

Ombudsman's Determination

Applicant	Mr Y
Scheme	Prudential Personal Pension (the Plan)
Respondents	(1) Prudential (2) Fidelity International (Fidelity)

Outcome

1. Mr Y's complaint is upheld against Fidelity only. To put matters right, Fidelity should pay £6,275.69 into Mr Y's Self Invested Personal Pension (**SIPP**) in recognition of the transfer value he has lost due to Fidelity's maladministration. Fidelity must also pay him £500 in recognition of the significant distress and inconvenience it caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y complains that as a result of several delays in the transfer process, from his fund being transferred from the Plan to his Fidelity SIPP, he has suffered a financial loss as his transfer value was lower.

Background information, including submissions from the parties

4. By way of background, the Plan was reviewed as part of the industry wide pension review, which resulted in a guarantee being offered for the Plan. The value of the guarantee would be based on whether Mr Y elected to:
 - a) transfer to Fidelity, and immediately take an income which would give him a higher level of guarantee, or;
 - b) transfer to Fidelity and allow the funds to remain invested which would give him a lower level of guarantee.
5. On 29 April 2015, Fidelity received Mr Y's request to transfer funds from the Plan to Fidelity. Fidelity's request was submitted to Prudential via Origo, an online tool used by SIPP providers. Prudential did not accept the online instruction because it required the client's signature.

6. On 6 May 2015, Mr Y received two transfer values and retirement quotations from Prudential. The transfer value available to Mr Y if he choose to invest the funds upon transfer was £153,690. The transfer value available if Mr Y choose to transfer his funds and take his benefits immediately was £167,521. Prudential said - “the value of the guarantee included in these quotations is calculated as £18,649 at 9 May 2015 for deferred vesting purposes, and £32,373 at 16 May 2015 for immediate vesting purposes”.
7. Prudential explained this to Mr Y in a phone call that took place on 13 May 2015. During the call, Mr Y confirmed that he wanted to take his 25% tax free cash entitlement. Prudential subsequently produced a further quotation dated 15 May 2015, confirming the transfer value to be £167,490 for immediate vesting upon transfer to Fidelity.
8. Mr Y subsequently completed Prudential’s ‘Transfer Value Acceptance and Authority to Pay’ form (**the acceptance form**), which Prudential received on 20 May 2015. However, Mr Y had incorrectly completed the form by listing his own contact details as the pension provider instead of providing Fidelity’s details. The form also asked Mr Y to confirm whether funds were to be transferred to the new provider, or whether he intended to take immediate benefits with the new provider. Mr Y did not tick the box for immediate vesting. Fidelity completed its paperwork, the ‘Declaration by Pension Provider’ form correctly, for Prudential’s use.
9. As there was an issue in distinguishing the receiving pension provider, Prudential wrote to Fidelity on 5 June 2015. It enclosed a new copy of the transfer value quotation and asked for any new forms to be completed correctly.
10. Instead of completing the new form, Fidelity amended the original incorrect acceptance form and sent it back to Prudential on 18 June 2015. As its requirements had still not been met, Prudential wrote to Fidelity on 29 June 2015, and asked for the new acceptance form to be completed by Fidelity and Mr Y.
11. Fidelity wrote to Mr Y on 27 July 2015, asking him to complete and sign the new acceptance form, which he did. Fidelity then completed and returned the acceptance form in accordance with Prudential’s instructions, which Prudential received on 18 August 2015.
12. Mr Y’s declaration confirmed he wanted to take retirement benefits with Fidelity immediately. However, the declaration completed by Fidelity did not indicate his benefits with Prudential would be used for immediate vesting. Prudential left a voicemail for Fidelity asking it to confirm, in writing, what was to happen with the transfer value once received by Fidelity. On 26 August 2015, Prudential followed up the call with a letter, asking Fidelity for confirmation about the immediate vesting question, in addition to a readable copy of the SIPP application form.
13. Fidelity responded to Prudential on 11 September 2015. It confirmed that Mr Y was not taking immediate benefits upon transfer. Accordingly, on 17 September 2015,

Prudential paid the lower transfer value of £159,489.86. Fidelity confirmed receipt of the funds as at 1 October 2015, and the funds were held in the cash account. On 5 October 2015, Mr Y requested for £90,000 to be reinvested in alternative funds, with the balance remaining in the cash account. Fidelity made the relevant fund investments, as per Mr Y's instructions, on the same day.

14. Mr Y was unhappy with the delays experienced since April 2015 and complained to both Prudential and Fidelity. He also complained that the transfer value had reduced by more than £8,000. He informed both respondents he would seek compensation of his losses through The Pensions Advisory Service (**TPAS**) and our office.
15. In Prudential's final response of 21 October 2015, it explained that it responded to all correspondence from Mr Y and Fidelity within its specified timescale of five working days. However, Prudential felt there was a considerable delay in hearing back from Fidelity in response to the letter it sent on 29 June 2015. It did not receive a response until 18 August 2015. It said: "we are not obliged to chase correspondence responses, but in recognition of customer fairness and clarity, we should have been more proactive at this stage of [Mr Y's] application process by chasing Fidelity for a response". Prudential sent Mr Y a cheque of £50 as a goodwill gesture.
16. Fidelity, in its response to Mr Y in September 2015, apologised for the 'aggravation' and inconvenience caused and explained that:
 - it amended the discrepancies Prudential had highlighted and sent back the documents, without correctly completing the new forms and obtaining Mr Y's signature;
 - there was a delay of 17 working days between it being notified that the amended forms were not acceptable, and Fidelity writing to Mr Y with the new forms on 27 July 2015;
 - the errors on the paperwork created extra administration and the short delay was unavoidable; and
 - it attempted to resolve the issues without requiring Mr Y to complete further paperwork.
17. As a result of investigations carried out by TPAS, both Fidelity and Prudential considered the issue of delays further.
18. Fidelity, on reviewing the timeline of events, found that it had contributed to the delays. Fidelity accepted that it had made an error when instead of completing the new acceptance forms, it amended the old forms and accepts that it ought to have followed Prudential's instructions in the first instance. Fidelity also found that by the time it had asked Mr Y to complete the new paperwork, they could not be sent to Prudential before 14 August 2015. This delay has been accepted by Fidelity.

19. As a result, Fidelity calculated the earliest opportunity it felt Prudential could have received the necessary paperwork to be 2 July 2015. After, receiving the new paperwork, Prudential took another 13 working days to ask Fidelity to confirm what Mr Y's intention was in reference to taking his benefits immediately. Using the same timeframe, Fidelity calculated that Prudential would have sent its further enquiry on 21 July 2015. It took a further 19 working days for the transfer to be completed and for the funds to be deposited into Mr Y's account. Therefore, Fidelity could have confirmed the position by 14 August 2015.
20. Fidelity asked Prudential to confirm how much the transfer value would have been on 14 August 2015. Prudential confirmed that it would have been £158,959.55. As this amount was lower than the sum actually transferred into the Fidelity SIPP, Fidelity did not consider Mr Y had suffered a financial loss. However, Fidelity recognised that it contributed to the delay which caused inconvenience to Mr Y, and it offered him £150 in recognition of this.

Adjudicator's Opinion

21. Mr Y's complaint was considered by one of our Adjudicators who initially concluded that no further action was required by Fidelity or Prudential. The Adjudicator's findings are summarised briefly below:-
 - Prudential had not contributed to the delays. It had clearly set out how to progress Mr Y's transfer to Fidelity. For Prudential to be able to progress the transfer, it needed the correctly completed paperwork.
 - Although there was no obligation on Prudential to chase correspondence, in light of treating customers fairly and with clarity, it offered Mr Y a goodwill gesture payment of £50 which was considered reasonable.
 - There was a significant delay caused by Mr Y's incorrect completion of the first set of transfer forms. And Fidelity did not carry out the actions Prudential had asked it to, which it accepts led to Fidelity making errors during that part of the transfer process which was considered maladministration.
 - Had it not been for the delays caused on the part of Fidelity, it was calculated that the transfer value available on the earlier date of 14 August 2015, was lower than the eventual transfer received in October 2015, and therefore no actual financial loss had been suffered. The £150 offered by Fidelity previously was adequate to cover the distress and inconvenience caused.
22. Mr Y accepted the Adjudicators findings against Prudential. However, he remained concerned that despite his signed declaration of 31 July 2015, where he confirmed he wished to take immediate benefits upon transferring his benefits in the Plan to Fidelity, Fidelity did not inform Prudential of his intentions. Mr Y felt that the blame for the lower transfer value being paid (which was based on his funds remaining invested

in the Fidelity SIPP) lay with Fidelity, because it informed Prudential he would not take immediate benefits.

23. A further investigation took place and the Adjudicator obtained further information from Fidelity around the specific point concerning Mr Y not taking his benefits immediately. Fidelity said that the form completed in May 2015 did not tick the box confirming Mr Y wanted to take benefits immediately, whereas the new form he completed in July 2015 did. Fidelity accepted that although it had differing information on the forms it had seen, it ought to have gone with the recent application form which confirmed he wanted to take immediate benefits with Fidelity.
24. The Adjudicator considered this failing amounted to maladministration because the net effect was, Prudential had paid across a lower transfer value as a direct result. The Adjudicator explained that to redress the maladministration, Fidelity ought to ascertain, from Prudential, what transfer value would have been available on 14 August 2015, on the terms that Mr Y was looking to take immediate benefits when the transfer completed. The Adjudicator also asked Fidelity to reconsider its offer for the distress and inconvenience it had caused.
25. Fidelity confirmed it had previously reassessed the suggested redress methodology, but Prudential confirmed the value was lower on 14 August 2015 (£158,959.55) than the actual transfer value received in October. Fidelity also said it would increase its distress and inconvenience offer from £150 to £200 in total.
26. The Adjudicator was not satisfied with Fidelity's reasoning and contacted Prudential directly, to ascertain the terms on which the transfer value of £158,959.55 as at 14 August 2015 had been calculated. Prudential confirmed the hypothetical transfer value on 14 August 2015 would have been £165,765.55 on the terms that Mr Y would transfer and take immediate benefits.
27. Fidelity was then asked to compensate Mr Y the difference of £6,275.69, in addition to the £200 award for the distress and inconvenience caused.
28. Fidelity did not agree with the Adjudicator and protracted correspondence then took place between both parties. To summarise, the Adjudicator's opinion:-
 - There was no dispute that Prudential had received an unclear message from the paperwork recently completed by Mr Y and Fidelity, and that it was an issue that needed clarification in order for the transfer to progress;
 - Fidelity said that Mr Y had to be taking some form of income from those existing funds at the point of the transfer from Prudential, in order to truly indicate his intention that he wanted to take immediate benefits once the Prudential transfer completed.
 - There was no obligation on Mr Y to have taken benefits previously, and the only way to establish his true intent was to ask him directly or establish what

he had indicated on the new application form. Fidelity ought to have given consideration to Mr Y's instructions.

29. In short, Fidelity said:-

- If the matter is about 'taking the benefits upon transfer' Fidelity would reasonably expect a drawdown request to be submitted with the transfer. It is unreasonable to expect Fidelity to comment on applications completed with other providers as they are not an instruction to Fidelity;
- Fidelity are an execution only company and work on the facts it has. Fidelity had not received an application to crystallise benefits;
- It was the responsibility of Prudential to clarify whether Mr Y would take immediate benefits or not, as it was essential to its process in calculating the transfer value.

30. Because all the parties were unable to reach an agreement, the complaint was passed to me to consider. Fidelity's final comments 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 Fidelity for completeness.

Ombudsman's decision

31. To determine this complaint I must consider the impact and cause of the delays. I must also consider whether Mr Y was paid the correct level of transfer value of his benefits from the Plan to the Fidelity SIPP.

32. I agree with the Adjudicator that Prudential are not responsible for the overall delays caused, as it had no obligation to chase Fidelity for responses to information requests. However, the offer of £50 from Prudential is fair and reasonable in acknowledging that it could have been pro-active and chased Fidelity for the outstanding information. I make no further findings against Prudential.

33. Fidelity accepts it was partly responsible for the delay to Mr Y's transfer of pension benefits from the Plan into the Fidelity SIPP. Fidelity also accepts that had it complied with Prudential's instructions in the first instance, the transfer delays would have been reduced.

34. Fidelity calculated that the earliest opportunity at which the transfer could have completed was 14 August 2015. I agree with the rationale used to arrive at this hypothetical date.

35. Additionally, I must determine whether Fidelity were correct in confirming to Prudential that Mr Y would not take immediate benefits upon the transfer being completed, and whether there was an obligation on Fidelity to have further investigated Mr Y's wishes.

36. Fidelity's position is that Mr Y never formally advised nor applied to crystallise his benefits under the Fidelity SIPP. Without a direct application to crystallise benefits, Fidelity would not have acted on a third party form but it would have supplied Mr Y with information on crystallising benefits had he informed it he wished to drawdown his benefits.
37. Even if Fidelity work on an execution only basis I consider Fidelity is at fault for advising Prudential that Mr Y would not take immediate benefits on transfer, and for not having clarified this with Mr Y before reverting to Prudential. I acknowledge that Mr Y marked on the Prudential discharge form that he wished to take immediate benefits upon the transfer being completed, and this was not a direct instruction to Fidelity. However, I do not consider this absolves Fidelity from its duty of care to Mr Y to comply with his wishes and intentions which, in my view, were clear.
38. If it was unclear to Fidelity they should have contacted Mr Y directly and asked him the question, and at that point, it could have requested he complete any necessary Fidelity paperwork. Taking such action would not have infringed any Fidelity execution only protocols, as it was not advising Mr Y on the suitability of the transfer or the risks associated with his decision. Mr Y's intentions, as at 31 July 2015, were perfectly clear in that he wished to take immediate benefits, and Fidelity was aware of this.
39. To have avoided the complaint from escalating, Fidelity ought to have clarified Mr Y's intentions taking into account the information Mr Y had provided to Fidelity, namely the Prudential application form. In many ways the matter to be determined is not difficult. Mr Y intended to draw his benefits under the Fidelity SIPP (after the transfer from Prudential had completed) and therefore, the responsibility, in my opinion, fell on Fidelity to ensure the correct transfer value was paid by Prudential in recognition of Mr Y's stated intention.
40. Had Fidelity asked the question of Mr Y I have no doubt that Mr Y would have confirmed he wanted to take immediate benefits with Fidelity, and it could have provided him with the paperwork needed to drawdown his benefits.
41. Fidelity says it was unclear why Prudential asked it to confirm what Mr Y's intentions were. I do not consider this to be unclear. Prudential asked the question because of the confusing information on the application forms, and because it wanted to ensure the correct level of transfer value was paid to the receiving SIPP arrangement.
42. Simply put, it was Fidelity's responsibility, as the receiving SIPP provider, given Mr Y had expressed an intention to crystallise his benefits, to have given due consideration to what Mr Y wanted to achieve as a result of the transfer. Further, Fidelity had a responsibility to follow Mr Y's instructions in all aspects of the transfer.
43. As a result of Fidelity's maladministration, Mr Y has suffered a financial loss. That loss has been quantified by the Adjudicator. I note Fidelity has agreed to increase its initial offer for the distress and inconvenience caused by its delays and actions from

£150 to £200. However, I do not consider its offer accurately reflects the circumstances of the complaint. I consider Mr Y should be awarded £500 for the non-financial injustice suffered, in recognition of the overall delays, and Fidelity's failure to accurately inform Prudential of Mr Y's intentions following his transfer from the Plan.

44. However, I recognise that Mr Y has himself also contributed to some of the issues that arose. But for the reasons I have given, I consider that Fidelity are ultimately responsible for maladministration which resulted in Mr Y receiving an incorrect transfer value.
45. I therefore uphold the complaint against Fidelity but not Prudential.

Directions

46. Within 21 days Fidelity shall pay into Mr Y's Fidelity SIPP, the sum of £6,275.69, which represents the loss of transfer value as a result of Fidelity's maladministration. This sum shall be placed within the Cash Fund to be invested as Mr Y chooses.
47. Fidelity shall calculate and pay simple interest at the rate for the time being declared by the reference banks on the payment of £6,275.69, had that been invested from 14 August 2015 until the date the money is placed in Mr y's Fidelity SIPP.
48. Within 21 days Fidelity shall also compensate Mr Y for the significant distress and inconvenience caused, and pay £500 to Mr Y in recognition of the non-financial injustice he has suffered.

Anthony Arter

Pensions Ombudsman
5 May 2017