

The complaint

Mr T complains that poor service provided by Prudential Assurance Company Limited delayed the transfer of his pension plan to another provider, leading to a financial loss.

What happened

Mr T had a Section 32 plan, a type of guaranteed annuity contract, with Prudential Assurance Company Limited ("Prudential"), which arose from the transfer in 1986 from a previous occupational scheme ("OPS"). The plan (ending *803) came with a Guaranteed Minimum Pension ("GMP") of £4,677, which Prudential was obliged to pay from Mr T's 65th birthday (in March 2020), regardless of how the fund performed.

The sale of policy *803 (and another one) had been subject to a pension review exercise in 1998. The outcome of which was that Prudential gave Mr T a guarantee that redress would be calculated when he came to take his benefits from the policy. Since that time, Mr T has been pursuing complaints with Prudential, as he doesn't agree with the outcome of the review and thought the compensation to reflect the guaranteed benefits he's lost should be paid to him in cash. In 2010 Prudential advised Mr T the trustees of his OPS wouldn't reinstate him into the scheme, a decision it couldn't influence. But it reassured him the pension review redress guarantee meant he'd be compensated for the loss of guaranteed benefits.

In 2019 and 2020 Prudential reminded Mr T it was time to think about taking benefits from his plan. But Mr T didn't want to do that without knowing how much the pension review compensation would be. So Prudential carried out the calculation following the Financial Conduct Authority methodology, prior to him taking benefits or transferring the plan. This arrived at a figure of £35,452, reflecting that Mr T's annual pension entitlement from the OPS in 1998 had been around £1,858, or £1,200 per year at the termination of his employment. This was revalued at Mr T's normal retirement date as an annual pension of £5,817, and Prudential's actuaries had calculated the capital cost of providing that pension to Mr T for life to be around £173,976. At the date of calculation Mr T's fund was valued at around £138,583, meaning the difference between those figures representing Mr T's loss equated to £35,452. This sum was paid direct to Mr T in October 2020, rather than into his pension plan. Despite this, Mr T continued to pursue his original complaint about the transfer from the OPS, as he still felt he was worse off.

Prudential's retirement packs recommended Mr T consult the free "*Pensionwise*" advice service to help him understand his options. Mr T appointed a firm of financial advisers referred to here as "AC" to help him decide what to do with his pension, and to liaise with Prudential on his behalf. But Mr T continued to correspond with Prudential himself, querying the valuation of his fund and revisiting the pension mis-sale compensation. And although Mr T's entitlement under the GMP didn't change, the fund value wasn't guaranteed, and could fluctuate.

Pensionwise or AC could've helped Mr T if he'd wanted to take his pension as an annuity (guaranteed income for life in line with the GMP), either from Legal & General ("L&G"), which provides annuities on Prudential's behalf, or by exercising the open-market option. But Mr T

wasn't happy that Prudential no longer provided its own annuities, and didn't want one from L&G. So he eventually decided rather than an annuity, he wanted the flexibility of a drawdown plan, which also meant transferring away from Prudential. And as the fund value was over £30,000, Mr T was legally required to receive specialist pension transfer advice. So he engaged a second firm, referred to here as "P", signing P's letter of authority in July 2021. P didn't request information from Prudential until 30 September 2021. Prudential responded on 30 November 2021 with a new valuation of Mr T's plan of around £132,491, reminding P the plan came with a GMP which might be lost on transfer. Despite having appointed two advisers, Mr T continued to correspond with Prudential himself, and objected when Prudential replied to P's enquiries without copying him in. He also wanted Prudential to pay the pension commencement lump sum (tax-free cash) separately, before he'd finalised taking benefits from the plan, and thought the plan should be paid to him totally tax-free.

In June 2022 P received a revised valuation of Mr T's plan of £131,025, which was sufficient for their advice purposes, but as it had been issued in March they warned Mr T it might have changed since then. But when a new valuation was requested in September 2022 it had fallen to £116,347. P requested annuity quotes based on this figure, and Prudential had to explain annuities are provided by L&G. It's not clear when P provided its advice, but Mr T signed the transfer discharge forms on 22 November 2022. A slight delay occurred here with the forms, which were returned to Prudential on 30 November 2022. In early December before the transfer completed, Prudential advised P the value of Mr T's plan had fallen again to £111,351 and asked whether to proceed. Mr T confirmed to P he'd discussed things with his wife and wanted to go ahead. The transfer to his personal pension with Royal London was finally completed on 21 December 2022.

As well as being dissatisfied with the drop in value, Mr T was also unhappy with how long it took, pointing out he was entitled to take benefits from his OPS from his 65th birthday in March 2020. Mr T has raised several complaints with Prudential throughout this period, and referred to this service in October 2022, prior to the transfer being completed. Prudential issued a number of final response letters, and paid Mr T compensation totalling around £1,000 to reflect the distress and inconvenience he'd experienced.

Our investigator explained that due to the six-month referral time limit, we couldn't consider the issues covered in Prudential's final response letters dated prior to April 2022.

While Mr T's complaint was with this service, Prudential reviewed the transfer timescale again, and concluded it could've happened around 3 September 2021, at which point the value would've been around £133,586. So in April 2023 Prudential wrote to Royal London requesting that they carry out a loss calculation. In June 2023, having received no response, Prudential carried out its own loss calculation, which arrived at a loss figure of around £19,473, to which it added interest of £590.72 net of tax and sent Mr T a cheque for around £20,064 in respect of the delay.

But our investigator didn't see why the transfer couldn't have happened by 31 January 2021 (when the indicative value was around £140,922). So he thought the loss calculation should be based on this date. But he didn't ask Prudential to backdate the transfer to March 2020 as Mr T could have taken an annuity then if he'd wanted to. Nor did he award anything further for distress and inconvenience.

Mr T didn't think £20,064 was enough, being less than the difference between the December 2022 and September 2021 valuations. And he didn't agree with the redress suggested by the investigator either, as he still thought it should be backdated to March 2020. He wasn't happy that Prudential no longer provided annuities and said Prudential had agreed to cover his financial adviser's fees of £3,000, which he wouldn't have incurred if he'd stayed in his OPS.

Prudential said the transfer couldn't have taken place as early as January 2021, as although documentation had been issued to Mr T's financial adviser in December 2020 and January 2021 it received no instructions until April 2021. And then there was another long gap until October 2021. So it felt basing the compensation on the transfer happening on 3 September 2021 was fair. Prudential had offered to consider evidence of any additional advice fees which arose as a result of their actions, but Mr T hadn't provided any.

As neither party accepted the investigator's view the case was passed to an ombudsman.

Provisional findings

I issued a provisional decision on this complaint in November 2023, to set out my initial thoughts, and to draw a line under the complaint points being addressed, so that anything new Mr T raised subsequently would be dealt with as a separate complaint. The issues I considered were the original mis-sale and pension review compensation, the various delays and servicing issues, and whether Prudential should reimburse Mr T for his financial adviser's fees.

For completeness, in the provisional decision I summarised the eleven final response letters Prudential issued to Mr T between July 2020 and September 2023, but I'm not going to do that again here. Each final response letter provided Mr T with referral rights to this service which expire after six months from the date of the letter. Based on the date Mr T referred his complaint to this service, the investigator explained that our rules prevent us considering the issues raised in the letters prior to June 2022, which is correct. But I said Mr T has essentially been raising the same issues repeatedly, namely the pension review compensation arising from the original transfer from the OPS, the service provided by Prudential to him and his financial advisers, which he says delayed him accessing his benefits, and Prudential failing to pay his TFC when he wanted or to cover his advisers' fees.

So I took those points in turn.

Transfer from OPS and pension review compensation

I considered the original transfer from the OPS to a personal pension and the outcome of the pension review to be the crux of Mr T's complaint, and he remains of the view he'd be better off if he'd remained in the OPS.

But as Mr T accepted compensation of £35,452 in October 2020 (which was paid to him in cash, rather than into his plan) this settled the mis-sale element of the complaint, and I wasn't going to look into that further.

Delay in accessing benefits and service issues

Mr T was entitled to take benefits from his pension in March 2020, but he didn't actually do so until December 2022. But having looked at what happened while Mr T has been in dialogue with Prudential, I didn't think the delay was solely down to Prudential's actions or failings. I said Mr T could've released 25% of the plan as TFC and started receiving his pension income at age 65 by way of an annuity from L&G based on the GMP, which is what his plan entitled him to, but he didn't want to do that.

And while things hadn't always gone smoothly, I thought Mr T had contributed to the delays by continuing to dispute the original OPS transfer and pension review, rather than making a firm decision about taking benefits from the plan. In August 2019 as Mr T approached his normal retirement age, Prudential had sent him a retirement pack which gave a valuation of around £136,598. It explained his policy came with a GMP and valued the guaranteed

element at around £121,418. This was followed up by a couple of reminders in 2020, in which Mr T was recommended to consult “*Pensionwise*”, he was told about the open market option, and that transferring to another provider risked losing the GMP.

I said Prudential was entitled to make a business decision not to provide its own annuities, and one under the same terms provided by L&G was a reasonable alternative. But rather than an annuity, Mr T decided to take benefits flexibly with a drawdown plan. This choice meant he was legally required to take (and pay for) regulated financial advice, and I didn’t think this could’ve happened in time for his 65th birthday. I understood Mr T’s frustration at how long the process took, but I didn’t hold Prudential responsible that he didn’t start receiving his pension from March 2020, as he chose to take his benefits in a different way.

I didn’t agree with the investigator that the transfer to Royal London could’ve happened as early as January 2021 at the higher value, as I didn’t think all of Prudential’s requirements could’ve been met within the three-month guarantee period. These were a declaration from the receiving scheme to confirm it accepted liability for the GMP, authority and discharge forms signed by Mr T, and an advice declaration form signed by the adviser to confirm Mr T had received regulated financial advice. Prudential had told AC that due to the GMP liability it couldn’t accept transfer instructions via the electronic “*Origo Options*” system, the forms had to be returned manually. So to secure the £140,922 valuation the financial advice process would need to have been completed and all the forms returned to Prudential by 13 April 2021. And although Prudential had sent the risk warning letter to Mr T in January 2021, it didn’t receive the completed forms back.

Prudential’s loss calculation was based on a transfer date of 3 September 2021, six weeks after Mr T signed P’s LOA, but I didn’t think that was realistic either. Mr T hasn’t said when he received the advice from P, so I wasn’t able to establish how long it actually took between the advice and the transfer in December 2022. It looked like there was about a month between P receiving a valuation from Prudential to Mr T signing the transfer paperwork and returning it to Prudential, after which Prudential took a further three weeks to transfer the funds to Royal London. It’s standard industry practice for a transfer to take around ten working days, so I assumed the additional time was due to P checking whether to proceed at the lower valuation. Given all the steps which needed to be completed, I thought a more realistic date for the transfer was 24 December 2021, just avoiding the Christmas break. So I said if the valuation of Mr T’s plan had been higher on 24 December 2021 than the 3 September 2021 valuation used in Prudential’s loss calculation, it should redo the calculation based on the higher value.

I saw no justification for Prudential to reimburse all Mr T’s financial adviser fees. It was his choice to consult AC rather than rely on Pensionwise. And he incurred P’s additional fee because he decided to take benefits by way of a drawdown plan, and regulated financial advice is a legal requirement to transfer a plan valued at over £30,000, whether from Prudential or from his OPS. But I thought it was fair of Prudential to consider evidence of any *additional* adviser fees Mr T incurred as a result of their failings, but Mr T hadn’t provided any.

Responses to the provisional decision

Prudential accepted the outcome and made no further points, other than confirming the value of Mr T’s plan on 24 December 2021 was £137,001.92, which is around £3,416 higher than on 3 September 2021.

To explain why it chose 3 September 2021 as the earliest date Mr T’s plan could’ve transferred, Prudential provided a timeline of key events between 16 August 2019 when Mr

T called to request a valuation, and August 2021 when it had attempted to speak to Mr T about his options without success.

Prudential also provided a copy of another final response letter dated 4 June 2020 not listed in the provisional decision, in which it had paid him £250 for some servicing issues, bringing the total compensation to around £1,250.

Mr T responded to say he thought the provisional decision was biased in favour of Prudential, which hadn't given him or his financial adviser the full details of his OPS benefits. He queried why two calculations carried out by Prudential hadn't come to the same figure, and why the delay compensation was less than the difference between the higher and lower valuations. He provided a letter from his OPS confirming he left the scheme in April 1986 after more than five years' service, and another copy of his original OPS pension entitlement, showing he'd have had a deferred pension of £5,832.96 at his normal pension date, the GMP element of which would be £4,676.88 at age 65. So while he'd accepted the compensation, he now thought the calculation was wrong.

So I'm now in a position to finalise the decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr T has continued to raise issues with Prudential, most recently about an incorrect statement. But the investigator has explained that any new complaint points not covered by the provisional decision are outside the scope of this complaint, so I won't be addressing them here.

OPS transfer pension review loss calculation

The original transfer in 1986 cannot be undone, and Mr T's OPS has declined to allow him to re-join. The pension review had identified that Mr T may be worse off, so the compensation calculation was designed to compensate him for the guaranteed benefits he's lost out on. Prudential carried out a loss calculation based on the key facts and assumptions it had set out in its letter, which resulted in a loss of £35,452. Mr T accepted this sum in cash, rather than into his plan, in full and final settlement of that aspect of his complaint. So we'd normally say this drew a line under the matter, and not revisit it again.

But Mr T queried the accuracy of the loss calculation, pointing out the discrepancy between the £5,817 Prudential used, with the figure of £5,832.96 mentioned in the 1986 letter from his OPS. In response, Prudential explained the letter makes clear the 5,832.96 figure was an estimate.

Mr T has provided us with a copy of this letter, so he'll be able to see the GMP element at age 65 was given as £4,676.88, which is the figure Prudential used in its calculation. And it also says that Mr T would be entitled to a deferred pension of £5,832.96 at retirement. But underneath it says the following in capital letters: "*Included in the deferred pension quoted above is an **estimate** of the revaluation of the proportion of your pension earned after 1.1.85 as required by recent legislation. The actual total deferred pension cannot be calculated until you retire, but it is unlikely to be significantly different to the amount stated*" (my bold emphasis).

So in the actual calculation, the amount of excess pension (above the GMP) earned between 1 January 1985 and 30 April 1986 when Mr T left the scheme, was revalued in line with statutory cost of living rates (RPI up to 2011 and CPI thereafter both up to a maximum of 5%). When calculating estimates, schemes couldn't predict future inflation rates, so generally used a flat rate of 5%, being the maximum. Whereas the actual figure was used in the calculation and averaged around 3.5% over that period. The difference is around £16, which isn't "*significantly different*", so I'm satisfied the calculation has been carried out fairly. Mr T has accepted the compensation, so I'm not going to comment on the original transfer or the pension review redress further.

Delays and servicing issues

In respect of the delay in accessing his pension, I remain of the view that it would have been possible for Mr T to have received his TFC and established an annuity around his 65th birthday, which would've provided a guaranteed income for life as his OPS would have done. Had Mr T chosen an annuity he could have consulted "*Pensionwise*", and wouldn't have needed financial advice, unless he chose to engage a firm such as AC for peace of mind.

Rather than an annuity, which provides retirement income in a similar way to his OPS entitlement, Mr T preferred to take his benefits more flexibly. And I've explained that the transfer of a plan valued over £30,000 to a drawdown plan, whether from Prudential, or from his OPS if he'd remained a member, legally required him to take regulated pension transfer advice, which AC wasn't qualified to provide. This resulted in Mr T incurring AC's as well as P's fees, totalling around £3,000. I saw no reason Prudential should pay all Mr T's financial adviser fees. And as Mr T hasn't provided any evidence he's incurred *additional* fees as a result of Prudential's actions or failures I'm not going to ask it to make a contribution towards his fees.

Prudential has admitted it didn't always respond in a timely manner to information requests from Mr T and his advisers, although I don't criticise Prudential for responding to P without copying in Mr T. Had everything worked smoothly, Prudential thought the transfer could have happened around 3 September 2021, so had carried out a loss calculation based on the plan value on that date.

Mr T accepted the compensation of £20,064.30, but disputed the amount, believing he should have received the difference between the two valuations. But that misunderstands how pension compensation is worked out, which aims to put Mr T's plan as far as possible in the position it would be in had the funds been transferred and invested at the earlier date, reflecting the investment performance over that period

Having reviewed everything again, I think the transfer could have happened earlier than December 2022, but not as early as 3 September 2021. This is because Mr T's plan couldn't be transferred to Royal London until he'd received regulated financial advice. And although he signed P's letter of authority in July 2021, P didn't contact Prudential to request the necessary information until 30 September 2021, without which P couldn't carry out its analysis to recommend the transfer.

Even without knowing exactly when Mr T received the pension transfer advice, for the reasons already explained, I remain of the view that 24 December 2021 is a more realistic date. But it wasn't clear if the plan value at that date would've been higher than on 3 September 2021.

In response to the provisional decision Prudential confirmed the value of Mr T's plan on 24 December 2021 was £137,001.92, so a new loss calculation is necessary. For the avoidance of doubt, this will not simply involve paying Mr T the difference between the two valuations.

Putting things right

- I think the fair and reasonable way to put things right would be for Prudential to carry out a new loss calculation, based on the transfer of £137,001.92 taking place and being invested on 24 December 2021, rather than the actual transfer of £111,351.42 on 22 December 2022.
- This loss calculation should follow the same methodology as the one Prudential carried out in June 2023 based on the transfer of £133,586.54 taking place on 3 September 2021. But the interest should now be calculated from 24 December rather than 3 September 2021.
- Tax should be deducted from the interest element of the redress as previously and Prudential should set out how much has been taken off. It should also give Mr T a tax deduction certificate if he requests one, so he can reclaim the tax from HM Revenue & Customs if appropriate.
- If this new loss calculation arrives at a figure higher than the £20,064.30 already paid, then the difference should be paid to Mr T in cash as before. If the calculation arrives at a figure equal to or less than the amount Mr T has received, then Prudential need do nothing further.
- A copy of the calculations should be provided to Mr T in a clear, simple format.
- Over the course of the complaint, Prudential has paid Mr T a total of around £1,250 compensation in respect of the various servicing issues, which I think is fair. So I'm not going to ask it to pay anything more in this respect.

My final decision

I uphold this complaint in part. The Prudential Assurance Company Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 February 2024.

Sarah Milne
Ombudsman