

## The complaint

X complains that The Prudential Assurance Company Limited (Prudential) failed to suitably handle his Additional Voluntary Contribution (AVC) pension transfer request. He made the following complaint points:

- He wanted the funds transferred on his 75<sup>th</sup> birthday, which fell at the end of 2023, but they were transferred much earlier than this. He felt he'd lost investment growth because of this.
- A Market Value Reduction (MVR) of £19,143.45 was applied to his funds, despite Prudential issuing a statement that said such a reduction wouldn't apply on his 75<sup>th</sup> birthday. He felt that Prudential should honour what it had stated and not apply an MVR.
- He received a lower amount of Tax-Free Cash (TFC) than expected
- He was charged almost £7K for the advice he'd needed to take in order to arrange the transfer he wanted. He felt the transfer should've been possible without the involvement of an expensive financial adviser.
- X also complained that Prudential sent its complaint response too late.

X initially made a complaint against both his financial adviser and Prudential. Prudential told this service that as the adviser works for a business which is part of it, it investigated all the complaint points raised both directly against it and the adviser. It said that it covered all of the complaint points under one final response letter. Our investigator closed X's complaint against his financial adviser to avoid duplication. This decision therefore also covers X's complaint points relating to his adviser.

## What happened

In September 2004, X started an AVC plan to support his retirement. He chose a selected retirement age of 75, so his selected retirement date would fall at the end of 2023.

On 31 March 2021, Prudential issued its Annual Plan Summary to X. It said the value of his plan was £276,016.95 as at 31 March 2021, but that it wasn't guaranteed. It also noted that X's assumed retirement date was the date of his 75<sup>th</sup> birthday.

The summary further stated that the current transfer value of the plan was also £276,016.95. And that this was made up of the current plan value of £276,016.95 and the current MVR, which it said could change daily, of £0.00.

The summary also stated that the current transfer value was: *"The amount you could have transferred to another pension scheme on the statement date. This is the fund value less any Market Value Reduction (MVR) which would have applied."*

The summary provided information about death benefits and With-Profits. It explained how it

managed the With-Profits fund. It also stated that the MVR would apply at all times except the Normal Pension Date (NPD) or on death. It said:

*“If you take money from your plan at any time other than your AVC normal pension date or on your death, you may receive less than the payout amount shown due to the application of an MVR.”*

The summary also provided information about the MVR. It said that this could apply if a consumer took money from the With-Profits Fund when the value of the underlying assets was less than the value of that consumer’s plan including all bonuses.

On 9 February 2022, Prudential sent X information about his plan. It said that the current transfer value as at 9 February 2022 was £300,808.65. This was made up of the current fund value of £225,474.73, an interim bonus of £1,894.59 and a final bonus of £73,439.33. The letter said no MVR currently applied to the figures shown, but that one could apply in future. The letter also included an MVR factsheet called: “MVR – a clear explanation”.

Prudential sent X further Annual Plan Summaries as at 31 March 2022 and 31 March 2023. The 2022 statement stated that the MVR applicable at that time was £2,172.21 and the 2023 statement stated that the applicable MVR at that time was £1,670.15. Both statements confirmed that an MVR wouldn’t be applied either at NPD or on any claims due to death.

X said he started to take his occupational pension scheme benefits at the end of 2022.

Prudential’s call records show that X called it on 16 January 2023. The notes recorded that he wanted to know his fund value and he also wanted to proceed with drawdown. The agent told him that Prudential didn’t facilitate drawdown. The note said that X would call Prudential back when he’d decided what he wanted to do.

On 20 June 2023, Prudential sent X a retirement options letter. This stated that the total pension value as at 10 June 2023, including any bonuses and deductions, was £333,495.50. One of the deductions listed was an MVR of £8,094.54. Although the letter stated that the MVR would apply at all times except the NPD or on death, it also stated later on: *“We don’t take an MVR if you take your pension benefits on the plan’s “MVR-free” date of [X’s 75<sup>th</sup> birthday].”*

X sent Prudential a secure message on 23 June 2023. He said he was going to turn 75 at the end of the year and that he wanted to take a 25% tax-free cash lump sum first. He wanted to leave the rest in drawdown. He asked what documents he might need to complete before his retirement.

Prudential replied on 3 July 2023. It explained that it wasn’t possible to drawdown from X’s plan. And that he would need to transfer his AVC benefits to another policy that allowed the drawdown facility. It also said that it did offer a policy that would allow drawdown, but that X would need to have a financial adviser if he wanted to proceed with that. Prudential said X could instead set up an arrangement with another provider and transfer his AVC benefits to them.

X replied the same day to say he’d arranged a face-to-face meeting on 8 August 2023 to discuss the requirements.

On 14 August 2023, X’s financial adviser called Prudential to query the MVR, which he said was around £10K. He wanted to know if it would apply on the recorded retirement date at the end of 2023. Prudential confirmed that the only times the MVR wouldn’t apply would be on the NPD or on death. It also confirmed that the NPD had passed. And that this meant that if

X transferred the MVR could apply.

X's financial adviser called Prudential again on 17 August 2023 for further clarification. He was again informed that the MVR only didn't apply at NPD or on death. Prudential explained that although the product literature showed a retirement age of 75, this was the intended retirement date chosen by the member, rather than the NPD, which was scheme-level and set at age 60. As this had passed, it couldn't guarantee that an MVR wouldn't apply.

I understand that the financial adviser recommended that X transferred his AVC benefits to the Prudential Retirement Account. And that Prudential received his signed application form on 18 August 2023. An Origo transfer request dated 18 August 2023 was sent. And on 22 August 2023, Prudential wrote to X to confirm that it had transferred £325,174.84 from his AVC plan to Prudential. It said that it had calculated the transfer with an effective date of 18 August 2023, which was when it'd processed the claim.

The letter further explained that the final bonus included in the transfer was £105,121.79 and the interim bonus was £1,356.63. It also said that an MVR of £19,143.45 had been deducted.

On 26 August 2023, X wrote to his adviser to tell him that he'd received an unexpected text message the day before which told him that his TFC lump sum would be in his bank account on 4 September 2023. He said he hadn't wanted payment until his 75<sup>th</sup> birthday. He felt his selected retirement date was clear, and that it had been included on his Prudential documentation from the start.

X said that the latest Prudential documents he'd received had clearly stated:

*"We don't take an MVR if you take your pension benefits on the plan's "MVR-free" date of [X's 75<sup>th</sup> birthday]."*

X wanted to know why his transfer had been carried out before his selected retirement date, especially in light of the fact that a large MVR reduction had then applied to the earlier payment date. He wanted this to be corrected.

X sent a further letter on 29 August 2023. He attached pages from his 20 June 2023 Prudential statement which had stated that an MVR wouldn't be taken if he took his pension benefits on his 75<sup>th</sup> birthday.

X asked his adviser:

*"1. Why did you arrange to transfer this according to 20th June 2023 statement? My request was to arrange this on my previously agreed 75<sup>th</sup> birthday of [date]. This is what I have requested to the Prudential AVC team at the beginning. This request is on the Prudential secure message section.*

*2. According to the above statement of the Prudential, this transfer on [my 75<sup>th</sup> birthday] should be "MVR-Free". The pension pot value on this day must be higher than the figure shown on 8th August 2023."*

X said he wasn't satisfied with the service and asked the adviser to rectify the issue.

X's adviser sent an internal email on 30 August 2023 about X's complaint. This stated that he had advised X during the presentation meeting, and documented in the Suitability Report, that it wasn't possible to select a specific date for the transfer to occur. And that Prudential therefore couldn't guarantee that an MVR wouldn't apply. The adviser also said that

Prudential had confirmed to him that X didn't have an MVR-free date, as he'd passed the scheme's NPD of 60. But that Prudential had sent X a recent illustration which stated that he did have an MVR-free date on his 75<sup>th</sup> birthday.

X complained to Prudential about the following issues:

- He'd received a letter dated 18 August 2023 which suggested that his TFC would be £83,255.39. But he'd only received £81,293.71. He wanted to know why.
- He'd received a further letter dated 22 August 2023 which had informed him of an MVR charge of £19,143.45. He said this contradicted the June 2023 retirement options letter which had told him an MVR wouldn't be applied if he took his pension benefits on his 75<sup>th</sup> birthday. He said he'd asked for the transfer to be arranged on his 75<sup>th</sup> birthday and questioned why it hadn't been.
- X felt that his plan value on his 75<sup>th</sup> birthday at the end of 2023 must be higher than the figure of £343,816.62 shown on 8 August 2023.

Prudential issued its final response to the complaint on 11 December 2023. It said it had incorrectly stated in the June 2023 statement that there would be an MVR-free date on X's 75<sup>th</sup> birthday. It also felt it had taken a long time to issue a complaint response. It offered X £300 compensation for these issues.

Prudential felt that the retirement options pack it'd sent to X in November 2022 had confirmed that if funds were taken at any time, apart from on death or NPD, an MVR would apply. It said that X's NPD was in 2008, when he was 60 years old. Therefore there was no MVR-free date on his 75<sup>th</sup> birthday. And it had therefore been within its rights to deduct the MVR as it had.

Prudential didn't uphold X's complaint about his transfer being carried out too soon, leading to the MVR being applied. It said that it wasn't possible to submit an application and then ask the customer services team to not deal with this until a specific date. And noted that when X signed the client declaration on 18 August 2023, this was his agreement to proceed with the advice at that date. It said that once it had received his application on 18 August 2023 it'd sent a copy to X, along with his "cooling off rights". And that this meant he could've cancelled the transfer within the permitted timescale if he'd wanted to.

Prudential also felt that the advice X had received had been suitable for his needs and objectives. It said that the adviser had confirmed that an MVR might apply and that he couldn't guarantee an exact transfer date. And that X had agreed to proceed with the advice in August 2023 on that basis. It also said that the adviser couldn't provide advice for a future date. And that any advice given had to be acted on within a reasonable timescale once a consumer accepted that advice.

Prudential also said that the initial figures it'd provided to X in the retirement packs and quotes weren't guaranteed.

Unhappy with Prudential's response, X brought his complaint to this service.

Our investigator didn't think that the complaint should be upheld. She considered that the plan's NPA of 60 had been clearly explained in the AVC brochure. She felt that Prudential had followed the correct transfer process and that it had correctly applied the MVR. She also felt that the correct TFC had been paid based on the value of the fund at the time. She felt that the error Prudential had made in its June 2023 retirement options letter had caused confusion for X. But that the £300 compensation it'd paid to apologise for the

miscommunication was fair.

X didn't agree with our investigator. He still felt that Prudential's error had caused him a financial loss of £19,143.45. He said he'd relied on its expertise and had been guided by its communications. X also felt that the advice fee was very high for what he felt was a simple transaction.

Our investigator acknowledged why X still felt Prudential's error had caused a financial loss due to the application of the MVR. But she didn't agree that this was the case. She said that although Prudential had made a mistake in its 20 June 2023 retirement options letter, there had never been an MVR-Free date on X's 75<sup>th</sup> birthday. Therefore she felt that X was in the position he should be in and that the MVR was taken correctly.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it. I know this will be disappointing for X. I'll explain the reasons for my decision.

I asked Prudential for more information about the advice X had received. Amongst other things, I asked it for more information about the fee the financial adviser had charged X.

X feels that Prudential's error in its June 2023 retirement options letter caused him a financial loss of £19,143.45. So I first considered if Prudential correctly applied the MVR.

#### *Did Prudential correctly apply the MVR?*

The evidence shows that X told his adviser at his first meeting on 8 August 2023 that he wanted to access his pension on his 75<sup>th</sup> birthday to avoid any applicable MVR being deducted from the transfer value. So it's clear that, because of Prudential's error in the June 2023 retirement options letter, X felt that he had an MVR-free date and that this was his 75<sup>th</sup> birthday.

The evidence shows that once the adviser started the advice process, he was provided with information about X's plan. This included the fact that as at 27 July 2023, the MVR was £10,194.06. It also shows that the adviser tried to establish how the plan could be accessed on X's 75<sup>th</sup> birthday. But that he found out that it wasn't possible to ensure that the plan was accessed on a specific date.

The adviser then spoke again with Prudential on 17 August 2023, where it was again made clear to him that X's intended retirement date of his 75<sup>th</sup> birthday was different from his NPD for MVR purposes. And that Prudential would only guarantee not to apply an MVR at X's NPD, which had long since passed. It also confirmed to the adviser that it wasn't possible to guarantee a transfer of pension funds on a specific date.

In a note the adviser wrote on 29 August 2023, he said that he went through the presentation of his recommendation for X in person on 18 August 2023. He said he'd addressed the MVR at the very start of the meeting. And that he explained that it wasn't possible to guarantee the date the funds would be transferred. He also said he'd included this caveat in the MVR section of the Suitability Report. The adviser also said he explained to X that Prudential had confirmed that his MVR would only cease to apply at his NPD, which

had already passed. He said he'd also provided X with a copy of the AVC Key Features Document, which confirmed this.

The evidence shows that the adviser met with X only a day after Prudential had most recently confirmed to him that X's MVR-free date had long since passed. The adviser recorded what had happened in his 18 August 2023 presentation meeting with X a few days later, on 29 August 2023, so I'm persuaded that at this point in time the adviser's recollection of what had happened during the meeting was fresh.

I'm therefore of the view that X was fully informed – *before* he agreed to the recommended transfer and signed the Retirement Account Declaration after the meeting on 18 August 2023 - that an MVR might be applied to his pension benefits when he transferred, and that it wasn't possible to guarantee the date that the transfer would take place.

I also consider that although it's clear that Prudential made a mistake in its June 2023 retirement options letter, it had sent X several other letters which made it clear that the only times an MVR might not be applied were on the NPD (at age 60) and on death. Other scheme documentation, including the AVC brochure, also clearly explained this. So I agree with our investigator that when the MVR was applied to X's benefits in 2023, it was correctly applied.

I acknowledge that X feels that Prudential's error caused him a financial loss equal to the MVR that was applied to his plan. For me to agree with him, I'd have to be satisfied that but for Prudential's miscommunication in its June 2023 retirement options letter, X could've accessed his pension without an MVR being applied. But I'm satisfied that this is not the case. I say this because I'm not persuaded that X would've made a different choice about his transfer if he'd been provided with correct information at all times. After X had passed his NPD at age 60, he was no longer entitled to an MVR-free transfer. And I'm satisfied that this was made clear to X before he agreed to transfer his AVC benefits to Prudential's Retirement Account.

I've also considered X's complaint that his transfer was carried out too soon, leading to the MVR being applied.

*Was the transfer carried out too soon?*

X no longer had access to an MVR-free date on transfer. So although I can see that he felt that the MVR had been applied because his transfer had been carried out before his 75<sup>th</sup> birthday, I don't agree that this early transfer was the reason an MVR was applied. As I noted earlier, the MVR was correctly applied because X's MVR-free date of his NPD had passed several years before.

Putting the issue of the MVR aside, X also said he'd always wanted to take his benefits on his 75<sup>th</sup> birthday. So I've gone on to consider whether the adviser should've delayed the transfer request for a few months.

Prudential said it wasn't possible to submit a deferred application for a specific future date. It also said that when X signed the client declaration on 18 August 2023, he'd effectively agreed to proceed with the advice at that date. Prudential also said that it provided X with his "cooling off rights" after receiving his application. But there's no evidence that X asked to cancel his transfer.

Prudential also said that depending on requirements, some cases may be requested on the day the application was received, while others may not be. It said that the adviser couldn't have known when the transfer would be requested nor when the ceding scheme would send

the transfer. It also said that an adviser couldn't give advice and then not proceed with the application, as if the advice was postponed it may no longer be suitable by the time the transfer went ahead. It felt that the adviser had made X aware that he couldn't guarantee a transfer date. And that when X had signed the client declaration he'd agreed he was happy to proceed on that basis.

The adviser said that he'd been expecting the transfer process to take longer than it had. He said that other advisers had told him that it could take up to three months.

From what I've seen, X agreed to the transfer on 18 August 2023. He was then fully informed that his transfer was going to go ahead. And given cancellation rights. But I've not been provided with any evidence that he then took steps to defer or cancel the transfer once he knew the date it would go ahead. So I can't reasonably say that the transfer was carried out too soon. Nor can I say that the adviser should've delayed the transfer request.

I next considered if Prudential paid X the correct TFC.

#### *Did Prudential pay the correct TFC?*

I can see that in his original submission to this service, X felt that instead of transferring the benefits from his AVC plan on his 75<sup>th</sup> birthday at the end of 2023 as he'd requested, the transfer was carried out based on 20 June 2023 statement. He felt this meant he'd lost over five months of growth.

Prudential transferred £325,174.84 which was the fund value as at 18 August 2023, after additions and deductions had been applied. The 18 August 2023 was the date X signed the declaration authorising the transfer. X then received 25% of this value as TFC. This came to £81,293.71.

X also complained that he received a letter from Prudential on 18 August 2023 which stated that his TFC would be £83,255.39. I've not been provided with a copy of this letter. But I can see that Prudential followed its normal process when it used the fund value as at 18 August 2023 as the basis for X's TFC payment. I appreciate that this value was very similar to the value shown on the 20 June 2023 statement, so I understand X's confusion here, but I'm satisfied that Prudential did correctly use the 18 August 2023 fund value to calculate the TFC payment.

I can also understand why X was unhappy that he received a smaller TFC than he was expecting, given he'd received a letter on 18 August 2023 showing a higher figure. But I'm satisfied that this letter was simply an illustration of the benefits X might receive, not the guaranteed amount he would receive. The guaranteed amount would only be known once the final fund value was assessed, and the final bonus, interim bonus and any MVR applied.

I understand how disappointing it must be for X that the illustrations he received showed a lower MVR than the one that actually applied to his transfer, and therefore a higher fund value and a higher TFC. But from what I've seen, Prudential correctly followed its normal procedures. And I'm satisfied that it paid X the correct amount of TFC.

I next considered X's complaint that the advice fee was very high for what he felt was a simple transaction. To fairly consider this part of the complaint, I looked into whether X had been made fully aware of what the charge would be for the advice before he agreed to it.

#### *Was the advice fee explained to X before he agreed to it?*

Prudential said that the initial advice charge is clearly documented and discussed with the

client before they agree to proceed with the advice. And that the client is under no obligation to proceed. It said whenever advice is accepted there would be an initial advice charge, whichever adviser or independent financial adviser (IFA) a consumer was dealing with. It also said that it believed the adviser's charges to be within industry standards.

Prudential explained that it didn't offer its clients a non-advised drawdown policy. So if a client wanted this policy with it, they would need to take financial advice. It said that it sent X an options pack with details of Pension Wise, the option to shop around and speak with an IFA. It said it also covered these options during calls with X.

Prudential said that the adviser provided X with the Suitability Report which documented the advice charge. It said he would also have been given the advice brochure. It also said that the initial advice charge was shown on the Retirement Account app and illustration. Prudential said that when X had signed the client declaration this was his agreement to the advice and all applicable charges. It provided this service with a copy of that signed declaration. Prudential provided an extract which stated the following:

*"We will pay your Financial Adviser 2.10% which equates to £6,993.45*

*This charge will be deducted from the same funds used to provide any Tax-free cash and income payments as outlined in the What will my withdrawals be? section."*

The evidence shows that X first called Prudential about his potential retirement plans on 16 January 2023. At this point he asked for a valuation because he wanted to proceed with drawdown. Prudential explained that it couldn't facilitate drawdown in his AVC plan. The call note recorded that X would call back when he decided what he wanted to do.

Prudential told X again on 3 July 2023 that it wasn't possible to drawdown from his AVC plan. It said he could transfer his AVC benefits to another policy with another provider, or he could transfer to a policy with it that would allow drawdown, but he'd need to take financial advice if he wanted to proceed with that.

From what I've seen, Prudential clearly explained that X could choose to transfer away from it. But that if he wanted to transfer to a different policy with it that met his retirement needs, he'd need to take financial advice. Once X sought out that financial advice, I'm satisfied that the evidence shows that the adviser made it clear what that advice would cost. And knowing that, X decided to proceed.

As I'm satisfied that X approached the adviser for advice, and that the adviser made him aware what the initial advice charge would be, I can't fairly agree with X that the fee was too high. If X had felt that way at the time he was informed of the fee, he could've decided to make different arrangements.

In summary, Prudential acknowledged that it made a mistake in its June 2023 retirement options letter. It has paid X £300 compensation for this, and for its delayed complaint response. I consider that this is reasonable under the circumstances. And it is in line with what I would've otherwise recommended.

I appreciate that X said he'd relied on Prudential's expertise and had been guided by its communications. I acknowledge that Prudential made an error on the June 2023 statement. But every single other document I've been provided with correctly stated that an MVR would be applied except on the NPD of age 60 or on death. And X's adviser told him before he agreed to transfer that the MVR would apply. I can't reasonably ask Prudential to honour its mistake unless that mistake caused X to take an action that he wouldn't have otherwise taken. There's no evidence that this is the case here. Therefore I don't require Prudential to



take any further steps to put things right. And I don't uphold the complaint.

### **My final decision**

For the reasons explained above, I don't uphold X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 27 June 2024.

Jo Occleshaw  
**Ombudsman**