

complaint

Mr C complains that The Prudential Assurance Company Limited failed to act on his instructions in a timely manner. And he says that Prudential has also failed to deal with his complaint in a reasonable time.

background

The background to this complaint was set out in the provisional decision I issued in October 2018. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr C has said that he accepts my provisional findings, but does want to ensure that Prudential complies with my decision in a timely manner given how long it has taken for calculations to be performed in the past. Prudential doesn't agree with my provisional findings and has provided us with some additional comments.

Although I am only summarising here what Prudential has said, I have considered its entire response carefully before reaching my final decision.

Prudential has reiterated its previous comments that it doesn't think it reasonable to have commenced any transfers until the advice process had been completed for all Mr C's pension investments. And it says that although Mr C had previously received advice on those transfers from another firm, Prudential would have needed to complete its own assessment before commencing the transfers.

Prudential points out that part of the DC funds that Mr C was transferring were AVC benefits that were linked to a DB pension fund that he held. So Prudential suggests that if there were a reason to not transfer the DB fund it might have been more tax efficient to not transfer the AVC benefits either. So that transfer should have been completed last. And Prudential says that although the transfers did not all arrive at the same time they didn't commence until it had been agreed that it was in Mr C's best interests to transfer all the funds.

my findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so the additional comments made by Prudential haven't caused me to change my mind on this complaint.

Prudential says that it wouldn't have been appropriate for any of the transfers to commence before Mr C had received advice on all his pension funds. But I have seen a copy of a suitability report given to Mr C by Prudential and dated 6 February 2017. That report provides advice to Mr C on the transfer of two of his pension funds. But it notes that the transfer of one defined benefit fund, and one defined contribution fund has already been dealt with. And the report says that the transfer of the AVC funds will be dealt with in a separate report.

So it doesn't seem to me that, as Prudential says, all the advice was provided to, and accepted by, Mr C before any of the transfers commenced. Some of the transfers had clearly started before this report was issued and discussed with Mr C. And that is exactly how Mr C has described the transfer process when making his complaint.

Ordinarily I might agree with Prudential that it would be sensible to have taken a view on the whole of Mr C's pension funds before commencing the transfer process. But, as Mr C told Prudential at the outset, an overall review had already been completed by another firm and had clearly suggested that he should transfer his funds. So Mr C had no doubts that Prudential's own review, which I agree it was entirely appropriate for Prudential to do, would reach a similar conclusion.

I have accepted that the lack of the relevant permissions to provide advice on DB transfers might have delayed things in that respect for some time. I think that was made clear to Mr C from the outset, and so I have concluded that Prudential's estimate of a transfer date of 1 December 2016 is reasonable.

But I don't think the same applies to the DC transfers. I have considered what Prudential has said about the benefits of making the AVC transfer alongside the connected DB benefits. But I think Mr C's expectation from the outset (based on the previous advisor's analysis) that it was beneficial to transfer all his benefits would mean that it wouldn't have been unreasonable to proceed with that transfer at the earliest opportunity.

So I think Prudential should treat all the DC funds as having been received before 25 November 2016, and so include the benefit of the quarterly price adjustment in February 2017 when assessing the loss that Mr C has made on those funds.

putting things right

Prudential should, within four weeks of Mr C's acceptance of this decision, recalculate its estimate of the loss that Mr C has suffered resulting from the delays to the transfer of his funds. The additional funds should be added to Mr C's pension plan.

For the DC funds Prudential should change the date at which the money should have been invested to 24 November 2016 so that the quarterly price adjustment in February 2017 is included in the loss calculation for those funds. And for the DB funds the date of 1 December 2016 should continue to apply.

my final decision

My final decision is that I uphold Mr C's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 December 2018.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr C complains that The Prudential Assurance Company Limited failed to act on his instructions in a timely manner. And he says that Prudential has also failed to deal with his complaint in a reasonable time.

background

Mr C held a number of different pension policies. They comprised final salary defined benefit schemes (DB) and defined contribution (DC) schemes. In early 2016 Mr C engaged a third party to provide him with advice on the investment of these various benefits as he approached retirement. That advice was provided to Mr C in July 2016 and recommended that he consolidate all his funds in a single pension product offered by Prudential.

Although Mr C agreed with that advice, the third party was unwilling to provide him with some further comparison information that he requested. As a result Mr C terminated his relationship with that company and approached Prudential direct about transferring his pension benefits.

Mr C first met with Prudential on 26 July 2016. At that meeting Prudential confirmed to Mr C that it would need to undertake its own assessment of his financial position before recommending any pension transfers. And Prudential has subsequently confirmed to us that this was the only basis on which it would have accepted the transfers – it wouldn't accept them unless it had concluded they were beneficial to Mr C. But Mr C did provide Prudential with a copy of the draft report produced by his previous advisor and the data that had been used in its completion.

Prudential confirmed to Mr C that at that time it wasn't licenced to provide advice in relation to the transfer of his DB schemes. But that it expected to receive that licence a couple of months later in October 2016. And it provided Mr C with some advice about applying for individual protection of his pension lifetime allowance. Mr C confirms he made this application in August 2016.

Prudential next met with Mr C in October 2016, and he was asked for some updated information about his pension benefits. And following that meeting Mr C was asked to request some updated transfer valuations from his other pension providers. But Mr C has pointed out that the timing of this meeting was chosen by Prudential and he could have supplied the required information at any time.

Mr C says that Prudential confirmed to him, on 24 November, that all the information needed to complete its suitability report had been received. And it told him that it should be able to produce its suitability report within a couple of weeks.

But that didn't happen. It seems that the number of applications that Prudential was dealing with at the time overwhelmed its analysis resource. So the advice documentation Mr C required, and that for many other consumers, was delayed. Ultimately Prudential provided Mr C with advice for each pension fund separately with the final funds not being transferred into Mr C's new Prudential policy until September 2017.

When Mr C's funds were received by Prudential they weren't immediately applied to his pension account. Instead they were held in what Prudential describes as a holding account until the next "quarter day" when the funds were invested. Although the holding account benefits from some investment return it doesn't receive the benefit of a quarterly price adjustment applied by Prudential. The "quarter days" fall on the 25th of February, May, August and November each year.

When Mr C complained to Prudential it agreed that the service he'd been provided fell well short of what he should expect. So Prudential initially offered him £400 in respect of the trouble and upset he'd been caused, and agreed to calculate whether the delays to his funds being transferred had caused him a financial loss. But calculating that loss took a further time which Prudential also agreed was unacceptable. So it increased the payment it made to Mr C to £800 and let him know that it thought the loss he'd incurred amounted to almost £72,000. So it offered to add that amount to his fund.

In calculating the loss that Mr C had suffered Prudential used a date of 1 December 2016 for when it considered his funds should have been transferred. Prudential has told us that it thinks this date is better than it would have achieved if everything had gone to plan. But Mr C doesn't agree – he thinks the funds should have been transferred much earlier. And he's pointed out that even if they'd only been received a week earlier, his loss would amount to over £170,000 since he'd have enjoyed the benefit of the quarterly price adjustment that took place in February 2017.

Mr C's complaint has been assessed by one of our investigators. She thought that it was reasonable for Prudential to have taken 1 December 2016 as the starting point for the compensation it offered Mr C. And she thought that what Prudential had paid Mr C for the distress and inconvenience he'd suffered was also fair. So she didn't think Prudential needed to do anything more, or that the complaint should be upheld.

Mr C doesn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide.

my provisional 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 also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Prudential has accepted that the time it took to arrange the transfers of Mr C's pension funds was too long. And I'd agree. So what I need to decide in this complaint is when I think it is reasonable to expect those transfers to have been completed. But that date is also affected by Prudential's policy of placing new investments into a holding fund until the next "quarter day". Mr C says that is unfair, and that he wasn't made aware that would happen. So I need to consider that aspect of the complaint too. And then I will be able to decide whether the payment Prudential has made to Mr C for the trouble and upset he has been caused is fair.

I think it is reasonable for me to consider the transfer of the DB and the DC funds separately. The regulatory requirements around each of those transfers are much different, and so is the analysis that Prudential would need to do before making any recommendation. And I am also mindful that Prudential wasn't in a position to provide Mr C with advice about his DB transfers until October 2016 when it became licenced to do so.

Prudential has said that it doesn't think the two fund types should be treated separately. It says that it was reasonable to think that Mr C would only want to go ahead with the transfers once he was sure that all his funds could be moved. But I don't agree, and say that for two reasons.

Before approaching Prudential Mr C had already taken advice from another firm. And he says that advice strongly recommended that he should move all his pension funds. So I don't think he'd have been concerned that Prudential's advice would have suggested some of his funds shouldn't be moved.

And once it begun producing its own transfer advice reports, Prudential appears to have been happy to implement them piecemeal. So in effect Mr C was transferring some of his funds before knowing whether Prudential's advice was for him to transfer them all.

So I think that, given the more simple nature of the DC fund transfers, it would be reasonable to expect those funds to have been moved earlier. So I think Prudential should treat those funds as having been received before 25 November 2016, and so include the benefit of the quarterly price adjustment in February 2017 when assessing the loss that Mr C has made on those funds.

But I don't think the same applies to the DB funds. I think it is reasonable for Prudential to conduct its own analysis before recommending these funds be transferred. And even if it had started this work soon after meeting with Mr C at the end of July, it is unlikely that the funds would have been received any earlier than December. And given what Prudential told Mr C from the outset about needing to be licenced before it could provide that advice I don't think it is reasonable to ask Prudential to use an earlier date than 1 December when calculating the loss Mr C has suffered on the transfer of his DB funds.

I've looked closely at the documentation that Prudential has provided to us in relation to Mr C's plan. I accept that the document I have seen dates from January 2017, so was issued a little after Mr C first agreed to move his funds to Prudential. But I think it likely that this is a reasonable representation of the terms that applied at that time, and certainly reflects the terms when Mr C formally agreed each transfer. And I also accept what Mr C says about there being nothing to confirm whether he was actually given this document – Mr C doesn't recall receiving it.

I think that the explanation in the document is clear about when the investment will move from a holding fund to the full pension plan. So I don't think Prudential was out of line with its terms and conditions in the way it calculated the loss on Mr C's investments. And although I can't be sure Mr C was made aware of those terms at the outset I don't think it would have made any difference. It doesn't seem to me that Mr C was in a position to actively control the dates on which the funds transferred. So he couldn't influence whether those funds were received shortly before or after a quarter day. And I don't think the terms were such that they would have made Mr C consider the pension plan to be a poor fit for his circumstances given the long term nature of the investment he was making.

Mr C says that recently Prudential has changed the way in which it deals with this sort of investment. And rather than transferring the investments from the holding fund each quarter, it now does this each month. He says that this shows the previous approach was unfair. But I'm afraid I don't agree. It is for Prudential to decide how it best manages its products, and a change in approach doesn't necessarily suggest unfairness, but might simply reflect a change in market conditions.

I understand how frustrating this whole process has been for Mr C. He has needed to spend a significant amount of time dealing with the transfer process. And then he has needed to spend a similar amount of time in getting Prudential to calculate the loss he has suffered. But I can see that Prudential has paid Mr C £800 in recognition of the trouble and upset he has been caused. And in the circumstances I think that is a reasonable level of compensation.