

## **The complaint**

Mr E has complained about Prudential Assurance Company Limited's handling of a request for advice to transfer his occupational pension defined benefit ('DB') scheme to a personal pension. Mr E believes he has lost out as a result of Prudential's service.

The financial adviser who mainly handled Mr E's advice request works for one of Prudential's 'partner' firms which operates under a different name. But, as Prudential is responsible for responding to the complaint, for ease of reading, I will only refer to Prudential within this decision.

## **Provisional decision**

On 31 May 2023 I issued a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

### ***"What happened***

*Mr E approached Prudential in 2019 as he was considering transferring out of his DB scheme of which he was still an active member. Prudential completed a fact-find with Mr E. Then, in a brief letter, Prudential advised him to remain in the DB scheme. Amongst other things it said:*

*"There is no guarantee that by opting out, our advice would be to transfer the Defined Benefits scheme membership to a Personal Pension arrangement. It is not the policy of Prudential Financial Planning to provide advice on opting out of a Defined Benefits scheme."*

*On 17 March 2021 Mr E contacted Prudential again. He acknowledged that it had previously advised him not to opt out of the scheme. But he said he had decided to opt out anyway and to proceed with the transfer. He said he wanted to raise capital for home improvements and a new car. He added that the death benefits available under a personal pension were more favourable for his wife. He also said he was intending to go part time in the next two to five years (when he would be aged between 58 and 60) and draw down funds from his pension to support him before retiring fully at age 65.*

*Prudential's adviser sought internal advice to confirm he could proceed with the advice process in Mr E's circumstances. Prudential provided that confirmation on 26 March 2021. It spoke with Mr E on 6 April 2021 and sent him a link to access Prudential's online portal on 9 April 2021, which it reconfirmed on 10 May 2021.*

*On 26 May 2021 Prudential asked Mr E to seek confirmation of his forecasted state pension entitlement. He provided that the next day.*

*On 13 August 2021 Mr E emailed Prudential to ask if everything was progressing as it should, he said things seemed to have "gone quiet". Prudential replied that it was "slowly moving forward". Mr E asked for another update on 15 October 2021. He said he was becoming concerned. Prudential replied that day. It said there was no cause for alarm and that the final stages of analysis "are not yet triggered". It said it would give Mr E a call.*

On 28 October 2021 Mr E emailed Prudential. He said he'd spoken to the DB scheme administrators and he should receive figures the next day. Prudential asked Mr E to keep it posted. On 31 October 2021 the DB scheme calculated Mr E's DB pension cash equivalent transfer value ('CETV'). On 2 November it emailed a copy to Mr E and he forwarded it to Prudential. The CETV was £499,744 guaranteed until 31 January 2022. Mr E also had additional voluntary contributions (AVCs) worth £10,380.72.

On 15 December 2021 Prudential emailed Mr E. It said it had put Mr E's case forward. It said once the "final indicative analysis" had been gathered it would be time for the abridged advice meeting.

In January 2022 Prudential gathered some more information from Mr E including an attitude to risk questionnaire. On 15 January, Prudential posted a letter to the DB scheme administrators asking for further information. Over the ensuing weeks the scheme administrators provided some details and Prudential chased them for more information including an updated CETV. The scheme administrators sought guidance from Mr E checking that he did want another CETV as he would have to pay £300 for it. Prudential agreed that it would pay the £300 required for the new CETV. On 24 February the administrators acknowledge receipt of payment and said they would provide the new CETV figures. On 15 March 2022 the administrators provided the new CETV which was £494,612.

Prudential wrote to Mr E on 23 March 2022. It confirmed the scheme administrators had provided the new CETV. It also confirmed Prudential's fee for its full advice was capped at £5,000 as that was the fee at the time when Mr E instructed it.

Prudential continued to seek further information from the scheme administrators. It also exchanged emails with Mr E seeking further information.

On 31 May 2022 Prudential provided its abridged advice. It recommended that Mr E should not transfer his DB scheme funds. Amongst other things it noted that both Mr E and his wife, Mrs E, were working. They owned their own home, which was valued at £230,000 and mortgage free. They held £15,000 in cash savings. It repeated the reasons that Mr E wanted to transfer that he had given at the outset, which were: to allow him to work part-time in the future before retiring; and to leave a legacy for his wife and family on his death. Explaining why it wasn't recommending a transfer Prudential said:

- Mr E had other ways of accessing cash, including his savings or borrowing.
- He was three years away from the age he intended to reduce his income and any changes to his plans or circumstances in that time could affect the need for a guaranteed income in retirement.
- He could look again at the possibility of a transfer nearer to his retirement date.
- His DB scheme was his largest retirement asset and would increase each year in line with inflation.
- If he died the scheme would pay Mrs E a spouse's pension.
- Mr E replied the same day. He was unhappy with the delays and Prudential's advice. He said that in the meantime he'd used his savings to fund home improvements and for a car.

Around a week later Mr E complained. Prudential replied in August 2022. It acknowledged that there were some delays between November 2021, when it received the CETV and May 2022, when it issued its advice. So it paid Mr E £150 compensation to address the impact of that. But it said its advice not to transfer was correct.

*In the meantime, on 1 June 2022, Mr E instructed a new advising firm (Firm P) to look into the matter for him. It completed the full advice process, during that time it received a new CETV, revalued to £408,836, with AVCs valued at £9,557. Firm P recommended that Mr E should transfer his DB scheme funds to a self-invested personal pension ('SIPP'). And, on 24 November 2022, secured the revalued CETV figure.*

*I understand that the actual transfer from the DB scheme to the SIPP met with delays and wasn't concluded until 29 March 2023.*

*In the meantime Mr E brought his complaint to our Service. One of our Investigator's looked into it. He didn't think Prudential had dealt with Mr E fairly. Amongst other things he said that Prudential's brochures say it will take around four weeks to complete the abridged advice process. So, after Prudential had agreed that it could give Mr E advice on 26 March 2021 Prudential should have been able to complete its advice process by 26 April 2021.*

*The Investigator noted Mr E had instructed Firm P the day after receiving the abridged advice from Prudential. And that Firm P had completed the full transfer advice process 25 weeks after receiving that instruction. So, on the basis that Mr E had instructed Firm P on 27 April 2021 (the day after Prudential should have been able to provide its abridged advice) then it could have completed its work by 21 October 2021. Our Investigator said Prudential should calculate whether Mr E had suffered a loss because of its delay in completing the advice process. He noted that the DB scheme administrators had provided CETV figures on 31 October 2021 and said Prudential should use those to establish if Mr E had suffered a loss.*

*Prudential didn't agree with our Investigator's assessment of the complaint, so it's been passed to me to decide.*

### ***What I've provisionally 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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

#### ***The applicable rules, regulations and requirements***

*The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Prudential's actions here.*

*PRIN 2: A firm must conduct its business with due skill, care and diligence.*

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

*The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.*

*The regulator, the Financial Conduct Authority ('FCA'), says in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable.*

*Is Prudential's £150 offer of redress reasonable to address the impact of its delays?*

*Prudential has acknowledged that it was responsible for some delays. But it said that, from receiving the revised CETV in March 2022 it dealt with the matter reasonably. And it didn't believe it was responsible for any delays prior to receiving the CETV in November 2021. It believes its offer of £150 compensation is reasonable to address the impact of any delays prior to that point. But I think Prudential has reached that conclusion without a full understanding of how the advice process played out.*

*Mr E approached Prudential in March 2021. At that time he confirmed he'd already made the choice to opt out of his DB scheme. Prudential played no part in that decision. It sought internal guidance to make sure that Mr E's was a case that it could look at. That seems a reasonable step and Prudential confirmed, on 26 March 2021 that it could begin the advice process. But I don't think things went smoothly from then on.*

*When it gave us its file, and a timeline of events, there were significant gaps within it. In fact Prudential gave very little information about what had happened between March 2021 and January 2022. It told us it held very little information for that period. But it said it believed that Mr E and/or the DB scheme administrators were responsible for any delays in that period. I don't know how Prudential arrived at that conclusion without evidence to support it. And it's not clear if Prudential approached its "partner" in order to try to fill in the gaps during the period concerned. But Mr E was able to give us a number of emails swapped between himself and Prudential as well as other documents relevant to the process, which do show how it played out between March and November 2021.*

*It's notable that Prudential had given Mr E a copy of its brochures titled: "An introductory guide for those considering transferring their defined benefit pension"; and "Our advice service". Both of those said its abridged advice process should take around four weeks. Further, the introductory guide said, in bold print, that it was important that clients like Mr E should wait for Prudential to request a transfer value from the DB scheme and not do this themselves. So, at the outset, Prudential gave Mr E an expectation that it should be able to complete its abridged advice process in around four weeks.*

*It might help if I explain that advising on DB transfers is often done in two stages. The first stage is known as abridged advice. This is a shorter form of advice requiring fewer pieces of evidence to complete and is less complex. It only has two possible outcomes:*

- a recommendation not to transfer;*
- a conclusion that the short form of advice is inconclusive about whether a transfer is suitable.*

*And, generally, a client would only move on to the second stage – full advice – if a firm like Prudential has identified that the abridged advice was inconclusive. Where, as in this instance, the firm recommends not to transfer, it's usual for the advice process to end at that point. So, usually, the abridged advice stage is unlikely to take a considerable amount of time. And the four weeks Prudential sets out in its leaflets, while far from guaranteed, seems reasonable.*

*I'll add that a full CETV is not strictly required in order to give abridged advice. But Prudential's told us that its policy is to request a CETV. That's because it will allow Prudential to give its client clear information about the charges applicable to a transfer and also to establish if a CETV offers good value for money.*

*I'll explain that it's common for advising firms to base their initial and ongoing advice fees based on a percentage of the client's CETV. So, without a CETV it can't spell out exactly how much it will charge its clients for advice. But, in this case, Prudential had already agreed with Mr E that, if it provided full advice, it would charge him a capped fee of £5,000. So I don't think it needed the CETV sum to calculate what charges it would apply.*

*Also if its policy is always to request a CETV at the abridged advice stage, then the information in its brochures that the process should be completed in about four weeks, doesn't allow for any delays in receiving the CETV.*

*That said I can certainly understand why Prudential would ask for a CETV as it provides detailed information about Mr E's entitlement from his DB scheme. That information would allow Prudential to assess whether he could meet his income needs in retirement from those figures. And it's not uncommon for scheme administrators to take a couple of weeks to produce the CETV. So, if Prudential insists on asking for one then it's important it does so without delay.*

*In this case, after confirming it could give Mr E advice, Prudential gathered further information from him and gave him access to its Portal. But I've seen no evidence it took any further meaningful action, other than asking Mr E to obtain a state pension forecast, until 15 October 2021. And during that time Mr E had asked for an update on what was happening. But it doesn't appear that prompted Prudential to take further action. Indeed it seems that it was only after Mr E emailed Prudential on 15 October 2021, saying he was becoming concerned with the lack of progress that Prudential took significant action.*

*The emails Mr E's provided show that Prudential advised him not to worry. But this was almost seven months after he had first approached it. Prudential's email said it would phone Mr E. And while I haven't seen a note of that conversation it seems the call did happen as the next email exchange, on 28 October 2021, confirmed Mr E had spoken with his scheme administrators who would provide him with figures soon. So, it seems that conversation on 15 October resulted in Prudential requesting the CETV. And it's quite common for scheme administrators to send those figures directly to scheme members rather than advising firms.*

*Prudential told us that any delay during the period up to January 2022 must have been caused by Mr E and/or the scheme. But it's provided no evidence to support that statement. As I've already said, it took Prudential seven months to even instigate a request for the CETV. And if, as its told us, it requires CETV information in order to complete its abridged advice process, then this is something it should have requested or asked Mr E to request – at the outset – it shouldn't take seven months. And, as I've said above, Prudential's brochure stresses that clients should not request a CETV themselves and wait for Prudential to give that instruction. So I'm satisfied that no blame lies with Mr E for this period of delay.*

*Further, while I don't know exactly when the CETV was requested, I assume it was some time shortly after 15 October 2021. As that date was a Friday the next working day would be 18 October. So assuming the CETV was requested on that day, that means that the scheme administrators took around two weeks to provide the CETV. I don't think that is an unreasonable time-frame in which to supply a CETV. So I don't think the scheme administrators were responsible for any delays up to that point.*

*After Prudential received the CETV it again took very little action immediately. In its comments to us, it's suggested that this was because Mr E requested the CETV too early, because he didn't want to start his home improvements until a later date and so his case wasn't ready for assessment. There is simply no compelling evidence to support that argument on file. And, if that had been the case I would have expected Prudential to advise*

*Mr E at the outset that he should defer asking for the advice until nearer to the time when he wanted access to the funds. But it didn't do that. And, as I've said above, the evidence indicates that it was Prudential that asked Mr E to obtain the CETV following its October 2021 phone call. So, if the CETV was ordered too soon, that was because of Prudential's actions and not because of anything Mr E did.*

*Also, CETVs are usually only guaranteed for three months and – generally – will attract a fee to produce another once that deadline has expired. So, particularly if the case will move to full advice, it's important that advising firms act on CETVs without delay. But Prudential didn't take any meaningful action until January 2022. Even then some of its information requests appear unwarranted. For example it asked the scheme administrators for numerous details about the scheme that simply weren't needed in order to provide abridged advice, for example it asked for the scheme's late retirement factors. But that was entirely irrelevant to the abridged advice process – it would only be relevant if providing full advice, where appropriate pension transfer analysis is required.*

*It follows that I don't think Prudential handled the matter reasonably. It took little or no significant action for around seven months. Then, after receiving the CETV, Prudential again took no meaningful steps for two months. It received all the information it had asked for in March 2022. But it didn't conclude its abridged advice until 31 May 2022, some 14 months later. I don't think there are any persuasive reasons for such a significant delay. And I don't think its offer of £150 redress for the impact of its delays is fair and reasonable.*

*Had Prudential done all that it should have done when it should have done it, allowing two weeks for it to request and receive a CETV, I think it should have been able to complete the abridged advice in roughly six weeks. So I think it should have completed its advice by 7 May 2021.*

*Prudential said it's not the case that it had all the information it needed to complete its abridged advice at an early stage. It said that, after receiving the CETV in March 2022, it had to gather more evidence from Mr E. That was because the fact-find information it held was completed in 2019 and out of date, so it needed further information. But the fact-find process is an integral part of providing any advice. So Prudential should have ensured that it had all of this evidence at the outset. And if it didn't then that's because it didn't handle matters fairly. It follows that any delay because it had to gather further fact-find information, a year after it had begun the process, falls squarely to its mishandling of the issue. So I think it is solely responsible for any delay.*

*Mr E appointed Firm P the day after Prudential provided its abridged advice. And Firm P completed its full advice process, and secured the revalued CETV on 24 November 2022. So, assuming Prudential had completed its abridged advice process by 7 May 2021, it's likely Mr E would have instructed Firm P on the next working day, which was 10 May 2021.*

*I've noted Firm P used the earlier CETV from March 2022 in its initial transfer consideration. But that had expired before it concluded its work and it received another CETV on 25 August 2022, around 12 weeks after Mr E instructed it. So, if Firm P had begun the advice process on 10 May 2021 and received a CETV around 12 weeks later it would have been dated around 2 August 2021.*

*I don't know precisely what that CETV figure would have been at that time. That's because, as well as Mr E's personal circumstances like the number of years he'd contributed to his DB scheme and his salary, external factors like gilt and discount rates also affect CETV values. But, while Mr E's transfer should have been based on a CETV obtained in August 2021, I don't know if Mr P's ceding scheme will be willing, or able, to produce a hypothetical CETV*

*at that date. However, I know that the scheme trustees produced a CETV of £499,744.58 dated 31 October 2021, which was guaranteed until 31 January 2022. Mr P's AVC fund also had a value of £10,380.72. So, to give both parties certainty here, I think it is fair for this CETV and AVC fund value to be used in the absence of a CETV from August 2021.*

*As I've said above it took Firm P 25 weeks to complete its full advice process. But there was then a further delay of around 18 weeks until the funds were actually invested. However, despite the delay, this didn't result in the CETV expiring because it had already been secured with the ceding scheme. So, from Mr E instructing Firm P to the date of investment was a period of some 43 weeks. It follows that, if Mr E had instructed Firm P on 10 May 2021, he could have expected his funds to be invested by 7 March 2022. So, in order to establish if Mr E has suffered a loss, Prudential should carry out the steps I've described under the heading "putting things right" below. When doing so it should use the CETV of £499,744.58 and assume that Mr E's funds were invested from 7 March 2022.*

*For completeness I'll add that Prudential has questioned whether Firm P's advice was suitable for Mr E. But I'm not looking at the suitability of Firm P's advice as that's not something that Mr E has complained about.*

*Prudential has also said that, if Mr E's objectives had changed between its advice process and Firm P's recommendation, that may account for a difference in recommendation. In other words Prudential is implying that a change in objectives could have led to a different recommendation, had Firm P given its advice in 2021. And, as such it's not fair to compare what Prudential did with what Firm P did. I have noted some small changes in Mr E's objectives in the two advice processes. For example by the time Mr E asked Firm P for advice he no longer wanted to raise capital for a car and home improvements. As he'd already paid for those things out of his savings. But I've seen nothing which persuades me that his objectives had changed so much that Firm P is likely to have come to a different conclusion if Mr E had instructed it around May 2021. So I'm satisfied that any losses Mr E might have suffered are attributable to Prudential's unreasonable delays. Further, as Prudential's unwarranted delays were clearly a source of distress and inconvenience for Mr E I think it should address that by paying him £350 compensation."*

## **Developments**

Prudential acknowledged it had taken too long to complete its advice process. So it said it was happy to pay Mr E £350 additional compensation. But otherwise it disagreed with my provisional decision.

In brief Prudential said:

- it accepted Mr E would have promptly approached an alternative advising firm, if Prudential had given Mr E advice not to transfer in May 2022 (I assume it actually means May 2021). But it said there was no evidence an alternative firm would have recommended a transfer.
- It said it wanted to see evidence the advising firm would have recommended a transfer at that time.
- It said any review of the advice would need to be based on Mr E's circumstances as he gave those to Prudential rather than his circumstances over a year later when he approached Firm P. It said the transfer might have been more suitable at that time because Mr E was nearer to retirement or because of a different set of financial objectives. It added that it wouldn't be fair to suggest Prudential's recommendation was incorrect and the new advising firm would have come to a different conclusion.

- It asked to see the details Firm P used in giving its advice and the reasons for its recommendations so it could compare the differences. It also asked for confirmation Firm P didn't arrange the transfer on an 'insistent client'<sup>1</sup> basis.
- It said it didn't believe it had caused a financial loss as Mr E's benefits within his DB scheme would have remained the same. It asked for my comments on whether its abridged advice was suitable. It also said Mr E crystallised a loss by transferring when he did.
- It added that Mr E's losses were caused by: the advice to transfer; his choice to transfer and the receiving SIPP's responsibility for carrying out due diligence.

Mr E accepted my provisional decision. But he told us that he hadn't cashed Prudential's original cheque for £150 compensation.

### **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.

Having done so, I don't intend to depart from my provisional findings.

Prudential has asked me to say whether I think the abridged advice it gave Mr E was suitable. But I don't need to make a finding on this point. Mr E's principal complaint is about the time it took to deliver that advice and the consequences of the delay. So that is the focus of my decision.

As Prudential knows, evidence of what would have actually happened in 2021 had Mr E approached Firm P at that time doesn't currently exist. At that point, Prudential was still in the process of advising Mr E. I don't think it is necessary for me to ask Firm P what it would have done in 2021. Instead, I have to come to my conclusions based on the balance of probabilities.

By the time Mr E approached Firm P, in 2022, he was a year nearer to retirement. He also was no longer looking to raise funds to pay for a car or home improvements, as he'd already used his savings to pay for those things. So the advice Firm P gave was not on an identical basis as the advice Prudential gave. But in my view, the grounds for advising against a transfer were probably stronger at that stage given he no longer needed to release money from his pension to pay for a car or home improvements.

That said, many of Mr E's core objectives remained the same. Those included:

- To be able to leave a lump sum to his family in the event of his death, and flexible access for his beneficiaries to those funds.
- Flexible access to his pension benefits.
- Control of his pension investments.
- The option of retiring early.

Those objectives were broadly similar to those Mr E approached Prudential with at the outset. And Firm P set out in its advice how those could be achieved and why Firm P believed it was in his best interests to achieve those. So, while Mr E's objectives hadn't remained static during the time Prudential was giving him advice, as I said in my provisional

---

<sup>1</sup> Where a client chooses to go against the advice of a financial adviser they are often referred to as an insistent client.



decision I don't think they were so different that Firm P would likely have come to a different conclusion. That's particularly the case as the CETV would almost certainly have been higher in 2021 than it was when Firm P actually gave its advice. That would have given Mr P more room for investment growth and a larger income in retirement to draw his pension from. So that would have given Firm P larger scope to give a positive recommendation to transfer. And as I've said above, at this point Mr E had a specific need to release cash from his pension at that time. So, I'm satisfied that, on balance, if Mr E had approached Firm P for advice in 2021, it would have recommended he transfer out of the DB scheme, for similar reasons to those Firm P gave in 2022.

Prudential has suggested I should give it the opportunity to examine the details of Firm P's recommendations to Mr E. But I don't think that would be appropriate. Mr E hasn't complained about the actions of Firm P. He's happy with its recommendation for him to transfer. And the fact that Firm P might have come to a different conclusion to Prudential, based on similar evidence, doesn't automatically mean that Firm P's advice was unsuitable. That said I will confirm that Firm P didn't proceed on an insistent client basis – It gave a positive recommendation to transfer out of the DB scheme. So, I don't need to share Firm P's advice with Prudential. Instead I'm required to look at Mr E's complaint about Prudential's actions. In doing so I need to determine:

- Whether Prudential did anything wrong; and
- if so, what it needs to do to put things right.

Prudential has now acknowledged that it took too long to complete its advice process. So I need to consider what it should do to put things right. When thinking about that my aim is to put Mr E, as near as possible, into the position he would have been in but for the failure's in Prudential's service. And, as I've said above, I think if it hadn't been for Prudential's unreasonable delays, Mr E would've approached Firm P sooner and I'm satisfied Firm P would most likely have made a recommendation for him to transfer his DB scheme funds to a SIPP far earlier. If he has now suffered a loss because Firm P couldn't achieve that sooner, then I think that is as a direct result of Prudential's actions. That does not mean that I am holding Prudential responsible for the advice of another firm (bearing in mind that Prudential does not consider the transfer was suitable for Mr E), it is simply that I think it is Prudential's actions that have caused Mr E a loss. So, I think it is fair and reasonable to direct Prudential to put things right. And I remain persuaded that the award I made in my provisional decision is a fair and reasonable way to achieve that.

Mr E told us that he didn't cash Prudential's original cheque for £150 compensation. So, as long as Prudential can verify that Mr E hasn't cashed the cheque (or if he returns the uncashed cheque to it) I think it's fair that Prudential pays him the full compensation figure of £350 as I set out in my provisional decision.

### **Putting things right**

#### **Fair compensation**

My aim is that Mr E should be put as closely as possible into the position he would probably now be in if Prudential had acted within a reasonable time frame. To do that Prudential should compare the actual value of Mr E's current pension against the fair value as set out below.

#### **Actual value**

This means the actual value of Mr E's SIPP at the date of my final decision subject to any other deductions as described under the heading "fair value" below.

### **Fair value**

This is what Mr E's SIPP would have been worth at the date of my final decision if Prudential had concluded its work in a reasonable time frame.

I think Mr E would have invested his CETV from 7 March 2022.

To compensate Mr E fairly, Prudential must:

- Ask Mr E's SIPP provider to calculate what Mr E's SIPP would be worth at the date of my final decision if he'd invested the CETV of £499,744.58 and AVCs of £10,380.72 in the SIPP from 7 March 2022. This is the fair value.
- If the actual value is greater than the fair value, no compensation is payable.
- If the SIPP provider is unable or unwilling to calculate a fair value, Prudential will need to determine a fair value for Mr E's SIPP instead, using the FTSE UK Private Investors Income Total Return Index.
- Any additional sum that Mr E paid into the investment should be added to the fair value calculation at the point it was actually paid in.
- Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Prudential totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.
- If the fair value is greater than the actual value there is a loss and compensation is payable. If there is a loss, Prudential should pay into Mr E's pension plan to increase its value by the amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Prudential is unable to pay the compensation into Mr E'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr E won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr E's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr E is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr E would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr E £350 to compensate him for his distress and inconvenience arising from Prudential's unwarranted delays. If Mr E has already cashed the £150 cheque Prudential sent to him then it should only pay a further £200.

The payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mr E within 90 days of his acceptance of my decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Prudential to pay Mr E<sup>2</sup>.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr E would have transferred and invested his pension funds sooner but for Prudential's unreasonable delays.
- If Mr E's SIPP provider fails to provide the information Prudential would need to determine the fair value, then the FTSE UK Private Investors Income Total Return index would be a reasonable alternative benchmark to use.
- This is because Mr E wanted capital growth and was willing to accept some investment risk. And this benchmark is made up of a range of indices with different asset classes, mainly UK equities and government bonds. So, it's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr E's circumstances and risk attitude.

### **My final decision**

For the reasons given above I uphold this complaint. My final decision is that Prudential Assurance Company Limited should pay Mr E the compensation amount as calculated above in my directions under the heading "putting things right". Prudential should provide Mr E with a breakdown of its redress calculation in a clear and simple to follow format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 2 August 2023.

Joe Scott  
**Ombudsman**

---

<sup>2</sup> Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest, it should tell Mr E how much it's taken off. Prudential should give Mr E a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.