

## **The complaint**

Mr A has complained about the actions of The Prudential Assurance Company Limited (“Prudential”) when he tried to transfer his personal pension to a Qualifying Recognised Overseas Pension Scheme (“QROPS”). Mr A first tried to transfer in 2022. That transfer request was turned down. Mr A then successfully transferred to a different QROPS in 2023.

The crux of Mr A’s complaint is that Prudential caused delays at numerous points in dealing with his transfer requests which resulted in him experiencing financial losses.

## **What happened**

I have already issued a provisional decision in which I set out the background to this complaint and my preliminary findings. I provisionally concluded Mr A’s complaint shouldn’t be upheld. Both parties have been sent that provisional decision, and have responded, so I won’t repeat what I said here – the parties know what I said. My provisional decision is, however, attached and forms part of this final decision.

## **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.

Prudential responded to my provisional decision and confirmed it didn’t have anything further to add.

Mr A disagreed with my findings. His response wasn’t extensive. It centred on the fact that his loss calculations were done by relevant experts using Prudential’s own parameters so, in ignoring those calculations, he thinks I (and by extension Prudential) have acted in a manner that is “bizarre” and insulting.

I addressed this point in my provisional decision in which I said the following:

*“Mr A’s original intention was to produce a best-case calculation in the belief that Prudential’s actions were so egregious that he should be afforded a fair wind in any loss calculation. Over time, and as the position of the parties got more entrenched, the view has taken hold that this is what Mr A thinks he would have done. But I don’t think that was quite his original intention. That doesn’t change my remit here, which is to look at what would have likely happened. But it does mean I can see beyond Mr A’s numbers (which are unrealistic) and look at his underlying arguments instead.”*

My view was – and remains – that Mr A’s approach can’t be viewed as a reasonable guide to what he would have done had there been no delays or be a reasonable basis for assessing losses. That isn’t a reflection on Mr A or on those who produced his calculations. It’s a reflection of what Mr A was trying to do, which was to produce a “best-case” figure because in his view that would have been the fairest way to resolve his complaint.

With that in mind, my provisional decision went on to outline what I considered a more

reasonable way of approaching the case. And I concluded that Mr A *wasn't* financially disadvantaged by the delays. I've seen nothing in Mr A's response that makes me change my mind on this.

Having reviewed the case once again, and having taken on board the responses of both parties, I see no reason to reach a different decision on Mr A's complaint. It follows that I don't uphold his complaint.

## **COPY OF PROVISIONAL DECISION**

### **What happened**

The dispute between Mr A and Prudential has been going on for a considerable time now. The casefile now has over 6,000 pages. I don't think it will benefit either party for me to catalogue everything that has happened here. I will limit my comments in this section to a high-level summary and will focus the rest of my decision on what I consider to be the remaining areas of dispute. However, as this is a provisional decision, either party can respond if they feel my decision has missed something significant.

Mr A is resident in New Zealand but held a stakeholder pension with Prudential. On 5 April 2022, Prudential received a request to transfer Mr A's pension to a New Zealand QROPS. On 26 April, Prudential sent Mr A a questionnaire to complete as part of its due diligence considerations. Mr A completed this on 24 May. On 7 June, Prudential requested Mr A send in documents proving his New Zealand residency. On 26 August, Prudential wrote to Mr A to decline the transfer. It did so because Mr A had received unsolicited contact from his adviser at the beginning of the process which Prudential considered a "red flag" – and therefore a reason to decline the transfer request – under the rules it had to follow. Information about the unsolicited contact had been provided by Mr A in the questionnaire he completed.

Mr A had a number of concerns. This included the decision to decline the transfer even though the unsolicited contact had come from a reputable, regulated, advisory firm and there were no obvious problems with any other aspect of the transfer; Prudential's delay in giving him its decision; the process by which Prudential came to a decision based on his answers to a questionnaire but subsequently asked for further information – information it could, in any case, have asked for at the beginning of the process; and its sending of information by post rather than email which delayed things considerably given his country of residence.

By way of background, a transfer to a QROPS attracts a tax charge in New Zealand that increases the longer someone has been resident there. So the longer a transfer takes, the higher someone's potential tax liability could be. This is in addition to the potential investment losses, and the potential distress and inconvenience, that can be caused during any delayed transfer. Mr A complained to Prudential.

Prudential responded on 18 January 2023. It didn't uphold Mr A's complaint. It said it had no choice other than to decline the transfer request. However, it did say it should have used email and that its information requests were "disjointed". It also apologised for the amount of time it took to respond to Mr A's complaint. It offered him £250 for the distress and inconvenience it caused and for the cost of Mr A's telephone calls. Mr A had by this stage referred his complaint to us. Our investigator didn't uphold it.

On 2 August 2023, Prudential reinvestigated Mr A's complaint. It still thought it had acted correctly in declining his transfer request. But it thought it hadn't responded to his complaint quickly enough – Mr A having initially raised his concerns even before the transfer had been declined. Given the delays in responding to Mr A, Prudential thought it had potentially delayed giving him information that could have led to him making a new, potentially successful, transfer request. So it offered to compensate Mr A for any financial losses that resulted from that delay. It also offered a further £350 for the distress and inconvenience it caused.

Prudential didn't set out how it was intending to calculate Mr A's financial losses. Our investigator said the distress and inconvenience payment should be increased to £900 in total. And she said Prudential should include the additional tax charge Mr A was likely to incur in its loss calculations. But she didn't otherwise specify what steps Prudential should take to calculate Mr A's losses. And this is the root cause of the complaint now before me.

On 29 August 2023, Prudential received a transfer request to a different QROPS. This second transfer proceeded more smoothly, although it wasn't without problems. For instance, an "amber flag" during Prudential's due diligence process meant it required Mr A to meet with MoneyHelper even though he had met with them just a few weeks beforehand in anticipation of such a request. Nevertheless, on 15 October 2023, Mr A wrote to us to say the transfer had gone through.

With the second transfer complete, Prudential was in a position to calculate Mr A's losses. It initially refused to pay Mr A's additional tax liability until that loss materialised. Prudential eventually conceded on this point and agreed to pay Mr A the additional tax charge ahead of it falling due. Prudential also offered a further £500 for the distress and inconvenience it had caused Mr A. As far as I'm aware, compensation for the tax charge and distress and inconvenience have all been paid.

That just leaves the issue of investment losses. On this issue, Prudential says Mr A didn't suffer a financial loss by being invested in Prudential, rather than in the QROPS, during the period of delay. It has provided its calculation to us. Mr A disagrees and says he did suffer a loss. He has also provided us with his calculation.

Neither party, nor our investigators, have been able to break the impasse. So it falls to me to decide.

### **What I've provisionally 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 recognise there is a lot more to the complaint than I've set out in my summary above. But I hope the parties don't consider I'm being discourteous when I say the complaint now is rather simple. The parties have, in essence, agreed a resolution to the complaint which is for Prudential to pay compensation for:

- the additional tax Mr A incurred as a result of the transfer delay;
- any investment losses incurred as a result of being with Prudential rather than the QROPS for the period of delay; and
- the distress and inconvenience it caused.

I don't intend to revisit the first and third of these. Compensation has been agreed upon by the parties and been paid. I consider these matters closed. So it's the investment losses I need to consider.

Mr A transferred to his QROPS on 12 October 2023. Prudential has taken the view that this should have happened nearly a year beforehand, on 7 November 2022. Its approach stems from the date it sent Mr A a letter declining his first transfer request. This was on 26 August 2022 and is the date Prudential says it should have given Mr A information that would have led to him submitting his successful second transfer request. Adding on 50 days to that date, which is how long the second transfer took to process – and therefore a reasonable proxy for how long things would have taken – takes us to 7 November. In other words, Mr A would have transferred on 7 November 2022 but for Prudential's delays. I consider this to be a reasonable starting point for Mr A's loss calculation.

It's worth noting at this point that the aim here is to consider what the value of Mr A's QROPS would have been had there been no delays and compare that with the position he actually found himself in. I say this because I've seen comments from Mr A about his Prudential pension losing value whilst he was trying to transfer and the value he transferred being short of previous valuations. Maybe so. But this isn't the whole story. I also need to consider what would likely have happened had his funds been

in his QROPS sooner, the performance of which may have been worse than the performance produced by Prudential. In that scenario, Prudential “hanging on” to his pension would have worked to his benefit. In other words, looking at the transfer value in isolation isn’t enough.

It’s important to make that point because Mr A did benefit from the delay – financially at least. On 12 October 2023, £329,926.66 was transferred. After accounting for a 3% adviser fee, and a small amount of growth whilst invested in cash, Mr A’s transfer value was converted to New Zealand dollars on 27 October at a rate of 2.08. Mr A was then paid \$197,666.62 as cash on 30 October. And the remainder of his funds, \$467,128.20, were invested in the NZD Growth Fund (300,307.43 units at a price of 1.5555 per unit). This means the position Mr A ended up in on 30 October 2023, after the various parts of the transfer had settled, was a total portfolio of \$664,794.82, some of which had been paid to him as cash and the rest of which was invested. These figures derive from Mr A’s own submissions.

Had there been no delays and he transferred on 7 November 2022, Mr A’s transfer value would have been £313,898.27. After accounting for the same 3% adviser fee, this means £304,481.32 would have been converted to New Zealand dollars at a rate of 1.92, leaving \$584,604.14 for taking as cash and for investment. If we assume, for the sake of argument, that Mr A would have invested his entire portfolio rather than taking any cash (which he could have done from January 2023), and that Mr A would have traded on the next working day (without any delays in other words), then he would have purchased 394,443.11 units in the NZD Growth Fund at a unit price of 1.4821. Roll that forward to 30 October 2023 (to allow for comparison) and Mr A’s portfolio would have been worth \$613,556.26 even if it had been fully invested for all that time. This is lower than the position he found himself in on the same date (\$664,794.82). In other words, Mr A benefited by \$51,238.56 (or 8.4%) because of the delay.

The reason for this is relatively straightforward. Mr A’s Prudential transfer value increased by 5.1% during the period of delay. Against this, had Mr A been able to transfer on 7 November 2022, he would have instead benefited from the performance of the NZD Growth Fund for the same period. At 5.0%, this was in line with the performance of Prudential. So those two factors broadly cancel themselves out. But sterling appreciated against the New Zealand dollar by 8.6% in this period (7 November 2022 to 27 October 2023) and it is this that gave Mr A’s pension a performance boost that it otherwise would have missed out on. Currency movements meant Mr A was financially better off having been “stuck” with Prudential.

The only way to draw a different conclusion is to assume Mr A wouldn’t have converted to New Zealand dollars shortly after 7 November 2022 and/or he wouldn’t have invested in the NZD Growth fund. In other words, one would have to assume the actions Mr A actually took *aren’t* a good guide to the actions he would have taken had the transfer happened sooner.

And that’s exactly what Mr A has argued. He says he would have taken action that would have produced a better result than the one he got. Specifically, he says he would have split his transfer value between two sterling denominated investments – the Sterling SR Balanced Portfolio and the Sterling International Shares Portfolio – which his QROPS could facilitate. And it wouldn’t have been until 21 August 2023 that he would have converted to New Zealand dollars and then invested in the NZD Growth Fund.

As Prudential correctly pointed out, 21 August 2023 was an eight-year high for sterling against the New Zealand dollar. And, like Prudential, I also consider it highly unlikely that someone can time the currency market quite so perfectly. However, to reject Mr A’s position out of hand misses two important points here.

First, Mr A’s original intention was to produce a best-case calculation in the belief that Prudential’s actions were so egregious that he should be afforded a fair wind in any loss calculation. Over time, and as the position of the parties got more entrenched, the view has taken hold that this is what Mr A thinks he would have done. But I don’t think that was quite his original intention. That doesn’t change my remit here, which is to look at what would have likely happened. But it does mean I can see beyond Mr A’s numbers (which *are* unrealistic) and look at his underlying arguments instead.

Second, 7 November 2022 came in the aftermath of a particularly volatile time for sterling, the result

of a poorly received government “Mini Budget” in September 2022 and subsequent political fallout. Whilst that volatility had dissipated by 7 November, it’s not inconceivable that Mr A would have delayed converting to New Zealand dollars and invested, for a time, in sterling denominated funds whilst markets calmed down. His QROPS allowed for this. And I’m aware Mr A was being advised during the process which also makes it more likely that he would have tailored his actions to the circumstances before him.

Even so, I’m satisfied Mr A wouldn’t have delayed for anywhere near the time he has argued for. For a start, if he had wanted to remain tethered to sterling and sterling-denominated funds for any length of time, he wouldn’t have had a need to transfer to the QROPS in the first place – he could have stayed with Prudential. At the very least, it’s reasonable to say Mr A *wasn’t* transferring in order to keep his pension in a foreign currency.

More importantly, Mr A would have needed to have been confident of three things for the prolonged delay to have made financial sense: currency movements would have needed to move in his favour; the Sterling SR Balanced Portfolio would have needed to outperform the NZD Growth Fund; and the Sterling International Shares Portfolio would have needed to outperform the NZD Growth Fund. He wouldn’t have needed all three to hold true. But he would have needed to have been confident enough that the net effect of all these factors – currency movements and the relative performance of three funds – would have been in his favour.

Mr A hasn’t offered us any insight as to why he would have been confident in making that call. As I say, his approach was to produce a best-case scenario rather than a convincing alternative to what he would have done or what would likely have happened. In that light, whilst I’m open to the possibility that he may have delayed converting to New Zealand dollar funds – until the following month, say – I don’t consider it likely that he would have extended this into the following year. For the avoidance of doubt, if Mr A had (hypothetically) delayed his investment into New Zealand dollar funds for a short time, he wouldn’t have ended up in a better position than the one he found himself in. It is only an unrealistically extended deferral period that generates the losses Mr A is claiming for.

Finally, I recognise Mr A may argue the starting point for the hypothetical position he should have been in should be even earlier than the 7 November 2022 date referred to above so as to take account of factors such as the delays he says he encountered before the first transfer request was even made, the amount of time it took to decline that request and what he considers to have been an unnecessary referral to MoneyHelper during the second transfer process. I also note Prudential said its information requests were “disjointed” during the first transfer but it didn’t account for that in its loss calculation – just the losses caused by not indicating soon enough that Mr A could submit a new transfer request. So there’s a reasonable argument to say an earlier date could have been chosen.

Realistically, however, those delays can only have added a short period of time to the process. Mr A benefited by over \$50,000 if one uses a hypothetical transfer date of 7 November 2022. That date can’t plausibly be pushed back far enough to generate the sort of relative currency and fund performance that brings that value down to zero – which is what would be needed for Mr A to have suffered a loss that necessitates compensation.

I also note that Mr A put forward an alternative transfer date of somewhere between February and April 2023. Bringing forward the hypothetical transfer date by several months would seem to make little sense given Mr A’s complaint is that Prudential caused extensive delays (and would seem to prove the point that trying to establish a hypothetical transfer date isn’t straightforward). Mr A’s reason for this approach is the transfer value he would have got which, he says, would have been somewhere in the region of £335,700 – far higher than Prudential’s hypothetical transfer value of £313,898.27. Of course, this doesn’t make much sense either. The hypothetical transfer date has to be grounded in some sort of reality. Nevertheless, for completeness, if I was to use 1 February 2023 when the transfer value was at its highest – £341,544.48 – the outcome doesn’t change for Mr A. After the 3% adviser fee and currency conversion, and assuming no delays, Mr A would have been able to purchase 398,755 units in the NZD Growth Fund on 2 February 2023, the value of which would have been \$620,264 on 30 October 2023. Again, this is lower than the position he actually found himself in (\$664,794.82).

That’s not to say there are no scenarios in which Mr A avoided losses. Indeed, Mr A has provided a

calculation showing one such scenario. But a glance at the exchange rate chart from the end of 2022 up to the date Mr A's funds were transferred in October 2023 neatly summarises what has taken me nearly five pages to explain: being "trapped" in sterling for the period under review benefited Mr A. Any realistic hypothetical scenario is unlikely to outrun that fact.

In conclusion, there appears to have been a misunderstanding of what a loss calculation is designed to do. It's that misunderstanding that has contributed, largely, to the chasm between the parties in terms of compensation calculations.

To be clear, a loss calculation isn't a means to maximise Mr A's compensation in order to recognise all the problems he faced trying to transfer (and thereafter). A loss calculation is designed to establish, as far as possible, what would have happened had there been no delays and whether that hypothetical scenario is financially advantageous or not. Of course, one can still argue over the precise parameters of what a realistic hypothetical scenario looks like. But, for the reasons given above, it's difficult to envisage one in which Mr A suffered financial losses beyond those resulting from having to pay additional tax.

It follows from the above that I don't intend to uphold Mr A's complaint.

## **END OF PROVISIONAL DECISION EXTRACT**

### **My final decision**

For the reasons given above, my final decision is to not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 June 2025.

Christian Wood  
**Ombudsman**