

## **complaint**

Mr T complains that The Prudential Assurance Company Limited failed to act in accordance with its stated terms and conditions when transferring his pension investments from a managed fund to a cash fund in August 2015.

## **background**

The background to this complaint was set out in the provisional decision I issued in September 2019. An extract from this is attached and forms part of this final decision, so I won't repeat that information here.

In my provisional decision I set out why I thought the complaint should be upheld and what Prudential needed to do to put things right. I invited both parties to let me have any further comments and evidence. Prudential has said that it accepts my provisional findings. Mr T has provided us with some further comments. Although I am only summarising here what Mr T has said, I have considered his entire response carefully before writing this decision.

Mr T has previously provided us with a copy of a cancellation notice he was given when originally taking one of the pension plans. He considers that the terms detailed in that notice are different from those I have suggested should be applied and would have led to his pension investments being switched to cash at an earlier date than his SRD and when their value was greater. So he considers these are the terms that I should use when deciding the compensation that he should be paid.

## **my findings**

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

I accept that the information Mr T received in the form of the "Notice of Right to Cancel" was slightly different from the full terms and conditions that I have quoted in my provisional decision. In that notice was the statement;

*"In normal circumstances units will automatically be switched without charge into the Cash Fund one month before selected retirement age."*

I can understand why Mr T believes from that statement that the transfer to a cash fund should have taken place earlier than I have proposed in my provisional decision. But there are a number of factors that mean I don't think that would be a reasonable outcome here.

The cancellation notice that Mr T sent to us was issued in 1989. Since then a number of legislative changes have taken place. And any revisions to terms and conditions that those changes might have caused wouldn't be reflected in the cancellation notice – that was simply a summary of the terms at the time. So I would normally expect the terms and conditions applicable to a pension plan to be the ultimate source of guidance where there might be any discrepancy.

I'm also mindful that the terms Mr T was given as part of the cancellation notice were directly contradicted by the information he was provided by Prudential as he was approaching retirement. The later information was clear that if he didn't get in touch his pension fund would be switched into cash at his SRD. And as I said in my provisional decision that was in line with the full terms and conditions of his plans.

It is possible that Mr T remembered the detail of the information that was contained in the cancellation notice he'd been given almost 30 years ago and he assumed that would override what he being told as he approached retirement. But, on balance, I would have to say I think that unlikely. And I think even if it were the case that Mr T was relying on the information contained in the cancellation notice he'd have got in touch with Prudential to understand why the recent letters contained different instructions.

So having considered everything I've received in relation to this complaint, both before and after issuing my provisional decision, I am not persuaded to change those initial conclusions. I think that, in the absence of any contact from Mr T, Prudential should have switched his pension investments to the cash fund on his SRD of 8 September 2015. Since it appears the date used for the switch has resulted in a lower fund value Prudential needs to pay Mr T some compensation.

#### **putting things right**

- Prudential should calculate what Mr T's funds would additionally have been worth when he transferred them to his new provider if it had used the SRD of 8 September 2015 for the switch to the cash fund.
- Prudential should liaise with the new provider to determine what value the additional transferred benefits would have at the settlement date if they had been invested in line with Mr T's already transferred pension benefits.
- Prudential should pay to Mr T's new provider a sum equivalent to this additional value for addition to Mr T's pension plan with the new provider. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Prudential is unable to pay the compensation into Mr T's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax in retirement. For example, if Mr T is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr T would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

As I noted in my provisional decision Mr T has subsequently transferred his pension investments to another provider. I understand that Prudential has agreed with a separate complaint Mr T has made about delays to that transfer and has been liaising with the new provider to calculate the loss that Mr T experienced due to the delays. I would remind Prudential of this complaint, and that the compensation I am directing here will need to be factored into any loss calculations on the second complaint.

**my final decision**

My final decision is that I uphold Mr T's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 January 2020.

Paul Reilly  
**ombudsman**

## **EXTRACT FROM PROVISIONAL DECISION**

### **complaint**

Mr T complains that The Prudential Assurance Company Limited failed to act in accordance with its stated terms and conditions when transferring his pension investments from a managed fund to a cash fund in August 2015.

### **background**

Mr T held two pension plans with Prudential. At the time he took out each of those plans he chose a selected retirement date (SRD). For each plan that date was his 65<sup>th</sup> birthday in September 2015. Mr T stopped contributing to the two plans in 2010.

As Mr T's SRD approached Prudential wrote to him on two occasions, in June and August 2015. In both of those letters Prudential asked Mr T to get in touch and provide some information about whether he still intended to take his pension benefits in September or whether he wanted to push back his SRD.

Both the letters that were sent to Mr T explained what would happen depending on whether or not Mr T got in touch about his impending SRD. The letters explained that should he choose to take his benefits at his SRD his pension investments would be switched into a cash fund no earlier than one month before the SRD. And the letters said that if Mr T didn't reply, that switch into the cash fund would take place on his SRD.

Mr T didn't reply to either of those letters and so Prudential automatically switched his pension investments into the cash fund. That switch didn't take place until October 2015 but Prudential back-dated the change to 27 August 2015. Prudential later explained that it used that date as it was the day of the month before Mr T's contributions had previously been made, and this would ensure its systems recognised the change as being at retirement and so no fund switching charges would be applied.

Unfortunately the period leading up to Mr T's SRD saw some market related falls in the value of his investments. So the indicative values that Prudential had given to Mr T in June and at the start of August were much higher than the value of his pension investments when the switch to the cash fund was made. Mr T says that Prudential should have switched his pension investments a month before the SRD and doing so would have meant his pension fund was around £11,000 higher.

Mr T's complaint has been assessed by one of our adjudicators. He didn't think that Prudential had acted unfairly when it moved Mr T's pension investments into the cash fund and he thought the date that had been used was reasonable. So he didn't recommend that the complaint be upheld. Mr T didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

### **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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think there are some facts about this complaint that aren't in dispute. Prudential wrote to Mr T about his impending retirement in June and August 2015. Mr T has given us annotated copies of those letters so I think it is reasonable to conclude that he received them and considered their contents. And there doesn't appear to be any dispute about the fact that Mr T didn't reply to those letters and give Prudential an indication of his retirement plans before his SRD.

As I mentioned earlier, the letters considered two different scenarios. They talked about what could happen if Mr T got in touch, either to confirm he would take his benefits at his SRD, or to change that SRD to a later date. And the letters also gave information about what would happen should Mr T not get in touch with Prudential before his SRD. As it seems Mr T didn't notify Prudential of his intentions, I think it is the parts of the letters relating to what would happen if Mr T didn't get in touch that are relevant here.

Both letters that were sent to Mr T made him aware that his pension investments would be switched into a cash fund if he didn't reply to Prudential. And both letters advised him that this switch would take place automatically on his SRD. The letters also confirmed that following this switch taking place a new SRD of Mr T's 75<sup>th</sup> birthday would be added to the plans.

The letters that were sent to Mr T noted that these automatic changes to the cash fund were in line with the terms and conditions of his plans. So I've had a look at those conditions to understand what they said. As I said earlier, Mr T had two pension plans and each had different terms and conditions. I've replicated the relevant parts below, but I think their meanings are the same;

Series 2 – Section R8.1(f)

*If no intimation in terms of R8.1(a), (b) or (e) above has been received by the Society by the Selected Retirement Date, the investor shall then be deemed to have chosen to postpone the payment of benefits and to have chosen his 75<sup>th</sup> birthday, both in terms of R8.1(c) above. Before the provisions of R8.1(d) are applied, all units then allocated to the Retirement Arrangement shall be switched into a Cash Fund.....*

Series 5 – Section R8.1.5

*If you have not told us of your chosen Pension Date by Selected Retirement Date, then you will be deemed to have chosen to postpone the payment of benefits and to have chosen your 75<sup>th</sup> birthday as Pension Date. All units will be switched into a Cash fund.....*

The terms and conditions I've replicated above don't provide an express date on which the switch into the cash fund should take place. But since both sets of wording take a trigger point of a consumer not getting in touch before the SRD it seems to me that it would be incorrect to suggest the transfer should be made before the SRD. So I don't think the terms and conditions of either plan do anything other than support the information that was given to Mr T in the letters he was sent in June and August 2015.

So I would have expected Prudential to have switched Mr T's investments into the cash fund on his SRD of 8 September. As I said earlier, Prudential didn't actually make that switch until later in October – I don't know why that delay happened, but I don't think the reason is relevant here. Prudential has backdated the switch, but I think the date it has chosen for that backdating is incorrect and not in line with either the letters it sent to Mr T or the terms and conditions of his plans.

Prudential has told us that the unit price it used for the backdated switch on 27 August was lower than the unit price on Mr T's SRD of 8 September. So it seems to me that if Prudential had fairly and correctly applied the terms of the policy, and what it told Mr T in its letters, the value of Mr T's pension investments would have been higher. So I intend to ask Prudential to pay some compensation to Mr T.

Following the events in 2015 Mr T has subsequently transferred his pension investments to another provider. I understand that Prudential has agreed with a separate complaint Mr T has made about delays to that transfer and has been liaising with the new provider to calculate the loss that Mr T experienced due to the delays. I would remind Prudential of this complaint, and that the compensation I am proposing here will need to be factored into any loss calculations.

I appreciate that the compensation I am awarding is somewhat short of what Mr T thinks he should be paid. But as I've explained earlier I don't see any reason to suggest that Prudential should have used any other date for the switch to a cash fund than Mr T's SRD. The other dates that Mr T has proposed are all based on an assumption that he had got in touch with Prudential to confirm he would be taking his benefits at his SRD – something that he didn't do. And for the same reasons there wasn't any requirement on Prudential to try and ensure the fund switch took place at a time when market conditions were best.