DRN-4731618

The complaint

Mr S complains about the service and advice he has received from The Prudential Assurance Company Limited ('Prudential') in relation to his pensions and retirement. Mr S has said that Prudential delayed the process of transferring his defined-benefit ('DB') occupational pension scheme. The transfer value of his DB pension has since fallen. And he says Prudential has therefore caused him this loss.

What happened

Mr S held five different pensions, including three with Prudential. Four of these, including the three with Prudential, were defined contribution ('DC') pensions. With the other a DB scheme.

In March 2018 Mr S took advice from Prudential. It recorded that he was 56, employed full time and had no financial dependents. He owned his own home, subject to a mortgage with an outstanding balance of around £64,000. Prudential noted that his objective at that time was to access £20,000 in tax-free cash ('TFC') to pay for an extension to his property, repairs to his car, to pay for a holiday and to increase his emergency funds. At that time Mr S *expected* to retire around age 67 and to need an income of £1,500 per month. Prudential noted that he had also been thinking about retiring early – but this would be dependent on his retirement income position at the time he came to do this.

Prudential advised Mr S to move two of his DC personal pensions, held with Prudential, into drawdown by transferring the funds to a Prudential retirement account ('PRA'). The total value of these pensions was £98,677.15. This would enable Mr S to access the TFC that he was interested in (£20,000) as this was less than the 25% he was entitled to from these funds. Mr S accepted this advice.

In September 2019, Mr S took further advice from Prudential. It recorded that his circumstances at that time were largely unchanged, including his retirement plans. It said the cost of the renovations to his property had been higher than anticipated by approximately £5,000. So, he wanted to access further TFC to cover as much of this cost as possible, with him funding the remainder.

Prudential recommended that Mr S take the remaining TFC he was entitled to from the funds that had previously been transferred to his PRA (£4,244.18). Mr S again accepted this advice.

Mr S got back in touch with his adviser from Prudential around July 2021. A summary of his state pension entitlement was provided to Prudential in August 2021. And in January 2022 Mr S asked Prudential to arrange for a pension income of £2,000 per month to be paid to him from his PRA, as he had recently retired. An email from Prudential to Mr S on the same day said it understood Mr S' pension provisions were made up of £84,256 in the PRA, approximately £75,000 in another personal pension with Prudential, £13,435 in a personal pension with another provider and the DB pension, which had a cash equivalent transfer value of £179,037.

There was a further meeting in March 2022. Following that meeting Mr S sent the adviser at Prudential the details he held at that time about his DB scheme. The adviser acknowledged receipt of these on 3 March 2022 and asked Mr S to send updated information once this was received from the trustees of the DB scheme.

Mr S received updated information from the DB scheme trustees on 14 March 2022. This included an updated CETV, which was £184,098. This value was guaranteed for three months from that date. This information was shared with Prudential around 23 March 2022.

Messages exchanged between Prudential and Mr S at the start of May 2022 refer to his personal pension that was held with another provider having now been closed and the funds transferred to him.

At the end of May 2022, Mr S sent Prudential a message saying he was following up in respect of his DB scheme.

On 5 July 2022, Prudential issued a suitability report summarising further advice to Mr S. Prudential said Mr S had retired and was drawing an income of £2,000 per month from his PRA. It said he intended to reduce this to £1,500 per month once his mortgage was repaid, which would cost approximately £48,000. And Mr S was looking to clear his mortgage in the near future. Prudential said Mr S wanted to release TFC from the personal pension held with Prudential that he had not yet accessed and use this to partially repay his mortgage, with the remaining balance being repaid from Mr S' other resources, with it noting he had savings at that time of around £30,000. Prudential recommended he transfer the personal pension to his PRA so that he could access TFC. And Mr S again accepted this advice.

I can see there were further messages between Prudential and Mr S in September 2022, where he enquired about his DB pension. The adviser said at that time they were awaiting information from Prudential's specialist DB team.

The transfer of the personal pension to the PRA completed in January 2023. The amount transferred was £71,182.35. And I understand TFC of around £17,000 was transferred to Mr S.

I've seen a message from Mr S to Prudential enquiring what this amount related to, as he said he understood he should only have been receiving a regular income of £1,800 per month. It was explained that this related to the advice from July 2022.

On 15 February 2023, the trustees of Mr S' DB scheme sent him a further transfer value quotation. The letter referred to this being in response to a recent request by him. This said that the CETV of his DB scheme was now £92,826.

Mr S complained to Prudential following the receipt of this information. He said although he had retired at the end of 2021 his plans had been mapped out for over three years. He said he'd asked the adviser at Prudential to consolidate all of his pensions so he had autonomy to access his benefits and that they'd been discussing this for some time – with Mr S referring to meetings over 2020 and 2021. He said the adviser had told him to get a transfer value for his DB scheme and discussed the repayment of his mortgage from his TFC and other assets. But the delays by Prudential had led to the TFC from his personal pension being received a lot later than planned and had led to a significant loss due to the fall in the CETV of his DB pension. Mr S felt Prudential had mismanaged his finances and now questioned its actions as a whole.

Prudential thought the advice it had provided to Mr S about the release of tax-free cash in 2018, 2019 and 2022 was suitable based on his objectives at the time. It agreed though that it had caused delays implementing the advice from 2022. It said it had done a loss calculation and established, if the transfer had gone ahead in July 2022, Mr S would not have been better off – based on market movements in the meantime. But it acknowledged that Mr S had received the TFC later than he should've done. So, it offered to pay Mr S interest on the amount of £541.27 (8% simple interest net of tax) for the period that he had not had the use of those funds.

In respect of the potential transfer of his DB pension, Prudential accepted that Mr S had begun discussing this with the adviser in March 2022. The adviser was not authorised to give advice on the transfer of benefits from a DB pension though so needed to refer this to the relevant department within Prudential. However, that had not happened, and the correct process was not followed. But even though Prudential accepted it had made an error, it didn't agree that it had caused Mr S to incur a loss. It noted that although the CETV of his DB scheme had fallen, he still retained the same pension benefits through that scheme. And it said a DB transfer can take up to six months, so may not have been concluded by the time the first transfer offer expired anyway. Moreover, it said a pension transfer specialist had now reviewed the request retrospectively and said that Prudential's free, abridged advice would have been that Mr S not transfer these benefits. While he could've asked it to give him full advice, this would've carried a fee of up to £10,000, depending on the transfer value. And Prudential said it was likely it would still have advised against a transfer, and it explained it does not process transfers on an insistent client basis. So, even if the correct process had been followed, it would not have facilitated the transfer, and Mr S may've incurred a significant fee. In recognition of the poor service received though, Prudential said it would pay Mr S £500.

Mr S did not accept Prudential's offer and referred his complaint to our service. One of our Investigator's considered the complaint. He thought that Prudential had addressed the complaint fairly and that its offer was appropriate. He thought the advice it had given Mr S was suitable at the time and its offer to address the delay in actioning the 2022 advice was fair. In respect of the DB transfer, Prudential had acknowledged service failings. But the Investigator also noted that the starting assumption set out by the regulator, the Financial Conduct Authority ('FCA'), is that a transfer from a DB scheme is unsuitable. And he thought Prudential's explanation that it's advice would've been not to transfer was reasonable. So, with that in mind and as Mr S was still entitled to his benefits under the DB scheme, he didn't think Prudential needed to take any further action beyond the offer it had already made.

Mr S disagreed. He said the adviser had been aware of his plans for several years and he'd been led by their advice in the actions he'd taken, including opting to retire early.

The Investigator wasn't persuaded to change his opinion, noting that any decision about when to retire was ultimately Mr S'. So, the complaint was referred to me to make a final 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.

I think it is worth starting by saying the role of our service is to informally review and decide individual disputes on a fair and reasonable basis. We aren't a regulator and are an informal alternative to a court of law. We look at what has happened in the specific circumstances of a complaint and decide whether a business has made an error, and if so, what the fair way to address that is.

To do this 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. 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.

I'd add that, because of the informal nature of our service, I've summarised what has happened. If I don't comment on or refer to everything I've been sent or that has been said this isn't meant as a discourtesy or because I haven't thought about it. Rather it is because my decision will address what I consider to be the key issues in deciding what is fair and reasonable.

The advice given by Prudential

As I've summarised above, Prudential recommended that Mr S move the three pensions he held with it into drawdown by transferring the funds to a PRA and that he access TFC from those funds, to address his stated objectives at the time. Based on the information available I think Prudential's advice to take these steps was reasonable.

I can see Prudential completed fact-finds when giving advice, to ensure it understood Mr S' circumstances. His aims and purposes for wanting to access funds were reasonable. The suitability reports indicate that alternatives were considered. But Mr S was at a point of life where he didn't want to take on further borrowing and in fact wanted to reduce this. Mr S was also entitled to access the TFC from his DC pensions given his age. Moving his pensions held with Prudential to the PRA allowed him to access the funds he wanted, meant he wasn't required to take an income and allowed for the rest of his pension to remain invested in line with his recorded attitude to risk. So, overall I think the recommendations were suitable.

Mr S has said that his plan for retiring at the end of 2021 had been mapped out for over three years and that Prudential was aware of this and recommended he do so. The fact-find completed in 2018 did mention Mr S had been think about potentially retiring early. But it also made it clear this was dependent on his circumstances, was not set in stone and that he *expected* to retire at 67. The latter point was repeated in the recommendations made in both 2018 and 2019. But I haven't seen anything to indicate this was questioned at the time. And in any event, I don't think this means that the advice given about accessing his TFC for the reasons he gave was unsuitable.

Mr S has said that he retired early due to advice he received from Prudential. But none of the advice documented relates to when Mr S should retire. And while Prudential may have discussed the sustainability of his pension funds throughout his retirement when talking about his plans, ultimately the decision to retire was Mr S' and not something I can reasonably say that Prudential is responsible for.

The delay in making the transfer recommended in July 2022

Prudential has acknowledged that, after it advised Mr S to transfer the proceeds of his third pension held with it into his PRA in July 2022, there was a delay in this happening which meant Mr S did not receive his TFC until January 2023.

Prudential has provided evidence of a loss calculation it carried out. This looked at whether the position in respect of his pension (specifically its value) would've been greater if the transfer had happened in July 2022. But, due to market movements between the advice and the transfer taking place, Prudential established that the value of Mr S' pension would in fact have been lower if the transfer had happened when it should have. So, he is not worse off as a result of the transfer.

Mr S was though without the use of the TFC for a period of time when he should've had access to it. Prudential offered therefore to pay interest on the amount of TFC for the period Mr S didn't have access to it at a rate of 8% net of tax. And it calculated this totalled £541.27. I think Prudential's offer in respect of this delay, and Mr S not having access to his funds when he should have, is fair and reasonable and in line with what I would recommend.

Mr S' DB pension not being transferred

As I understand it this is the main area of concern for Mr S. He has said that Prudential was aware of his retirement plans and his intention to consolidate all of his pensions for a long time and that this was discussed during 2020 and 2021, along with his aim to do this before he retired at the end of 2021. And by delaying matters and not following these instructions, Mr S says Prudential has caused him a significant loss.

I've seen copies of messages and emails between Mr S and Prudential and these don't indicate that there were discussions in 2020. Rather, after the advice in 2019, the next contact and meeting between the parties appears to have been in July 2021. And the first reference to potentially taking action around the DB scheme appears to have been in March 2022, following which a transfer quotation was obtained.

Prudential though has acknowledged that errors were made. The adviser Mr S dealt with did not have the required regulatory permissions to provide advice on the transfer of a DB scheme so needed to refer this on to a specialist department. But Mr S' request for advice was not referred on to the correct department in March 2022 or before Mr S complained.

Where an error has been made, as has happened here, the aim of any recommendation we make is to put the impacted party back in the position they would've been in but for that error. And if Mr S' request for advice on a transfer had been referred on, this would've been considered in March 2022. But that doesn't mean that a transfer would have taken place.

While Mr S may have wanted to transfer his DB scheme to Prudential, he was required to take regulated financial advice before he could do so. A transfer couldn't proceed without him taking this advice.

Advising on DB transfers is not straightforward. There are a number of rules, regulations and requirements that Prudential needed to consider to do that. Not least the provisions the FCA set that deal with making a personal recommendation and a set of provisions that specifically deal with DB pension transfers. These state that the starting assumption for a transfer from a DB scheme is that it is unsuitable and should only be considered if it can clearly be demonstrated on the evidence from the time that it is in the consumers best interests.

Prudential's process for DB transfers, which is in line with what the FCA permits, is to first provide abridged advice, free of charge, and either conclude, based on more limited information, that a transfer is unsuitable or that it is unclear whether a transfer is suitable and that more information will be needed. If the outcome is that it is unclear, full advice can then be requested, at a cost.

No advice was given here, due to the enquiry not being referred. But if the request had been passed to the right department again Prudential's role wasn't just to put in place what Mr S might've wanted. It had to give him suitable advice and follow its advice process.

Prudential has said, as part of considering Mr S' complaint, the matter was referred to a pension transfer specialist – who holds the relevant permissions to give regulated advice on the transfer of a DB scheme. And they've said that Prudential's advice would've been that a transfer was not suitable. This is because they believed Mr S didn't have the capacity for loss to transfer, the requirement for retirement income, which the DB scheme guaranteed, took precedence over a desire to release money and the reason for wanting to access funds (TFC) was a want rather than a need. And I think this explanation is reasonable.

Mr S has been clear that he wanted to transfer. But that doesn't mean that doing so was in his best interests. The suggestion is that Mr S wanted to access further TFC to clear his mortgage (which would cost around £48,000). But I haven't seen anything that suggests Mr S *needed* to clear this mortgage or that he wasn't maintaining payments. And he was already releasing TFC of approximately £17,000 from the pension funds transferred to the PRA on the advice in 2022. The fact-find at the time indicated that he had savings of approximately £30,000 (including some money from an inheritance). And he'd also released funds from another small pension which had been closed and the proceeds paid to him. So, based on the information recorded at the time, even if he did want to clear his mortgage (and I agree with Prudential this appears to be a want rather than a need), it doesn't appear that he needed to transfer his DB scheme pension and access TFC to do this.

The DB scheme would provide a guaranteed income for the remainder of Mr S' life. He estimated he'd require £1,500 per month in retirement. The DB scheme alone would not have provided this. But the guaranteed income from this, when combined with his state pension from age 67, would've meant that a significant portion of his expected income need was met, reducing the amount he needed to draw from his other pensions, which were already subject to market risk.

Taking all of this into account, based on the information that is available, I can't reasonably say that Prudential would or should have recommended a transfer, if it had followed its correct advice process. So, even if the error that it made hadn't happened, I can't say that Prudential ought to have facilitated the transfer before the CETV obtained in March 2022 had expired. And so, I can't say that Mr S' position would be any different.

Mr S is understandably upset that the CETV of his DB scheme has been recalculated and reduced. But the CETV is not the same as a fund value of an investment linked pension. An investment linked pension's value rises and falls based on the investments held and their performance. The benefits in a DB scheme do not have an investment linked value though – as the underlying benefits are guaranteed. The CETV is a value determined by actuarial principles, taking into account factors including personal circumstances of the pension holder, contributions to the pension and market factors and requiring assumptions to be made about how future events might influence the members benefits. It is generally based on the providers best estimate of the expected cost of providing the guaranteed benefits. So, a fall in this is not a reduction in benefit value. And here Mr S has retained the benefits under the DB scheme and still has access to them. So, while the CETV the trustees have offered him has fallen, he hasn't incurred a loss of pension benefits under the scheme.

Prudential offered Mr S £500 for the poor service it provided – including not referring his request for advice around the transfer of the DB scheme to the right department. I don't doubt that this caused Mr S some frustration. The correspondence I've seen makes it clear that he contacted his adviser following up several time after March 2022. And he appears to have been provided incorrect information about the progress of this enquiry. In the circumstances though I think the offer that Prudential has made is fair.

As a result of the above, while I don't doubt this will come as a disappointment to Mr S, because I think Prudential has made a fair offer, I won't be asking it to do anything more

My final decision

For the reasons I've explained I don't uphold this complaint, as I think The Prudential Assurance Company Limited has already made a fair offer to resolve things.

So, to put things right, if it hasn't already done so, The Prudential Assurance Company Limited should pay Mr S the total redress of £1,041.27 it previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 May 2024.

Ben Stoker
Ombudsman