted the transfer value issued on 12 January 2023 was incorrect and he was not entitled to that amount, so there was no financial loss, but there was a loss of expectation which I had considered in my proposed award for distress and inconvenience set out below.

2. Secondly he said he lost out due to the delay in transferring his pension. There were two

parts to his loss:-

a. the amount paid out was lower than it should have been and

b. had the money been transferred sooner and invested in Mr C's new account it would have been subject to investment returns that would have meant it was higher or lower in value than was the case

Prudential had provided a loss calculation for this and made payment to Mr C. This service cannot check that calculation.

Mr C had disputed the amount used for his pension value but otherwise did not dispute the calculation. Mr C initially maintained that the figure that should have been used was that on 3 March but later said it was the figure from 30 March (which was the date that he signed the discharge papers). He referred to the figure on the discharge papers which was around £717,000. But I didn't agree. I said that because the discharge form was clear that the figure quoted isn't the amount he will receive.

The forms said the following:

> *'I understand that the transfer value will be recalculated at the date Prudential receive all their requirements to make payment and this amount could be higher or lower than the transfer value shown in this quotation'*

Prudential said they had calculated the loss based on the date that they would have received all their requirements which they are saying is 31 March 2023. That seemed reasonable to me given that the signed discharge form had to be returned to Prudential. On that basis the first complete day that it would have had all that was needed could not be earlier that the day after he signed all the papers. So I thought the date used for the calculation was fair and reasonable in the circumstances.

However I thought that payment only dealt with the loss under (a) above and while it had added a small amount of interest, it did not check whether there was an investment loss in his new retirement account due to the delayed payment under (b) above. So I thought Prudential needed to make a further calculation and if needed make a further payment on the basis the investigator suggested.

So I thought Prudential should

- Calculate the notional value of Mr C's pension today had £706,417.70 been paid into his pension on 7 April 2023.

- Compare this notional value with the current value of Mr C's pension and, if there was a loss, pay the outstanding amount into his pension fund.

3. Thirdly Mr C said that in reliance on the higher pension valuation he was told to spend money. He says this advice was given by the Prudential financial adviser (FA).

He estimated that he had spent around £40,000 that he said he would not otherwise have spent.

Firstly I said that this complaint was against the Prudential and not against the Financial Adviser who I understood was employed in part of the group of companies that include the Prudential (but not by the Prudential company party to this complaint). I was not therefore making any findings about the FA but had considered the evidence presented by way of background context to the events at the time.

I noted that possible Estate Planning was discussed during Mr C's meetings with the FA as it became clear that it was possible his beneficiaries could have to pay inheritance tax of around £100,000 on his death. Annual inheritance tax allowances for gifts were outlined but I noted Mr C did not instruct his FA to give advice on Estate Planning. At the time Mr C had significant cash resources and was living off savings as neither he nor his wife's state pensions were in payment. I mentioned these things as I thought they presented a background to the events at the time. I noted that part of the commitments Mr C entered into were gifts to family members.

In essence Mr C was arguing that in reliance on a representation from Prudential (the incorrect transfer value) about the value of his pension, he spent money and made gifts.

It is clear that there was a misrepresentation as to the transfer value of his pension. But this was an error. The law would say that he should be put back into the position he would have been in as if there wasn't an error. That position would have been to have had a correct but much lower transfer value.

But Mr C says he acted in reliance on that misrepresentation by spending money that he would not otherwise have done. He should therefore be repaid.

But I didn't agree. I said that because the transfer value presented at the meeting in late January 2023 was not guaranteed and was clear it could be subject to change, so there was no certainty the amount of around £1,400,000 could be captured. Mr C had said that the reason he didn't question the value was because the values he had received in the past were variable so there was not an established sense of the value of his policies. That might have caused Mr C to be cautious until the money was actually received.

Further the money had not been transferred at the time he started to make financial commitments and therefore the amount had not been fixed. The transfer value statement was clear the amount payable on death was around £483,000. This was significantly less than the transfer value leaving Mr C at risk of receiving a much lower amount if he died before the transfer was completed.

It seems that notwithstanding this Mr C decided to spend money and make gifts in anticipation of receipt of the incorrect transfer value. But that wasn't the fault of the Prudential and it would not be fair nor reasonable to hold it responsible for that.

Further Mr C has had the benefit of some of that expenditure.

But even if I was wrong in that, I noted that the FA said the incorrect pension fund was corrected and communicated to Mr C on 17 February 2023. I noted that there were two meetings with the FA in February. One before and one after this date. On balance it seemed reasonable to conclude that Mr C would have been aware of the lower value from 17 February 2023 or the date of the second February meeting at the latest.

I had carefully considered the information on spending provided by Mr C. Some of it reflected payments made before the first meeting in late January 2023 when the incorrect value was first communicated, so cannot have been made in reliance on the incorrect transfer value.

Further commitments were made after Mr C was given the corrected transfer value in February 2023 so again cannot be in reliance on the incorrect valuation. But even if they were Mr C had a duty to mitigate, which I had considered below.

There are a smaller number of commitments entered into during the time before it was understood the transfer value was wrong. These in part relate to flights (possibly upgrades) which I understood were for Mr and Mrs C and related to a holiday booked before the incorrect value was communicated. It seemed that Mr and Mrs C had the benefit of those flights. So it would not be fair or reasonable for him to enjoy the benefit and be repaid for this flights.

Mr C also said he had already made promises to family members about gifts/expenditure before he was aware of the error. But Mr C also had a duty to mitigate his loss. By that I meant that he had a duty to avoid and or reduce any liabilities he had committed to and certainly not enter into new commitments once he was aware of the error. While it would have been awkward to do so it was possible to explain that those gifts/payments would no longer be possible.

Based on the evidence presented Mr C seemed to have continued to enter into commitments after he was aware the transfer value was much lower.

For all those reasons I didn't think that it would be fair or reasonable to hold Prudential responsible for the expenditure Mr C had listed.

Distress and inconvenience

An award for distress and inconvenience was intended to reflect the impact on Mr C not to punish Prudential. Mr C had been clear that he suffered a major loss of expectation when he discovered that the transfer value had been overstated by around double. He said that this and the delays had impacted his health and that he now has a long-term medical condition for which he has to take medication. He attributed that to these events. I completely understand that the disappointment must have been significant. I noted that the position was corrected within a matter of weeks (late January to mid-February 2023).

However the magnitude of the difference in the figures was material and it was clear he had started to make plans in anticipation of the transfer. In the light of this and what Mr C had said I thought an award of £1,200 would be fair and reasonable in the circumstances. However Mr C had confirmed that he had already received payments of £175, £200 and £500 that Prudential sent with its final response letters. So it need only pay a further £325.

I proposed to uphold this complaint in part and direct that the Prudential should pay Mr C a total of £1,200 for distress and inconvenience (but it need only pay a further £325) and in order to put things right for Mr C, Prudential must:

- Calculate the notional value of Mr C's pension at the date of calculation as if the £706,417.70 had been paid and thereafter invested in his new pension retirement account on 7 April 2023.

- Compare this notional value with the current value of Mr C's pension and, if there is a loss, pay the outstanding amount into his pension fund.

Mr C said he accepted some of the findings, but made further comments as follows:-

- He could not agree that 706,417.70 GBP should have been paid into the pension on the 7th April 2023. Despite causing the delays in transfer, referred to previously, Prudential said they had calculated the loss based on the date that they would have received all their requirements which they were saying was 31 March 2023 for £717, 918.47. Therefore the difference should be calculated on the basis that the value is the same as stated on the discharge letter 30th March 2023 (£717,918.47) and not the 7th April 2023.

- Although a holiday had been previously booked. Flights were not upgraded until immediately after the first meeting with the FA, following his advice to increase expenditure. The upgrade cost was for £4,690.24, this was done on the 1st Feb 2023 before the revised value was received.

- Although he did not instruct the FA to give advice on estate planning, the FA had voluntarily advised him to use cash reserves in order to retain the pension value and limit future IHT liability. Furthermore, to reduce liability, his wife also cashed in her pension following his suggestion.

- He believed he should be compensated for the additional expenditure that was incurred. In addition, he felt the £1,200.00 was not fair and reasonable as it did not reflect the considerable distress, inconvenience and deterioration to his health, as a consequence.

- With regard to the comment about the transfer value of around £1.4 million being presented at the meeting in late January 2023 not being guaranteed, he had received in writing from the Prudential on 12 January 2023 confirmation that the value was correct, although it could not be guaranteed as it could go down or up depending on investment performance, no reference was made to errors in valuation.

- Mr C also confirmed that the compensation already paid by Prudential had been paid to him personally and not into his pension account.

- He said the money transferred was invested into three funds. No changes had been made to those funds since he transferred and invested.

- He was a basic/standard 20% tax payer. He draws a monthly income of around £1,300 from his pension and had taken about £15,000 to date.

The Prudential accepted the proposed extra payment for Distress and inconvenience to £325. But said the award for financial loss needed to take into account the £9,443.75 it had already paid Mr C for the loss from 11 April (7 April was Good Friday) to 1 August 2023. It should also make allowance for the fact that Mr C had the benefit of that money since August 2023. Prudential explained how it had approached the calculation and the payment it had already made to Mr C. This compensated both for the lower amount paid and the lost investment return in his new investments in the period up to the date it paid Mr C compensation.

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 have considered what Mr C has said.

- With respect to the value to be used my provisional decision explained why it was appropriate to use the value on 31 March 2023 as the basis for an assumed transfer on 7 April 2023. As I explained above the value on the discharge form was not the value he would receive.

- I note that his flights for his holiday were not upgraded until immediately after the first meeting with the FA. As I said in my provisional decision this complaint is not against the FA that he says advised him to increase expenditure. Further as I said in my provisional decision I thought that given past variations in his fund value he should have been cautious and was aware the value was not fixed and that if he died before the transfer was made the amount paid was significantly less. So spending before receipt was risky. Further he had the benefit of the flight upgrades so it would not be fair or reasonable for him to enjoy these and be paid for them.

- With respect to his statement that the FA had voluntarily advised him to use cash reserves in order to retain the pension value and limit future IHT liability. This is not a complaint against the FA so I cannot consider this. Furthermore he said to reduce liability, his wife also cashed in her pension following his suggestion. Again that is not the subject of this complaint so I cannot comment on this further.

- I note his comments about being compensated for the additional expenditure that was incurred and that £1,200.00 was not fair and reasonable as it did not reflect the considerable distress, inconvenience and deterioration to his health. I don't agree for the reasons set out above and in my provisional decision.

- With regard to the comment that he had received written confirmation from the Prudential that the £1,400,000 value was correct, was not guaranteed and could go down or up depending on investment performance, but no reference was made to errors in valuation. I can see that Mr C would not have anticipated that the transfer value was wrong and that variations in value due would not typically be so large as to reduce the value by around fifty percent. But I have already considered his considerable loss of expectation when the correct value was provided and explained why I do not think he should be compensated for his additional expenditure. Further I have considered that he was not entitled to the erroneous higher value so there was no financial loss by virtue of the incorrect statement of value.

I have considered the comments made by the Prudential who said that the award for financial loss needed to take into account the £9,443.75 it had already paid Mr C for the loss from 11 April (7 April was Good Friday) to 1 August 2023 and make allowance for the fact that Mr C had the benefit of that money since August 2023. This money was paid directly to Mr C and not into his pension.

Based on its explanation I agree that Prudential has already paid Mr C an amount that represents the difference between the amount actually paid and the amount that should have been paid to him on 7 April plus lost investment return up to the date of payment. So no further provision is needed for financial loss.

I provided a copy of the detailed explanation of the calculation to Mr C and he has not disputed my view that he has already been compensated for loss in terms of the lower amount transferred and the lost investment return on the additional amount that should have been transferred.

However he still maintained that the value of around £706,000 on 7 April 2023 should not have been used and instead the earlier valuation of around £717,000 should have been used due to their delays in processing. But I don't agree for the reasons already given.

Mr C also added that there was a delay between the date he instructed his FA to start drawdown on 3 March 2023 and the date he first received some money and he had lost out due to this delay. But as I said to Mr C the transfer could not have taken place before he signed and returned the transfer forms. I considered the email evidence Mr C supplied. This showed exchanges with his FA who said there was a delay because he had assumed the transfer could be done using the Origo transfer system. But that was not the case so the FA had requested the forms. But the Prudential wasn't required to use the Origo system and it wasn't its fault that a delay was caused because his FA assumed this and by his own admission didn't ask for the transfer forms at an earlier stage. As I explained to Mr C, for that reason I didn't think the Prudential was responsible for that delay.

Mr C also said he had lost out because he didn't get his first drawdown payment until August 2023. But the actual financial loss caused by Prudential has already been calculated and paid to Mr C in August 2023 (as explained above). So I couldn't see that Mr C had suffered any further loss as he was able to take drawdown from the money already in his account and the additional loss payment made directly to Mr C in August 2023 didn't affect the timing of his starting drawdown. Mr C didn't make any further comment in response to my reply on this, so I don't think any further award is needed.

Putting things right

In order to put things right the Prudential should make a further payment for distress and inconvenience of £325. For the reasons given above there is no longer a need to make a calculation of financial loss as proposed by my provisional decision.

My final decision

I uphold this complaint.

I direct that The Prudential Assurance Company Limited should within 30 days of this service notifying it that Mr C has accepted this decision, pay Mr C £325 to bring the total payment to £1,200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 June 2024.

Colette Bewley
Ombudsman