DRN-5097863

The complaint

Mr B's representative has complained, on his behalf, that The Prudential Assurance Company Limited has failed to provide the required justification for correcting what the latter claims to have been an error with its With Profits calculations – which has resulted in a deduction of around £66,000 from Mr B's pension plan.

Mr B's representative has further said that Prudential has failed to justify the application of a Market Value Reduction (MVR) on Mr B's pension funds.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr B holds two Flexi-Access Income Drawdown Plans with Prudential under plan numbers XXXXXX64 and XXXXXX08. On 3 January 2020, Prudential wrote to Mr B to advise that the current transfer value of the two plans was £897,393.47, made up of £356,891.90 and £540,501.57 respectively.

On 29 January 2020, Prudential sent further plan information and confirmed that the combined transfer value of the two plans was £895,138.49.

On 3 March 2020, Prudential wrote to Mr B and confirmed that it had made an error with the amount of tax it had deducted for the 2019/2020 tax year. Prudential had deducted £15.60 too much.

On 17 August 2020, Prudential sent Mr B an annual statement. This confirmed that the combined transfer value of his plans was £903,784.88.

The following year, on 21 January 2021, Prudential wrote to Mr B and confirmed that it had facilitated his request to alter his income payments to £1,950 pm before tax.

On 16 June 2021, Prudential wrote to Mr B and explained that it had once again deducted more tax than it should have for the income paid to him in May 2021. Prudential said Mr B would receive a tax rebate in his June payment and apologised for the inconvenience caused.

An annual statement was issued on 16 November 2021 which confirmed that the combined transfer value of the two plans was £874,089.05.

A further annual statement was issued on 16 November 2022, which confirmed the transfer value of the two plans was £909,626.52.

On 26 January 2023, Mr B completed an Investment Alteration Form. He wished to cancel 50% of his existing investments held in the PruFund Cautious fund and cancel 100% of his investments held in the PruFund Risk Managed 2. 50% of the cancelled investments were to be added to the PruFund Growth fund and 50% applied to the PruFund Risk Managed 3 fund. The request was forwarded to Prudential on 31 January 2023.

However, on 29 January 2023, Prudential wrote to Mr B and his Independent Financial Adviser (IFA), who is Mr B's representative in this complaint. It explained that a further error had been identified. It said the following:

"We've identified an issue with the terminal bonus calculation on [Mr B's] plans. As a result, when the income payments were taken between January 2020 and October 2022 from plan XXXXXX64, and between February 2022 and May 2022 from plan XXXXXX08, the plan values didn't automatically reduce by the correct amount."

Prudential said the difference was £56,232.62, and the deductions had been applied to Mr B's plans.

On 30 January 2023 Mr B completed a 'Withdrawing money from your Drawdown Plan' form. He wished to withdraw £4000 monthly from his fund starting on 28 February 2023.

Prudential wrote to Mr B on 2 March 2023 to confirm the fund switch alterations he'd instructed on 26 January 2023 had been made.

In October 2023, Prudential wrote to Mr B to explain a further error had been identified. It said the following:

"We're writing to let you know that we've identified an error in the calculation of your plan value. As a result, the value quoted in recent statements and other communications has been higher than it should have been.

<u>How it happened</u>

When a customer takes money out of their plan in the form of an income withdrawal, the remaining plan value should automatically reduce by the amount taken out. Unfortunately, when you took income withdrawals in early 2022, a systems error miscalculated the remaining plan value for your investments in the With-Profits fund."

Prudential explained that the value of Mr B's fund before the correction was £899,801.85 and the value after was £833,189.76 – a difference of £66,612.09.

Mr B called Prudential on 20 October 2023 and then a complaint was raised about what had happened.

On 10 November 2023, Prudential emailed Mr B's IFA in response to the telephone call and said:

"This issue was identified in February 2023, since then we have been undertaking a detailed analysis to understand the population of impacted customers… We've identified that there was a system error in our calculation code between 12 February 2022 and 15 May 2022. The result of this issue prevented the remaining plan value from reducing correctly."

The correction was due to be completed by 10 November 2023, and Prudential advised Mr B log in online after that date to obtain his plan value.

On 16 November 2023, Prudential issued a further Annual Statement confirming the transfer value of Mr B's plan to be £847,474,83.

In December, Mr B completed a further 'Withdrawing money from your Drawdown Plan' form requesting £2,400 pm.

On 11 December 2023, Mr B's IFA emailed Prudential and said the following:

"I have received a copy of the Income Payment Illustration… the policy number quoted is XXXXXX64. This is not the policy that the revised income payment is to be taken from – instead, future withdrawals were to be taken from policy number XXXXXX08."

On 21 December 2023, Prudential confirmed the amendments had been made. And the following day, it issued its final response letter to the complaint raised on 30 October 2023.

Prudential upheld the complaint and said the following:

- When some customers took income withdrawals in 2022, a system error miscalculated the withdrawals and overstated the remaining plan values.

- Due to a correction that was undertaken in March 2022, the unit deductions for historical income payments were also recalculated but it was done when Prudential was unaware of the terminal bonus calculation issue, so the fund value was further overstated

- Prudential said it had informed the regulator of the industry of the error and confirmed the overall deduction to Mr B's plans was £66,612.09.

- Prudential offered £400 by way of an apology.

Mr B's IFA emailed Prudential on 8 January 2024. He was unhappy with the failings that led to Prudential deducting over £66,000 from Mr B's fund. He asked that the complaint be referred to a senior manager before the case was referred to this service.

The IFA asked for a number of clarifications, including the following:

- The letter sent in October 2023 related to an error with the With Profits fund in early 2022, but Prudential was now advising the error dated back to January 2020. He wished to know why Mr B wasn't informed of this sooner.

- He also wished to know what had happened to cause the error with the secondary, historical income payment recalculation issue which dated back to 2020. The IFA further wanted to know why it took Prudential so long to discover it and why Mr B should be held accountable for it.

Prudential issued a further letter on 29 January 2024. The letter included a breakdown of the payments taken and the figures actually deducted from the plan.

Mr B's IFA replied on 1 February 2024. He said the letter received was unsolicited and raised further questions, as follows:

- When did Prudential discover the further five month period of errors (dating back to 2020)?

- Did the figure of £66,612 quoted in October 2023 include the additional five month period?

- Could Prudential provide a further note detailing all transactions for this five month period?

- Had the IT error been fixed?

Prudential issued a further complaint response letter on 18 April 2024. It bullet pointed the issues raised by Mr B's IFA. Prudential apologised again but confirmed it would not restore the inflated values, as they were not what Mr B was entitled to.

It did however confirm that it would consider compensating Mr B's IFA for the additional work he had needed to undertake on Mr B's behalf and that it was sorry for the delays in implementing Mr B's further plan. It sent a further £425 to Mr B by way of compensation for its errors.

The IFA replied with further comments and Prudential issued another response on 17 May 2024. It apologised that not all concerns were addressed previously and offered a further £200 compensation for Mr B.

By this time, however, the case had already been referred to this service to consider.

The investigator set out her view on the matter, saying the following in summary:

- There was no doubt that Prudential had over a number of years sent Mr B incorrect statements and valuations and when it said that it had corrected the error, this would inevitably have been disappointing for Mr B.

- Mr B's expectations had been unfairly raised, but this didn't however mean that he was entitled to the higher incorrect fund value, or that it would be reasonable for this service to require Prudential to reinstate that higher fund value.

- But Prudential should compensate Mr B for the errors and the loss of expectation. Prudential had already paid Mr B £1,025 in respect of its errors – this reflected not only the matter of sending Mr B incorrect valuations, but also its failure to answer the additional questions posed by Mr B's IFA.

- The investigator thought that this was an appropriate amount of compensation in respect of the errors, but said that Prudential also needed to provide the additional requested information in a way which was clear and not misleading.

In response, Mr B's IFA said the following in summary:

- Although Mr B may not on paper have suffered an actual monetary loss, he had suffered an "opportunity cost" whereby Mr B was unable to accurately compare the true performance of his pension with that of other providers. Prudential had produced a return of around 1% from February 2023 to date, whereas other providers had produced returns of around 7%.

The IFA requested more time to respond fully, however.

In a further response, the IFA said that Mr B would like the complaint referred to an ombudsman for review, adding the following:

- Prudential had produced further factually incorrect information in order to justify the £66,612 deduction from Mr B's plan.

- Both he and Mr B had been assured in December 2023 and January 2024 that the data produced on 15 November 2023, after corrections had been made, was accurate. But it was now Prudential's position that further corrections had been completed on 21 December 2023.

- The latest figures also didn't tally with the figures used by Prudential to justify the £66,612 deduction.

- On the basis of the information received, it couldn't reasonably be concluded that Mr B hadn't in fact suffered a financial loss due to Prudential's errors.

The investigator then requested that Prudential explain how the £66,612 deduction could still be correct, given that the latest set of figures were different to those which had been used to calculate the £66,612 figure initially.

Prudential provided a copy of a letter which it sent to Mr B's IFA, dated 25 July 2024, in which it said it was addressing the matter of the discrepancies in the information previously provided.

Prudential said that the following in summary:

- The information provided in December 2023 and January 2024 were the impacted transactions relating to the error with the withdrawal on Mr B's account.

- The information provided in its letter dated 5 July 2024 was an updated transactions summary for both plans (and which had been produced on 3 July 2024). That information wouldn't have shown the impacted transactions, as the corrections had already taken place. The information was now correct and showed Mr B's transaction history as at 3 July 2024.

- As such, the two sets of data wouldn't be expected to match – one covered the errors and the other showed an updated and correct transactions history.

Mr B's IFA remained dissatisfied, however, saying that he didn't understand why Prudential had needed to update the transaction history. The incorrect transactions which had justified the £66,612 deduction were either factual or not and if the former, it was unclear as to why they needed to be updated.

The IFA said that he could only conclude that Prudential had no data which could be assessed or inspected to verify or justify the amount deducted.

In response, Prudential said that, as corrections had been made to Mr B 's plan, the transaction history was now correct – and that the corrections had been made to ensure that they were correct as and when Mr B had taken income from the plan.

It also reiterated its position that it wouldn't be reinstate the previous value.

Mr B's representative continued to disagree, however, saying the following in summary:

- Prudential had written to Mr B in October 2023 advising him that an error occurred between February and May 2022 which had resulted in the value of his pension plans being overstated. But this was false, as the error actually covered the period from January 2020 to October 2022.

- In December 2023, Prudential had admitted that the clawback represented mistakes made over a period of three years and provided a partial list of the incorrect errors made.
- This list was, however, incomplete and a full list was provided the following month.
- This list provided a breakdown of the date of each transaction, income amount incorrectly added/deducted from the plan, income requested, the difference and then a total clawback to be claimed.
- A detailed list of all transactions on the pension account had previously been provided and it should have been a simple exercise to compare the figures claimed by Prudential against the actual amounts deducted from the policy.
- But there were a number of discrepancies between the figures claimed and the actual amounts deducted from the plans and so the IFA had asked for an explanation for these discrepancies.
- Prudential had repeatedly failed to provide a suitable explanation for those discrepancies, instead saying that the figures had been "updated". But this meant that they couldn't be verified.
- In effect, the IFA and Mr B were simply being asked to believe that Prudential's calculations were correct and accept whatever figure it decided to claw back from Mr B.

The IFA added that what he considered to be the obfuscation by Prudential was difficult to understand as the original data which supposedly justified the clawback of £66,612, if left in place, would have provided a clear picture as to how much had been incorrectly paid.

But by updating the figures, Prudential had made it impossible for any outside party to verify the veracity of the clawback claimed.

The IFA said that, if his understanding of the situation was incorrect, then it was open to Prudential to provide a fresh, detailed list of the "incorrect" deductions made to the pension plans together with a detailed explanation of why all of the previous figures provided are now incorrect.

The IFA asked that the required information be presented in a readable format.

As agreement couldn't be reached on the matter, it's been 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.

And having done so, I've reached similar conclusions to the investigator and for broadly the same reasons.

The deduction of £66,612

As set out by the investigator, my view is that Prudential is entitled to correct errors in Mr B's fund value, even though it was seemingly caused by its own systems failures. To require Prudential to reinstate the value of Mr B's fund value wouldn't be fair and reasonable in the circumstances, given that Mr B has already benefited from the income withdrawals.

Opportunity Cost

I've noted what Mr B's IFA has said in response to the investigator's assessment and I understand and acknowledge the point being made. But in situations such as this, in order for me to fairly and reasonably take into account an alternative investment strategy which might have been put in place had the reality of the pension plan's situation been known, I'd need to see credible evidence of what that alternative action would have been.

Mr B's IFA has said that there were other funds which were producing much higher returns that the With Profits fund in which Mr B was invested, but I note that no specific alternative has been mentioned. Nor have I seen details of any alternative fund into which Mr B may have moved since the reality of the performance of this With Profits has been known.

And so I think it would be difficult to fairly and reasonably conclude that an investment comparison should be undertaken between this With Profits fund and an unknown other type of investment into which Mr B might have switched.

The provision of information regarding the deduction and the MVR

I have much sympathy with the position of Mr B and his IFA regarding the information which has been provided and which might account for, in a clear and understandable fashion, the mistakes which have been made on the account and how the £66,612 deduction would still remain the same if the statements of previous deductions have been incorrect – and subsequently amended.

I also note that the investigator has previously enquired as to how this might be the case, with a request for a detailed explanation which could be forwarded to Mr B and his IFA.

I can see that Prudential has provided some information relating to the incorrect deductions made on the basis of Mr B's income withdrawals, but as far as I can tell it hasn't yet provided the rationale as to why how the £66,612 figures has been calculated, taking into account the withdrawals and any subsequent amendments which have needed to be made to correct previous errors.

For example, I note that a transaction list was produced which showed that the £66,612 deduction was due to incorrect deductions (and in some cases additions) to Mr B's pension plan from the period from January 2020 to May 2022, but that this then seemingly extended to October 2022. But it's unclear as to how those additional errors in the following five months would have still resulted in the same figure of £66,612.

And so in the absence of this information, I'm inclined to agree with Mr B and his representative (along with our investigator) that there's currently simply no way for the incorrect deductions/additions to be verified against the overall £66,612 "correction" on Mr B's plan.

Alternatively, if the mention of October 2022 in the letter of 29 January 2024 was a mistake, and the incorrect transactions only went as far as May 2022 (as suggested by the transaction list in that letter) then Prudential should clearly set this out to Mr B and his representative.

But in any case, in order that these deductions can be verified, Prudential should also show (e.g. within the format of an annual statement) where the incorrect deductions/additions have been made so that the *definitive* transaction list which it needs to send to Mr B and his IFA can be cross referenced against those figures. Mr B and his IFA will then be able to check the amounts which Prudential have said were actually paid against his bank records.

I've also noted the repeated request by Mr B's IFA for an answer as to why the MVR has been applied to Mr B's pension funds. I can see that Prudential has provided the details for the mechanism for applying an MVR and the conditions under which this might occur, but as set out by Mr B's IFA, it would be helpful to know what the catalyst for the MVR has been in this instance so that he may give Mr B an indication as to when the MVR might be lifted.

My presumption is that this has been related to the overall performance of the With Profits fund, but it would be helpful for Prudential to provide as much detail as possible on this so that Mr B's IFA may take this into account when advising his client.

Prudential should also provide any other information which might reasonably be requested by Mr B or his IFA so that they can administer Mr B's pension funds and undertake effective planning.

Award for distress and inconvenience

I've then considered the amount paid to Mr B in respect of the trouble, upset and inconvenience this matter has caused him. It's not in dispute that Prudential has made many errors in its handling of Mr B's pension funds and his income withdrawals, and this will have caused him a not inconsiderable amount of worry – especially when he was informed that his pension fund would be reduced by over £66,000. It has also taken a protracted amount of time to try to resolve them matter – and as I've set out above, I think that Prudential needs to send further information to Mr B and his IFA to satisfy their requirements.

In thinking about the type of award which might be appropriate for this type of situation, it's helpful to refer to our website which sets out example of awards for different types of scenario. No two situations will be identical, but the overall award made by Prudential of £1,025 would fall into a category where the impact of a business's mistake has caused substantial distress, upset and worry and where there may have been serious disruption to daily life over a sustained period, with the impact felt over many months, sometimes over a year.

Overall, taking into account what's happened here, I think the total of £1,025 is appropriate in the circumstances.

My final decision

My final decision is that The Prudential Assurance Company Limited should provide the information to Mr B and his IFA as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 November 2024.

Philip Miller
Ombudsman