

## **complaint**

Mrs L complains, through her financial adviser, that The Prudential Assurance Company Limited has unfairly charged her penalties for withdrawals of capital from her investment plan.

## **background**

Mrs L invested £17,340 into a Prudential Investment plan in November 2011 from which she took regular withdrawals. One of the terms of the plan was that a charge would be payable for any other withdrawals in the first five years of the investment. The original investment was initially made into the PruFund Protected Cautious fund before being switched into the PruFund Cautious fund in 2016.

In January 2018 Mrs L invested a further £20,000 into the plan through her financial adviser. The investment was into the PruFund Growth fund. She then withdrew £10,000 from the plan in March 2018 and a further £1,000 in June 2018.

She was subsequently charged £989 and £37 for these withdrawals. This was because the withdrawals were from the Growth fund which the top-up of £20,000 was invested in and the charge for withdrawals in the first five years of investment applied to any top-ups to the plan from the date of the top-up.

Prudential didn't uphold the complaint. It referred to an illustration sent to the financial adviser before the top-up payment was made which it said showed the fees payable if a withdrawal was made from the plan in the five years after the additional investment.

One of our investigators considered the complaint but didn't think it should be upheld. He said the withdrawal of £10,000 in March 2018 was from the Growth fund and the only money invested in that fund at the time was the top-up of £20,000.

He said the illustration sent in January 2018 confirmed charges were applicable during the first five years. He also said that the Key Features Document (KFD) Mrs L would've been given when she first invested in 2011 confirmed an early cash-in charge applied for withdrawals from any top-up.

The investigator said that by the time Mrs L withdrew £1,000 from the Growth fund in June 2018 all of her investment, including the amount originally invested in 2011, was in that fund. He said that as the money in the fund was split equally into segments Mrs L had only been charged on the part of the withdrawal that was from the top-up, which amounted to £374 of the £1,000 withdrawn.

The financial adviser didn't agree with the investigator. She summarised the points she made as follows:

- Initial advice was sought from Prudential Adviser Support prior to the top-up and she was never made aware that the new money would be subject to a five year penalty period.
- Advice was also sought at the time of withdrawal – help with forms etc. – and there was again no mention of the penalty.
- A fund switch letter requesting all funds to be moved to the Growth fund was sent before the request for withdrawal but the withdrawal went ahead before all the funds were invested in the Growth fund.
- During the fund switch process Prudential confirmed 'the plan is 100% invested in the Growth fund which doesn't appear to have been the case.
- She was never made aware of the Holding Account in which the funds would be held until the quarter transfer into the Growth fund.
- When she contacted Prudential about the penalties her adviser contact didn't know why they had been applied so how was she meant to know.
- Prudential said it wasn't possible to listen to the calls between her and her adviser contacts.
- The adviser support wasn't good enough in this instance and as a result Mrs L has been penalised.

As Mrs L didn't agree with the investigator the matter has been referred to me for review.

### **my findings**

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

The KFD that Prudential provided when the plan was taken out in 2011 explains that an early cash-in charge will be taken if there is a withdrawal – other than regular withdrawals – within the first five years of the start of the plan. The financial adviser has confirmed she was aware of this when the plan was taken out but that she wasn't aware that this also applied to any top-ups to the plan.

I note the KFD includes the following:

*"This charge also applies to each of your top-ups separately. This means that the charge period for each top-up starts from the date you invest it – not the date when your plan started."*

So I think if the KFD was read it made reasonably clear that a charge also applies for any withdrawals in the first five years after a top-up is made.

In addition to this, as Prudential pointed out in its FRL, it sent the financial adviser an illustration for the proposed top-up before it was made. This set out clearly, by way of a table, what the percentage cash-in charge would be for each year in the five years after the top-up. In the circumstances I think Prudential provided the information needed about there being an early cash-in charge to any top-up.

The financial adviser – in response to the investigator’s opinion - has referred to seeking advice from her adviser support contact at Prudential but not being made aware that the top-up would be subject to a five year penalty for withdrawal. But in her initial complaint what she said was simply that her contact hadn’t told her about the early withdrawal charge. I’m not satisfied she sought any advice or this is something that Prudential was responsible for providing - it wasn’t for it to advise her about what she should do on behalf of her clients.

I accept she wasn’t told by her contact about the early withdrawal charge for top-ups. If she had been I don’t think she would’ve gone ahead with the withdrawals in the way she did. But given this information was provided in the KFD and illustration provided I’m not persuaded that her contact had any responsibility to specifically refer to the early withdrawal charge when she made the top-up of to the plan, or at the time the withdrawals took place.

I acknowledge that a fund switch to switch the original investment into the Growth fund was made in the middle of February 2018, before the first withdrawal request was sent to Prudential on 26 February 2018.

But the fund switching form completed by Mrs L makes clear that there is a 28 day holding period that applies to switches and that switches are made into the relevant Holding Account until automatically transferred to the selected fund on the next quarter day – which in the case of Mrs L was 25 May 2018.

So although the request to switch to the Growth fund had been made before the request for withdrawal of £10,000 from that fund had been made the switch wasn’t completed until a couple of months after the withdrawal - in accordance with what was set out in the fund switching form.

I note the financial adviser has referred to an email dated 2 March 2018 from Prudential to her administrator which states that:

*“the plan is 100% invested in the pru fund Growth”*

I accept that this may have given the impression to the financial adviser that both the original investment and the top-up were invested in the Growth fund as at the date of the email. But I note her administrator sent an email to Prudential on 19 March 2018 which referred to the original investment as still showing as invested in the Cautious fund and not the Growth fund. So I think the financial was on notice that the original investment may not have been in the Growth fund at that time.

And even if the financial adviser did think the original investment was in the Growth fund when it wasn’t I don’t think it is more likely than not she wouldn’t have gone ahead with the withdrawal on behalf of Mrs L if she had known that wasn’t the case.

This is because the main issue raised by the financial adviser in this complaint is that she wasn’t actually aware that a charge would apply to early withdrawals made from the top-up. So she had no reason to think there was any issue with taking the withdrawal from just the top-up anyway.

It is also worth noting in this regard that even if the original investment had been switched into the Growth fund before any withdrawal an early repayment charge – although reduced - would still have been payable.

I note the financial adviser has referred to Prudential being unable to provide the telephone recordings of her discussions with her contacts. It has explained this is because of problems that arose as a result of changing to a new system. Whilst these would've been helpful the fact they aren't available doesn't change my findings.

**my final decision**

I don't uphold this complaint for the reasons I have explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 6 February 2020.

Philip Gibbons  
**ombudsman**