DRN-4681032

The complaint

Mr P complains that The Prudential Assurance Company Limited (Prudential) repeatedly prevented him from paying contributions to his personal pension plan (PPP) and refused to accept transfers unless he used a financial adviser. He says he lost out on tax relief and investment returns as a consequence. He wants compensation for the losses.

What happened

Mr P took out the PPP (the plan) with Prudential in 1988, using it to contract out of the State Earnings Related Pension Scheme (SERPS). Mr P says he contacted Prudential during 2018 because he wanted to make further contributions to the plan but was told this wasn't possible.

Mr P says there was a long running problem with contributions to his plan that Prudential investigated in 2018.It offered him around £10,000 in compensation for this, which he accepted. Initially this was to be paid into the plan. But Prudential then said it wouldn't do this, paying it directly to Mr P instead. He says he wanted to pay this money as a contribution but was told he couldn't unless he took financial advice. In 2019 Mr P spoke with M&G wealth (the advisory arm of Prudential) but no recommendations were made. He spoke with Prudential again in 2023 about making transfers to his plan and both employer and employee contributions. He says he was told this wasn't possible. Then that it was, but that he would need to take financial advice in respect of the transfers, which he said was expensive and unreasonable.

Mr P raised a complaint, but Prudential didn't uphold it. It said it didn't accept transfers unless an adviser was involved as there were multiple factors to consider in deciding whether this was the best option. And it said it hadn't told him he couldn't pay contributions.

Mr P disagreed and referred his complaint to our service and our investigator looked into it, and he said it should be upheld in part.

Our investigator asked Prudential for records of phone conversations from 2018 where Mr P said he'd been told he couldn't make contributions and also asked it for information about the compensation paid in 2018. It said it had no record of Mr P asking about contributions in 2018, but he had asked about this in 2023 and paid contributions then. It said he'd had a telephone consultation in 2019 with its advisory arm, M&G Wealth, but this was about potentially accessing benefits from his plan, rather than contributing.

Prudential said the compensation accepted by Mr P in 2018 related to him being contracted out of SERPS longer than he should have been. It said until around mid-2018 compensation of this type was normally paid into customers plans but following tax concerns, it began paying compensation directly. But it said Mr P could have used the compensation to pay a pension contribution personally had he wanted to. And this didn't require him to take financial advice. But it said its long-standing policy from 2004, was that it didn't accept transfers without a financial adviser being involved.

Our investigator said there was no evidence Mr P had asked about contributions or transfers until July 2023 when he made several calls to Prudential. On 17 July 2023 it said if he wanted to pay contributions, he could. Mr P had confirmed he wished to do so, but shortly after the call was disconnected due to a problem at Prudential's end. The next day Mr P used the online messaging service to ask whether his employer could pay contributions. Prudential wrote to him on 20 July 2023 providing the necessary application forms for this. On 24 July 2023 Mr P called again about making transfers of existing pensions he had into his Prudential plan. It said he would need to use an adviser in respect of the transfers. Mr P complained about this.

Mr P had then messaged Prudential on 19 August 2023 saying he hadn't received any paperwork about paying contributions and that it hadn't responded to his complaint.

Our investigator said Prudential responded the next working day by sending him the necessary paperwork and a letter explaining what he needed to do. And Mr P had then paid a single contribution and restarted monthly contributions. But he said it didn't appear Prudential had tried to call Mr P back or send out the documents needed after the call was disconnected in July 2023 until he'd contacted it again in August 2023. Which had caused a 35-day delay in Mr P making the contributions.

Our investigator said Prudential should work out if any loss had been caused by this and if it had it should put Mr P back into the position he should have been in. He said Mr P had been inconvenienced by what had happened and it should also pay him £150 compensation. But he said it wasn't unreasonable that Prudential would only accept transfers if an adviser was involved, so it hadn't made any error here.

Mr P said he mostly agreed with our investigator's findings. But he said he'd been told in November 2018 that he couldn't pay contributions, and this had been repeated since, including in 2023. He said as Prudential recorded calls it was withholding this evidence. And in preventing him from contributing in 2018 he'd lost out on tax relief and investment growth as it didn't want him to contribute to .

Prudential said it accepted it had caused a delay in Mr P restarting contributions in 2023 and said it would rework the investment date to ensure he didn't suffer any loss.

Our investigator asked Prudential to provide evidence of searches of its call history with Mr P and to provide any recordings. It provided five recordings from 2023 and showed that no calls had been found from 2018. Mr P then said he'd used various other phone numbers in 2018 and he'd located a call made to a particular member of staff at Prudential on 22 October 2018. He provided a copy of letter Prudential sent the next day referring to this call.

Prudential made a further search but found no calls between 1 September to 30 November 2018. Our investigator said it may be that call recordings had been deleted due to the passage of time. But he'd expect Prudential to locate more recent calls and its records didn't show any until 2023 despite Mr P saying he'd repeatedly contacted it asking to pay contributions after 2018. Our investigator said as there wasn't any evidence, it wasn't possible to uphold this part of the complaint. Mr P said he thought Prudential had deliberately deleted records to save itself from the financial consequences of its actions.

Prudential said it had now located a call from May 2018 in which it had explained why it was now making a cash offer in respect of the compensation. Which Mr P had accepted as he specifically didn't want it paid into his pension as he was getting divorced at the time. Our investigator said whilst Prudential couldn't provide records of any call later in 2018, this did support its position that Mr P had wanted a cash settlement at the time rather than a contribution. But Mr P didn't agree.

As Mr P doesn't agree it has come to me to decide.

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 done so I am upholding the complaint in part.

I've considered all the points Mr P has made but will focus on what I consider to be the core elements of his complaint in this decision.

Requirement to take advice on transfers

There are regulatory requirements in place that advice must be taken on some types of pension transfer. This means the pension provider can't accept them unless it receives confirmation the consumer has been given advice from a regulated adviser. This might not have applied to the plans Mr P says he wanted to move to Prudential, but I don't think it has treated him unfairly here. Like any business, Prudential is free to set out on what basis it is prepared to provide services to consumers. It evidently decided many years ago that the business risks of accepting non-advised transfers outweighed the benefits. And there's no evidence it treated Mr P differently from any other customer in respect of this.

The ability to make contributions

There's no evidence that Prudential told Mr P he couldn't make contributions. That it does accept contributions and did so in 2023 suggests to me it is highly unlikely it would have told him he couldn't contribute. Mr P's comments indicate he considers his with profit investment offered some particular advantage that benefited him rather than Prudential, which is why it didn't want further contributions paid.

But my understanding is that his plan offers a unitised with profit fund. Which unlike some older with profit funds doesn't offer potentially valuable features such as guaranteed annuity rates or minimum annual bonus rates. Features that did lead some pension providers to change the policy terms and conditions to prevent additional contributions being paid.

Instead, it may be that there was a misunderstanding about the different positions between personal or employer contributions and transfers of existing pensions in the past.

This may have arisen to the change in the way Prudential paid compensation on pension complaints during 2018. Originally it was going to top up Mr P's plan with the compensation amount. But concerns had grown generally that this could cause consumers unexpected tax issues. Due to the possibility of exceeding the maximum pension contribution allowable under the annual allowance rules. Paying the compensation as cash avoided this. As Prudential has said, Mr P could have used then used this money to pay a contribution if he wanted. But it may have been that this change in process resulted in Mr P understanding he couldn't pay contributions. He is adamant that isn't the case, but there is no other evidence about this.

I appreciate the frustration caused by call recordings not being available. There is evidence of a call on 22 October 2018. But the letter sent the next day, together with the prior correspondence confirms this relates to the recalculation of the compensation due to be paid to Mr P in respect of the SERPS issue. It may have been that Mr P asked about contributions during the call. But the letter of the next day makes no reference to this at all, and it did provide contact details if Mr P still had queries. And there isn't a requirement that Prudential keeps all call records, with data protection laws encouraging firms to actively consider whether they need to hold records or if they can be disposed of.

However, I've considered the impact on him if it had told him he couldn't contribute. I think, if he were mindful to pay contributions, he would have explored other alternatives at the time. And would have paid contributions to another pension provider. And Mr P did have other pension arrangements he may have been able to use for this. Because of that I don't think it is reasonable argument to say he has lost out on tax relief and investment growth in the interim. And when Mr P did speak to M&G Wealth in 2019 the notes of these conversations indicate he was interested in accessing his benefits, which would have required a new plan, rather than paying additional contributions to the existing plan.

So, taking everything together, I think it is more likely than not that Prudential didn't tell Mr P he couldn't make contributions. It isn't unreasonable that it declined to accept transfers unless through a financial adviser. And it responded promptly to his requests for information about making employer contributions. But it did cause a delay in him making the contributions he wanted to in July 2023. This delay was around 35 days. This may have caused Mr P a loss and I think it did inconvenience him.

Prudential has accepted this and has confirmed it has reworked the contribution start dates for both the single and regular monthly premiums. This corrective action should put Mr P back in the position he should have been in but for the error in not contacting him after the call was disconnected.

Putting things right

I think there was 35 days delay in Mr P being able to make his contributions. Prudential has already conducted a corrective action to resolve any financial loss that this delay may have caused. It must provide Mr P with a simple calculation of how it has done this.

I think Mr P has been inconvenienced by the delay and Prudential should pay him £150 compensation in respect of this, which is in keeping with awards our service would make in similar circumstances.

My final decision

My final decision is that I uphold the complaint against The Prudential Assurance Company Limited.

I direct The Prudential Assurance Company Limited to confirm details of the corrective action it has taken on Mr P's plan.

I further direct The Prudential Assurance Company Limited to pay Mr P £150 in compensation for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 April 2024.

Nigel Bracken
Ombudsman