The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr D
Scheme	British Steel Pension Scheme (**the Scheme**) - Prudential Additional Voluntary Contributions (**AVCs**)
Respondents	B.S. Pension Fund Trustee Limited (**the Trustee**)

Outcome

1. Mr D's complaint is upheld and to put matters right the Trustee shall pay the cost of making good the financial loss Mr D has suffered.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D says the Trustee excessively delayed the processing of his completed AVCs paperwork. He says this held up his annuity purchase, depriving him of income, and by the time his annuity purchase could be completed, the annuity rate had dropped.

Background information, including submissions from the parties

4. From 6 April 2015 individuals who meet certain conditions can access their Defined Contributions (**DC**) funds as an uncrystallised funds pension lump sum (**UFPLS**). But trustees/managers did not have to make these payments if they chose not to do so.

5. Amendments introduced by The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2015 (**the Regulations**) require trustees/managers to provide certain information automatically about flexible benefits where a member has an opportunity to transfer flexible benefits. This includes signposting to Pension Wise and, instead of the previous requirement to advise affected members of the opportunity to select an annuity, the provision of certain statements - including the opportunity to transfer flexible benefits to one (or more) different pension providers and a statement of the options available to the member under the scheme rules. The Regulations also require trustees/managers to provide specific information within two months of a member making a request, or notifying the trustees that they are considering what to do with their flexible benefits. There are some exceptions to the information requirements. These include where

details have been provided in the previous 12 months or where the member informs the trustees/managers that he has received independent financial advice in the previous 12 months about what the member may do with flexible benefits.

6. The Pensions Regulator's "Essential guide to communicating with members about pensions flexibilities" states at least four months before retirement age (unless the retirement date is specified less than four months in advance) the trustees/managers must automatically provide the information required under the Regulations in a "wake-up" pack. The information requirements also apply where a member has reached normal pension age.

7. Mr D paid into the Scheme's Prudential AVC arrangement after 8 April 1987. His benefits in the main Scheme do not form part of his complaint to the Pensions Ombudsman.

8. On 2 August 2015, Mr D attained normal pension age under the Scheme. Mr D had DC funds in two other pension arrangements entirely separate from the Scheme.

9. In July 2015, Mr D's independent financial adviser **(the IFA)** enquired about his client taking his AVCs as a cash sum. He was told that the Scheme did not provide this option. He says it was at that point Mr D took the decision to combine his AVCs with funds from the two other schemes to buy an annuity on enhanced terms under the Open Market Option (**OMO**).

10. On 19 August 2015, the IFA obtained an annuity quotation from Retirement Annuity (**RA**) based on an annuity rate of 5.392% (**the Initial Rate**). The quotation was guaranteed until 14 September 2015 (**the Deadline**). RA says, as the AVCs were also included in Mr D's annuity application, to secure the Initial Rate it required the funds from all three schemes by the Deadline.

11. On 25 August 2015, the Scheme administrators issued to Mr D (the same day it received the information from Prudential) his AVCs retirement pack. The covering letter advised Mr D of the option to arrange an annuity with another provider of his choice under the OMO. Mr D says he completed the forms selecting the OMO and sent them back but it appears they were not received.

12. At a Trustee meeting on 15 September 2015 (**the Meeting**) the board approved the provision of a maximum of three UFPLS and communicated the revisions to the procedures (for processing DC AVCs) to the Scheme administrators via the Scheme Secretary the following day. It was noted that "all scheme DC member communications will need to be amended". No transitional arrangements were put in place.

13. Meanwhile Mr D was proceeding with his disinvestment from his other two DC pension schemes. On 2 September 2015 RA received the funds from those other schemes.

14. On 2, 7, 11, 14, 24 and 28 September 2015, RA chased Prudential for Mr D's AVCs funds. On 29 September 2015, Prudential replied that it required Mr D's completed OMO transfer form at which point it became apparent that the original form had not been received. The same day the Scheme administrators re-issued the August retirement pack to Mr D.

15. On 6 October 2015, the Scheme administrators received Mr D's completed OMO transfer form.

16. On 21 October 2015, the Scheme administrators wrote to Mr D;

17. "I note that you have opted [for] the Open Market Option.

18. However, due to a recent change in our Scheme rules, we can now offer the fund value (approx. £1192.22) be paid directly to you under Pensions Flexibilities introduced in April 2015. 75% of the fund value amount would be subject to tax at Basic Rate, 20%. Please advise whether you wish to proceed with this option, or whether you wish to continue transferring the fund value to Retirement Advantage."

19. The same day Mr D confirmed that he wanted to proceed with the OMO. His reply said "now that we have waited this long we would prefer to continue and have the fund value transferred to Retirement Advantage, although hopefully this will now go through quickly as it is holding up the full annuity fund being settled."

20. Later the same day the IFA complained that he had enquired earlier about Mr D taking his AVCs "under the new rules" but had been told it was not possible. As a consequence he felt Mr D had been put at a disadvantage.

21. He said "therefore can you make the immediate payment as [Mr D] has directed and then log this as an official complaint."

22. On 26 October, the Scheme administrators replied to the IFA: "As you are aware, I have also received an email from [Mr D] directly, and he confirms we are to carry on with the transfer to Retirement Advantage. I will contact Prudential this morning." The email went on to explain that the option of taking Uncrystallised Funds Pension Lump Sums as a single cash lump sum "was not available within this Scheme until 14 September 2015, thus meaning we could not offer it to [Mr D] previously." The email concludes with a proposal to deal with any complaint "on completion of the transfer."

23. On 3 November 2015, the Scheme administrators wrote a letter to Prudential instructing them to disinvest Mr D's AVCs.

24. On 16 November RA sent an email to the IFA informing him that Prudential said it had processed the transfer on 15 November.

25. In the Trustee's response, under stage 1 of the Scheme's internal dispute resolution procedure - dated 18 January 2016, the Trustee confirmed that the funds were received from Prudential on 20 November 2015 (13 working days after the date of the request).

26. RA says it received the funds from the Scheme on 4 December 2015. A monthly annuity of £314.74 (gross) was secured.

27. Had the Scheme administrators instructed Prudential on 13 October 2015, five working days after receiving the completed OMO transfer form, and received the funds from Prudential on 30 October 2015 (13 working days after the request), and then paid the AVCs within five working days of receipt, RA would have received the funds on 6 November 2015. RA has confirmed had it received the funds from Prudential on 6 November 2015, the annual annuity would have been £4,010.76 (a monthly annuity of £334.23 gross).

28. Mr D says he and his wife had to manage without the annuity for four months and used savings and the cash lump sums from other pension schemes to supplement their income. Mr D estimates his financial loss to be significant. He considers £2,666 to compensate him for the lower income (as a result of the drop in annuity rates between August and December 2015) and the loss of income for four months to be reasonable compensation.

29. The Trustee acknowledges that the Scheme administrators delayed instructing Prudential to disinvest Mr D's AVCs while awaiting the outcome of communications with his IFA in October 2015, but does not accept that Mr D has been financially disadvantaged as a result.

Adjudicator's Opinion

30. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee to put right the financial loss Mr D has suffered. The Adjudicator's findings are summarised briefly below:

- The Scheme administrators delayed instructing Prudential to disinvest Mr D's AVCs following receipt of his completed retirement paperwork.

- If not for the delay Mr D would have secured a higher monthly annuity of £334.23.

31. The Trustee did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D and the Trustee have provided their further comments but they do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr D and the Trustee for completeness.

Ombudsman's decision

32. The Trustee says while the administrative stages in connection to Mr D's retirement were not processed as promptly as they could otherwise have been, there were material mitigating factors which meant that Mr D's retirement did not follow the usual

administrative process. Namely: the change in the benefit options available to him under the Scheme and conflicting communication from Mr D and his IFA.

33. Turning first to the change in benefit options. The Trustee contends that following the decision to allow affected members the option to take an UFPLS via the Scheme, it had a responsibility to incorporate the option into the retirement process and ensure the Scheme communication complied with the Regulations. Given the time it takes to make suitably considered revisions to communication, it rejects any suggestion that the standard retirement pack ought to have been amended by the time the retirement paperwork was re-issued to Mr D.

34. The Trustee says it considers that it was reasonable not to notify all members who had already commenced the retirement process of the additional UFPLS option. The Trustee says, in Mr D's case, the administrator involved with his retirement recalled his strong preference to take his AVCs as a lump sum and Mr D was informed of the UFPLS option when the administrator became aware that he had returned his OMO transfer form. The Trustee says it was this intervention, which was largely in Mr D's best interests, which caused the delay identified by the Adjudicator.

35. I do not accept that the need to communicate the UFPLS option to Mr D was a good reason for the delay in implementing his instructions. I make no comment about the way that the change to the scheme options were implemented generally, or as to whether they affected other members who are not party to this complaint. I restrict my findings to the way that communication with Mr D was handled and the effect it had on him. I find that if Trustees had considered that the UFPLS option had become available to Mr D as a consequence of the decision made on 15 September 2015, he ought to have been informed about it at the latest when the retirement paperwork was reissued to him, because that was the point at which he needed to exercise his option.

36. Turning now to the communication exchanged with Mr D and his IFA after the Scheme administrator received Mr D's completed OMO transfer form on 6 October 2015. The Trustee says the key point of confusion arose on 21 October 2015, when Mr D indicated that he wanted to take the OMO option whilst on the same day the IFA complained that Mr D had not been notified earlier of the lump sum option. If there was confusion, I do not think that Mr D or his IFA caused it. Clear instructions had been given on 6 October. I can see no good reason to wait until 21 October to raise a question about them. Once the question was raised, Mr D confirmed his original instruction immediately.

37. I have considered whether anything said by Mr D or in the IFA's email sent that day should have given the Scheme administrators reason to doubt that Mr D did in fact want to proceed with the OMO transfer. It is my view that Mr D's instructions on 21 October 2015 remained clear. Furthermore, I do not think the IFA's email was contrary to Mr D's instructions. Rather, the IFA's email confirmed Mr D's election to proceed with the OMO transfer. If anything had been unclear I would expect clarification to have been sought immediately from Mr D. In fact, the instructions

appear to have been understood, because the scheme administrator confirmed that the transfer would go ahead.

38. In conclusion, I am satisfied that Mr D could have secured the higher monthly annuity of £334.23 on 6 November 2015 but for the Scheme administrator’s delay in instructing Prudential to disinvest his AVCs and paying the monies over to RA. Turning to Mr D’s point that he had to wait longer for his annuity to come into payment, I do not consider that he is entitled to an additional payment for the missed months because the change in the annuity rate took account of his increased age as well as fluctuations in market conditions.

39. While I agree that this matter has caused Mr D distress and inconvenience – the delay caused him to be without his annuity for a little over a month, I do not consider that it warrants a payment of £500 – the minimum I award for non-financial distress.

40. Therefore, I uphold Mr D’s complaint.

Directions

41. To put matters right, the Trustee shall, within 28 days of the date of this Determination:

    a. cover the cost of increasing Mr D’s monthly annuity with RA by £19.49 from its due date of 6 November 2015 and;

    b. pay Mr D simple interest at the rate for the time being declared by the reference banks on the arrears from each due date to the date of payment.

Karen Johnston

Deputy Pensions Ombudsman
23 November 2016