Financial Ombudsman Service

**complaint**

Mr J complains about The Prudential Assurance Company Limited ("Prudential"). He's unhappy with the value of his Personal Retirement Plan when it was transferred to a Retirement Account.

**background**

Mr J first met with a Prudential adviser on 26 January 2017. They discussed income drawdown but the adviser didn't recommend this to Mr J because he didn't think it suited Mr J's circumstances at the time. Following this meeting Mr J decided to contact Pension Wise to further investigate the retirement options available to him.

On 6 March 2017 Mr J got back in touch with the Prudential adviser. He said he wanted to purchase a buy to let property and required the Tax Free Cash he'd be entitled to in order to be able to go ahead with the purchase. As Mr J's objectives had changed since their last meeting, the Prudential adviser said he could now recommend drawdown to Mr J in the form of a Prudential Retirement Account.

The Prudential adviser submitted a pre-sale check for the Retirement Account on 10 March 2017. This was completed on 16 March 2017.

The Prudential adviser met with Mr J again on 20 March 2017 and a Retirement Account application form for Mr J was completed. On the same day the advisor wrote to Mr J enclosing a suitability report, illustrations, Key Features documentation and his recommendation. Within the documentation provided to Mr J and under the heading *'Disadvantages and/or risks associated with this recommendation'* it said:

*"There are a number of plan specific disadvantages and/or risks to be aware of which are detailed in the Key Features document I provided. I have highlighted the following based on our discussions: (…)*

***Investment returns** The investment returns may be less than those shown in the illustrations (…)*

***Income Level** Income levels under the Income Drawdown option are not guaranteed and could go down (…)"*

And under the heading *'Important Information About My Advice'* it said:

"***Investment Risk** The value of an investment may fluctuate and is therefore not guaranteed (…)"*

The Prudential adviser's recommendation letter said:
*"(…) We discussed how you would feel if your investment/income were to fall in value (…) whilst you are working up until October when you fully retire, any decrease in the fund value, whilst disappointing from a fund performance point of view, would not have any impact on your ability to meet your monthly commitments (…) You also confirmed if your pension fund did reduce in value due to market conditions, you have the option of downsizing your property to reduce outgoings, and release some equity to support your retirement income if needed (…) In light of the above you have the capacity to absorb losses on the fund value".*

The illustration enclosed for the Retirement Account listed the amount Mr J c
ould potentially be transferring from his personal retirement plan was £73,485.40. But it also said:

*"It's important to remember these figures are only examples and are not guaranteed (…) What you get back depends on (…) when you take your money (…)".*

The Prudential adviser's recommendation letter to Mr J concluded with:

*"Once you have read through this report, if any of the information contained within it is incorrect or you have any question, please contact me as a soon as possible (…)".*

On 13 April 2017 the value of Mr J's Personal Retirement Plan was transferred to a Retirement Account. The value transferred at the time was £67,452.56.

On 24 April 2017 Mr J contacted Prudential to complain about the transfer value of his Personal Retirement Plan and the delay in his Retirement Account being set up.

On 16 May 2017 Prudential called Mr J to discuss his complaint further. It responded to Mr J's concerns in writing on 23 May 2017 and said:

- Mr J's plan value reduced due to bonus rates applicable from 1 April 2017
- Mr J's plan was made up of separate elements some of which were guaranteed (the basic annuity and annual bonuses) and others that were not (underlying interest and terminal bonus rates).
- any non-guaranteed bonuses were added at retirement, or when benefits were transferred. As they weren't guaranteed they could, go up or down at any time
- the transfer value represented the value of the plan's share of underlying assets in the With Profits fund
- on 1 April 2017 the bonus rates used in the calculation of quotations were updated following Prudential's full bonus declaration. The adjustment reflected the most recent performance of the With Profits fund and market conditions. Unfortunately, the investment returns received were not sufficient to justify the amount of non-guaranteed bonuses that had previously been incorporated into Prudential's quotations, and as a result they were reduced
- it was the changes in non-guaranteed bonuses and adjustment to reflect market conditions that resulted in the lower transfer value Mr J had noticed
- any values provided based on a retirement or transfer date before 1 April 2017 would be based on the previous bonus rates applicable to the policy
- after new bonus rates are applied on 1 January and 1 April, values could fluctuate more significantly
- the transfer value of £73,485.40 was quoted on the application form dated 20 March 2017, was based on the bonus declaration effective date from 1 January 2017 to 31 March 2017
- the transfer value of £67,452.56 on 13 April 2017 was based on the bonus declaration effective from 1 April 2017 to 31 December 2017
- it acknowledged Mr J's Retirement Account wasn't set up as quickly as it should've been. It apologised for this and said that as it should've received Mr J's transfer value by 3 April 2017. It noted the value of Mr J's plan had reduced by £162.49 as a result of the delay so arranged for this amount to be added to Mr J's Retirement Account

- for the trouble and upset caused by the delay in setting up Mr J's Retirement Account it arranged for a payment of £250 to be paid into his bank account

On 6 and 8 June 2017 Mr J's wife contacted Prudential to discuss Mr J's complaint further. She said she felt it was the adviser's fault Mr J hadn't secured the higher fund value previously quoted. Prudential sent its final response on 22 June 2017. It said:

- the plan values quoted to Mr J in January 2017 were never guaranteed
- it was never expected that the value of Mr J's plan would drop so dramatically
- when Mr J confirmed he wanted to go ahead with drawdown his adviser worked as quickly as he could to ensure all pre-sale checks were completed before meeting with Mr J on 20 March 2017
- it would never have been possible for Mr J's plan to be transferred to his Retirement Account by 31 March 2017
- it didn't agree that the adviser held up the transfer or delayed the meeting about the setting up of Mr J's Retirement Account

Unhappy with Prudential's response, Mr J referred his complaint to our service.

Our investigator reviewed the matter and said:

- Prudential's offer of £250 compensation for inconvenience caused by the delay in transferring Mr J's plan value was fair, as was the reimbursement for the reduction in Mr J's plan value caused by this
- he didn't think Prudential could've done more to get the transfer process completed before 1 April 2017
- he didn't think Prudential was responsible for the fact that Mr J didn't benefit from the bonus rates before 1 April 2017

Mr J disagreed and said he should've been told in January 2016 quotations that bonus rates would be changing on 1 April 2017. He asked for the complaint to be passed to me for a final decision.

**my findings**

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 intending to uphold this complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of all the arguments made by both parties, I have limited my response to the issues I consider to be central to this complaint. That is to say:

- whether Prudential provided any guarantee for what Mr J's plan value would be when he transferred

- whether Prudential delayed the transfer of Mr J's Personal Retirement Plan to a Retirement Account

- whether any delay by Prudential resulted in Mr J losing out on a higher plan value than what was ultimately transferred

- whether Prudential has sufficiently compensated Mr J for any financial loss experienced which was avoidable

- whether Prudential made Mr J reasonably aware of the fact that the value of his plan could increase or decrease during the transfer process

I don't propose to go into the detail of how Mr J's plan worked. This has already been addressed by Prudential and covered by the investigator. I should however say again that Mr J's Personal Retirement Plan was invested in a with-profits fund. The growth achieved by an investment in a with-profits fund depends on the level of bonuses awarded by the business, which in turn depends on the underlying performance of the assets in the fund. But as bonus rates are not (and were not) guaranteed there was, and remains, the risk with this plan that income levels and transfer values could fall.

It seems to me that Mr J is unhappy as he says he was led to believe that the plan value provided to him in an illustration from January 2017 was guaranteed. And that irrespective of when he transferred, the January 2017 plan value (£73,485.40) was what he would always secure. But I haven't seen anything to suggest that any such guarantee was provided by Prudential. Indeed the documentation Prudential provided to Mr J contained a number of warnings about how there were no guarantees as to the value which would be received at transfer and that the value secured depended on a number of different factors. The guide for Mr J's plan also said:

*"It is emphasised that, whilst the bonuses assumed in this illustration are based on the rates most recently declared, no guarantee as to future bonuses can be given. Bonuses depend mainly on investment returns and are currently at a historically high level. It must be expected that in the event of a decline in the rate of inflation there will be a tendency for investment returns- and hence, in due course, bonuses- to be lower".*

The Prudential adviser's recommendation letter to Mr J also said that the potential fall in value of Mr J's plan was something which was discussed at the time. And in conclusion said:

*"Once you have read through this report, if any of the information contained within it is incorrect or you have any question, please contact me as a soon as possible (…)".*

I haven't seen anything to suggest Mr J contacted Prudential to dispute the contents of the documentation/recommendation the advisor provided him with. So I can only reasonably conclude he was satisfied with the advisor's summary of events, including the fact that the risk of Mr J's plan value falling was discussed.

I think the documentation Mr J was provided with about his plan and the transfer to a Retirement Account was clear enough to make him reasonably aware of the fact that the January 2017 plan value wasn't guaranteed and that the value transferred could differ from previous quotations.

There's no dispute about the fact that Mr J's Plan value reduced between January 2017 and the date the transfer went through (13 April 2017). And Prudential has accepted that there was a delay on its part which partly contributed to the reduction in the value of Mr J's plan.

Prudential has confirmed Mr J's plan transfer to the Retirement Account should've happened on 3 April 2017 and not ten days after this. In light of this Prudential has reimbursed Mr J with the amount his plan value fell by during this period, £162.49. It has also arranged for £250 to be credited to Mr J's account for distress an inconvenience caused. I think Prudential has done all in needs to resolve the matter of the transfer delay in this respect. It has put Mr J back in the position he would've been had the delay not occurred and fairly recognised any inconvenience caused as a result. So I won't be asking Prudential to do anything else in this respect. Having carefully reviewed the transfer process I'm satisfied the transfer should have been completed by 3 April 2017.

Turning now to what appears to be Mr J's main concern- the fact that his plan value went down by approximately £6,000 between January and April 2017- this is in addition to the £162.49 loss mentioned above.

Prudential has explained that the significant drop in the value of Mr J's plan during this period was as a result of a change in terminal bonus rates. Prudential applies new bonus rates twice a year, on 1 January and 1 April. The impact of this is that a transfer value can be higher or lower than expected depending on market conditions and performance of the with profits fund.

I understand that Mr J feels it is rather convenient  that despite the delay Prudential has accepted it caused, the date it says the transfer should've been effected still leaves him in a position where he 'misses out' on the previous (higher) bonus rates by one working day. I do have real sympathy for Mr J and can appreciate his disappointment. But while it's unfortunate, I haven't seen anything to persuade me that the transfer should reasonably have been completed before 3 April 2017 so Mr J could've benefited from the more favourable bonus rates applicable from 1 January 2017 to 31 March 2017.

It's important to note that the amount of bonus declared for the fund is a matter for Prudential's commercial discretion. And with-profits fund providers, like Prudential, do have significant discretion about how they operate this type of fund.

Yet they are accountable to the industry regulator, the Financial Conduct Authority (FCA) for the way in which they manage their with-profit funds. The FCA monitors the management of the funds. And the FCA's Principle 6 requires that firms *"…must pay due regard to the interests of its customers and treat them fairly".* The Conduct of Business Sourcebook (COBS 20) also provides specific rules and guidance for firms on the operation of these funds.

I'm not aware of any concerns the FCA has about Prudential's management of the fund or how it operates its with-profits fund.

In closing, I do appreciate that Mr J might be concerned that he didn't know the reductions were going to happen. But Prudential's actuaries regularly review what bonuses the with-profits fund can support and what the appropriate factors are to convert a pension in to a transfer value. And until Prudential actually implements a recommendation that the actuaries have made, no one else will have advance knowledge of what the change is going to be.

**my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 December 2017

Chillel Williams
**ombudsman**