

Complaint

Mrs S (with the assistance of her husband) complained about the advice and work provided by the Prudential Assurance Company Limited when she looked into transferring benefits from an occupational pension scheme (OPS)

Background

Mrs S sought advice from Prudential in relation to transferring from her defined benefits OPS (of which she'd been a member from November 1989 until October 1992). It's understood Mrs S would be entitled to an annual pension of £3,919.78 from her former scheme. That amount allowed for increases from the date of leaving and retirement date in line with the regulator's assumptions (which were not guaranteed).

Prudential completed a fact find dated 12 December 2016. This recorded that there hadn't been any significant changes from a previous fact find but that Mrs S was now looking to take advantage of transferring benefits to a Prudential proposition. It has been suggested this was a particularly good time for Mrs S to achieve the highest transfer value for her OPS benefits. The fact find also set out what her preferred fund choice was following a transfer and recorded this was no doubt linked to her husband's knowledge. And there was reference to Mr S being "*very knowledgeable, being a Chartered Planner himself*".

A transfer value analysis report dated March 2017 was provided. It included that:

- Mrs S was aged 53.
- The OPS cash equivalent transfer value (CETV) equivalent transfer as at 3 March 2017 was £61,032.14.
- The CETV guarantee date was 19 January 2017. The transfer value expiry date was 18 April 2017.
- To replace the benefits provided by Mrs S' former scheme, she would need an investment return to retirement of 8.5% per annum.

The transfer value analysis indicated that the required rate of return was unachievable based on Mrs S' attitude to risk and that she wouldn't be able to achieve the rate required to match or improve the benefits offered by her OPS.

Mrs S and her husband didn't agree with what Prudential said and complained. In summary they were unhappy with Prudential's approach and that:

- There was an overdependence on the critical yield when making recommendations.
- Prudential wrongly failed to adopt a holistic approach. Prudential ought to have by taking into account other information in reaching their recommendation including; other significant client assets, soft financial planning facts and the wider client objectives.
- Since Prudential had advised and a further CETV was obtained, the value had dropped by 8.5%.

- Prudential hadn't dealt with Mrs S properly and there was poor administration and delay during the transfer process.

Mrs S and her husband went on to seek advice elsewhere and it's understood a transfer was made from Mrs S' OPS in late April 2018 of around £56,295.

Prudential responded to the complaints made by Mrs S and her husband. They didn't uphold the complaint made around the factors taken into account during their advice process or the conclusion that was reached. They also didn't consider the fall in value by the time the transfer proceeded was something Prudential ought to be responsible for.

Prudential didn't accept there was a failure in the regard they'd placed on the critical yield required when providing their advice. They said that *"due to the complexity of transferring any defined benefit scheme such as this, and the scrutiny under which these are subject to by the regulators, [they] must apply the same rigorous parameters to all transfers, irrespective of clients' other objectives... [albeit they appreciated Mr S' view that].. this diverges from taking a holistic approach to the total of a client's assets and their financial objectives. But in order to ensure [their] process treats all clients fairly, they must assess each case purely on the merits of the existing scheme, to demonstrate the utility (or not) of moving to a Prudential pension vehicle. The assessment of critical yield with respect to your risk appetite is only one aspect of this. It is not the defining measurement, but taken in balance with other factors of the ceding scheme's arrangements. ..and this approach is used to ensure all such transfers are assessed fairly"*.

Prudential thought the administration into how the loss of documentation had been dealt with wasn't what they would have expected. They also thought the advice against the transfer wasn't communicated as quickly as it could have been; but they didn't think it was as delayed as had been suggested. Prudential accepted the written confirmation of their decision hadn't been despatched until shortly before the expiry of the OPS' CETV. Prudential thought that even if their written report had been sent out at the time of the decision being made, this still would not have been enough time for another firm to fully assess the CETV and proposed transfer before the CETV expired on 18 April 2017.

Prudential made various financial offers in relation to the service provided during the transfer process and other activities. In summary Prudential offered their apologies and a compensation payment of £100 in their letter dated 21 March 2017 and £200 in their letter dated 10 April 2017. In their Final Response letter dated 16 May 2018 they offered £325 overall.

Mr and Mrs S didn't accept what Prudential said and referred Mrs S' complaint to this service. They told us Mrs S continued to believe she had suffered financial loss based on the decision not to initiate the transfer. The primary concern is said to be that Prudential failed to give proper and due consideration to all the facts, circumstances and objectives. So the approach adopted has been one dimensional and lacking holistic rigor.

Our adjudicator didn't agree with Mrs S. He didn't think Prudential had done anything wrong here in relation to their approach to the transfer and advice; and he thought their offer was appropriate in the circumstances.

In his view he set out what the regulator (the FCA) had said (in its publication 'PS18/6: Advising on Pension Transfers' dated 26 March 2018). Namely that an adviser should start

from the assumption that a defined benefit pension transfer will be unsuitable. And that this reflected the high proportion of unsuitable advice seen in supervisory work.

The adjudicator went on to set out his thinking in respect of what was said about the importance of, and weight to be placed on the critical yield (the annual investment growth rate required for the new personal pension arrangement to match the value of the benefits payable under the final salary OPS until Mrs S' scheme normal retirement age of 65).

Here the critical yield calculation showed that even just to match the benefits provided by Mrs S' former scheme, an investment return of 8.5% per annum to retirement would be needed.

So the adjudicator considered that where, as here, a future annual growth rate of 8.5% per annum for the next 12 years or so is required; where it is well above current illustrative growth rates, even on the current '*high rate*', it isn't unreasonable to conclude a transfer of benefits is not viable. And this would be so even for someone with an identified '*medium to high*' attitude to risk.

The adjudicator didn't accept the complaint that Prudential did not adopt a holistic approach. He accepted Prudential's explanation on this. He also pointed to what had been said in the original fact find as well as the final response letter.

The adjudicator also didn't think Prudential ought to be held responsible for the expiry of the original CETV and fall in the transfer value available at a later date. The expiry date for the CETV had been 18 April 2017 and the written confirmation of Prudential's decision was dated 11 April 2017. But even if the written report had been sent out at the time the decision was made (around 31 March 2017), this would have left just two and a half weeks before the CETV expired on 18 April 2017. There would not have been enough time for another firm to fully assess the CETV with a view to transferring the benefits, without incurring a fee to request a second CETV (within a twelve month period) and a delay to enable further advice to be provided once the CETV was available.

The adjudicator set out that he shared Prudential's view on this. This was why OPS transfer values were usually guaranteed for three months in order to take into account inevitable advice and transfer delays. And he didn't think the fall in the CETV would have been unforeseeable by Prudential at the time that the transfer advice was being assessed.

He also thought that if Mr S (and his wife) believed that it was likely that the OPS transfer value was almost certain to fall following expiry of the transfer value guarantee period (as he seemed to understand was also suggested); then, as Mr S is a Chartered Financial Planner, he would have understood other options and could have considered requesting at inception that the transfer proceeded on either an 'insistent customer' or on an 'execution only' basis.

Mr and Mrs S didn't agree. They continued to be of the view that the recommendation not to transfer was not in their best interests and a transfer was viable for all the reasons given.

They asked the adjudicator to refer himself back to the covering note sent with the original complaint. Mr S felt the adjudicator had focused on a re-iteration of the "*hard facts*" rather than a full assessment of the "*soft*" financial planning facts at play. They also thought the adjudicator had also given a disproportionate weight to the critical yield.

Mr S referred to a case that had appeared in the trade press where he said the FCA found fault on a rejected transfer where the critical yield was 15%. In this case the regulator thought the adviser had not taken a holistic approach in fully considering other assets, not factored in the softer facts and not fully appreciated the client objectives and what was trying to be achieved. Mr S didn't think their position was any different.

Mr S accepted he has some knowledge of this market but did point out that although qualified to an advanced level he is not a practicing Chartered Financial Planner.

Further submissions were made in respect of recorded data on bonus and monthly earnings which were said to be incorrect. And Mr S stressed that when the transfer did proceed (through a firm of advisers), their adviser had agreed with Mr S' assessment.

Mrs S' complaint was referred for an ombudsman's decision. Whilst it has been waiting to be allocated to an ombudsman Mr S has provided some further submissions. He contacted us in July 2019. In this contact he sent us a copy of an article and highlighted the part he considered of most relevance. He thought this demonstrated the ongoing acknowledgement that there can be persuasive reasons to consider a transfer.

Mr S particularly noted this might apply to people in a comfortable financial position. This highlighted one of the earlier points Mr and Mrs S had stressed. Their circumstances at the time of the advice were comfortable and although Mrs S' OPS benefits appeared to reflect the major proportion of her direct pension arrangements; their other arrangements regarding savings and investments for example ought to have been balanced against this factor being considered, (as they felt), in isolation.

In August 2019 Mr S provided his thinking having considered the recent publication of FCA paper CP 19/25. Mr S said that although the paper was primarily addressing the issue of contingency adviser charging on defined benefit transfers and the potential conflict of interest; he did want to draw attention to a section which he believes reinforces the case.

Mr S says the relevant section is Annex 2 - "*why consumers choose to transfer and the main categories of client suited to a transfer*"; and he wanted this added to the file for consideration. Mr S thinks the first three bullet points are relevant.

"There are some valid reasons why consumers may want to transfer their DB pensions... there are those consumers, often more able to afford advice ones, whose preferences revolve around wealth management and inheritance planning. From our work, we consider that only a small number of these clients are likely to be suitable for a transfer.

The main categories of client suited to a transfer includes:

- *consumers in households with multiple DB or other guaranteed pension income sources that is sufficient to meet their needs so that they can accept investment risk to acquire additional flexibility*
- *consumers in households with significant other assets, where a transfer allows better tax planning*
- *consumers in households with significant DC pensions or other assets, and the DB scheme is not required to meet their needs".*

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 agree with the adjudicator and for broadly the same reasons.

For me to uphold Mr and Mrs S's complaint here, further than has already been acknowledged by Prudential and the adjudicator, I would need to conclude that Prudential had done something wrong in the way they approached their advice and made their decision. I don't accept they did.

Overall there is nothing that suggests to me Prudential didn't reasonably apply their advice process. I understand they have previously explained their process was fairly new at the time and they'd only recently offered the process for defined benefits.

But I think the main thrust of Mr S' complaint on behalf of his wife, is that he doesn't agree with the decision reached by Prudential. Mr S has highlighted matters he feels Prudential failed to give sufficient weight to; and that he thinks they gave undue weight to the critical yield.

So in other words, he thinks they ought to have done things differently, and if so, he thinks this would have led to a different outcome. And following on from this, if Prudential had concluded they would advise Mrs S to transfer her OPS, she would have been able to obtain the higher original CETV provided by the OPS. In addition she would not have had to pay additional costs, including those associated with obtaining the second CETV. But I think some of this logic relies on unforeseeable outcomes that could not be guaranteed.

I am not saying that it would be necessarily unsuitable or wrong if Prudential had decided differently. But I don't think it would be right to say that's what they ought to have done. I think this is an area where the regulator has been sufficiently clear that caution is required when considering transferring, particularly from defined benefit schemes. I also think an assessment of the critical yield required to match (let alone exceed) the benefits offered by the scheme (particularly where the period of time involved is of some length) is an important part of the process. Here the critical yield required was significant.

As the regulator has highlighted, this does not mean that all transfers would necessarily be unsuitable. I accept that the factors highlighted as relevant by Mr S to his wife, are those that may be considered relevant as part of the assessment and advice process in such cases. But that doesn't mean Prudential were wrong to reach the decision they reached either. I think the information provided demonstrates Prudential had the information on Mrs S' circumstances; it's just that Mr S thinks these circumstances ought to have been given greater weight than he thinks Prudential gave them.

I don't consider it to be unusual that in the circumstances as they relate to Mrs S a firm decided not to advise in favour of the transfer. But equally that doesn't mean another firm might not come to a different conclusion. I also accept Mr S appears to have had sufficient experience and an involved approach (no doubt due to his work) with his own financial arrangements and those of his wife. I think he would have understood and been well-placed to explore alternative options.

I don't consider it remarkable that the three month guarantee period for the CETV might cause a further CETV to be required if the first advisers for example didn't advise in favour of

a transfer in time. In fact here I've seen the OPS agreed to honour the CETV for an extended period. In any event I don't think it reasonable for Prudential to be responsible for the drop in the CETV by the time the transfer took place. The advice outcome was never certain; and as I've set out, I don't consider the advice to be unsuitable here.

Having looked at everything provided it appears to me the offers made previously by Prudential cover a number of different aspects of the process with which Mr S was dissatisfied. Here having looked with care, I consider Prudential's offers to be sufficient. I don't intend to ask them to do anything further. It appears to me, Mr and Mrs S have been paid what was offered previously. If I am wrong about that, I don't doubt the sums will be paid. I accept here that the written confirmation of the outcome of the advice could have been provided sooner.

Final decision

So for the reasons given, I uphold in part Mrs S' complaint about the Prudential Assurance Company Limited. But I don't require them to do anything further than had already been offered before the complaint was referred to this service.

Under our rules, I'm required to ask Mrs S to accept or reject my decision before 13 March 2020.

Louise Wilson
Ombudsman