

## **complaint**

Mrs M is unhappy that The Prudential Assurance Company Limited invested the funds she was due to take as tax free cash (TFC) when she transferred her pension to it from another provider in late 2017. As a result, a sell-down of funds was required to provide the 25% required for the TFC. But as the fund value had dropped during this period, Mrs M says she suffered a loss.

Mrs M is being represented in this complaint by her financial adviser.

## **background**

Mrs M received advice from her financial adviser to transfer her pension plan with another provider to a Prudential Retirement Account. She wanted to take TFC immediately and an annual income of just over £19,125. The illustration and application were completed online by Mrs M's financial adviser. However, only 2.4% of the fund was allocated to the cash account, the remainder was invested. This meant there was insufficient money in the cash account to pay the TFC. So it was necessary to sell funds. However, by the time the funds were sold, the fund value had reduced by around 1% so Mrs M received less TFC than she was expecting.

Mrs M's adviser complained to Prudential on her behalf. Prudential reviewed matters but didn't uphold the complaint. It said that as the account was adviser led, it was fair to assume the adviser would have been fully aware that in order to make the initial 25% TFC payment, this percentage would have had to be moved over to the cash account to avoid the sell down of funds.

Mrs M remained unhappy so she referred her complaint to this service for independent review. She's being represented in her complaint by her financial adviser.

One of our investigators reviewed matters but she didn't think Prudential had done anything wrong. In summary she said that Prudential was acting on the instructions given and she couldn't see that it had made an error. She thought the illustration was clear in setting out how income is paid and what happens if there isn't enough in the cash account. And she thought that the adviser had been offered the opportunity to go through the process by a Prudential representative but he hadn't taken this up.

Mrs M and her financial adviser didn't accept the investigator's findings. In summary they said:

- Mrs M has requested maximum TFC to be paid immediately but Prudential didn't act on this instruction when the funds were received. Instead it invested the money and immediately had to disinvest it to carry out an instruction it already knew about. The adviser had no control over the order in which Prudential dealt with the requests made in the application.
- During the application process, there's no suggestion that there's a need for the required TFC to be placed in the cash account, why would there be when the funds were to be held in cash initially?

- It's never been the case that any provider would design a product where an instruction to provide immediate TFC was ignored in favour of immediate investment. There's no logic to having a process that would allow money to be invested only to need to be immediately disinvested.
- This was a brand new product and advisers were heavily reliant on representatives at Prudential to talk the through the illustration choices. In the case of Mrs M, the illustration was put together during a phone call with the representative.
- The Financial Ombudsman Service would be able to ask if Prudential has changed its system for paying tax free cash as it's unclear during the application process what will be paid from where and when.
- There's unnecessary confusion with the illustration by referring to TFC as Income; it's not an income payment.

### **my 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 conclusion reach by the investigator, for mostly the same reasons.

It's not in dispute that Mrs M received less TFC cash than she was expecting because the funds were invested and the value dropped between the initial investment and the TFC being paid. But I can only hold Prudential liable for any loss suffered if I think it made a mistake when setting the plan up. And having considered everything carefully, I don't think it did.

This was an adviser led sale and it's expected that advisers have an understanding of how the products they're recommending and arranging work. So I wouldn't expect Prudential to question instructions received from a regulated financial adviser.

Having said that, I acknowledge the adviser's comments that this was a new product and they aren't aware of any others where the TFC is invested when there is an immediate instruction for it to be paid. But it's not for me to comment on how Prudential choses to set up and operate its products. All I can do is look at whether the information provided was clear.

I think it's important to note that this isn't simply a drawdown product. The policy terms explain that this product is designed to be used by account holders to save for retirement. And when they reach retirement age, it enables individuals to access their benefits by opting to drawdown or take lump sums, without the need to switch to another product.

In the case of Mrs M, it appears she received advice to transfer her pension from a previous scheme to the Prudential Retirement Account so she could access her benefits immediately. Therefore rather than using the product to save for retirement, she moved straight into drawdown. It is possible to use the account in this way but this means - certainly in terms of how funds are dealt with when they're first transferred - it operates in a slightly different way to a standalone drawdown plan. But I'm satisfied the policy terms explain how transfer payments are treated.

I say this because Part A: General Terms and Conditions for the Retirement Account states:

*“3. Accounts*

*3.2 All contributions and transfer payments will go into your Pension Savings Account. Drawdown transfers will be paid into your Pension Income Account (see section 3.4)”*

I think this term makes it clear that the transfer payment would be placed in the Pension Savings Account. So I think Prudential were right to invest the money when it was initially received, in accordance with the instructions provided on the illustration. I'm also satisfied that the terms explained that TFC is paid from the cash account and if there's insufficient money in the cash account, funds will be sold. In particular, 'Payments from your Retirement Account' states:

*“23.11 Tax-free cash, regular UFPLS and income payments work in the following way:*

*23.11.1 Step 1: Seven days before the payment date we will check if there is sufficient money in your cash account. If there is enough money it is ring-fenced for the income payment. If there is not enough money we move to step 2.*

*23.11.2 Step 2: we will sell investments as previously instructed by you and then move the proceeds to your cash account. If your instruction can't be followed as there is not enough money in the investments you instructed us to sell, or if there is a delay in selling your investments for one of the reasons set out in Section 16, we move to step 3.*

*23.11.3 Step 3: We will sell a proportionate amount of all of your available investments and move the required amount of money to your cash account.”*

I've considered the illustration the adviser completed. I think this made it clear the TFC would be treated as an income payment. I say this because the TFC is listed under the income payment section of the illustration.

I've also listened to a recording of a telephone call between the Prudential representative and the adviser. The discussion relates to the annual income payment and what needs to be done to ensure sufficient funds are in the cash account for this to be paid. I appreciate that this adviser only referenced the annual income payment during this call. But I'm conscious that the representative offered to talk the adviser through the process over the phone and, he also offered to check the illustration. The adviser declined these offers due to the limited time he had remaining to get the illustration submitted. But I think it's likely that - had these offers been taken up - any misunderstanding regarding the TFC would likely have come to light.

But as stands, I'm not satisfied that it would be fair or reasonable for me to uphold this complaint against Prudential. I don't consider it made an error or a mistake. So it's not responsible for any loss Mrs M has suffered.

**my final decision**

For the reasons set out above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 April 2019.

Lorna Goulding  
**ombudsman**