Ombudsman's Determination

Applicant	Mr W
Scheme	Ford Salaried Contributory Pension Fund (**the Pension Fund**)
Respondents	Trustee of the Ford Salaried Contributory Pension Fund (**the Trustee**)
	Mercer, formerly JLT Benefit Solutions Limited (**JLT**)

Outcome

1. Mr W's complaint against Mercer is partly upheld and to put matters right, Mercer shall pay Mr W £500 in recognition of the significant distress and inconvenience it has caused.

Complaint summary

2. Mr W complained about a number of issues relating to his Additional Voluntary Contribution (**AVC**) policy. His main complaint was that there was a delay in the disinvestment of his policy, and the final value he received was lower than he had expected and had previously been quoted. Mr W considered his financial loss was at least £7,598.20, which is the difference between the amount quoted to him on 26 February 2019, and the amount disinvested on 8 April 2019.

3. Mr W also complained about how he was treated by the Trustee and Mercer, the Pension Fund's administrator, during the disinvestment process. He has said that Mercer was slow in providing information and dealing with his disinvestment, the Trustee did not engage with members about the complexity of the Pension Fund, and he felt let down by the Trustee's responses to his complaint.

4. Mr W also noted that Prudential, the Pension Fund's AVC provider, would not discuss specific policy details with him when he telephoned.

Background information, including submissions from the parties

5. Marsh & McLennan Companies purchased JLT in April 2019, resulting in the JLT UK business being integrated into Mercer. Although the background information below starts before JLT's purchase, for consistency, the Pension Fund's administrator is referred to as Mercer.

6. Mr W was a pensioner member of the Pension Fund, having retired in 2005 at age 60. At retirement, Mr W chose to retain an AVC policy with Prudential, which was invested in a With-Profits Fund.

7. Although not a condition of the AVC policy, Mr W was required to transfer his AVC benefits out of the policy before his 75th birthday, which was in March 2019. Prudential stated that it sent Mercer a transfer reminder letter in September 2018, six months before Mr W's 75th birthday. On 6 September 2018, Mr W received a letter from Mercer, telling him about the required transfer.

8. On 7 November 2018, Mercer sent a reminder letter to Mr W, and Prudential sent a second reminder letter to Mercer, three months before Mr W's 75th birthday. This would have been in December 2018.

9. On 4 January 2019, Mercer wrote to Mr W, and provided him with AVC information that he had requested. The letter reminded Mr W that he should let Mercer know what he wanted to do with his fund before he reached his 75th birthday, otherwise Prudential would disinvest, and send the cash proceeds to the Trustee's bank account. The letter enclosed Prudential's Key Facts and Features Document and With-Profits Guide.

10. Mr W worked with two advisers: Apex Independent Financial Planning (**Apex**), and Hargreaves Lansdown. On 17 January 2019, Mercer received Mr W's Letter of Authority and information request from Apex.

11. During January 2019, Mercer received a number of telephone calls from Mr W and his two advisers, requesting information about Mr W's AVC and asking for annuity quotations from Prudential.

12. On 31 January 2019, Mercer requested the annuity quotations from Prudential, which Prudential issued on 5 February 2019. On 11 February 2019, Mercer forwarded the quotations to Mr W. The annuity quotations also included details about how the With-Profits Fund's bonuses were reviewed annually, and that values could fall as well as rise following a review. New bonus rates were due to come into effect on 15 March 2019.

13. On 1 February 2019, Mercer received a telephone call from Hargreaves Lansdown, requesting information on behalf of Mr W. Mercer also received a number of telephone calls from Mr W and his two advisers during February 2019, chasing for requested information and checking Mercer's transfer process from a security perspective. Also, Mr W complained to Mercer about the length of time it had taken to respond to his advisers' requests.

14. On 13 February 2019, Mr W telephoned Mercer to obtain contact details for Prudential and request income drawdown quotations. During this call, Mercer confirmed that its Service Level Agreement (**SLA**) for queries was 10 business days. On the same day, Mr W telephoned Prudential to discuss income drawdown and the annuity quotations. He said that during this call, he was informed that income drawdown was not available from his AVC policy, and that if he wanted this facility, he would need to transfer to another policy.

15. On 22 February 2019, Mercer asked Prudential if Mr W could reinvest his AVC policy into a Prudential income drawdown policy.

16. On 26 February 2019, Mercer sent Apex a letter answering its queries, and setting out the current fund value, which was £141,736.07. Mr W was also sent a copy. The letter included relevant documents required for transferring his benefits. It also stated that the current fund value included a final bonus, which was not guaranteed. The letter included Prudential's Key Facts and Features Document and With-Profits Guide. The With-Profits Guide described how the regular and final bonuses were added to the policy.

17. On 6 March 2019, Mercer wrote to Mr W apologising for the delays in sending requested information to his advisers. It said the delays were due to large work volumes.

18. On 7 March 2019, Mercer received a response to the queries it had raised with Prudential on 22 February 2019. Prudential confirmed that Mr W could re-invest his fund proceeds into another Prudential policy, but that he would need to provide instructions to Mercer to do so within five weeks, or his policy would be sold, and the cash sent to the Trustee's bank account.

19. On 22 March 2019, Mr W complained to Prudential about it not discussing specific details of his policy with him when he telephoned. Prudential investigated the complaint but did not uphold it, and this was communicated to Mercer on 25 March 2019. Prudential stated that it could not discuss specific details of Mr W's policy with him, as Prudential's client was the Trustee and its advisers, and not Mr W, so it did not have authority to do so.

20. On 25 March 2019, Mercer wrote to Mr W, providing him with Prudential's contact details in case he wanted to discuss the annuity quotations further. On the same day, Mercer also responded to Hargreaves Lansdown's queries from 1 February 2019, and provided an updated fund value of £127,221.18.

21. On 4 April 2019, Apex telephoned Mercer to check that the £127,221.18 value was correct, as this was significantly lower than the previous value quoted. Mercer replied in writing the following day, confirming the value, and enclosing an explanation from Prudential on why Mr W's fund value had gone down.

22. On 5 April 2019, Mercer requested the sale of Mr W's AVC policy, and Prudential sold it on 8 April 2019. The final proceeds were £134,137.87, and this was received in the Trustee's bank account on 12 April 2019. On 18 April 2019, Mercer confirmed this to Apex, and stated that it was awaiting instructions on what to do with the proceeds.

23. On 21 May 2019, Mr W complained to the Trustee about the reduction in his fund value when it was sold.

24. On 30 May 2019 and 13 August 2019, Mercer wrote to Mr W and Apex asking what it should do with the sale proceeds, as the cash was still in the Trustee's bank account.

25. Mr W received a response to his complaint from the Pension Fund's Pensions Manager on 4 July 2019 and from the Chair of the Trustee on 31 January 2020. His complaint was not upheld and an explanation from Prudential on why his fund value had reduced was enclosed.

26. A summary of the explanation is set out below:-

    - The value of Mr W's AVC policy was dependent on the With-Profits Fund's regular bonuses and a one-off final bonus. Regular bonuses gradually increased the guaranteed minimum value of his policy and could not be taken away once added.

    - The final bonus was calculated and only added when the policy was disinvested. The amount of the final bonus reflected the difference between Mr W's accumulated guaranteed policy value and the value of his share of the underlying assets in the With-Profits Fund after smoothing.

    - The With-Profits Fund's smoothed value could be higher or lower than the actual current value of the underlying assets, as it was designed to provide some protection during periods of market downturns.

    - This meant that at any time up to the date that Mr W's policy was disinvested, the final bonus could have increased or decreased since the previous valuation. Mr W received a final bonus from his policy when it was disinvested, but it was lower than was assumed in his valuation on 26 February 2019, due to a reduction in value of the With-Profits Fund's underling assets between the two dates.

27. Mr W telephoned Mercer numerous times during the period January to August 2020 requesting the current value of his cash in the Trustee's bank account. On 23 August 2020, Mercer wrote to Mr W confirming his cash value was £134,134.87.

28. On 8 November 2022, Mercer confirmed that Mr W's policy proceeds were still held in the Trustee's bank account.

Adjudicator’s Opinion

29. Mr W’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee, but that there was maladministration by Mercer, who should pay Mr W £500 in recognition of the significant distress and inconvenience caused to Mr W. The Adjudicator’s findings are summarised below in paragraphs 30 to 43.

30. Six months before Mr W’s 75th birthday, Mercer warned Mr W that he would need to transfer his AVC before reaching his birthday. This was sufficient time in which to allow Mr W and Mercer to organise and implement the transfer.

31. On 17 January 2019, Mercer received Apex’s Letter of Authority and information request. On 26 February 2019, Mercer responded to the request, after receiving numerous telephone calls chasing for a response. So, Mercer took 28 business days to respond to Apex. On 1 February 2019, Hargreaves Lansdown also requested information from Mercer, and it received a response on 25 March 2019. So, Mercer took 36 business days to respond to Hargreaves Lansdown.

32. Response times to both advisers were well outside of Mercer’s standard SLA of 10 business days and were also far longer than Mr W could reasonably have expected and amounted to maladministration. Mercer was aware of Mr W’s 75th birthday deadline, and it should have better prioritised its responses to Mr W and his advisers.

33. Mr W received two policy valuations as follows:

- 26 February 2019 - £141,736.07; and
- 25 March 2019 - £127,221.18.

34. On 8 April 2019, the policy was sold, and the final proceeds were £134,137.87.

35. Although Prudential wanted Mr W to transfer his AVC benefits before his 75th birthday, this was not a condition of the policy. So, Prudential did not have an obligation to disinvest the policy on Mr W’s birthday. Prudential waited until it received instructions from Mercer, on 5 April 2019, before disinvesting the policy.

36. The letter Mr W received from Mercer on 26 February 2019, stated that the current fund value included a final bonus, which was not guaranteed. The letter also included Prudential’s Key Facts and Features Document and With-Profits Guide. The With-Profits Guide described how the regular and final bonuses were added to the policy.

37. So, Mr W should have been aware that the final bonus applied to his policy would only be known when his policy was disinvested, and in the meantime, the value of his policy could change.

39. The total time taken to transfer Mr W's policy was just over three months. This may have been longer than Mr W had anticipated, and Mercer's maladministration resulted in significant response delays, but overall, this was a reasonable timeframe in which to complete a transfer of this nature.

40. Mercer wrote to Mr W three times during the transfer process to let him know that he needed to transfer his policy before his 75th birthday. He could have requested Mercer to disinvest his policy at any time during the transfer process. So, Mercer's maladministration did not result in Mr W suffering financial loss.

41. Mr W also complained that the Trustee did not engage with members about the complexity of the Plan, and he felt let down by the Trustee's response to his complaint. Fund value and annuity quotations were provided to Mr W by Prudential and via Mercer, and documentation he received set out details of the With-Profits Fund and how bonuses were added. So, the Trustee had delegated its responsibility for communicating with members to its providers and the providers had adequately carried out this role.

42. The Trustee's two response letters set out adequate responses to Mr W's complaint, including detailed explanations about how the With-Profits Fund worked.

43. Mr W noted that Prudential would not discuss specific policy details with him when he telephoned. Prudential's client was the Trustee and not Mr W, so Prudential did not have authority to discuss his policy with him, so, Prudential's action was reasonable in this regard.

44. Mr W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr W provided his further comments, which are summarised below:-

- The change in value of his AVC policy had caused him trauma, and this was made worse by Mercer's delays in providing information to him and his advisers.

- He thought that six months to complete the transfer was probably sufficient time if he was dealing with an efficient, organised administrator, but not Mercer.

- He did not know that he could have requested Mercer to sell his policy at any time. Information provided to him about his policy was negligible while he was still working, and non-existent after he retired.

- Prudential had demonstrated contempt for the interest of its client of 29 years, and he felt that Prudential's 20-day response time for answering emails was an indication of this behaviour.

- Prudential did not sell his policy on his 75th birthday, which resulted in it being sold at a loss. He thought this was unethical.

- Prudential's change of final bonus rates on 15 March 2019 should not have impacted the value of his policy, as it was due to be sold prior to this date, on his 75th birthday.

- He considered the final bonus to be a high proportion of the policy's total value, and he wondered if this was because Prudential could reduce the final bonus at any time, whereas it could not change the regular bonuses that had already accumulated.

- Written documentation about his AVC was not issued to him until 2010, approximately 20 years after he joined the Pension Fund. The more detailed information about the With-Profits Fund had only come from the Trustee in response to his complaint, which was 20 years too late. He believed that this illustrated the failure in duty of care by the Trustee and Prudential.

45. I have considered Mr W's comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

46. Mr W's complaint was that there was a delay in the disinvestment of his AVC policy, and the final value he received was lower than he had expected and had previously been quoted. Mr W also complained about how the Trustee and Mercer treated him during the disinvestment process. He also noted that Prudential would not discuss specific policy details with him when he telephoned.

47. The sale of Mr W's AVC policy took just over three months from when Mercer responded to Mr W's initial information request on 4 January 2019. Mr W could have started the process sooner by responding to Mercer's first letter he received on 6 September 2018, rather than requesting information after he received the second letter sent on 7 November 2018. This would have allowed an additional two months for the transfer to take place.

48. Mr W has said that he did not know he could have asked Mercer to sell his policy at any time. But Mr W received three letters from Mercer confirming that he needed to transfer his policy before his 75th birthday, approximately six months and four months before his 75th birthday, and again in a letter on 4 January 2019. I find Mr W ought reasonably to have been aware that he could have disinvested his policy at any time, and that he needed to provide instructions to Mercer before his 75th birthday in order to do so.

49. Mr W submits that Prudential demonstrated contempt for the interest of its client of 29 years, and he felt that Prudential's 20-day response time for answering emails was an indication of this behaviour. I appreciate that Mr W felt that Prudential did not care about its relationship with him, but as previously stated, Mr W was not Prudential's client. Prudential's direct relationship was with the Trustee, and therefore, it did not have the authority to discuss Mr W's AVC policy directly with him. The AVC policy was held with the Trustee on behalf of Mr W. I acknowledge that Prudential's actions could affect Mr W but note that the Trustee asked Prudential for an explanation of the issues raised by Mr W, and these were explained to him in the letters dated 4 July 2019 and 31 January 2020.

50. Mr W said Prudential's change of final bonus rates on 15 March 2019 should not have impacted the value of his policy, as it was due to be sold prior to this date, on his 75th birthday. Prudential did not receive instructions to sell the AVC policy until 5 April 2019, and it did not have an obligation to sell the policy before Mr W's 75th birthday.

51. Mr W has said that he considered Prudential's final bonus to be a high proportion of the policy's total value. This may well be the case, but that is how bonuses are typically structured in With-Profits funds. Mr W was sent the With-Profits Guide on 4 January 2019, which set out more details regarding the With-Profits Fund. I appreciate that With-Profits funds are complex and difficult to comprehend, and Mr W may well have benefitted from receiving more detailed information about his policy during the term of his policy. However, the Trustee appropriately delegated its responsibility for communicating this information to members to Mercer, who adequately carried out this role. Had Mr W required more information to aid his understanding of the AVC policy, he could have requested this at any point during its term.

52. In summary, I find that:

- long response times amounted to maladministration, so I partly uphold Mr W's complaint against Mercer;
- while Mercer's delays did not directly result in Mr W suffering financial loss, I find that he will have suffered non-financial injustice which should be recognised; and
- communications provided to Mr W by the Trustee, and its delegated providers, were acceptable, so I do not uphold Mr W's complaint against the Trustee.

Directions

53. Within 28 days of the date of this Determination, Mercer shall pay £500 to Mr W in recognition of the significant distress and inconvenience caused to Mr W.

Anthony Arter CBE

Deputy Pensions Ombudsman

27 January 2023