

Ombudsman's Determination

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| Applicant | Mr Y |
| Scheme | Prudential Flexible Retirement Plan (the Plan) |
| Respondents | Financial Planning Objectives Limited (FPOL); and Prudential |

Outcome

1. Mr Y's complaint is upheld against FPOL. To put matters right it will contact Prudential to obtain a calculation of the difference in the value of the Plan, had Mr Y's funds been invested as he requested. FPOL are then to pay the difference into Mr Y's new plan (as the Plan with Prudential is now closed) in accordance with my directions set out in paragraphs 26 and 27 of this determination.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that he has suffered a loss of investment growth because his funds were not invested with Prudential, as he requested on his application form.

Background information, including submissions from the parties

4. Mr Y elected to have three separate policies (which he held with different providers), transferred and invested into one Flexible Retirement Plan with Prudential. The commencement date of the Plan was 17 January 2013.
5. FPOL, Mr Y's Independent Financial Advisor, completed the application form on his behalf, and listed where he wanted his funds invested. FPOL believed that by listing twice on the application form where Mr Y wanted his funds invested that no further action was required by it.
6. FPOL received the following email from Prudential on 7 January 2013, which said:

“As with all regular plans that are set up to be invested into [a] SIPP, it will be invested in a Cash fund for the first couple of months and then it will be switched into the SIPP fund.”

7. On 8, 11 and 16 January 2013, Suffolk Life, the beneficial owners of the Plan, sent letters to FPOL. This was the first time, Suffolk Life contacted FPOL, but the initial letter explained who it was, and why it was contacting FPOL, instead of Prudential. All three letters explained that in order to action Mr Y's transactions the investments needed to be carried out on the "Cofunds Platform", which is Suffolk Life's investment tool. The letters sent on 8 and 16 January were correctly addressed. The letter sent on 11 January 2013, was correctly addressed but referred to Mr Y as the adviser and then referred throughout the letter to a different member; FPOL did not take any action following these letters.
8. From 17 March 2013 (two months on from the Plan start date), Mr Y's funds were ready to be invested through the Cofunds Platform. However, his funds remained in a Royal Bank of Scotland Cash Deposit Fund (**the Cash Deposit Fund**), gaining very little interest.
9. In June 2013, Prudential sent a mid-year statement to FPOL, and on 3 January 2014, sent an annual statement. These showed that Mr Y's transferred funds had been held in the Cash Deposit Fund. FPOL did not act upon the information sent in June 2013. However, after receiving the information on 3 January 2014, FPOL telephoned Prudential and queried why the funds were in the Cash Deposit Fund. Prudential, explained that FPOL should have invested the funds through the Cofunds Platforms and that FPOL had been advised of this on 8, 11 and 16 January 2013. FPOL said it did not receive these letters.
10. Prudential said if Mr Y's funds had been invested, as detailed on the application form, his plan value would have been worth £166,700.76 on 24 October 2014, rather than £154,692.54. This meant he had suffered a loss of investment growth of £12,008.22.

Adjudicator's Opinion

11. Mr Y's complaint was considered by one of our Adjudicators who concluded that the complaint should be upheld against FPOL. The Adjudicator's findings are summarised briefly below:
 - There is no dispute that a problem has occurred and this has caused Mr Y financial injustice. Maladministration can be found in this case and it was viewed that the fault lay with FPOL and not Prudential. Mr Y suffered a loss of investment growth and FPOL, are required to cover this loss to put Mr Y into the position he would have been in had the error not occurred.
 - Although FPOL believed the investment would happen automatically because it listed twice on the application form where the funds were to be invested.

It did not receive confirmation that the different investments had been made and it did not chase Prudential for this. FPOL had a responsibility to Mr Y to ensure these investments were made and it did not follow this through.

- A number of letters were sent to FPOL, which explained the investments needed to be made through the Cofunds platform. These were correctly addressed so it is highly unlikely that none of them were received.
12. FPOL did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. FPOL provided their further comments which 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 FPOL for completeness.
 13. Prudential and Mr Y have both accepted the adjudicator's opinion.
 14. After the opinion was sent Mr Y transferred his benefits to another provider and so the Plan is now closed.

Ombudsman's decision

15. There is no dispute in this case that an error has occurred and that Mr Y has been financially disadvantaged as a result. The issue to be determined is who is responsible for the errors, Prudential or FPOL?
16. FPOL say it does not consider that the evidence provided by Prudential is sufficient proof that the disputed letters were actually sent to it. Prudential have provided copies of the three letters, including one that contains errors, it is very unlikely that Prudential would have supplied fabricated evidence that contained mistakes. As I have stated in a previous determination (ref: PO-7511), I cannot prove that the letters were sent but I cannot exclude the possibility that FPOL overlooked the letters through human error. On the balance of probabilities it is highly unlikely that all of the letters were not sent and received by FPOL. Therefore, I find that the letters were sent and received by FPOL, but it failed to take the appropriate action.
17. FPOL say that it did receive the June 2013 mid-year statement, however, it said the information was so limited it was not clear that the funds had remained uninvested. Conversely, this means that it was also unclear that the funds had been invested correctly. I consider that FPOL should have contacted Prudential and requested clarification on whether the funds had been invested as set out on the application form. Instead FPOL took no action until it received the yearly statement in January 2014, which made it clear that the funds remained in the Cash Deposit Fund.
18. FPOL say it is unclear why Prudential requested details on its application form of where funds are to be invested if it had no intention to take action on receipt of the information. Although, this is a question on the application form it does not state that the investments will happen automatically.

If FPOL were unsure about how the investments would be treated it should have sought clarification.

19. FPOL contend the problems occurred in this case because of the inter-relationship between Prudential and Suffolk Life. It says Prudential should have made it clearer from the outset that correspondence would be sent from Suffolk Life. Although, Prudential could have explained this from the outset it was not required to do so. Furthermore, in Suffolk Life's initial letter to FPOL, it clearly explained who it was and why it was getting in contact about Mr Y's Plan.
20. FPOL say it is unusual to be expected to complete the different investments through an online platform. Although, completing the investments on the Cofunds Platform may not have been a normal process for FPOL, this is not a satisfactory reason for it not to have taken appropriate action. The investments needed to be made either by the adviser or by Mr Y. Mr Y had no idea that the investments needed to be completed through the Cofunds Platform as the letters advising this were sent to FPOL, and so the responsibility remained with FPOL to action this which it did not.
21. FPOL say that Prudential did not make it clear how the future monthly investments would happen. Therefore, it was unclear where the responsibilities started and ended. If, FPOL had been unsure of how the Plan would operate I consider it had a duty to clarify this for itself and also for its client, Mr Y, so it could properly advise him.
22. Since this complaint arose Prudential has amended its processes and application form to make it clearer that investments need to be made via the Cofunds Platform. FPOL believe this means that Prudential has acknowledged that there are flaws in its process, and therefore are partially responsible for Mr Y's complaint. Although, Prudential has changed its process to provide a better service to its customers this does not mean it is responsible for the error in this case. The responsibility lay with FPOL to make sure Mr Y's fund was set up correctly, it had a duty of care to Mr Y and it did not follow this through.
23. The complaint is upheld against FPOL, as it had a duty to make sure Mr Y's Plan was set up and run correctly. It did not do this and as a result Mr Y has suffered a loss.
24. Mr Y argues that he would have been able to take a higher amount of tax-free cash had his funds been invested as he requested. Mr Y chose to transfer the funds within the Plan before I had made my Determination therefore if he is unable to benefit from a higher tax-free cash sum it will be as a result of his own actions. Mr Y will need to contact Scottish Widows directly to see whether an additional tax-free cash sum payment is still an option once the extra funds have been added by FPOL.
25. For the reasons set out above the complaint is upheld against FPOL and not upheld against Prudential.

Directions

26. Within ten working days, FPOL are to contact Prudential and obtain the difference in the value of the fund as it would have been on 9 August 2016 , had the funds been invested correctly between 17 March 2013 and 24 October 2014, and the amount Mr Y transferred to Scottish Widow's on 9 August 2016, and
27. Within fourteen working days of receiving this information, FPOL are to pay that amount into Mr Y's new Plan held with Scottish Widows.

Anthony Arter

Pensions Ombudsman
27 September 2016