

complaint

Mr K is unhappy with the way The Prudential Assurance Company Limited compensated him for delays to a fund switch in his pension.

background

Prudential informed customers in 2014 of their decision to close one particular fund (Fund A) and switch investors to another fund (Fund B). Customers were given the opportunity to choose a different fund if they didn't want to be invested in Fund B.

Prudential was planning to close Fund A by 28 November 2014. However, the closure took longer than expected and Fund A only closed on 13 November 2015. Mr K had moved his investments from Fund A to a different fund shortly before on 25 September 2015.

In 2018 Prudential wrote to customers to apologise for the delay in switching funds. Prudential acknowledged Fund B had done better than Fund A during this period and customers would have missed out on growth in Fund B during the delay. So as a gesture of goodwill they paid Mr K the difference in value of growth his investments in Fund A would have gained if they had been invested in Fund B between 28 November 2014 (the date of the planned switch) and 25 September 2015 (when Mr K switched out of Fund A). This amounted to £9,873.

Prudential then revalued this difference using a recent fund price in 2018 to recognise the fact the switch had happened over two years earlier. The revalued compensation sum was £14,950. Prudential paid this sum directly to Mr K as tax-free compensation.

Mr K accepted the payment. However, he is unhappy the compensation was paid outside his pension plan. He feels his pension still hasn't been put back in the position it would have been in had the delay not occurred.

He wants Prudential to put this right and also consider subsequent loss of investment growth since he transferred to new funds (as the fund value going forward would have been higher and would have attracted more growth). As the payment by Prudential has been made "ex-gratia", Mr K considers any compensation to put his pension plan in the position it would have been in, should be paid in addition to the compensation already paid.

Our investigator didn't think Mr K's complaint should be upheld. In summary she said it was Prudential's commercial decision to close Fund A and switch to Fund B. There was no requirement for them to do so. So whilst the closure took longer than expected, she felt technically Prudential hadn't done anything wrong. She thought the compensation Prudential decided to pay Mr K was reasonable.

Mr K disagreed. He said once Prudential had told him about the planned switch, he would've expected them to go through with it in a reasonable timeframe. He says the fact Prudential apologised for the delay implies they made a mistake and they should put it right properly.

As no agreement could be reached Mr K's complaint was passed to me for a 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.

I understand that Mr K has been dissatisfied with Prudential in general and that he complained to them about several issues with the administration of his pension, their customer service and the way they handled his complaints. I understand that Prudential has upheld all of these complaints and paid Mr K separate compensation.

The issue left for me to deal with is the delay in the switch and the compensation associated with this. Having considered everything, I've decided not to uphold Mr K's complaint. I'll explain why.

Prudential made a commercial decision to close Fund A and switch customers to Fund B. It was their choice. If they hadn't decided to close it, Mr K would've likely stayed in Fund A until he gave instruction to switch funds (which he eventually did in September 2015).

I appreciate that Mr K says Prudential essentially entered into a binding contract with him. They offered to do the switch to Fund B unless Mr K asked for a different fund to be switched to. And by not taking any action he says he agreed to this offer and would have expected Prudential to fulfil their end of the agreement. I can see where Mr K is coming from. However, I also have to take into account that Mr K was sent a statement in January 2015 which showed him that he was still invested in Fund A after the planned switch date in November 2014. And at no point did Mr K query or raise concerns with Prudential that the fund switch had not happened as intended.

So on balance I think it's likely that Mr K was generally happy with Fund A (a fund he had chosen). He just didn't object to the switch to Fund B when he was told Fund A would close (and therefore he wouldn't have been able to stay in it). So if Prudential hadn't made the decision to close Fund A it's likely Mr K would have stayed in Fund A until he switched out in September 2015. So I think his situation would not be any different to what it is now.

I would look at the case slightly differently if Mr K had *specifically instructed* Prudential to make changes to his funds and they didn't complete or had delayed his switch. I would have expected Prudential to follow Mr K's instructions in a reasonable time frame and compensate him for any losses he suffered as a result. This is because he would have been in a different position than he wanted to be in.

I appreciate that Prudential told Mr K they would do something and then didn't do it until much later. And I think as part of good customer service they could have told Mr K when the planned closure was delayed. However, as explained above I'm not persuaded that Mr K would have actively switched to Fund B if he had known that the automatic switch wasn't happening in November 2014. So I don't think he would be in different position than he is now and I wouldn't expect Prudential to compensate him for any lost growth opportunities.

Having said all of this, Prudential acknowledged that closing Fund A took much longer than they expected and that they fell short of their own internal service standards. And when they reviewed their cases and found that Fund B had in fact performed much better than Fund A they decided to compensate their customers for the growth opportunity they lost out on. I think this is fair in the circumstances.

Prudential say they tried to put Mr K back in the position he would have been in if he was switched to Fund B in November 2014. They decided to pay the growth value Mr K missed out on directly to him and not into his pension plan. Prudential say they've done this to avoid potential tax or lifetime allowance implications for their customers.

I appreciate Mr K's comment that they didn't know about his personal circumstances and that paying compensation to him directly still leaves his pension short of what it would have been if the fund switch had happened in November 2014.

Prudential told Mr K he could pay some or all of his compensation into his pension if he wanted to. But I understand Mr K's personal and financial situation means this isn't the most tax efficient for him and so he doesn't want to do this.

So I agree his pension is not exactly in the same position it would have been in if the switch had happened as planned. But I think the payment made to Mr K covers the growth value he missed out on between November 2014 and September 2015 and the payment was also revalued to 2018 to acknowledge potential subsequent investment growth losses. In Mr K's case the revaluation amount was another £5,077. So on the whole I think the payment was generous and a lot more than I would ask them to pay.

I don't agree with Mr K that because Prudential made the payment "ex-gratia", it means this only covers administration errors by Prudential and doesn't cover any lost growth opportunities. The payment was clearly paid to compensate for growth Mr K missed out on.

Whilst the compensation payment might not be the ideal solution for Mr K's particular circumstances, Prudential compensated all their affected customers –not just Mr K-and I don't think paying it as direct tax-free compensation is an unreasonable approach.

As this is essentially a goodwill payment from Prudential and more generous than I anything I would ask them to do, I won't be asking them to do anything further.

my final decision

For the reasons I've explained I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 December 2018.

Nina Walter
ombudsman