

The complaint

Mr H complains about The Prudential Assurance Company Limited's delay in transferring his with-profits guaranteed annuity to the Britannia Retirement Scheme, a Qualifying Recognised Overseas Pension Scheme (QROPS) with New Zealand Britannia (NZ Britannia).

What happened

NZ Britannia first sent a letter dated 27 January 2022 to Prudential requesting the transfer. It enclosed all the documentation it considered was necessary, including the HMRC APSS263 form signed by Mr H on 24 January 2022. Prudential's copy of this letter has a date stamp of 27 January 2022, suggesting it was sent electronically and received on the same day. (On other occasions, when NZ Britannia sent items only in the post they have a delayed date stamp accordingly.)

Notably the receiving scheme has been recognised by HMRC as a QROPS since 2 February 2017 (and the QROPS provided Prudential with confirmation of its 'renotification' from HMRC dated 17 December 2021). This original request also included evidence of Mr H's residency in the form of a council tax invoice to his home address, which had been certified by an overseas solicitor.

NZ Britannia provided a letter from the NZ Financial Markets Authority confirming it had seen the trust deed for the scheme and certified that it met the registration requirements. It also provided a printed extract from the NZ Companies Office Disclose Register, which is a register for offers of financial products and managed investment schemes under the NZ Financial Markets Conduct Act 2013. It gave the website address of this register where Prudential would have been able to download such documents as:

- Governing Document (and subsequent amendment)
- Establishment Deed
- Statement of Investment Policy and Objectives (SIPO)
- Scheme Financial Statements
- Annual Reports

The applicable SIPO from June 2021 was a 21-page document explaining that the scheme offered four diversified funds (moderate, balanced, growth and lifetime income, each with their own risk profile and targeted to certain benchmarks) and a cash enhanced fund. The funds would comprise portfolios of securities, funds managed by NZ Britannia or other investment managers. Leveraging (borrowing) was not allowed. The assets these funds would invest in are set out in the SIPO. The fund manager was allowed to invest in other assets not explicitly stated in the document, providing they fell within the parameters of the risk profiles set out therein.

Prudential responded on 15 March 2022, after NZ Britannia reports chasing it on one occasion – and it sent a transfer value quotation to Mr H. The letter doesn't appear to have included forms to complete in order to progress the transfer, because that wasn't its purpose: it was to ensure Mr H was aware of the guarantees attached to his plan and how to spot if he was about to become the victim of a scam. If he didn't object to the transfer, it would then proceed after 14 days.

The letter also explained to Mr H the enhanced checks Prudential was now required to carry out as a result of the UK Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021, and accompanying guidance from The Pensions Regulator (TPR). It said:

*“...we’re required to carry out further checks which could include asking for evidence of employment links for transfers to employer schemes and residency links for transfers to overseas schemes. In some cases, it might be necessary to review other aspects of the transfer such as the regulatory status of any third party advisers, whether unsolicited contact was involved, or whether other factors such as incentives influenced the transfer.
We’ll start these checks when we receive the completed documents and we’ll let you know if further information is required. Its important to stress that we may have to decline the transfer request if at least one of these regulatory conditions can’t be met.”*

Prudential then wrote to NZ Britannia on 18 March 2022 requesting further Information, including a receiving scheme declaration for it to complete, the APSS263 form (which I note NZ Britannia had already provided), the trust deed and rules, promotional material about the scheme, its investment providers, and how it was promoted to Mr H. The letter stated that the receiving scheme declaration, a lifetime allowance declaration and ‘Changing your plan’ form (transfer out form) had been sent to Mr H directly. Prudential’s letters to Mr H don’t appear to have enclosed the cited documents as they make no reference to them directly.

NZ Britannia received this letter on 1 April 2022 having again chased for progress. On 4 May it posted Prudential the trust deed (Governing Document), member’s booklet which included details of the investment providers, scheme rules including the HRMC form APSS251 – and again referred Prudential to the website above for any more information. It added that it did not have the receiving scheme declaration in order to be able to return it. Prudential received these items on 20 May 2022.

NZ Britannia confirmed with Mr H’s overseas adviser that Mr H hadn’t received the forms to which Prudential referred. It then emailed Prudential on 24 May to explain the documents were missing and raising concerns about the poor service. Prudential wrote to Mr H again on 31 May 2022 requesting completion of a ‘Changing your Plan’ form, a lifetime allowance declaration and declaration by receiving pension provider. When NZ Britannia checked with Mr H’s adviser on 21 June, he had not received this, so NZ Britannia chased Prudential again by email on 23 June.

NZ Britannia then had to involve its UK representative, who spurred Prudential into sending Mr H a new transfer quote dated 13 July 2022, which Mr H didn’t receive until 10 August. Mr H signed the ‘Changing your plan’ form the following day (I note it does not ask any of the questions Prudential had to ask Mr H separately). After calling Prudential to ask what was outstanding on 12 August, NZ Britannia then received these from his adviser and posted them to Prudential on 30 August 2022.

I note that Prudential sent Mr H another transfer pack on 8 September 2022 and this did include a receiving scheme declaration form for NZ Britannia to complete. A separate letter it sent him on the same day suggested a lifetime allowance declaration had also been included within the transfer pack, but there is no evidence that it was.

It became apparent from another letter to NZ Britannia dated 8 September, which it received on 3 October, that Prudential was asking for a lifetime allowance declaration. NZ Britannia then left the matter in the hands of its UK representative who tried several times to contact Prudential’s administration department by phone, and established (on 21 October) that the lifetime allowance declaration had actually been posted to Mr H on 20 September.

Mr H sent Prudential a secure message on 26 October 2022 explaining that he had sent back the completed ‘Changing your plan’ form and declaration by the receiving pension

provider some months prior, and that a lifetime allowance declaration hadn't been provided to him. He also mentioned that the reason he was transferring to the QROPS was "*because of [NZ] tax implications on overseas savings*" – and confirmed that the £25 telegraphic transfer fee could be deducted from his transfer value. This crossed with Prudential's letter dated 29 September asking for the same information (but without the form).

NZ Britannia's UK representative got involved to chase Prudential again. Prudential's records show him calling on 8 & 9 November. On 10 November that representative confirmed that Prudential would be emailing the lifetime allowance declaration directly to Mr H within 48 hours. I've listened to the 9 November call and Prudential does indeed say this. By a week later, this has still not arrived.

NZ Britannia's UK representative chased Prudential again on 17 November only to be told that the call handler was unable to take a note of his request and the correct department wasn't accepting calls, so his only option was to call later or wait 48 hours for a call back. He felt that the only way to break this impasse was to raise a further complaint.

It subsequently transpired the lifetime allowance declaration was sent by post that same day (17 November). Mr H didn't receive this until 20 December 2022, and immediately signed this and emailed it back to Prudential on the same day. NZ Britannia subsequently posted a hard copy of this to Prudential, having received it back via Mr H's adviser, on 25 January 2023. It also reissued the same evidence it had previously provided of QROPS registration and confirming the method of electronic transfer in pounds sterling.

Meanwhile, Prudential had written to Mr H in the post again on 21 December 2022 asking him to confirm how he became aware of the QROPS, and whether he had received financial advice. NZ Britannia established this during a call with Prudential on 30 December 2022, leading Mr H's adviser to ask it on 24 January 2023 (as the questions had still not arrived) why these couldn't have been sent by email. NZ Britannia asked Prudential to do this on 2 February 2023 (and asked by post on 7 February 2023).

Despite this, it wasn't until 24 February 2023 that Prudential sent a secure message to Mr H asking him to answer the following questions:

- Details of how he became aware of the receiving scheme and what information he had been told about it
- Whether he had received financial advice in relation to the transfer and if so, confirmation of adviser's name and address

Mr H responded the next day that "*All the information that you require has been given to you approximately 6 months ago. Due to the inaction by yourselves over the last few months, I have instructed my New Zealand pension provider to go to law*". As matters were not progressing NZ Britannia subsequently raised a further complaint on Mr H's behalf.

Prudential issued a final response to the complaint on 15 March 2023, acknowledging that:

- "*we have fallen well below our standard on this occasion*"
- "*certain aspects of our transfer process could have been expedited*"
- "*we have failed to provide you with the necessary transfer documentation and...we have failed to respond to you [sic] email in a timely manner*"

Prudential said it was sending £200 compensation for any inconvenience. However it said it still needed Mr H's answers to the above questions and "*As soon as we receive the information requested, we will proceed with your transfer request*". Prudential further said that once the transfer had been *completed it would carry out a loss assessment "to identify the earliest date we could have processed the transfer and then we will write to you for confirmation of the amount of investment you would have received."*

Mr H sent another secure message back to Prudential on 16 March 2023 confirming the following information:

- The receiving scheme was an existing scheme that Prudential had previously transferred another pension into in March 2018.
- He had received a Britannia policy disclosure document
- He had received financial advice on this and the previous transfer, including on the tax implications
- The name, employer and address of his financial adviser was given.

Prudential issued a further final response to NZ Britannia on 24 March 2023 saying it had increased the amount it sent to Mr H to £275 because it had failed to respond to NZ Britannia's concerns going back as far as May 2022. It confirmed it still required Mr H to provide this information (which it also asked him for directly):

- Details of how he became aware of the receiving scheme and what information he had been told about it
- Confirmation of the adviser's name and address

NZ Britannia maintained that Mr H had already provided this information by secure message on 17 March 2023. It chased Prudential a further five times before Mr H contacted Prudential directly on the online portal on 16 May. He told NZ Britannia that *"The Pru have now had the information that was asked for for two calendar months and I have heard nothing from them since then."*

NZ Britannia's UK representative got involved again, attempting to call Prudential four times. He reports Prudential telling him on 18 May that the transfer should have been completed the previous day. Mr H also told Prudential in a secure message on 19 May that *"Due to your delay, which has now pushed my pension fund transfer past 31 March 2023 I will also be seeking further compensation for the increased taxation that I am now liable for."*

Mr H complained to our service in similar terms on 1 June. NZ Britannia then chased Prudential a further four times before Prudential sent a further list of questions to Mr H on 17 August 2023:

1. Confirmation of whether he had received financial advice in relation to the transfer request. If so, confirm the adviser's name and address.
2. Details of the investment providers/details of the proposed investments once the transfer has been paid.
3. Evidence of residency for tax purposes in the same jurisdiction as the QROPS.
4. Copies of any promotional material, emails or letters he'd received about the receiving scheme.
5. Details of how he became aware of the receiving scheme and what information he'd been told about it.

Notably, questions 1 and 5 had already been answered by Mr H in his secure message of 16 March 2023 and aspects of some others had been covered in the request to NZ Britannia.

On 22 August 2023 Prudential issued another final response to the complaint, reiterating that these requirements were outstanding, and that it needed all information to be returned directly from Mr H by post. It apologised that *"I agree that we have caused delays in processing the transfer so far as we have not made it clear what we require and we have requested additional information, rather than requesting everything at once."*

Prudential was arranging to pay a further £200 compensation to Mr H and confirmed it was still intending to carry out a loss assessment. But it seems to have treated the information Mr H provided about previously making a transfer to this QROPS in 2018 as a request for it to clarify why Mr H's second Prudential policy wasn't transferred at that time, rather than

Mr H's answer to its question *"Details of how he became aware of the receiving scheme"*.

Mr H highlighted to our investigator that Prudential also hadn't attempted to update him on these matters via the secure portal 'My Pru', but insisted on using regular mail which usually takes 4 to 6 weeks postal time from the UK to New Zealand. In the end, this service had to send documents to Mr H by email which Prudential failed to do itself.

Mr H informed our investigator on 5 October 2023 that answers to Prudential's outstanding questions were sent to its customer services director on 14 September, recorded as 'signed for' on 28 September. This included certified copies of his permanent residency visa, letters from the tax authority and his accountant confirming his tax residency status and a copy of his pension scheme Policy Disclosure document. But he was still awaiting a response and his transfer was outstanding.

On 16 November 2023 Prudential says it wrote to Mr H (and by copy, NZ Britannia) again asking further questions. A follow up letter dated 14 December 2023 referred to a questionnaire Prudential had required Mr H to complete and mentioned for the first time that it might have to refer Mr H to the UK government's "MoneyHelper" guidance service. The questions asked (which I've abbreviated) were:

- *"Was financial advice provided by a firm or an individual without the appropriate regulatory permissions..."*
- *"Were you contacted unsolicited..."*
- *"Were you offered incentives to transfer..."*
- *"Were you pressured to complete the transfer quickly..."*

Mr H didn't receive the 16 November letter, which was returned to Prudential "gone away". The 14 December one arrived on 9 January 2024. Although he considered that he had already adequately answered questions of this nature, he agreed to complete and return it by post on 11 January. Unfortunately, he hadn't at that point received a further letter from Prudential agreeing that it was acceptable for him to reply by secure message.

Prudential's response to this letter was to message him on 29 February 2024 asking him to attend a free MoneyHelper pension safeguarding guidance appointment. It said this was required under the Conditions for Transfers Regulations, because the 'amber flag' of overseas investments being included in the receiving scheme had been triggered.

Mr H said to our investigator, *"I should really have been informed of this mandatory requirement in March 2022, not March 2024."* He took a total of seven working days from Prudential's request to book, attend and respond back to Prudential with his reference number at the conclusion of the MoneyHelper appointment. Prudential subsequently transferred £9,738.11 to NZ Britannia on 12 April 2024.

I issued a Provisional Decision on this complaint on 9 May 2024, the content of which I'll repeat below. Both parties have now responded to the Provisional Decision - and where relevant I'll respond to their comments in my findings, which follow here.

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.

I haven't explicitly allowed for public holidays in the timescale below, as two countries are involved and due to the overall length of delay I consider the impact of these to be negligible.

A lot of the information Prudential sought from the Britannia Retirement Scheme was already

provided in the transfer request itself, which Prudential date stamped as received on 27 January 2022 (the same day it was sent, so I'm assuming it was emailed). A weblink was provided to a government register of pension schemes where this information was provided electronically.

Prudential responded to this transfer request on 15 March 2022. I consider that to be an inordinate delay. I see no reason to disagree with the investigator that Prudential should have responded on 15 February 2022 by sending the transfer quotation and warning about scams to Mr H, which it later sent on 15 March. At this time, I'm not persuaded it was necessary for Prudential to reply by a quicker medium than post: form-filling with 'wet' signatures is typically required, and no instructions had been given for it to do otherwise.

There doesn't, however, seem to have been any allowance for the fact Prudential was posting this letter overseas when it indicated to Mr H that it would proceed with the transfer if it didn't hear back from him in two weeks. Although in any event, quite how it could proceed with the transfer if it didn't hear back from him is unclear – when it didn't enclose with this letter the forms he would need to do so.

To my mind, it was more logical to enclose the forms Mr H would need to transfer whilst at the same time warning him of the risk of scams – and if he *didn't* reply, that would have achieved the outcome Prudential was seeking of prompting him to reconsider whether he wanted to transfer. That meant enclosing the receiving scheme declaration, lifetime allowance declaration and 'Changing your plan' form (transfer out form) on 15 February – none of which were included when Prudential actually wrote to him on 15 March.

Likewise, the request for further information Prudential sent to NZ Britannia on 18 March 2022 could have been sent, at the same time, on 15 February 2022. I agree that part, but not all, of the information it requested from NZ Britannia at that time was genuinely new – and not already available from the weblink provided. Chiefly these were

- a receiving scheme declaration for NZ Britannia to complete
- promotional material about the scheme, its investment providers, and how it was promoted to Mr H

Although some of the information about investment providers was already contained in the SIPO, Prudential was later sent a member's booklet in response to this request which I accept would have been of assistance, and it was necessary for it to ask about the promotion of the scheme to establish whether Mr H had a statutory right to transfer under the recently introduced UK Conditions for Transfers Regulations.

The investigator assumed this correspondence (on 15 and 18 March 2022) would have been received by Mr H and NZ Britannia two weeks later. This isn't necessarily supported by the facts of the case, given that Mr H refers to post sometimes taking 4-6 weeks to reach him or his provider. So it is from this point that I begin to depart from the investigator's findings.

I consider a fairer way to establish this is to look at the time it actually took between 13 July and 30 August – from when Prudential belatedly did send the right forms to when NZ Britannia posted them back. I will assume another four weeks from when these forms were posted back on 30 August to then arrive at Prudential's offices, so they would have been with Prudential by 27 September.

Adding this 13 July – 27 September time gap on to 15 February 2022, when Prudential *should* have initiated all its form-filling requirements of Mr H and NZ Britannia at once, brings us to 3 May 2022. Again I do not object to this information being requested by post, despite a potentially foreseeable delay, as Prudential needed wet signatures and providing all of the necessary information had been requested at the same time. But this means that by 4 May Prudential should have been able to clarify all of its basic requirements, including whether Mr

H was prepared to pay the telegraphic transfer fee – a question it was actually still asking in October 2022.

The Conditions for Transfers Regulations and accompanying guidance had been known about since November 2021, which I consider left Prudential sufficient time to address what was required. But I accept that it may always have become apparent after the form filling had been completed, and a final analysis was carried out, what additional questions Prudential needed to ask Mr H in order to satisfy his statutory transfer right. For example, how he became aware of the QROPS, and whether he had received financial advice (questions that were not even asked at all until 21 December 2022).

However on recognising that there were additional things it needed to ask, and with experience of the delays that were now being incurred by post, I think it would have been reasonable for any additional questions to have been followed up by email using the secure portal in May 2022 on this hypothetical timescale – as they later were in the actual timescale.

I also have to take into account that Mr H refused at first to answer Prudential's questions. I make no criticism of Mr H, as given the delays he had experienced (which to some extent would always have been experienced), some frustration is understandable. But initially he refused to respond – and persistently failing to answer a question required under the regulations and accompanying guidance would have amounted to a red flag (and the denial of his statutory right to transfer).

To Mr H's credit, his position changed and he subsequently did provide the information requested within about three weeks of actually being asked (24 February to 16 March 2023). If I assume Prudential had asked Mr H the same questions by secure message one week after it *should* have received his forms back (10 May 2022), I consider it reasonable to assume Mr H would likely still have taken those three weeks to respond – so, by 31 May 2022.

In the actual timescale, Prudential then asked for this information again – in my view unnecessarily. Mr H had already provided his adviser's name and address. And it was a pre-existing scheme to which Prudential had already transferred policies before (which Mr H was telling Prudential, and his answer could readily be confirmed). I therefore consider it was unnecessary to ask Mr H how he had originally become aware of the scheme.

That question was aimed at identifying cold calling activity (another red flag under the regulations), but what prompted Mr H's interest in making this particular transfer was evidently that this was his existing scheme and he had now identified a stray UK pension which, by omission, he hadn't transferred to it before. I fail to see how that could lead to the same concerns of unsolicited contact the regulations were expecting Prudential to identify.

In addition if Prudential wanted to know details of the investment providers the scheme used and/or details of the proposed investments to be made once the transfer had been paid (as it later asked on 17 August 2023), it should have asked for this information from Mr H on 10 May 2022 at the latest, in my hypothetical timescale. The same applies for evidence of his residency and for promotional material about the scheme that it hadn't otherwise been able to obtain from NZ Britannia. I have little reason to doubt Mr H would then have provided any outstanding information by 31 May 2022, even allowing for his initial hesitation as I've explained above.

On 16 November 2023 in the actual timescale, Prudential asked Mr H: "*Was financial advice provided by a firm or an individual without the appropriate regulatory permissions...*". That was not a question for Mr H to answer, but for Prudential to establish. Mr H had already given the name and address of his adviser, but the fundamental issue here is that he was resident outside the UK and receiving advice from a firm outside the UK, so the advice

wouldn't breach UK law where all the activity took place outside UK territory. It appears Prudential subsequently realised this, as it didn't 'red flag' the transfer for that reason. However, I think it should have come to that conclusion sooner instead of causing further detrimental delay to Mr H's transfer.

Prudential asked a number of other questions on this same day (16 November 2023): "*Were you contacted unsolicited...*" had already been answered by Mr H in respect of his motives for making this particular transfer, as I've noted above. "*Were you offered incentives to transfer...*" and "*Were you pressured to complete the transfer quickly...*" could both have been asked much sooner, and would have been confirmed by Mr H as 'no'.

The MoneyHelper appointment

Happening as it would have been before July 2022 in my hypothetical timescale, there was even less guidance from the UK government on the issue of "*Overseas investments are included in the scheme*", which was the 'amber flag' Prudential deemed it necessary to request a MoneyHelper appointment for. At the time, there was widespread concern in the industry at that time that the wording of the regulations, if not the accompanying guidance, had the effect of flagging *any* overseas investment (even if that perhaps might not have been the intention).

The QROPS was by its very nature likely to hold overseas investments (and a larger proportion of such investments than a UK scheme). The SIPO disclosed that the "balanced" fund Mr H was going to be investing in had a 60/40 split between shares and fixed interest/cash, spread across Australasia, New Zealand, and the rest of the world. This uncertainty in the guidance caused a tension between potentially sending Mr H for an unnecessary appointment, or insufficiently protecting Prudential's legal interests.

Therefore on balance, I agree with Prudential that it wouldn't have been unreasonable to ask Mr H to attend this appointment in mid-2022. I've also taken into account that QROPS transfers are significantly more complex than many UK onshore transfers, in terms of the level of scrutiny required. So I'm going to allow a further two weeks for Prudential to conclude that the MoneyHelper appointment was required. I'm satisfied that Mr H would have been prepared to attend the MoneyHelper appointment just as he was recently.

This therefore takes us from 31 May 2022 to 14 June 2022 for Prudential to request Mr H book a MoneyHelper appointment. I've then added the actual length of time that it took Mr H to book, attend and respond back to Prudential with his reference number at the conclusion of the MoneyHelper appointment (seven working days), bringing us to 23 June 2022. This becomes the date Prudential was in possession of all its requirements and so the effective date of determining the cash equivalent transfer value of his policy.

With the bulk of the due diligence already undertaken prior to the MoneyHelper appointment, I think it should then only have taken a further five working days to authorise the transfer based on this 23 June 2022 valuation, which would then have taken three further working days to arrive at NZ Britannia – meaning Mr H's QROPS would have had the funds on 5 July 2022.

In response to the Provisional Decision, both parties have already accepted these findings. Mr H added that although Prudential required 'wet' signatures to forms, there was still no reason that the forms could not have been emailed for him to print out and return via courier. He said it was frustrating that this sporadically *did* happen, but when this service or his NZ adviser asked Prudential to do so.

I've considered what Mr H has said. Although Prudential *could* have sent all of the forms by email, the view I reached in my Provisional Decision was that – absent a specific request

from Mr H to deal with him differently – these were matters for Prudential to decide for itself. This service is not a regulator and we don't specify how an insurer's systems and processes should be designed.

At least some of the forms Prudential was sending were part of a standard process for transferring a policy anywhere (including within the UK), and such a process is usually less prone to error – or unauthorised interception of messages – if the provider issues the forms itself, rather than requiring them to be printed out. Whilst it's arguable that a different process could be used for overseas transfers, I'm not sure it's true to say that all destinations would experience as long a postal delay as Mr H seems to have experienced. So I'm satisfied it was open to Prudential to apply its own judgement at the time, although it may be an approach it wishes to review in light of the experience of such cases as Mr H's.

I have said above that where additional information was required, following on from the written forms, Prudential should have requested and been willing to receive this by secure email. I've taken that into account in the proposed timescale. And the reason that some documents were emailed to Mr H's adviser or this service is that Prudential was specifically requested to do so. So I think that reflects that Mr H, his adviser or his scheme could have been more specific from the outset with Prudential on the forms of communication they wished to be used.

Mr H made some other comments about redress, which I'll address where relevant in the next section.

Putting things right

- Prudential should determine the value of Mr H's policy as at 23 June 2022.
- It should take into account the GBP → NZD exchange rate to convert this sum which would have been received by NZ Britannia on 5 July 2022 into NZD. According to x-rates.com £1 bought 1.9431 NZD on that date.
- To this hypothetical sum Prudential should then add a measure of subsequent growth, reflecting Mr H's choice of the balanced fund with NZ Britannia, up to the date of my Final Decision. More information about this is below.
- This adjusted hypothetical sum should then be compared with the value of the actual part of Mr H's NZ Britannia scheme corresponding to the transfer-in from Prudential, to be requested from NZ Britannia as at the date of my Final Decision.
- If the adjusted hypothetical sum is greater than the actual value, there is a loss (in NZD). If it is not, then there is a gain and no compensation is payable for financial loss.

Mr H has also complained about the greater tax burden caused by the transfer. To explain, in NZ Superannuation Schemes (unlike British ones), income earned on savings within the pension is taxed, but payments out of the pension are not. The Britannia Retirement Scheme is a Portfolio Investment Entity (PIE), so tax is paid by the Manager at the member's prescribed investor rate (PIR) on that part of the Scheme's income attributed to the member, and there is no further NZ tax payable on withdrawal.

In effect as a result of this, NZ tax residents who delay transferring their overseas pensions to NZ for more than four years after becoming resident start to attract an increasing one-off income tax charge – to make up for the progressive loss of taxation on income earned within the pension, had the pension been transferred to NZ earlier¹. The portion of the transfer that is taxed increases with the number of years elapsed, according to the so-called 'schedule method' table.

¹ Full details are available at <https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir1000---ir1099/ir1024/ir1024-2014.pdf>

These regulations define a lump sum as "A single payment paid to you directly, or transferred to your New Zealand or Australian superannuation scheme. A lump sum does not include a pension paid regularly to you from a foreign superannuation scheme (which is generally taxable in full when received)." The tax-assessable portion of the lump sum payment is entered on the member's tax return - my understanding is that the tax charge isn't paid by the pension scheme itself. A compensation payment from Prudential would likely also be caught by this definition.

Mr H became a NZ tax resident in February 2005. He is in effect complaining that because his transfer was made in the 2024-25 NZ tax year (April 1 - March 30) rather than the 2022-23 tax year as it should have been, the one-off tax charge he'll have to pay is determined from him being 16 (instead of 14) years after his four year tax exemption period expired. This means that instead of 60.27% of the transfer being taxed as income in the year of receipt, 67.84% will be taxed - i.e. an additional 7.57% of the transfer will become subject to income tax at Mr H's marginal rate.

In most cases, I would have been prepared to use a broad benchmark of investment growth to update the hypothetical transferred sum from 2022 to the date of settlement. However, I think it would be difficult to identify an appropriate benchmark in this case – the balanced fund Mr H was in is not a typical UK investment for which the Financial Ombudsman Service often specifies benchmark indices. It contains a lot of Australasian and NZ investments and no UK-specific component. In my view it is fairest to compensate Mr H by obtaining the actual growth of the NZ Britannia balanced fund, taking into account its charges, from 5 July 2022 to the date of my Final Decision.

To put matters right, Prudential would need to ask NZ Britannia to quote a figure for:

1. Preferably, the growth the fund would have achieved from 5 July 2022 up to the date of my Final Decision *before* allowance for ongoing tax charges on the fund's income;

Or, if 1) is not available:

2. The growth the fund would have achieved over the same period *after* allowance for ongoing tax charges on the fund's income.

Only if 2) applies, the effect of the progressively higher one-off tax charge on the inbound transfer would also need to be undone, to avoid double-counting the tax Mr H would have paid. I asked Mr H to clarify what his marginal rate of tax is in response to my Provisional Decision. He says that his PIR is 28%, but the rate of income tax he pays is 30% (meaning his income is between \$48,001 and \$70,000). This may be subject to retrospective change with the NZ Budget due on 30 May 2024.

My understanding is that it is the income tax rate, not the PIR, that applies to the assessable part of a foreign lump sum pension payment – as it is added to Mr H's income in that year for income tax purposes. There is always the possibility that budget changes can occur, but I consider the 30% rate is a fair assumption to bring matters to a close given that the impact on Mr H's case is having an additional 7.57% of his transfer taxed at 30% (meaning a 2.27% difference). So if – and only if – 2) applies, then the impact of the higher one-off tax charge can be undone by 'grossing up' the growth rate by a factor of $1/0.9773$.

A redress payment equal to the amount of any loss could in theory be paid either to Mr H directly, or to NZ Britannia as a 'top up' payment following the recent pension transfer. Prudential has told this service that it's currently enquiring with NZ Britannia whether it can make the payment directly to that scheme. In either case I consider it's likely to attract tax at the 'schedule method' corresponding to how long the current tax year is from when Mr H

became tax-resident. But I think this will broadly correspond to tax Mr H would always have had to pay from the income his pension funds earned, if a greater amount had been transferred sooner.

So, providing Prudential has made any adjustment for doubly-counted tax (only if the growth is being determined from 2) above), then no further adjustment would be needed to the redress payment. My understanding is that it would be down to Mr H to deal with any tax payable (just as he would do with the recent transfer) through his tax return.

Compensation for distress and inconvenience

The investigator thought that Prudential should pay Mr H a further £275 (in addition to the £475 she thought had already been paid), to recognise the upset Prudential caused because of the length of the delays and incorrect information being requested over a sustained period of time. That would result in a total of £750. Guidance on our website suggests this is at the maximum point in a band where the impact of the maladministration had caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. We suggest that typically, the impact would last over many weeks or months.

At the time the investigator proposed this award, Mr H had been waiting until December 2023 to make a transfer which I've concluded should have completed in July 2022 - a delay of 17 months. Now the transfer has been completed we can see that it was delayed by 21 months.

I've taken into account that the sum involved wasn't necessarily life-changing - it was a pension that Mr H had actually overlooked for some years, and was looking to consolidate with his main fund. So I don't consider the distress and inconvenience strays into the subsequent band where we'd expect to see disruption to Mr H's daily life. However I don't doubt that this will have been a considerably frustrating and distressing experience for Mr H, with in my view no justification for the lion's share of this delay. In my view a total of £750 compensation for distress and inconvenience adequately recognises this, so this should be paid to Mr H (to the extent to which it hasn't been paid already).

My final decision

I uphold this complaint and require The Prudential Assurance Company Limited to calculate and pay any compensation to Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 June 2024.

Gideon Moore
Ombudsman