

Ombudsman's Determination

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| Applicant | Mrs F |
| Scheme | Prudential Personal Plan (the Plan) |
| Respondent | Prudential |

Outcome

1. Mrs F's complaint is upheld and to put matters right Prudential should:-
 - Reverse the switch of her fund choices to the Cash fund, so that her contributions are returned to a split of 50% Managed and 50% With Profits; backdated to 9 October 2015, as if the switch has not occurred.
 - Carry out a loss assessment exercise to determine whether Mrs F lost out on any investment growth as a result of the switch to the Cash fund. If this establishes that she suffered a financial loss, Prudential should pay an amount equal to that loss into the Plan.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs F's complaint is that Prudential incorrectly switched her With Profits holdings into a Cash fund when she reached her Normal Retirement Date (**NRD**) at age 60.

Background information, including submissions from the parties

4. Mrs F's NRD was 9 November 2015. Throughout the life of the Plan, she had chosen to invest 50% of her contributions in the Managed portfolio. She opted to invest the remaining 50% of her contributions in the With Profits portfolio.
5. On 18 June 2015, Prudential sent Mrs F's then Independent Financial Adviser (**IFA**) a letter explaining that all of her fund choices would be switched to the Cash fund one month before her NRD, unless she provided contrary instructions.
6. On 20 October 2015, Prudential wrote to Mrs F's IFA saying it had switched all of her holdings to the Cash fund.

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7. After Mrs F's IFA discovered that her portfolio choices had been switched to the Cash fund, they wrote to Prudential on 9 August 2016 to complain on her behalf that they had never received its letter dated 18 June 2015. As a result, Mrs F did not have the opportunity to remain invested in the Managed and With Profits funds.
8. The IFA further complained that it had encountered a similar issue with respect to Mrs F's husband's Plan (which was identical to Mrs F's, with the same portfolio choices, portfolio split and contribution rate). Prudential had written to the IFA before Mr F's selected NRD in 2013 to tell him that his With Profits units would be switched to the Cash fund, unless he provided contrary instructions. On Mr F's behalf, the IFA had instructed Prudential to change his NRD to his 65th birthday and make no changes to his portfolio choices. However, Prudential still went ahead and switched his whole portfolio to the Cash fund.
9. The IFA noted that, on the basis that it had failed to take action following receipt of Mr F's instruction, Prudential had agreed to reverse the switch; backdated to his original NRD. In these circumstances, the IFA suggested that Prudential should also reverse the switch in Mrs F's case; backdated to her NRD of 20 October 2015, as if the switch to Cash had not occurred.
10. The IFA also noted that Mrs F's Plan was valued at £43,802, while Mr F's Plan value was £48,023. The IFA noted that they had selected the same fund choices and portfolio split, and paid exactly the same contributions, throughout the lifetime of the Plans. Accordingly, the IFA suggested that the difference in the Plan values was due to the fact Mrs F's switch from the With Profits fund to the Cash fund had not been reversed, whilst Mr F's had.
11. In its response letter dated 13 September 2016, Prudential accepted that it should have written to Mrs F directly in the run-up to her selected NRD. It offered to reverse the switch out of the Managed fund into the Cash fund. However, Prudential said that the rules governing the Plan do not permit a member to remain invested in the With Profits fund after their selected NRD. Accordingly, Mrs F would have to select an alternative fund for the 50% of the contributions that were invested in the With Profits portfolio.
12. Turning to the difference in fund value between Mr F and Mrs F's plans; Prudential said this was because Mr F's switch from With Profits to Cash had been reversed and backdated to his original NRD, whilst, in Mrs F's case, this had not been done. Prudential explained that it had agreed to fully reverse the switch in Mr F's case because he had written to it to tell it to change his NRD and retain the investment in the With Profits portfolio, but it had failed to act on this instruction. On the other hand, Mrs F had made no such request, and so there is no evidence that she wanted to change her NRD and stop the switch to the Cash fund.

Adjudicator's Opinion

13. Mrs F's complaint was considered by one of our Adjudicators, who concluded that further action was required by Prudential. The Adjudicator's findings are summarised briefly below:-
- Prudential recognised it should have written to Mrs F directly to tell her that all her portfolios would be switched to the Cash fund at her selected NRD, unless she instructed otherwise. That is why it agreed to reverse the switch from the Managed fund and, in the case of the With Profits fund, permit her to select an alternative, non-cash portfolio.
 - The Adjudicator considered It was notable that Mrs F's husband, who was a member of the same Plan, and had made the same investment choices and fund split, was permitted to switch back out of the Cash fund, into the With Profits portfolio. The Adjudicator recognised that Prudential received an instruction from Mr F in 2013 to tell it that he did not want to switch to the Cash fund. However, he noted that Prudential accepted it should have written to Mrs F directly to tell her that both portfolios would be switched to the Cash fund one month before her selected NRD, unless she instructed otherwise.
 - The Adjudicator noted that Mrs F said that, had she been in possession of the facts, she would have taken the same action as her husband. Bearing in mind Mr F and Mrs F had made the same fund choices up until that point, the Adjudicator accepted this testimony. In the circumstances, he could see no valid reason for treating Mrs F differently from Mr F.
14. Prudential did not accept the Adjudicator's conclusions and the complaint was passed to me to consider. Prudential provided its further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Prudential for completeness. In summary, these are:-
- Mrs F's case is not the same as Mr F's. In September 2013, Mr F instructed it to change his NRD to 10 October 2018 and told it he did not want to switch either portfolio to the Cash fund. Prudential failed to act on this instruction and Mr F's With Profits holdings were erroneously switched to the Cash fund. When this error came to light, Prudential reversed the switch; backdated to Mr F's original selected NRD.
 - It accepts that when Mrs F was approaching her selected NRD in November 2015, it should have contacted her directly to tell her that the money invested in the With Profits portfolio would be switched to the Cash fund, unless she provided instructions to change her NRD and retain the existing investment portfolio.
 - However, it would only have permitted Mrs F to remain invested in the With Profits fund if it had received such an instruction before her selected NRD.

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- Since it has not had sight of any evidence that Mrs F sought to continue making contributions or change her selected NRD, it is unable to switch her back into the With Profits fund.
15. Prudential's comments were shared with Mrs F. She provided her further comments, as follows:-
- Her Plan was identical to Mr F's Plan; they were held over exactly the same length of time and exactly the same contributions were paid into each portfolio.
 - It was Prudential's responsibility to contact her whenever important changes were going to be made to the Plan.
 - If Prudential had written to her in the run-up to her selected NRD in November 2015, she would have instructed it to change her selected NRD to align with her 65th birthday and make no changes to her investment portfolio.

Ombudsman's decision

16. I have reviewed the terms and conditions governing the Plan in order to establish what they say with regard to what happens when a member reaches their selected NRD. As relevant, section 5.1 states:-
- “Investment of new contributions is not allowed in any With Profits Fund less than three years before or at any time after the Member's Normal Retirement Date”.
17. It is notable that this refers to *new* contributions, not existing contributions. Mrs F does not want to pay new contributions; she simply wants the existing contributions invested in the With Profits portfolio to remain there. Accordingly, I conclude that this section does not apply.
18. There is another section (clause 8.1, entitled “Switch to Cash Fund”), which says:-
- “Unless you ask us not to, one month before Normal Retirement Date all units under the Plan will be switched into a Cash Fund. No charge will be made for the switch. Any contribution due or paid thereafter will be redirected to the same Cash Fund. The Plan will then remain invested in the Cash Fund waiting for your instructions”.
19. As such, the clause provides that Prudential will switch all With Profits units into a Cash fund one month before the selected NRD, *unless the member asks it not to*. It does not say that all such holdings have to be switched to a Cash fund in all circumstances.

20. The final relevant section is clause 8.5, which provides:-

“You can ask us to change the Normal Retirement Date, but you must do this before the member’s Normal Retirement Date. The revised date

- **if the Member’s Normal Retirement Date was before his 72nd birthday**, must, if the plan includes any investment in a With Profits fund, be a birthday which is at least three years later, but no later than the 75th birthday ...
- will, in future, be called the Member’s Normal Retirement Date and all references in these plan conditions will be read accordingly”.

21. It is apparent, from this clause, that a member can remain invested in the With Profits fund after age 65, if they instruct Prudential to change their selected NRD prior to their original NRD. That is, provided the new selected NRD is more than three years after the original selected NRD (but no later than the 75th birthday).

22. Turning to Mrs F’s complaint; Prudential say that the reason they will not reverse the entire transaction was because Mrs F did not tell it that she wanted to change her selected NRD and retain her existing portfolio split.

23. However, Prudential has acknowledged that it should have written directly to Mrs F to tell her that the With Profits holdings would be switched to the Cash fund, unless she instructed otherwise. Further, the IFA has advised that it did not receive Prudential’s letter dated 18 June 2015; and this has not been disputed by Prudential. As a result, I find that Mrs F did not have a reasonable opportunity to tell Prudential she wanted to change her NRD and make retain her existing fund choices.

24. Mrs F has said that, had she received Prudential’s letter dated 18 June 2015, she would have provided the same instruction as Mr F – that is, to change her selected NRD to align with her 65th birthday and retain her existing fund split. Bearing in mind that Mr F and Mrs F had previously made the same fund choices, with the same portfolio split, and paid the same monthly contributions throughout the life of their plans, I accept this testimony.

25. Therefore, I uphold Mrs F’s complaint. The objective of the redress is to place her back in the position she would have been in, had the maladministration not occurred.

Directions

26. Within 21 days of the date of this Determination, Prudential will:-

- Accept any instruction Mrs F gives to revise her NRD
- Return Mrs F’s fund portfolio split to 50% Managed and 50% With Profits, backdated to 9 October 2015, as if the switch to the Cash fund did not occur.

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- Carry out a loss assessment exercise to determine whether Mrs F was financially disadvantaged as a result of the switch to the Cash fund.
- If this exercise reveals that Mrs F suffered a financial loss as a result of the switch, Prudential will pay an amount equal to that loss into the Plan.

Karen Johnston

Deputy Pensions Ombudsman
21 December 2017