

complaint

Mr D complains that The Prudential Assurance Company Limited (“Prudential”) failed to send the money he was transferring out of the pension scheme he held with it using a Telegraphic Transfer (“TT”) and instead used BACS, causing a delay. He says this delay resulted in a loss to him, as the investment he made in his new pension scheme would have cost him less, had there not been a delay. He’d like compensation for this.

background

Mr D held a personal pension with Prudential, which he decided to transfer to another pension provider. Mr D contacted Prudential by phone in September 2017 to ask a number of questions about its transfer process and the timescales involved. Recordings have been provided of the conversations which took place between Mr D and Prudential. I have listened carefully to each of the recordings.

During the conversations between Mr D and Prudential, it was confirmed to Mr D that the transfer would take up to 13 working days, and that a BACS payment of the money to be transferred would be made to his new pension provider, which would take 3 to 5 working days. Mr D asked if a TT could be used instead of BACS, as he wanted the money to get to Mr D’s new pension provider as soon as possible. The dispute is focussed on this request.

In the event, Prudential used BACS, not TT, to send the money to Mr D’s new pension provider. Mr D thinks the money should have been sent by TT, as this was what was agreed, and a delay was caused by the use of BACS. Prudential thinks it was not obliged to use TT as the transfer was prioritised and did not, in the event, take 13 working days to complete.

Our adjudicator did not think Prudential had done anything significantly wrong. He said it had undertaken to complete the transfer by 13 October 2017 (13 working days after the transfer request) and had in fact completed it by 6 October 2017, even though it had used BACS. He did not think it was fair in these circumstances to say Prudential had caused a delay.

Mr D did not accept this view. He maintained Prudential has agreed to use TT and, by using BACS, had caused him a delay.

I looked into things, and wrote to both parties to say I’d taken a different view of things to that of the adjudicator. I said, in summary:

- In my view, during the second telephone conversation between Mr D and Prudential, there was a clear and unequivocal agreement made to send the money to Mr D’s new pension provider by TT, once the money was ready to send - whenever that might be.
- I’d seen no evidence to show that the agreement to send the money by TT was conditional on the transfer taking 13 working days. The agreement was simply that the money would be sent by TT as soon as it was ready, and that Prudential’s transfer team would be told to make the payment by TT.
- I took the point Prudential had made that, by asking for the TT, Mr D was asking for preferential treatment (as Prudential only used BACS as a matter of course). But it was open to Prudential to decline the request and say that it would not send the money by TT.

- Prudential didn't do this. It agreed to the TT and attached no conditions to that agreement.
- So I didn't think it could be argued that it was fair to use BACS simply because the transfer didn't take 13 working days to complete, in the event. Using BACS was contrary to what had been agreed with Mr D and if Prudential had done what it had agreed to the money would have been with Mr D's new pension provider sooner.
- In the circumstances, I thought a fair resolution would be for Prudential to pay Mr D sufficient to now purchase the additional units he would have received had the money been sent to Mr D's new pension provider by TT, as agreed.
- I acknowledged Prudential did not charge Mr D for the TT and that he ended up with more units in one fund, but I did think any reduction in the compensation payment should be made for this, as I thought Mr D should also be paid some compensation for the upset caused and that the £60 Prudential had paid so far is a little less than I might be minded to award for that.

Mr D accepted my view. Prudential did not. It said in summary:

- It would like to reiterate that it had 13 working days to complete the payment, and that it made payments by BACS.
- Mr D, as has been acknowledged, requested for the payment to be made by TT. However he did not provide, at any time, any reasonable justification for the payment being required urgently.
- Mr D only mentioned that he wanted the money sent as soon as possible and, as a gesture of goodwill, it agreed to process a TT payment. It is important to note that there was no date on which it agreed a TT payment would be completed.
- It has been acknowledged that Mr D appeared to be requesting preferential treatment, without reasonable justification. It accepts that it could have declined his request to pay by TT and it seems that by not having done so, it may now be asked to redress a loss which it does not consider to be fair or reasonable.
- Its position is that whilst it agreed that the payment could be completed by TT, there was no agreement on which day this would be.

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 have not been persuaded to depart from the view I set out in my email to both parties.

In my view, Prudential clearly and unequivocally agreed to Mr D's request to send money to his new pension provider by TT. I've not seen any evidence of it having attached any conditions to this agreement. It simply said that it would use TT. I think it is also important to note that, when speaking to Mr D, it described the 13 working day timescale as a "*worst case scenario*". So I do not think it can now reasonably describe that as a fixed term and argue that it was entitled to go back on its agreement to use TT as using BACS meant the process still completed within 13 working days.

As Prudential agreed to use TT, that is what it should have done. Had TT been used, the money would have arrived with Mr D's new pension provider three days earlier. The new pension provider has provided an illustration of what units in Mr D's selected investment funds would have been purchased, had the money arrived three days earlier. This shows Mr D got less units in three out of the four selected funds as a result of the delay and, at the time, was around £300 worse off overall as a result.

In the circumstances I think it is fair and reasonable for Prudential to compensate Mr D for the shortfall in the investment units he purchased, resulting from the delay. So Prudential should pay Mr D the current value of the amount of units he missed out on. I do not think Mr D should be required to pay the TT fee or that the value of the extra units he got in one fund (around £40) should be taken off the value of the shortfall units. I say this as I think Mr D should be paid a little more than £60 already paid for the upset caused by Prudential's actions, and I think the value of the TT and the extra units adequately addresses this.

The current value (i.e. the value as of the date of this decision) of the units Mr D missed out on should be paid into his pension. Allowance can be made for any available tax reliefs. If the money can't be paid into Mr D's pension, it should be paid to Mr D net of tax at a rate of 20%. I know Mr D would rather it was paid gross, but this is a taxable payment. Prudential should provide a tax certificate, then Mr D can talk to HMRC about any adjustments that might be necessary.

my final decision

For the reasons given, I uphold the complaint. The Prudential Assurance Company Limited should calculate and pay compensation as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 August 2018.

John Pattinson
ombudsman