

## **complaint**

Mr M has complained about The Prudential Assurance Company Limited. He says it delayed a pension transfer which resulted in him receiving a lower transfer value.

## **background**

Mr M had the benefit of a deferred individual annuity policy from a previous employer. In September 2017 he was offered a transfer value of just over £1,000,000. Mr M had recently used the services of Prudential to transfer another, smaller, pension into a Prudential Retirement Account. He decided to consult with Prudential to transfer this pension. He met with Prudential in October 2017 to discuss the transfer and a fact-find was completed. This recorded that Mr M was worried about the transfer value going down and that he would 'prefer the certainty of the current' transfer value. But upon receiving further specific information about the pension in December 2017, Prudential realised that it didn't have the necessary authorisation to advise on this particular pension contract.

On 18 December 2017, Prudential emailed Mr M to explain that it wouldn't be able to arrange the transfer at that time, but said they would be in a position to do so in early 2018.

Mr M contacted Prudential in March 2018, and then in July 2018 Prudential responded and confirmed it was now able to proceed with advising on the transfer.

The transfer was completed in November 2018, by which time the transfer value had fallen by over £50,000.

Mr M complained about the time taken to transfer the policy. Prudential accepted it could have been more efficient in arranging the transfer but said it was completed within its service level agreement. There was no guarantee period for the transfer value, so Mr M said that the transfer ought to have been prioritised as time was of the essence, but Prudential said it wouldn't have been fair to prioritise Mr M ahead of other customers.

Mr M was also unhappy with the amount he paid in fees for the transfer and doesn't believe it fairly reflects the work completed.

Prudential provided several responses to Mr M's complaint and accepted that there had been some service failings, including an error in how the ongoing advice charge had been set up. Prudential also felt the transfer could've been completed more efficiently and offered to pay Mr M £550 in total to acknowledge this.

Mr M didn't agree and referred his complaint to this service.

An investigator considered the complaint and decided that it should be upheld. She felt that Prudential hadn't explained clearly that Mr M didn't need to wait for the transfer to be completed. It hadn't been made clear that although Prudential couldn't advise on the transfer it could have been completed with other advisers. She set out how redress should be calculated.

Mr M accepted that view but Prudential didn't. It said, in summary:

- The fact-find from the October 2017 meeting had recorded that Mr M held a defined benefit plan. On receiving further information it was discovered that the contract was

a deferred annuity and not a defined benefit arrangement. Mr M was contacted and told that Prudential could not currently advise on this type of contract. He was not told that this was a product that awaited FCA approval before any transfer could take place. The email message clearly stated that Prudential couldn't advise at this time but may be able to do so in early 2018. So it was clear that Mr M was free to seek advice elsewhere.

- The adviser recalls that she was clear in explaining to Mr M the risks involved with waiting. He was told that the transfer value could fall. Mr M had made it clear that he didn't want to go elsewhere and that he would prefer to wait.
- There was no guaranteed transfer value available from the pension plan. It was always going to be calculated at point of transfer. Therefore the transfer value offered in 2017 and the one in 2018 were "at a point in time". Arbitrarily picking a date in March as when the transfer could have been effected could easily result in a poor (or conversely over generous) compensation.
- The paperwork sent to Mr M dated 13 December 2017 clearly states the transfer value is not guaranteed and the final payment is based on market conditions. If Mr M felt that time was of the essence he could have sought advice elsewhere. The information from the scheme clearly states he needs to get appropriate financial advice and "they must be authorised to give advice on transfers to defined contribution arrangements". Mr M was made aware it was an authorisation issue for Prudential and he would have understood that other companies were authorised in this area.
- The fact Mr M was willing to wait in December 2017 gives the impression that he was willing to wait for Prudential to give the advice. He even confirmed that he would like to go ahead once Prudential was in a position to continue, which enforces this position.
- Having explained to Mr M that Prudential were not able to deal with his pension in 2017, it is not clear what else Prudential could have done. It was Mr M's choice to wait.

The investigator didn't change her view and so the case has been referred to me for a final decision.

### **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 considered the evidence, I've reached the same conclusion as the adjudicator. I uphold this complaint.

I've considered everything Prudential has said, including its response to the view. But essentially, I'm not satisfied that Prudential set out with sufficient clarity that although it couldn't advise on this transfer in December 2017, the transfer could have been made with other advisers. I'm satisfied that if the position had been made clear Mr M would most likely have decided to seek advice elsewhere and gone ahead with the transfer sooner. He would therefore have secured a higher transfer value. I agree with the investigator that it's fair to assume a transfer could have been completed in March 2018.

Mr M was taking advice from Prudential. It had already completed a pension transfer for him. It is apparent that at the meeting in October 2017 it was understood that Mr M held benefits in a defined benefit scheme which Prudential could have advised him on. With further

information in December 2017, it transpired that the contract was actually a deferred annuity contract which Prudential apparently wasn't authorised to advise on.

Prudential says that it explained that the restriction on transfer was due to its lack of authorisation although there doesn't appear to be any documentary evidence of this. But Mr M says that he understood there was a wider regulatory issue which meant the transfer couldn't go ahead.

If there was a full explanation given to Mr M of the restrictions on the transfer, I'm not satisfied that he had fully understood it. And I think it ought to have been apparent to Prudential from his correspondence that Mr M potentially had a different understanding. I also think there should have been a clear and unambiguous explanation that he could take advice elsewhere and proceed if he wished.

I've considered the exchange of emails from December 2017. I think it's worth setting them out in some detail.

This is what Prudential said:

'We have now received information back from the pension scheme, who have confirmed that the pension that you have is not actually a defined benefit pension but is in fact deferred annuity contract, and therefore this means that currently Prudential are not able to advise on this type of contract, although we will be in a position to advise early 2018.'

So Prudential did say that currently it was not able to advise. But it didn't expressly say that this was due to an authorisation issue and it didn't go on to explain that Mr M could go ahead with other, authorised, advisers if he wished to. It wasn't a full explanation.

In response Mr M said:

'To the untutored eye, it looks like a pension to me. Clearly the nuances are lost on me'. And, 'So the valuations I have received to date are for what exactly?', and, 'if you can give advice early in 2018 on this 'type' of pension then great. I'm finding this v frustrating to say the least.'

He also said that he sensed some 'wriggling' by the pension provider.

I'm satisfied that it ought to have been apparent to Prudential from this exchange of emails that Mr M didn't have a full understanding of the reasons why it wasn't proceeding with the transfer. There was no clear and express reference to the limits on its authorisation. Mr M referred to a lack of understanding of the 'nuances' and suggested there may be some 'wriggling' by the pension provider. But the issues had nothing to do with the pension provider. He also queried why he had been given transfer values, effectively asking why there were transfer values if he couldn't transfer.

I've seen nothing in this exchange which shows that Prudential made it clear that the restriction on transfer was due to its lack of authorisation and not due to wider issues. I'm satisfied that it ought reasonably to have understood from Mr M's response that there was the possibility of misunderstanding on his part, and any potential misunderstanding ought to have been eliminated by a clear and unambiguous statement of the correct position. Even if it thought Mr M understood that it was restrictions on its authorisation that prevented it from

going ahead, his email response ought to have caused them to question that, and go on to make the position clear in my view.

I'm satisfied that Prudential ought to have told Mr M, in clear terms, that he could take advice elsewhere if he wished to proceed with the transfer at that time. Mr M was relying on Prudential's expert advice and he was entitled to clear, unambiguous advice and information.

I'm satisfied that if Mr M had been fully informed of the correct position in December 2017 it is more likely than not that he would have instructed advisers that were authorised to complete the transfer of his annuity contract. I base this conclusion on the fact that the fact-find itself recorded that Mr M was 'worried' that the transfer value may go down and that he would 'much prefer the certainty of the current TV, rather than the uncertainty of future values'. He also expressed his 'frustration' with the situation in his email message which I've referred to above.

Had Mr M instructed other advisers, I think it's likely the transfer could have been completed in March 2018 as the investigator said. It was actually completed in around four months from Prudential restarting the process in July 2018 and it's accepted that it could have been handled more quickly. So an assumed period of three months is reasonable in my opinion.

### ***Putting things right***

In assessing what would be fair compensation, my aim is to put Mr M as close as possible to the position he would probably now be in if he had been given clear information in December 2017 that he could've gone ahead with transfer.

I'm satisfied that the position Mr M would be in is as if he had secured the transfer value available to him on 18 March 2018 rather than the one he did secure.

Prudential should compare the actual value of Mr M's pension investment with the *fair value*. The *fair value* is what the pension investment would now be worth if the transfer had taken place on 18 March and the value transferred in had been the transfer value available on 18 March 2018.

If the *fair value* is greater than the actual value there is a loss. If the actual value is greater there is no loss.

If there is a loss, Prudential should pay an amount into Mr M's pension plan, sufficient to increase its value to the *fair value*.

The payment should allow for the effect of charges and any available tax relief. Prudential shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance. If Prudential is unable to pay the compensation into Mr M'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 compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated assuming Mr M would be a basic rate tax payer at his selected retirement age. So the reduction would equal the current basic rate of tax, however, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Prudential must provide details of the calculation to Mr M in a clear, simple format.

I agree with the investigator that the proposed award for the trouble and upset caused by the delay in transferring of £550 is fair and reasonable in the circumstances, so I don't make any further award.

**my final decision**

I uphold this complaint. The Prudential Assurance Company Limited must calculate and pay redress as set out above. It must also pay Mr M £550 to the extent it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 June 2020.

Keith Taylor  
**ombudsman**