

Ombudsman's Determination

Applicant	Mr K
Scheme	Hays Pension Scheme AVCs (the Scheme)
Respondents	Hays Pension Trustee Limited (Hays), Prudential

Outcome

1. I do not uphold Mr K's complaint and no further action is required by Hays or Prudential.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K's complaint against Hays and Prudential is twofold.
4. Firstly, he is unhappy with the interest rate applied to his benefits in the Scheme's Deposit Fund. He has highlighted that the Scheme booklet states there will be low growth to benefits in the Deposit Fund. However, he believes that there is in fact no growth, as inflation is higher than the interest rate. Furthermore, he highlights that he could achieve a better interest rate with a high street bank.
5. Secondly, Mr K is unhappy because £50,000 of his benefits were erroneously transferred from the Discretionary Fund to the Deposit Fund in 2015. Whilst this error was being identified and remedied, he was unable to use the funds as he wished. He therefore believes he has suffered a financial loss.
6. Hays is the trustee for Hays Pension Scheme, but has delegated responsibility for the administration of it to Equiniti Pensions Solutions (**Equiniti**). Hays Pension Scheme has several additional voluntary contributions (**AVCs**) arrangements; one of which is the Scheme and is offered by Prudential.
7. Mr K states he has largely dealt with Hays in relation to this matter. However, the Scheme is administered by Prudential. For this reason, Mr K's complaint is against both Hays and Prudential.

Background information, including submissions from the parties

8. In April 2014, Mr K requested that £50,000 of his benefits in the Scheme be transferred from the Discretionary Fund to the Deposit Fund. There were a number of issues with this transfer, but it was eventually completed in July 2014.
9. In December 2014, Mr K requested that another £50,000 of his benefits be transferred from the Discretionary Fund to the Deposit Fund. The transfer was completed on 7 January 2015. However, it appears that Mr K did not receive confirmation of this. On 23 February 2015, as a result, Equiniti chased Prudential on behalf of Mr K.
10. Equiniti's correspondence included a copy of the original switch request from December 2014. Due to an error in Prudential's system, this was used to generate a new switch request. As a result, a third amount of £50,000 was transferred to the Deposit Fund for Mr K (**the erroneous transfer**).
11. The erroneous transfer was processed on 25 February 2015. On this date, the FTSE 100 level was approximately 6935.
12. On 2 March 2015, a breakdown of Mr K's benefits showed £150,000 in the Deposit Fund, and only £13,757.57 remaining in the Discretionary Fund.
13. On 17 March 2015, Mr K contacted Hays to say that he had expected there to be £100,000 in his Deposit Fund, and approximately £65,000 in the Discretionary Fund. He highlighted that his benefit statement showed £150,000 in the Deposit Fund and only approximately £13,000 in the Discretionary Fund. He also confirmed that he had only requested two transfers of £50,000.
14. On 20 March 2015, the FTSE 100 broke through the 7000 level for the first time.
15. On 16 April 2015, Mr K chased a response from Hays. The evidence indicates Hays in turn chased a response from Equiniti, but no responses were received by Mr K. The FTSE 100 level was around 7000 at this time.
16. On 10 May 2015, Mr K contacted Hays again. In particular, he stated:

"It is nearly two months since I raised concerns about the £50,000 "missing" from my AVC investment in Prudential Discretionary Fund (unit-linked) – see my email to you dated 17 March 2015 – yet I have received no response. I wanted to lock-in gains on this unit linked investment when FTSE 100 rose through the 7000 level but am being denied that opportunity".
17. On 20 and 27 May 2015, the FTSE 100 broke through the 7000 level again.
18. On 7 June 2015, Mr K raised a formal complaint. In his letter, he stated that he was due to retire in six months and he was concerned that he was "suffering...direct financial loss...as a result of being unable to lock-in substantial gains on the Discretionary Fund while stock markets are at an all-time high".

19. On 17 July 2015, the erroneous transfer was reversed. On the same day, Equiniti confirmed with Hays that Mr K's benefits in the Discretionary Fund had also been reworked, as though there had never been an erroneous transfer.
20. Prudential took responsibility for the error and offered Mr K £200 for any stress and inconvenience caused. However, both Prudential and Hays felt Mr K had not evidenced that he had suffered financial loss, and so nothing further was offered. In particular, Prudential and Hays confirmed that they have never received a third transfer request from Mr K. As such, they could not say that they had failed to act on his instructions. They have stated that, if Mr K had wanted to take advantage of the high FTSE 100 levels at any point, they would have expected him to have requested the remaining benefits in his Discretionary Fund be transferred to the Deposit Fund at the relevant time.
21. Mr K has argued that it was not appropriate for him to request a third transfer whilst he was disputing the balance of his funds. In particular, he states he was concerned that it would look as though he were accepting the error, if he requested the remaining Discretionary Fund benefits to be transferred to the Deposit Fund. He also states that he had been transferring £50,000 every six months, and as such he had established a clear transfer pattern.
22. In addition to his complaint regarding the erroneous transfer, Mr K has also argued that Hays never made it clear that the interest rate for the Deposit Fund was so low. He states the rate is 0.5%, whereas he would easily be able to achieve at least 1.5% on the high street.
23. Furthermore, Mr K has provided a copy of the Scheme booklet which describes the Deposit Fund as offering "secure, low growth" and stating capital in the Deposit Fund will be "safe". Mr K believes that, as the interest rate of the Fund is lower than the rate of inflation, his capital in the Deposit Fund is in fact losing value. He therefore feels it is misleading to describe the capital as "safe".
24. Lastly, Mr K has highlighted that there is a history of maladministration in relation to his AVC benefits, and he feels this ought to be taken into account.
25. In August 2015, Mr K transferred all of the remaining benefits in his Discretionary Fund to the Deposit Fund. By this time, the FTSE 100 level had dropped to approximately 6367.

Adjudicator's Opinion

26. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Hays or Prudential. The Adjudicator's findings are summarised briefly below:-
 - The Adjudicator did not consider other issues Mr K had raised against the respondents. This was because these other issues had not been formally raised

with or investigated by the respondents. As such she felt it was not appropriate for this Office to investigate them or make findings in relation to them. She advised Mr K to raise any other complaints he had with the relevant respondent in the first instance.

- The Adjudicator felt there was insufficient evidence to show when Mr K would have wanted the third transfer to take place. In particular, Mr K had never made a third transfer request, until after the erroneous transfer had been reversed, and he has never confirmed the date he would have wished to make the third transfer. As such, the Adjudicator could not be satisfied that Mr K had suffered a financial loss.
 - The Adjudicator did not accept Mr K's arguments about why he had not requested the remaining funds be transferred from the Discretionary Fund to the Deposit Fund before August 2015. She felt that Mr K could have requested a third transfer for the remaining funds, if there was a specific date on which he had wanted to take advantage of the market. He also maintained that he would have transferred more on that date, but was not accepting the erroneous transfer.
 - The Adjudicator was not persuaded by Mr K's argument that he had clearly wanted to transfer £50,000 every six months in the few years before his retirement. This was because there were insufficient transfers on his recent account history to support this, and of the two he had made there was not an obvious six month gap between them. Furthermore, she felt it contradicted Mr K's statement that he would have made the transfer when the market was performing well.
 - The Adjudicator also addressed Mr K's points concerning the interest rate on the Deposit Fund. She noted that Hays and Prudential had never misled him in relation to the rate, and that they were not obliged to offer him a more competitive rate than other institutions.
 - Lastly, the Adjudicator did not believe Mr K has reasonably interpreted the Scheme booklet in relation to his money in the Deposit Fund. She did not agree that a reasonable interpretation of "safe" in the relevant context meant Mr K's capital would not be eroded by inflation. She considered that a reasonable interpretation of "safe" in the relevant context was that Mr K's money was no longer being invested, and therefore there was no risk of the capital value falling due to poor investment performance.
27. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome.
28. In particular, Mr K has highlighted Appendix 1 section d (2) of the Scheme rules, which states Scheme members will be notified within 5 working days of any delay after receiving a valid instruction. Mr K highlights this as another way he feels Hays and Prudential have failed to adhere to the Scheme rules. He feels he did everything

he could at the time to mitigate his loss, and he believes it is unreasonable for anyone to suggest he ought to have done more.

29. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr K for completeness.

Ombudsman's decision

30. It is clear that there has been maladministration in this instance, and this led to the erroneous transfer. However, I am not satisfied Mr K has demonstrated that he has suffered financial loss as a result.
31. Whilst the erroneous transfer was being investigated and rectified, Mr K made no third transfer request. I acknowledge that he has explained his reasons for this, and I have considered these. However, even if I were to find his explanations reasonable, it would not make any difference. Ultimately, he did not make his intentions clear at the time, and as a result I cannot say when he would have made his third transfer request, had the erroneous transfer request not occurred.
32. I also note that Mr K has still not provided a date on which he states he would have requested the third transfer of £50,000. Although, even if he had, I would need to be satisfied that he was not simply stating a date with the benefit of hindsight. I believe it would be exceptionally difficult for Mr K to prove this.
33. When the erroneous transfer was reversed, Mr K's benefits were re-worked to reflect the value they would have been had it not occurred.
34. Therefore, I agree with the Adjudicator that Mr K has not evidenced his financial loss.
35. Mr K has also raised Appendix 1 Section d (2) of the Scheme rules. However, I do not believe this applies. In particular, it refers to delays, and in this case there was no delay. On the contrary, the funds in question were originally transferred prematurely.
36. I understand Mr K's wider point is that there has been a series of issues with Hays and Prudential. However, whilst this may be the case, I am not determining matters other than those which the respondents and the Adjudicator have considered.
37. Therefore, I do not uphold Mr K's complaint.

Anthony Arter

Pensions Ombudsman
26 July 2017