

complaint

Mr K's representative (who I'll refer to as "B", a regulated adviser) complains that The Prudential Assurance Company Limited reneged on an offer to include 8% per year simple interest in its compensation, following a review of delays experienced in processing instructions on its Retirement Account (RA) investment platform.

background

I issued my provisional decision on this complaint on 16 December 2019. A copy of that is attached and forms part of this final decision.

Prudential said it had no further details of the 'Options' system than that it had provided, recording that Mr K's crystallised funds were received on 10 March – as his RA has since been closed. It was in agreement with the provisional decision. Mr K's representative didn't agree with the provisional decision, but didn't want to add anything.

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 acknowledge that Prudential has no further information to add about the Options system. I reached my findings in the attached provisional decision on the basis of all the evidence that was available. As neither party has made any comment beyond this, I see no reason to change my findings, which I'm satisfied are fair and reasonable in the circumstances.

my final decision

Prudential has offered Mr K £200 for the upset caused to him. I also consider what Prudential has paid to Mr K or his SIPP for his financial loss, totalling £1,893.28 gross, is fair and reasonable in the circumstances of this case. I do not make any further award, providing Prudential ensures that all offered sums have been paid to Mr K or his SIPP. I appreciate that this will come as a disappointment to Mr K and his representative.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 February 2020.

Gideon Moore
ombudsman

provisional decision of 16 December 2019

background

In late 2016 B recommended that Mr K transfer his existing self-invested personal pension (SIPP) to a Prudential RA. Mr K was already taking an income from the SIPP. B says that it discussed the timescale to process the transfer with Prudential in early December 2016, and in view of potential Christmas delays, they decided to wait until Mr K had received his 28 December income payment.

B submitted the application on 30 December 2016 by keying it onto Prudential's online RA portal. Prudential's system acknowledged the application and they assumed it could be processed in time to start Mr K's monthly income payments with Prudential on 28 January. B also faxed documents to Prudential which it received on 3 January 2017.

Prudential accepts that it didn't enter this onto the online 'Options' system until Friday 13 January 2017, instead of the five working days maximum it should have taken (9 January). However the system couldn't accept it as some of the funds were already crystallised – and that hadn't been detailed in B's original request. So Prudential had to ask B to resubmit the request on 16 January, the next working day. Due to system issues, discussed below, B couldn't give the split of crystallised amount until 26 January. Prudential also says that the RA account number was keyed incorrectly – but this was resolved the next day.

B complained when it became apparent that a number of its clients also moving to the RA were experiencing delays – and as a result Mr K wouldn't receive his 28 January 2017 income payment in time. In the meantime Prudential proceeded to key in a split request for Mr K's funds from the SIPP provider on Options on 9 February – which it admits it should have been able to do four working days earlier, on 3 February.

Initially on 17 February B suggested that the proceeds of the transfer should be held in cash (rather than being invested into the PruFund Growth fund), in case that made it easier to make the February income payment on time. When it became clear that Prudential couldn't guarantee meeting the February timescale, B countermanded this request and asked Prudential to ensure that the March payment was made on time. B believes the SIPP provider sent the funds on 17 February, however Prudential didn't receive these until 3 March. Mr K then started receiving his income on 28 March. The two 'missing' income instalments had been £3,583.75 per month.

On 14 March 2017 Prudential responded to the complaint and offered Mr K compensation of £200 for the distress and inconvenience caused by the delay in starting his income. Prudential also said that it was setting up a review to 'ensure that the investment dates for [RA] are in line with the terms and conditions'. As B had mentioned that Mr K had to move funds from other investments to fund the missing months' income, Prudential invited B to send any evidence it had that its delay had caused Mr K further financial loss.

B was expecting more compensation, because in January 2017 Prudential made an offer of compensation to another of its clients (who was also known personally to Mr K) which mentioned:

'To compensate for this delay, I have calculated the time taken from the date we first received the application to the date the application was finalised, minus 13 working days (the expected time to set up an application). Using the total fund value we received and

taking into account the length of the delay. I have calculated compensation due using 8% simple interest (which is the rate used by the Financial Ombudsman Service)...

In April 2017 B complained to Prudential again having understood that Prudential changed its method of compensation during February 2017. It said from a "treating customers fairly" point of view, any complaints received before the new process was implemented should have been dealt with on the original basis.

In June 2017 Prudential provided a final response to Mr K's complaint. It clarified that the payment of £200 was only for the distress and inconvenience Mr K had suffered and wasn't the only amount he might receive – as it was yet to calculate any investment loss he might have suffered:

'Our decision to initially use the rate of 8% simple interest was made in view of us not being in a position to make redress through the Retirement Accounts in place, this by way of crediting additional units for example. We were also very aware of the timescales being experienced by our customers, with our desire to resolve concerns in an efficient and appropriate manner.

Through the actions we have taken as a business in terms of the Retirement Account proposition, we are seeing an overall improvement in relation to the timescales being experienced by our customers. Furthermore, we are also enhancing our system capabilities and it is now possible to find a redress solution within the Retirement Account itself. I want to stress that this was always our desired solution.

... we are currently undertaking a review of all the Retirement Accounts impacted by the delays in investing monies, or indeed setting up the Accounts themselves. This review will ensure that all customers impacted by such delays will be put into the same position as if none had been encountered.'

B referred the matter to the ombudsman service, repeating its concerns that Prudential was not treating customers fairly. It added that Mr K's complaint should have been resolved before 13 February (when Prudential's approach changed) in any event, so by not paying 8%pa interest he was being penalised for Prudential's own delay in resolving the complaint.

Prudential told us that each complaint was dealt with on its individual merits, and as a business it was within its rights to commercially decide how to redress customers at any time. It would normally expect a transfer to take 13 working days. In this case the transfer included both crystallised/uncrystallised funds, so it couldn't be completed on *Options*. That caused a delay as paperwork had to be sent.

Whilst Mr K's complaint was with us, B became aware that some other clients who had received 8%pa simple interest in January 2017 were getting 'top up' amounts if Prudential's new review of investment loss produced a higher redress figure. It also told us:

'...a best pricing exercise would have to be carried out on the investments [Mr K] had to encash. He had to encash funds from both his own and his wife's Stocks and Shares ISA accounts. This means Prudential would have to pay back the £7167.50 taken from the ISA's along with any growth the plans would have earned.

I would suggest that the fairest way to resolve this case would be for Prudential to use the redress process that was in place when the complaint was made. Anything other than this

means that [Mr K] is being treated unfairly because of the failures in Prudential that caused the complaint in the first place.'

Both an investigator and a lead adjudicator have spoken to B about this case. In summary, the most recent position they've taken on the complaint is as follows:

- We would consider awarding 8%pa simple interest where a consumer had been deprived of money, whereas in this case Mr K had access to funds from ISAs.
- The delay in transfer potentially resulted in a loss of investment growth, if it would have grown more in the RA than in the ceding scheme over that time.
- We might also look to consider any difference in investment growth caused by having to withdraw funds from ISAs instead of the RA.

The investigator obtained outline details from B of the investments Mr K had to encash, and asked Prudential to take these into account in its calculations.

On 9 October 2018 Prudential gave the result of its wider review to Mr K – I haven't seen a copy of the letter but I'm aware it confirmed £257.25 had been added to the RA cash account as redress. On 11 October Prudential informed the ombudsman service that it thought B was also partly responsible for the delays in this case – for instance in not responding to Prudential's email of 16 January 2017 for ten days. For that reason it wasn't including the impact on investment performance of Mr K having to take two monthly withdrawals from ISAs instead of the RA in its calculation.

However Prudential had become aware that the figure of £257.25 was based on the temporary fund selection of cash, which B had only given between 17 and 22 February 2017 – and not the PruFund Growth fund. It wrote to Mr K again on 16 October 2017 to confirm a further £1,599.28 would be paid into his RA cash account, reflecting the loss of growth in the PruFund Growth fund. Its letter also said a further payment would be made directly to Mr K:

'We are making an interest payment based on the delay in paying income. The gross amount (before tax) is £36.75...'

B made a number of comments in response to Prudential's further payments:

- B considered that any attempt to factor the specific funds Mr K had been invested in and when he bought and sold those funds into the redress calculation would be *'absolutely ridiculous'*.
- B had been trained on Prudential's RA system in September 2016, and was not told that transfer requests needed to be split between crystallised and uncrystallised rights. It assumed the system would automatically do this.
- Further training wasn't given until 31 January 2017 and there were no user guides to refer to.
- It had wanted to key the application earlier in December 2016, but had been 'instructed' by Prudential not to do so.
- B had resigned from being directly authorised by the FCA to become a trading style of another regulated business – and as a result was 'locked out' of Prudential's RA system from 16 to 26 January 2017. But it was in regular phone contact with Prudential to resolve the issue at this time.
- There was a second Prudential delay at the start of February 2017 where it failed to meet its service standards.
- While the transfer was being made between 17 February and 3 March, B had to repeatedly call Prudential to find out where the money was.
- Mr K hadn't been compensated for the *'stress of having to find money from other assets at the last minute, totally at odds with his investment strategy'*.

- It was still looking for the method of 8%pa simple interest to be used. Other clients were still being offered compensation on this basis.

We've shown Prudential B's comments. In summary it said:

- There is no evidence that it 'instructed' B not to key the application in December 2016.
- Its compensation was based on it taking four working days longer than its five working day service standard to turn around the fax received on 3 January by 13 January 2017.
- It refutes that inadequate training on the RA system was given. And any potential difficulty in accessing that system to provide a revised benefit split could have been resolved by email.
- *Options* records that the SIPP provider didn't send the transfer amount until 20 February rather than the date of its letter (17 February). It wasn't responsible for how long the funds took to arrive and so wasn't in a position to confirm their location.
- It was entitled to change its redress to a more appropriate method, which has now resulted in Mr K's plan receiving total payments of £1,856.53 as well as Mr K personally receiving £200 for upset and direct interest of 29.40 net.

The investigator considered what both parties had said. He relayed to B that he was satisfied Prudential had calculated the difference in the investment value of the RA, if it had been possible to set up the whole account sooner. He no longer considered that Prudential needed to consider the impact of Mr K having to take some withdrawals from ISAs rather than the RA.

As B didn't accept the investigator's findings, the complaint has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carried out an initial review of the file, I decided that there were a number of issues left to address in order to reach a decision on the complaint. We've obtained further information from Prudential as follows:

delays on the online system

The request for B's FCA authorisation to be changed (so-called 'novation') was a letter dated 1 January 2017 emailed to Prudential on 10 January 2017. Prudential applies a ten working day service standard for processing novations. During this time Prudential made the following 'calls back' to B, which I've been able to listen to:

17/01 10.45am – B discussed a request it had received for the split between crystallised/uncrystallised funds. Prudential suggested making a request on the system and then confirming the figures in an email so that it would be updated at Prudential's end.

3.33pm – B explained that due to novation it was currently 'locked out' of the online RA system. Prudential confirmed the extra information would have to be keyed onto the system. It would email over the new agency numbers B could use.

18/01 12.11pm – Discussion about an error message B was encountering with the new agency numbers. B had already been given a helpdesk number to call, but Prudential agreed to raise this directly with the helpdesk.

20/01 3.25pm – Prudential confirmed novation should be completed by the close of day, (Fri) *“because that’s probably the quickest way, rather than getting the team to do it and then it’ll join the queue...if it doesn’t work, come back and we’ll re-think what we’re going to do.”*

23/01 4.09pm – The novation had not been completed successfully. B referred to the fact (Mon) Mr K was still waiting for his income and asked for it to be dealt with urgently.

4.30pm – The postcode wasn’t set up correctly on B’s ‘unipass’ certificate, which might be due to the fact B was a trading style of a company with a different address. B was put through to the ‘e-business team’ to resolve this. We don’t have the recording of that part of the call, but B was apparently told that the problem was caused by the novation not being completed.

5.01pm – Prudential admits to B that it was misinformed internally that the novation had been completed. There was discussion about it being difficult (if not impossible) to complete the transfer process without this. Prudential was hoping this would be completed overnight. B reiterated that it needed to be done in time for the 28 January income payment.

The novation was completed on 24 January 2017 after one issue had been clarified between Prudential and B’s head office on 20 January.

Prudential entered a correctly-keyed transfer reflecting crystallised and uncrystallised values onto *Options* on 9 February. *Options* recorded the funds being sent by the ceding scheme on 20 February by BACS. Whilst the uncrystallised funds were logged as received the same day, the crystallised funds were logged as received on 10 March. (In reality BACS is likely to have taken several days, but not as long as 10 March.)

what redress has been paid for

Prudential now says the redress totalling £1,856.53 was only for the time Prudential delayed setting up the account and investing it into the PruFund Growth fund from 22 February – being the day after it received the funds from Mr K’s ceding provider – to 14 March 2017.

Prudential believed Mr K’s ceding provider did, or was in a position to, pay Mr K’s January income payment. Although Prudential did not pay Mr K’s February income payment it paid Mr K £29.40 in respect of the delay in being able to do so.

Prudential denies that other clients are still receiving offers based on 8%pa simple interest, but offers which were calculated and made prior to the date it changed its approach have been honoured. Mr K was not in this position as the complexities of his case meant Prudential hadn’t calculated an offer before it changed its approach.

my provisional comments on how Prudential has treated Mr K’s case

I don’t consider the fact Prudential may have offered other consumers 8%pa interest requires it to offer the same to Mr K, for the reasons it has explained (and summarised above). I’m not in a position to say whether that rate was overgenerous to those other

customers or not, as I'm not investigating their cases to establish the extent to which they were deprived of funds. I'm only investigating Mr K's case.

In my view the compensation for a case like this would typically take a combination of the following forms:

1. Comparing the growth Mr K might have achieved in his SIPP, had the transfer happened sooner – so that instead of growth in the former SIPP's investments he obtained more growth in the PruFund growth fund. This would be an investment loss.
2. Looking at whether he was deprived of income as a result of a delay in receiving monthly instalments:
 - This might be paid at the rate of 8%pa simple if Mr K had lost enjoyment of the use of the money (for instance if he had no other sources of funds).
 - Alternatively, there might be an investment loss if Mr K withdrew funds from other sources – but of course that would have enabled him to achieve further growth on the unused amounts in his SIPP.

lost growth on the transfer

From what I can see, Prudential has only considered paying Mr K the missed growth in the PruFund Growth fund from the day after it received his funds from the ceding scheme (22 February). I'm surprised Prudential has set up a redress scheme to do this as it is, in fact, what any provider would do when receiving a transfer – it would backdate the funds to the date of receipt. I'm assuming that that the date on Options for receiving the crystallised funds (10 March) is incorrect and all the funds were received on 22 February. Either party can let me know in response to this provisional decision if that's not the case.

What this means is that no compensation has been offered for the eight earlier days Prudential seems to have admitted potentially causing an investment loss under (1): from 9 January to 13 January, and from on 3 February to 9 February, despite Prudential previously indicating to this service that this is what its compensation was for. But before concluding that Prudential must do anything further in respect of these delays I need to be satisfied, in terms of causation, that these earlier issues have materially altered the date the ceding provider actually sent across the funds.

The first thing to note is that these are not particularly significant delays in the overall timescale it can take to transfer a pension. Prudential is right to admit that it didn't meet its own internal timescales at both these times, although certainly in respect of the first one it's likely to have been a knock-on effect of the Christmas period.

I think it's relevant that B had already anticipated that there would be a seasonal delay and not applied to transfer to the RA until Mr K had received his December income payment. I think that was a prudent step whether or not it was Prudential who recommended B do so. I take it from the way B presented Mr K's case that it cancelled the January income payment from the ceding scheme. But had it also left that instruction open (which again could have been a prudent step) Mr K may not have had cashflow problems to the same extent. He might still have missed one income payment in February (for which Prudential has paid compensation, discussed below) but his funds would have remained invested – apart from during the BACS transfer, which is of course unavoidable.

Of course it turned out that the initial instruction B gave was incomplete in any event, as it needed it to be split into crystallised and uncrystallised funds. I note B's point about training on Prudential's system, however I'm not aware of any system that would be able to merge different tranches of a drawdown plan for the very reason that they need to be kept separate

for legislative reasons. I also don't follow how the system could have been expected to 'assume' what the crystallised and uncrystallised portions were. So I'm mindful that this is a matter B could reasonably have discussed with Prudential's helpline before submitting the instruction, rather than risk getting it incorrect.

Had B not been in the process of giving Prudential a novation instruction, I'm satisfied the issue with crystallised funds could have been sorted out fairly quickly without Prudential necessarily becoming responsible for the time it took to alert B that the instruction was incorrect in the first place. I've reviewed the calls Prudential returned to B about the novation. It seems to me that the consultant was endeavouring to be helpful whilst recognising that it was still likely to be quicker for B to give the instruction electronically, rather than it joining a queue of work to be entered manually. Presumably the purpose of the online system was to save B waiting in a queue of paperwork in the first place.

Novations are not an everyday process – a number of systems need to be changed and I don't think it's unreasonable that Prudential has a ten working day standard for these. Despite the miscommunication that the novation had completed sooner, which I agree was frustrating for B, I note that it did eventually complete within that time. But given that Prudential says it has a five working day standard for administering the transfer itself, there is less excuse for why it didn't then key the correct figures onto *Options* until 9 February.

All things being equal, keying this in earlier would have resulted in the transfer from the ceding scheme being made sooner. The relevant way to address whether this has exacerbated Mr K's losses is to look at whether this would have resulted in an increased transfer value from the ceding scheme overall, once an additional four days of growth in the PruFund growth fund after its receipt is also taken into account. Yet B says any attempt to factor the buying and selling of specific funds Mr K had been invested in would be '*absolutely ridiculous*'.

Prudential has pointed out to this service that the ceding scheme had generally been rising in value over this period and an earlier transfer wouldn't necessarily have made Mr K more money overall. B is Mr K's adviser and will know how the ceding scheme funds performed. If it does not want to demonstrate there's a further loss in this area I don't see a need to address this further.

missed income

Despite a regrettable miscommunication about when it would be completed, Prudential didn't take excessive time to deal with the novation problem. This was always likely in my view to mean Mr K's January income payment would be delayed. As the income instruction from the ceding scheme could have been left open, or B might have been able to give an *ad hoc* instruction to the that scheme, I agree with Prudential that it's not reasonable to hold it responsible for the delay in making that payment, or for any disruption to Mr or Mrs K's ISAs.

I think Mr K and B were more entitled to think that the February payment could be made on time, or at least nearly on time. I understand it wasn't actually made – i.e. they haven't insisted on a catch-up payment from the SIPP having drawn funds from ISAs instead. Prudential has nevertheless paid Mr K interest as *if* it paid him the February payment late.

This isn't commonly what the Financial Ombudsman Service would have asked Prudential to do given that this seems to be a situation of further investment loss, rather than Mr K being deprived of income. However a payment of £36.75 gross on an income payment of £3,583.75 would amount to about 47 days' interest at 8%pa simple. Given the period over

which Mr K's transfer was delayed I consider that to be fair and reasonable in the circumstances – particularly given that this is a payment Prudential is guaranteeing to make. If we were to compare the lost growth in the ISAs with the growth gained in the ISAs there wouldn't necessarily be a loss, and that can only now be seen with hindsight.

What B is asking Prudential to do is again plainly unreasonable here. It has asked for Prudential to repay the £7167.50, plus interest Mr and Mrs K would have gained in their ISAs. But Mr K still has the value of this 7167.50, plus investment growth in his SIPP.

my provisional decision

In conclusion I accept that the overall timescale to transfer to Prudential's RA was excessive in this case. There were also some miscommunications about the novation and, according to B, tracing receipt of the funds. However the main frustration this seems to have caused is to B, who isn't the complainant and can't be the subject of an award. Prudential has offered Mr K £200 for the upset caused to him. Bearing in mind the approach B has taken to how Mr K's losses should be calculated, which I don't think is reasonable, I'm not minded to require Prudential to pay Mr K anything further for the upset caused. This is in line with the size of award the ombudsman service would have made.

I also consider what Prudential has paid to Mr K or his SIPP, totalling £1,893.28 gross, is fair and reasonable in the circumstances of this case. I remain to be persuaded B that any higher sum should be paid for his investment loss and if so what that sum should be.

Gideon Moore
ombudsman