

complaint

Mr E complains The Prudential Assurance Company Limited (Prudential) transferred a significantly lower value in a pension transfer to an existing Self Invested Personal Pension (SIPP) than he had originally been quoted. He wants Prudential to refund the difference.

His financial adviser assists Mr E in his complaint.

background

I set out the background to Mr E's complaint in my provisional decisions. I'll summarise it again here.

In January 2017, Mr E received a letter from Prudential regarding his annuity based personal pension plan and suggesting he consider his retirement options as he was due to retire on 1 March 2017. The letter quoted a current value of £81,699.87 but went on to explain this value was not guaranteed and could change on a daily basis.

Mr E spoke with his financial advisers and decided to transfer his personal pension to an existing SIPP he held with another provider. He completed the transfer forms and sent them to his financial advisers. They emailed them to his SIPP provider on the 7 March and Prudential received them on 9 March 2017.

Neither Mr E nor his adviser heard anything further and around April 2017, his adviser followed up the transfer with his existing SIPP provider. They told Mr E's adviser they hadn't received the transfer. The adviser then contacted Prudential who explained an Appropriate Advice Declaration (AAD) hadn't been received and the transfer couldn't take place without it.

Prudential say they sent Mr E the AAD form on 15 March 2017 but Mr E says he didn't receive it. Mr E's advisers contacted the SIPP provider to check the transfer had completed but were advised it was still outstanding. They contacted Prudential on 20 April, who explained the AAD was outstanding and emailed the AAD, which was completed and returned to Prudential on 21 April 2017.

On or around 03 May 2017 Prudential telephone Mr E's SIPP provider to advise them the transfer value was significantly lower than previously quoted but they didn't inform Mr E's financial advisers. They wrote to Mr E on 4 May to explain the transfer value was now £68,943.64, around £12,000 less than the initially transfer valuation.

Mr E felt this lower value was very unfair and so with the assistance of his financial adviser he complained to the Prudential about the significant reduction, the delay in processing the information and for failing to inform him of both.

Prudential say the initial transfer value wasn't guaranteed and without the required regulatory paperwork, the AAD, they couldn't process the transfer. They say they sent this to Mr E on 15 March but didn't receive it back until after they had sent it to his IFA. They also say it's not their process to notify either Mr E or his adviser of a change in transfer value and so they don't believe they acted unfairly. Mr E was unhappy with the outcome of his complaint and so he referred the matter to this service.

Our investigator looked into things for Mr E. He carefully reviewed the timeline of events and the actions of both Prudential and Mr E's advisers. He didn't think Prudential had acted fairly towards Mr E especially considering the significant drop in value of the initial transfer value quotation. He thought Prudential could and should have done more and so he asked them to pay Mr E the difference between the initial transfer value and the actual transfer value.

Mr E was happy to accept the investigators view but Prudential disagreed. They pointed out they had already carried out a review of the transfer in November 2017. They felt that whilst the transfer value was correct, the reduction of the transfer value was "undesirable" and so they gave Mr E £4,600 as a gesture of goodwill. They feel this is fair and reasonable and so they asked for an ombudsman review.

I looked at the reduction in the transfer value from the initial quotation in January 2017 to completion was around £12,000. This occurred because Mr E's pension plan was annuity based and so the reduction was partly due to a fall in bonus rates. But Prudential also took a commercial decision to change the conversion factors they used to convert the annuity and this had a significant impact. The transfer value originally quoted was given in January 2017 but the transfer took place after the review and this reduced the transfer value. The reduction was a significant difference and I've carefully considered the timeline of events that took place. I noted and it's accepted by Mr E and his adviser that the initial transfer value wasn't guaranteed but as the reduction was so significant I looked to see if this could have been avoided or if Prudential failed to process the transfer value request in timely manner. I've also looked at why Prudential communicated directly with Mr E and not his adviser.

Prudential said the reason the transfer wasn't carried out until May 2017 was due to missing documentation. Specifically, the AAD, which is a regulatory requirement, when completing a pension transfer where the fund value is in excess of £30,000. The AAD is a signed declaration of advice from a suitably qualified adviser confirming Mr E has received advice regarding the pension transfer. Mr E's advisers have provided a record of a conversation with Prudential on 11 February to discuss the possibility of a flexible drawdown option from his existing arrangement. Prudential explained Mr E's current plan couldn't support this option and this is why he decided to transfer his pension to an existing SIPP with an alternative provider, which would afford him this option.

The AAD was not included in this pack sent out on 25 February and Prudential say they sent a copy to Mr E on 15 March but he didn't receive it. They didn't contact his adviser or alert them to the missing documentation. The argument here is that had they done so the information they required would have been provided swiftly and before the 1 April review date.

Prudential originally said they weren't aware Mr E had a financial adviser as they had no contact since March 2016 and so always corresponded directly with Mr E. It was shown that a call note showed evidence to the contrary detailing a telephone call in August 2016 giving full contact details and confirming Prudential had updated their records accordingly.

There is disagreement here about the details and Prudential have said they have no record of a joint call with the adviser in February 2017 but the Origo request Prudential received, details the adviser under the heading "Receiving Contract details". I was persuaded that Prudential should have known Mr E had a financial adviser and so should have emailed the AAD directly to them on the 15 March, as they did on the 20 April. Given that Mr E's adviser responded within 24 hours I find it probable they would have done so on the first occasion.

Whilst I couldn't be certain this would have ensured the transfer completed before the 1 April 2017, I looked at the balance of probabilities and I was persuaded there probably would have been sufficient time to complete the transfer. So it more likely than not would have been processed before 1 April and Mr E wouldn't have been subject to the April bonus review, which reduced his transfer value by around £12,000.

I considered the investigation Prudential subsequently carried out from which they identified Mr E's transfer value reduction as "undesirable" and taken account of the goodwill gesture they made to him at the time. This was for £4,600 and I have noted their request to have this refunded or taken into account. I think given the value of the goodwill gesture it would seem fair and reasonable to do so and this formed part of the redress of my final decision.

Overall I was satisfied that Prudential made an administrative error in failing to contact Mr E's advisers when they received the transfer request via the Origo system on 9 March and this resulted in a financial disadvantage which may have been avoided and so I asked Prudential to put Mr E back in the position he most likely would have been in had the error not occurred and the transfer request been completed by 31 March 2017.

I said I intended to ask Prudential to:

1. Calculate the transfer value as would have been paid on 31 March 2017.
2. Contact the new SIPP provider to request a calculation of the current transfer value of Mr E's fund assuming the transfer value calculated in 1 above, less £4,600, was paid to it on 31 March 2017.
3. Pay such amount as may be required into Mr E's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the difference between the amount calculated in 2 above and the actual value of the fund. However, the compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
4. If Prudential is unable to pay the total amount into Mr E'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 total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. I'm satisfied that Mr E will likely be a basic rate taxpayer in retirement and therefore the notional allowance should be calculated assuming a basic rate of tax and allowance made for any tax free cash that would otherwise have been payable.

I invited both Mr E and Prudential to respond, which they both did.

Mr E's adviser, on behalf of Mr E, accepted the provisional decision.

Prudential disagreed with my provisional decision. They were concerned their submissions in a letter of June 2018 hadn't been taken into account and they provided further submissions for my consideration in response to my provisional decision.

my findings

I thank Mr E's adviser and Prudential for their responses. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have finished my re-consideration and having done so I've not been persuaded to change my findings. Please let me explain why.

Firstly, I would like to reassure Prudential that their letter of 28 June 2018 was both available and considered when I reached my provisional decision. It is not always necessary to comment on every point raised in order to reach a decision but that shouldn't infer it hasn't been taken into consideration. I have also considered the additional submissions following my provisional decision.

Prudential's concerns seem to be centred on the role an adviser has in ensuring the transfer request is carried out meeting both the legislative and regulatory requirements. I am of course aware that the AAD is a legislative requirement and not solely a document only the Prudential insists upon. They assert that the adviser's delayed response in chasing the transfer was the reason the transfer didn't proceed and consequently the adviser should be held responsible and not the Prudential.

I've reflected upon the advisers role in the transfer process and whilst I agree he has a responsibility to his client I think the Prudential had a responsibility to deal directly with Mr E's given representative. It seems from the information provided he was, or should have been the main point of contact for the Prudential in the transfer process. This was evidenced from the telephone calls between the Prudential, Mr E and his adviser and even accounting for the one telephone call the Prudential have no record of; he is clearly detailed on their system at the adviser representing Mr E.

Within 6 days of the transfer request, Prudential were aware there wasn't an AAD they sent a form to Mr E at his home address on 15 March 2018 and not directly to the adviser. I think that was an administrative error and Prudential should have sent it to the adviser. As Mr E didn't receive the form, neither he nor the adviser were aware it was missing. Had they emailed the adviser, as they did on 20 April I'm still persuaded the form would have been returned immediately as was the case in April. So whilst I understand the point Prudential makes I also think they had a responsibility to ensure they were communicating with the known and recorded representative at the point in the transfer process that would have ensured Mr E's transfer was carried out in a timely manner and wouldn't have resulted in a financial loss of £12,000.

I'm afraid I haven't seen anything from the submissions that have been made to alter my earlier view and so I'm going to direct Prudential to put Mr E back in the position he would have been in had the transfer gone ahead by 31 March 2017.

my final decision

For the reasons I have given I direct Prudential Assurance Company Limited to:

1. Calculate the transfer value as would have been paid on 31 March 2017.
2. Contact the new SIPP provider to request a calculation of the current transfer value of Mr E's fund assuming the transfer value calculated in 1 above, less £4,600, was paid to it on 31 March 2017.
3. Pay such amount as may be required into Mr E's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the difference between the amount calculated in 2 above and the actual value of the fund. However, the compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
4. If Prudential is unable to pay the total amount into Mr E'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 total amount should be reduced to

notionally allow for any income tax that would otherwise have been paid. I'm satisfied that Mr E will likely be a basic rate taxpayer in retirement and therefore the notional allowance should be calculated assuming a basic rate of tax and allowance made for any tax free cash that would otherwise have been payable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 17 November 2018.

Wendy Steele
ombudsman