

## **complaint**

Mr K complained that The Prudential Assurance Company Limited (Prudential) caused unnecessary delays when he transferred his pension to another provider. The delay resulted in the transfer value of Mr K's pension being less than what he had previously been told.

## **background**

In December 2016 Mr K's financial advisor contacted Prudential asking for plan details of his Retirement Annuity Contract (RAC). This was provided by the Prudential in the same month.

The financial advisor subsequently got in touch in with Prudential in January 2017 asking for the RAC value and this was provided on the 18 January. The value on this date was £84,957. This amount included a bonus declaration which was effective from 1 January 2017 until 31 March 2017.

On the 14 March Prudential received a request to transfer the RAC to another provider through the Origo OPTIONS system. The Origo system is designed to streamline the process for transfers and remove the need for paper documents to be completed. However, the system doesn't facilitate all pension transfers.

As the transfer for Mr K's RAC was for more than £30,000 and included '*safe-guarded*' benefits, an Appropriate Advice Declaration (AAD) form was required. The form had to be signed by Mr K's financial advisor to show that he had received independent advice on transferring his SIPP.

The AAD was sent to Mr K on the 18 March. Mr K called the Prudential on 24 March to confirm he had received the form and would be passing it on to his financial advisor to sign and return to the Prudential as soon as possible. During this call he also asked for the transfer to be completed urgently as he felt this had been ongoing since December 2016.

The signed AAD form was received by the Prudential on 30 March. Prudential started the relevant checks they needed to complete on 31 March. Letters were sent to Mr K and his financial advisor on 31 March confirming the funds from his SIPP had been sent to his new provider by cheque. This is also the date that was added to the Origo system. However, Prudential has said the funds weren't sent until 3 April. This meant that the transfer value of RAC sent to the new provider was based on the bonus declaration effective from 1 April 2017 to 31 December 2017, £77,401.09.

Mr K complained to the Prudential about the reduction in the value of his transfer.

Prudential looked into his concerns. It said to calculate the transfer value of the pension it converted the current pension amount into a lump sum, using the interest rates underlying its annuity quotations. And that the transfer value represented the value of the policy's share of underlying assets in the With Profits fund.

Prudential said that as the transferred funds were sent on 3 April the correct bonus declaration had been applied. It said that changes to the non-guaranteed bonuses and adjustments to reflect current market conditions resulted in lower transfer values. It maintained that as a result of the bonus updates the correct value had been sent.

Unhappy with its response Mr K brought his complaint to our service.

One of our investigators looked into the complaint. She hadn't seen any evidence to show Mr K's financial advisor had made a transfer request prior to 14 March 2017 and was satisfied Prudential hadn't caused any delays up to this point.

She felt the Prudential had followed its own timescales when completing the transfer and didn't think these timescales were unreasonable. But she said as Prudential had all the documents it needed to complete the transfer on either the 31 March 2017 or 1 April 2017, she didn't think it had treated Mr K fairly by choosing the date which had a detrimental financial impact on him. She said Prudential should use the transfer value of 31 March 2017.

Prudential disagreed and asked for an ombudsman's decision.

I issued a provisional decision (PD) on 31 January 2018 to explain why I thought the complaint should be upheld. And I said I'd consider anything else the parties wanted to give me - as long as I received it by 1 March 2018.

Mr K confirmed he had received my provisional decision and had no further comments or submissions to add.

Prudential responded to my provisional decision as it disagreed. In particular it said:

- The Prudential scheme had been referred to as a Self-Invested Pension Plan (SIPP) which was incorrect. It should have been referred to as a Retirement Annuity Contract (RAC), as this is a fundamentally different arrangement.
- Prudential reiterated that the transfer payment hadn't been sent until 3 April 2017 so they had used the correct bonus declaration effective from 1 April 2017 to 31 December 2017.
- It didn't agree with the redress proposal that had been put forward or the date it should use to calculate from when Mr K's funds were invested with his new provider.

### **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've thought very carefully about the points made by Prudential in response to my PD. I'm still of the view that Mr K's complaint should be upheld. I've explained my reasoning below.

I acknowledge that the preceding Prudential scheme was a RAC rather than a SIPP and I'm sorry this wasn't made clearer in my PD. But this makes no difference to my decision.

Prudential has argued that its longstanding policy is to calculate a transfer value from policies such as Mr K's, on the day it deals with the claim, not the date it receives all of the information it requires to make the transfer. I've thought very carefully about what Prudential has said. But I have to make a decision based on what I think is fair and reasonable taking into the facts and individual circumstances of this particular case.

The evidence I have is that Prudential had all of the documentation it needed to complete the transfer on 30 March 2017. Prudential then wrote to Mr K and his adviser on 31 March

2017 to confirm that the proceeds of transfer had been sent to Mr K's new pension provider by cheque. I've also noted that the transfer request had been made through the Options transfer system. This system is used by pension providers to help reduce the time it takes to transfer funds between different financial services providers. The system notes record that the proceeds of transfer were sent on 31 March 2017.

So in the particular circumstances of this case, I find it difficult to reconcile Prudential's argument that the funds were calculated and sent three days later, when the evidence in this case indicates that it dealt with the claim and transferred the funds on 31 March 2017. So in this particular case I don't think it's fair or reasonable for Prudential to calculate the transfer value of Mr K's policy several days after records show the funds had been transferred on 31 March 2017.

And taking into account the particular facts and circumstances in this case, I think the fair and reasonable thing for Prudential to have done, would be to have calculated the value of the funds transferred as at 31 March 2017. This is why I think Prudential should've used the bonus declaration effective from 1 January 2017 to 31 March 2017 when transferring the pension to a new provider

I've given further thought to the date Prudential should use to calculate the value of Mr K's pension. Prudential has said it shouldn't use the 31 March 2017, as originally suggested, as the first cheque wasn't received by Mr K's new SIPP provider. A new cheque was issued and subsequently cashed on 25 May 2017. I've taken on board Prudential's comments on this and think the date used should be when the second cheque was cashed on 25 May 2017. I think this is fair and reasonable in this particular case, as I don't think Prudential is responsible for the first cheque not being received.

### ***how should Prudential put things right?***

1. Take the value of the proceeds transferred from Mr K's pension currently invested in his SIPP at the date of this decision (Figure 1);
2. Determine what the value (as at the date of this decision) of the proceeds from Mr K's pension that should have been transferred and those funds had been invested in the same funds as in (1) had they been invested from 25 May 2017 (Figure 2).
3. Compare Figure 1 with Figure 2 to determine if Mr K has suffered a loss.
4. Mr K should provide Prudential with the relevant authorisation (if he hasn't already done so) in order that Prudential can obtain the information it needs to carry out the calculations.
5. If this shows that redress is due, then this should be paid to Mr K's pension. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
6. The redress should be paid directly to Mr K as a lump sum after making a deduction of 15% if it can't be paid into his pension. The payment would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed according to his likely tax paying status in retirement – presumed to be 20%. And so the 15% deduction adequately reflects this.

7. Add and pay 8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance).

Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest it should tell Mr K how much has been taken off. Prudential should give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **my final decision**

My final decision is that I uphold the complaint and The Prudential Assurance Company Limited should calculate and pay Mr K compensation using the methodology I've set out above in the 'how should Prudential put things right?' to resolve this complaint section of my findings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 June 2018.

Michael Fisher  
**ombudsman**