

Ombudsman's Determination

Applicant	Mr Z
Scheme	Prudential Company Pension Transfer Plan (the Plan)
Respondents	Prudential Assurance Company Ltd (Prudential)

Outcome

1. I do not uphold Mr Z's complaint and no further action is required by Prudential.

Complaint summary

2. Mr Z complained that Prudential switched his pension fund into a cash fund a month before his normal retirement date (**NRD**).
3. Mr Z said he had just made new investment choices and he had expected that these new investments would continue beyond his NRD until he decided to claim his pension.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. On 26 June 2007, Mr Z's defined contribution occupational pension scheme was transferred into the Plan following a Section 32 buyout. Mr Z's pension savings were then invested in a Lifestyle option. This meant that his investments were automatically switched to lower risk funds as he approached his NRD.
6. On 5 June 2018, Mr Z telephoned Prudential to discuss what would happen when he reached his NRD in January 2019. Prudential explained that he would have to make decisions regarding what would happen to his pension and that it would write to him and explain the options that were available.
7. On 12 June 2018, Mr Z received his annual pension statement. The enclosed letter stated that as there was now only a short period until Mr Z's NRD he needed to start thinking about how to access his pension.

8. On 19 June 2018, Mr Z telephoned Prudential to say that he had some decisions to make about his pension. Prudential explained that Mr Z's pension funds were currently invested in a Lifestyle option. Mr Z could opt out of this at any point, but he would need to either write to Prudential to do this or to complete an investment alteration form. There would be no charges made if he changed investments and the maturity date of the Plan would remain the same.
9. On the same day, Mr Z telephoned Prudential to explain that he was considering keeping the Plan invested beyond his NRD, but he wanted to check if he could make further contributions to the Plan after this date. Prudential confirmed that he would be unable to pay contributions into the Plan and that if the Plan remained invested the value of his investments could fluctuate.
10. On 19 August 2018, Prudential sent a letter to Mr Z which stated that the approximate value of his pension fund at his NRD would be £32,359.06 and it was time to think about his pension savings. The letter explained that there were different options Mr Z could take or he could do nothing and leave his pension savings invested for now.
11. On 30 August 2018, Prudential sent a letter to Mr Z that stated it was writing to him about his investment selection. In summary:
 - The existing Lifestyle option was closing.
 - Mr Z was exceeding the maximum number of funds he could invest in and so he could not be moved to the new Lifetime Investment profile.
 - The Lifetime Investment profile was designed for those who have not yet decided how to take their benefits.
 - Mr Z could change his investments or cancel the Lifestyle option.
 - If it did not hear from Mr Z within the next 21 days, it would cancel the Lifestyle option for him and send confirmation of this alteration in writing.
12. On 10 September 2018, Mr Z telephoned Prudential to ask why he had received a letter informing him that he was invested in too many funds. Prudential stated it would investigate why he had received the letter.
13. Later the same day, Prudential telephoned Mr Z to say that he needed to choose fewer funds so that he could move to the new Lifetime Investment profile. Prudential then sent Mr Z an email that set out the funds he could invest in.
14. On 12 September 2018, Mr Z completed an investment alteration request form. Mr Z's fund choices were:

M&G Global Themes	35%
Artemis Global	35%

Fidelity Asia	30%
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15. On 24 September 2018, Prudential sent a letter to Mr Z which stated that it had received his completed investment alteration request form but the funds he had selected were not available for the Plan. This meant that Mr Z needed to complete a new investment alteration form and if it was received by 10 October 2018 Prudential would keep to the original date of receipt of 14 September 2018 as the effective date of the switch.
16. On 26 September 2018, Mr Z telephoned Prudential to ask which investments he could choose. Prudential explained how Mr Z could filter the online fund library and sent an email to Mr Z with a new investment alteration request form.
17. On 1 October 2018, Mr Z completed an investment alteration request form. Mr Z's fund choices were:

Baillie Gifford Global Select Fund	35%
Blackrock Ascent European Equity Fund	35%
Prudential Index-Linked Fund	30%

18. On 8 October 2018, Prudential sent a letter to Mr Z informing him that the Prudential Index-Linked Fund was not available for the Plan and so it was unable to process the switch. The letter also stated that to process the change to his investments Mr Z needed to complete a new investment alteration request form. If the new form was received by 15 October 2018 Prudential would keep to the original date of receipt of 14 September 2018 as the effective date of switch.
19. On 12 October 2018, Mr Z telephoned Prudential to ask why his fund choice was not available when it had been on the list of investments to choose from on the investment alteration form. Mr Z said he was trying to switch into a different fund allocation as he was not planning to take his pension until after his 65th birthday in January 2019. Prudential stated that it would investigate what had happened and call him back.
20. On 15 October 2018, Prudential telephoned Mr Z to say that the issue was that he needed to clarify whether he wanted to choose the active or passive Prudential Index-Linked Fund. Mr Z stated that the form he had received did not have an active index linked fund but just contained an index linked fund or an index linked passive fund. Prudential agreed that the form could have been clearer, and it accepted Mr Z's choice of the active index linked form over the telephone rather than requiring him to complete another form.
21. On 16 November 2018, Prudential sent Mr Z a letter stating that he needed to make choices about his pension. It also stated:

“Approximately one month before your normal retirement date we will switch your fund to a Prudential Cash fund. Whilst this switch will not provide an absolute guarantee it will offer a measure of security as this cash fund is less likely to fall in value than other more volatile funds.”

22. On 12 December 2018, Mr Z’s pension funds were moved to the Prudential Cash fund.
23. On 1 October 2020, Mr Z received his annual pension statement which showed that he was now invested in the Prudential Cash fund and the fund value on 26 June 2020 was £31,673.54.
24. On 3 October 2020, Mr Z complained to Prudential that he had asked for his funds to remain invested and not be moved to a cash fund.
25. On 26 November 2020, Prudential sent a letter responding to Mr Z’s complaint. It confirmed that it had written to him on 16 November 2018 informing him that his funds would switch to a cash fund approximately one month before his NRD. This was as detailed in the policy terms and condition.

Prudential’s position

26. Prudential acknowledged that it did not act on Mr Z’s telephone instructions on 15 October 2018 and has offered to amend his investments to reflect his instructions on that date.
27. It will however retain the date that the investments were moved to the Prudential Cash fund. Mr Z was informed regarding the switch to the Cash fund and he did not confirm to Prudential that he did not want this to happen.

Mr Z’s position

28. Mr Z acknowledged that Prudential has now offered to act on his telephone instructions on 15 October 2018. When he made the decision to switch funds this was for the period up to and after maturity of the Plan and not just from September to December 2018. He does not understand why Prudential would make the switch to a cash fund when he had only just selected a new investment strategy.

Adjudicator’s Opinion

29. Mr Z’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator’s findings are summarised below:-
 - Section 8.1 of the Plan Policy booklet set out that in preparation for taking pension and lump sum benefits Prudential would switch all units allocated to the Plan into the Prudential Cash fund, but no earlier than a month before NRD. It also stated:

“We will not apply this switch to the Prudential Cash fund if the plan holder asks us in writing not to make the switch.”

- Prudential wrote to Mr Z on 16 November 2018 to inform him that approximately one month before his NRD his investments would be moved to a Prudential Cash fund. Mr Z has said that he did not receive this letter, or he would have acted on it. The Adjudicator’s opinion was that as the letter was correctly addressed it was reasonable for Prudential to believe the letter would have been delivered to Mr Z and that it had informed him of its intention to move his investments to a Prudential Cash fund. The Adjudicator noted that Mr Z received all other postal correspondence from Prudential.
- The Adjudicator reviewed Mr Z’s contact with Prudential prior to his NRD to consider if he had explicitly informed Prudential, clearly and in writing, that he did not wish the switch to the Cash fund to go ahead or if he had issued a formal verbal instruction to Prudential that he wished to stay invested in the Plan beyond NRD.
- Mr Z telephoned Prudential on 5 June 2018 to discuss what would happen when he reached his NRD, but he did not actively set out his intentions to remain invested in the Plan. Mr Z also spoke to Prudential in two telephone calls on 19 June 2018 and he did not say explicitly in either of these telephone calls that he wished his pension to remain invested beyond his NRD but rather that he was exploring his options.
- Prudential did explain that there would be no charge to change investments and that the maturity date of the Plan would remain the same even if there were any changes made. However, in the Adjudicator’s opinion, when Mr Z asked about the payment of future premiums and the tax implications of leaving his investments in place beyond his NRD Prudential could have explained that Mr Z needed to formally notify them if he wished his investments to remain in place.
- Mr Z has said that the fact he chose a new investment strategy showed Prudential that he wished his funds to remain invested beyond his NRD. However, Mr Z had to make a change to his investment strategy as the current Lifestyle option was ending. The Adjudicator did not think the action of choosing new investments was sufficient to indicate to Prudential that Mr Z wanted his funds to remain invested beyond his NRD.
- Mr Z did however say in his telephone call with Prudential on 12 October 2018 that he wanted to choose new investments as he was planning not to take his pension until beyond his NRD. The Adjudicator would again have expected Prudential to inform him that he needed to formally confirm this in writing if he wished for his investments to remain in place and not be switched to a cash fund.

- The Adjudicator noted that there were several opportunities for Prudential to have provided Mr Z with clearer information regarding what he needed to do to remain invested in the Plan, but she considered this to be poor administration rather than maladministration.
 - In the Adjudicator's opinion Mr Z could also have asked in the telephone calls whether he needed to do anything to allow his funds to remain invested beyond the end date of the Plan and he did not do this. It was unfortunate that Mr Z did not receive the letter of 16 November 2018, as this meant he did not have the opportunity to contact Prudential to request that the switch to a cash fund did not happen. However, as the letter was addressed correctly the Adjudicator had no reason to doubt that it was sent, and so Prudential could not be held responsible if Mr Z did not receive it.
 - The Plan's terms and conditions specified that any request to not apply the switch to the Prudential Cash fund should be in writing. Mr Z has not provided any evidence to show that he informed Prudential in writing that he did not wish the switch to a cash fund to go ahead, and, in the Adjudicator's opinion, Mr Z did not formally notify Prudential that he wished to remain in the Plan. In the circumstances the Adjudicator found that Prudential had acted in line with the Plan's terms and conditions and there was no maladministration in switching Mr Z's investments to the Prudential Cash fund.
30. Mr Z did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Z provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Z which are summarised below.

Mr Z's additional comments

31. Prudential have been negligent and did not provide him with a duty of care. Prudential has not made it clear that he should have notified Prudential in writing if he wanted to remain invested in the Plan beyond his NRD.
32. The fact that Prudential did not act on his instructions in October 2018 was also negligent.
33. It was always his intention to leave the pension invested after the maturity date and in the investments of his choice. He does not understand why Prudential would give him investment choices that would only be in place for a few months rather than as long-term investment decisions.
34. He has no record of receiving the Prudential letter of 16 November 2018 as he would have responded immediately. He has responded to all other correspondence with Prudential in a timely manner.

Ombudsman's decision

35. Mr Z complained that Prudential switched his pension fund into a cash fund a month before his NRD. Mr Z said he had just made new investment choices and he had expected that these new investments would continue beyond his NRD until he decided to claim his pension.
36. The Plan rules set out that all the units allocated to the Plan will be switched to the Prudential Cash fund no earlier than a month before a members NRD. Prudential notified Mr Z in writing that it was going to make the switch to the Cash fund so that he had the opportunity to inform it if he did not want this to happen. I agree with Mr Z that it is unfortunate that he did not receive this letter. I am satisfied though that this letter was correctly addressed and that Mr Z has received other correspondence from Prudential. In the circumstances I agree with the Adjudicator that it is not the fault of Prudential that this letter did not reach Mr Z. I also note there was other information available to Mr Z about the switch to the Cash fund.
37. Mr Z has said that he had not previously been informed that he must inform Prudential in writing if he did not want his Plan benefits to be switched to the Cash fund prior to his NRD. The Adjudicator has taken the view that if Mr Z had given an explicit verbal instruction to Prudential that he wished his Plan benefits to remain invested then Prudential should have acted on this.
38. Prudential has provided the telephone calls that took place between June and October 2018 and although Mr Z does refer to the fact that he was considering leaving his pension benefits invested in the Plan, at no point does he give a specific verbal instruction to Prudential that he wished his benefits to remain invested beyond his NRD. I agree with the Adjudicator that there were opportunities for Prudential to have given more appropriate guidance to Mr Z. However, it has responded appropriately to all the specific questions that Mr Z asked and has confirmed in writing when there was to be a switch to the Cash fund.
39. I find that although there were opportunities for Prudential to be more proactive regarding the verbal information it gave Mr Z it did confirm its intentions to convert Mr Z's benefits to the Cash fund in writing. Prudential has fulfilled its obligations to notify Mr Z that his investments would not remain in place and has acted within the rules of the Plan. I do not uphold this aspect of Mr Z's complaint.
40. Mr Z said that the fact that he chose new investments should have indicated to Prudential that he wished to remain invested in the Plan. It is a member's choice when they make changes to their investments and I do not find that the simple act of choosing new investments was enough to alert Prudential that Mr Z wished to leave his benefits invested beyond his NRA.
41. Mr Z did telephone Prudential in October 2018 and asked for his investment choices to be changed. This was in response to a communication from Prudential that the current lifestyle option was changing and Mr Z needed to make new choices. I agree with Mr Z that Prudential did not handle the process of choosing the new investments

well as he had to make several phone calls and the final choice request he made in the telephone call of 15 October 2018 was not acted on.

42. Prudential has now offered to make this switch retrospectively for Mr Z for the period from 14 September to December 2018 when the change to the Cash fund was made. Due to a change in its systems, Prudential needs Mr Z to give his consent for this switch to happen. Mr Z has indicated that as he wanted the new investment choices to remain in place beyond December 2018 he does not require this switch to now be done. I agree that Prudential should have acted on Mr Z's telephone instructions of 15 October 2018, however, without written instructions that he wished to remain invested beyond his NRD, the failure to do so has had no financial impact on Mr Z as he does not now require this switch to take place.
43. I do not uphold Mr Z's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
13 March 2023