Ombudsman's Determination

Applicant	Ms Y
Scheme	NHS AVC Scheme (**the Scheme**)
Respondents	Capita Prudential King's College Hospital NHS Foundation Trust (**the Trust**)

Outcome

1. Ms Y's complaint against Capita, Prudential and the Trust is partly upheld. To put matters right, Capita and Prudential shall pay Ms Y £1,000, split equally between the two parties, for the serious level of distress and inconvenience caused to her.

Complaint summary

2. Ms Y complained that Capita did not deduct Additional Voluntary Contributions (**AVCs**) from her salary when instructed to do so. This resulted in a delay in investing her AVCs with Prudential, and consequently, she missed out on receiving tax relief and investment returns.

3. Ms Y also said she spent a lot of time setting up multiple policies with Prudential and corresponding with Capita, Prudential and the Trust. Ms Y wants to be compensated for the financial loss incurred.

Background information, including submissions from the parties

4. Ms Y was employed by the Trust. The Trust's payroll provider was Capita, who was responsible for deducting AVCs from employees' salaries and passing them to Prudential for investing.

5. On 7 January 2019, Ms Y telephoned Prudential to start paying AVCs of £898 per month via salary deduction. On the same day, Prudential wrote to Ms Y confirming that her AVCs would be invested 100% in the Prudential International Equity Fund.

6. On 24 January 2019, Ms Y telephoned Prudential and amended her investment choice to 40% in the Prudential International Equity Fund, 30% in the Prudential UK Equity Fund and 30% in the Prudential Ethical Fund.

7. On 25 January 2019, Prudential wrote to Capita, with instructions to set up the deductions from Ms Y's salary with effect from February 2019. Prudential also confirmed this to Ms Y. Prudential told Ms Y that if no deductions had been made to her salary within two months, she should contact Capita.

8. On 7 May 2019, Ms Y telephoned Prudential to discuss increasing her AVCs. Prudential told Ms Y that Capita had not paid any AVCs to her policy. Ms Y telephoned Capita to find out why, and followed up with an email, but she did not receive a response.

9. Prudential said that it telephoned Ms Y on 13 and 14 May 2019, but the calls were not answered. On the second call, Prudential left her a voice message.

10. On 20 May 2019, Prudential wrote to Ms Y and confirmed that it would instruct Capita again to start deducting £898 per month from her salary, backdated to February 2019. On the same day, Prudential wrote to Capita with the instructions.

11. By 27 November 2019, Prudential had not received any contributions from Capita, so Prudential wrote to Capita asking why.

12. On 21 December 2019, Ms Y met with her financial adviser who said that there had been no AVC contributions deducted from her salary.

13. On 24 December 2019, Capita telephoned Prudential to ask how it should pay the AVCs to Prudential. On the same day, Ms Y telephoned Prudential to increase her AVCs to £1,000 per month with effect from February 2020, and to make two lump sum contributions in February and March 2020 of £3,686.26 each. Prudential made these contribution amendments to Ms Y's existing policy. Ms Y instructed the AVCs to be invested 45% in the Prudential UK Equity Fund and 55% in the Prudential International Equity Fund.

14. Ms Y said that the two lump sums were later amended to £4,696.26 per month for February and March 2020.

15. On 24 December 2019, Ms Y telephoned Capita. Capita said that Prudential had written to it but had not stated the amount that should be deducted from her salary. On 27 December 2019, Prudential provided payment instructions to Capita. On the same day, Prudential wrote to Ms Y confirming her new monthly contributions and lump sum payments. The letter also stated that Prudential would provide Capita with the new instructions for her salary deductions, which it did on 9 January 2020.

16. On 6 and 30 January 2020, Ms Y emailed Capita to find out if it had received Prudential's instructions. Ms Y said that Capita tried to telephone her on 3 February 2020, but she was about to go on holiday and missed the call.

17. On 3 February 2020, Capita telephoned Prudential, and asked for confirmation of Ms Y's contribution deductions, which Prudential provided by email on 4 February 2020.

18. On 28 February 2020, Prudential received the first contribution of £4,696.26. But the payment referenced Kings Healthcare as the employer, not the Trust, which Ms Y had confirmed on her application. Therefore, the contribution could not be applied to Ms Y’s policy.

19. On 7 March 2020, Prudential automatically lapsed Ms Y’s policy, as it had not received any contributions within the first 12 months.

20. On 19 March 2020, Prudential received confirmation that the payment it had received that referenced Kings Healthcare was for Ms Y.

21. On 1 April 2020, Prudential emailed Capita saying that Ms Y’s policy had lapsed and so the contribution could not be invested. Prudential wanted to send the contribution back to Capita. On 2 April 2020, Ms Y received an email from Capita updating her on the situation and informing her that the lump sum would need to be refunded to her.

22. On 21 April 2020, Prudential emailed Ms Y, asking her to submit another policy application.

23. On 28 April 2020, Ms Y telephoned Prudential to increase her AVCs to £1,200 per month with effect from June 2020, and to complain to Prudential about lapsing her policy and the delays that she had incurred.

24. On 28 May 2020, Prudential set up a new policy record for the increased contributions, and informed Capita of Ms Y’s increased contributions.

25. On 29 May 2020, Ms Y received a letter from Prudential stating that her new AVCs should start from June 2020.

26. On 24 June 2020, Prudential wrote to Ms Y saying that it needed more time to respond to her complaint.

27. On 23 July 2020, Prudential responded to Ms Y’s complaint, but did not uphold it, as it had instructed Capita, but no contributions had come through. Prudential sent a cheque for £100 to Ms Y for the delay in responding to her complaint, but she has said that she did not bank it.

28. On 19 August 2020, Ms Y complained to the Trust and Capita.

29. On 3 September 2020, Capita emailed Prudential saying that it had not received instructions from Prudential to increase Ms Y’s AVCs to £1,200 per month.

30. On 18 September 2020, Capita responded to Ms Y’s complaint. Capita said that it could only act on instructions from Prudential, and to date, it had only received notification to deduct £4,696.26 in both February and March 2020, and to change the monthly deduction to £1,000 per month. Capita said that it had tried to contact Prudential on several occasions with no response.

31. On 22 September 2020, Ms Y's husband spoke to Prudential to increase Ms Y's contributions to £2,000 per month. Prudential stated that the previously agreed contributions would need to be collected first.

32. On 29 September 2020, Ms Y complained to Prudential again, and asked for a financial loss assessment, which she never received.

33. On 11 November 2020, Prudential replied to Ms Y's second complaint, which it did not uphold. Prudential agreed that Ms Y was entitled to a financial loss assessment, as contributions had been deducted from her salary, but not passed to Prudential for investment. Prudential said that the calculation would need to be carried out by the Trust.

34. On 14 April 2021, the Trust confirmed that Ms Y's salary deductions had been paid to Prudential within one week as follows:

- £4,696.26 per month in February and March 2020;
- £1,000 per month from April to September 2020;
- £2,000 in October 2020; and
- £1,200 per month from November 2020 to April 2021.

35. During the course of The Pensions Ombudsman's (**TPO**) investigation, Prudential offered Ms Y £250 as an apology for the delays.

36. Prudential confirmed its process for setting up policies as follows:-

- On receipt of an application, Prudential sends instructions to the employer's payroll provider to set up contribution deductions.
- Prudential contacts the payroll provider after three months, and if no contributions have been received, lapses the policy after 12 months.
- If Prudential receives instructions to vary contributions, it passes these instructions to the payroll provider in a timely manner.

37. Prudential said that it had completed this process for Ms Y's policy, and that Capita had failed to act on the £1,200 per month instructions sent to it on 28 May 2020.

Adjudicator's Opinion

38. Ms Y's complaint was considered by one of our Adjudicators who concluded that the actions of both Capita and Prudential had amounted to maladministration.

39. The Adjudicator’s findings are summarised below:-

- Ms Y first set up her policy with Prudential for £898 per month on 7 January 2019, and Prudential wrote to Capita with salary deduction instructions on 25 January 2019 and again on 20 May 2019, after contributions had not been received. But Capita claimed that it did not receive either of these instructions.

- On 28 April 2020, Ms Y increased her AVCs to £1,200 per month, and on 28 May 2020, Prudential wrote to Capita with the new salary deduction instructions. But Capita claimed that it did not receive these instructions either. Ms Y’s contributions eventually started in February 2020, one year after her initial telephone call to Prudential.

- Prudential has said that if no contributions were received, it should have contacted Capita three months after first setting up Ms Y’s policy, which would have been in April 2019. But there was no evidence to suggest that this took place. It was only when Ms Y telephoned Prudential on 7 May 2019, that Prudential wrote to Capita again, with the same instructions, on 20 May 2019. Having received no contributions, Prudential should have chased Capita in August 2019, but failed to do so until 27 November 2019.

- There was also no evidence to suggest that Prudential chased Capita after increasing Ms Y’s contributions to £1,200 on 28 May 2020. Prudential did not follow its process for setting up a new policy, and it should have chased Capita more promptly when contributions were not received.

- Capita claimed that it did not receive three of Prudential’s written instructions. But Capita did receive correspondence from Prudential, so Prudential had posted instructions to a correct address. Despite the vagaries of the postal system, it was improbable that Prudential’s instructions would have gone missing three times, particularly as they were sent over a period of 16 months. So, Capita had an issue with managing its post.

- It could not be overlooked that Ms Y could have taken simple steps to determine whether her contributions were being made correctly. When Ms Y first set up her policy, she started with sizeable monthly contributions of £898, which should have been deducted from her salary. At the very minimum, Ms Y could have checked her payslips, which Prudential had told her to do for the first two months after setting up her policy. If she had done so, it is more likely, than not, she would have noticed the deductions not being made or being incorrect, as her financial adviser had done on 21 December 2019.

- The rule of mitigation requires an applicant to take steps to minimise his or her financial loss, and the outcome would have been different had Ms Y checked her payslips and taken prompt action with Capita and Prudential. So, Capita and Prudential could not be expected to meet any potential loss of investment returns from the missed or incorrect contributions.

- Ms Y had likely suffered significant non-financial injustice because of Capita's and Prudential's maladministration over an extended period of time. Ms Y should be awarded £500 for distress and inconvenience, split equally between Capita and Prudential. This was in addition to the £350 that Prudential had already offered to pay.

40. Capita provided further comments and accepted the Adjudicator's Opinion. Capita's comments are summarised below:-

- All of Prudential's letters to Capita had been incorrectly addressed or were sent directly to the Trust.

- However, Capita did eventually receive a number of the letters via mail redirect, but some were never received.

- Despite efforts by Capita to contact both Prudential and Ms Y to resolve the matter, it recognised that its overall service had not been to the standard it wanted to achieve.

41. Prudential provided further evidence which showed that all of Ms Y's AVC salary deductions from February 2020 to December 2022 had been invested in her AVC policy. Prudential accepted the Adjudicator's Opinion.

42. Ms Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms Y provided her further comments, which are summarised below:-

- By taking prompt and continued action, she had fully met the rule of mitigation. This involved telephoning Prudential on the 7 May 2019 when she wanted to increase her contributions. When Prudential told her that no contributions had been received, she telephoned Capita to find out why. This was after only three months of salary payments.

- She did not receive any calls or telephone messages from Prudential on 13 and 14 May 2019.

- It should not be an employee's responsibility to have to continually chase two 'powerhouses' of the size and capability of Capita and Prudential.

- Her financial advisor had said that, in his opinion, her financial loss was £12,000, plus £4,677 for tax relief.

- The redress for Capita and Prudential lacked any significant recourse.

- Prudential sent her a cheque for £100, but she did not bank it. She also had not received the additional £250 from Prudential. Therefore, Prudential had not made any settlement for compensation.

43. I agree with the Adjudicator's Opinion, but Ms Y's comments have led me to increase her level of non-financial injustice from significant to serious, and I have reflected this in her level of award for distress and inconvenience caused to her.

Ombudsman's decision

44. Ms Y complained that Capita did not deduct AVCs from her salary when instructed to do so. This resulted in a delay in investing her AVCs with Prudential, and consequently, she missed out on receiving tax relief and investment returns.

45. Both Capita and Prudential missed numerous opportunities to ensure that Ms Y's AVCs were collected correctly and invested in accordance with her instructions. When expected contributions were not received by Prudential, it did not chase Capita promptly. Capita claimed that it did not receive postal instructions from Prudential on three occasions over a 16-month period, due to them being incorrectly addressed. While this may be the case, Capita did receive some of those letters via mail redirect yet failed to take the appropriate action. I find that Capita's and Prudential's lack of action amounted to maladministration.

46. Ms Y submitted that she took steps to minimise her financial loss resulting from the maladministration, by telephoning Prudential on 7 May 2019. But she telephoned Prudential to increase her contributions, not to query whether contributions had been received. Ms Y did not check her payslips, as instructed by Prudential for the first two months of setting up her policy. It was not until 21 December 2019, when Ms Y met with her financial adviser, that she realised that no AVCs had been deducted from her salary. But, every month since February 2019, Ms Y had received a payslip which showed that no AVCs had been deducted. If she had checked her payslips, she would have first realised the error in February 2019, and every subsequent month thereafter.

47. Although I agree with Ms Y's comment that she should not need to chase Capita and Prudential, she did not mitigate her financial loss. Therefore, it would be unreasonable to hold either Capita or Prudential responsible for any financial loss as a result of the missed deductions.

48. I have no doubt that the numerous errors and lack of action by both Capita and Prudential will have caused Ms Y serious distress and inconvenience for which she should receive an award. In line with my guidance on non-financial injustice, the appropriate payment for this level of distress and inconvenience is £1,000, which should be met equally by Capita and Prudential. This replaces the £350 that Prudential had already offered to pay Ms Y.

49. Capita was responsible for managing the Trust's payroll. Therefore, I do not uphold the complaint against the Trust.

50. I partly uphold Ms Y's complaint.

Directions

Within 28 days of the date of this Determination, Capita and Prudential shall pay a total of £1,000 to Ms Y, split equally between the two parties, in recognition of the serious level of distress and inconvenience caused to her.

Anthony Arter CBE

Deputy Pensions Ombudsman

10 March 2023