

## Ombudsman's Determination

Applicant	Mrs R
Scheme	Railways Pension Scheme ( <b>the Scheme</b> )
Respondents	Prudential Plc ( <b>Prudential</b> ) RPMI Limited ( <b>the Administrator</b> )

## Outcome

1. I do not uphold Mrs R's complaint against Prudential and no further action is required by it.
2. I uphold Mrs R's complaint against the Administrator and, to put matters right, it should (1) redress her for loss of potential investment growth associated with the delayed transfer and (2) pay her £500 for significant distress and inconvenience.
3. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

4. Mrs R's complaint, about Prudential and the Administrator, is in relation to delays transferring pension benefits from Prudential to the Scheme.

## Background information, including submissions from the parties

5. In 2008, Mrs R started working for the Moeller Electric Group and became a member of the Moeller Electric Group Pension Scheme (**the Prudential plan**).
6. In August 2012, Mrs R left the Moeller Electric Group and became a deferred member of the Prudential plan.
7. In April 2013, Mrs R joined the Industry Wide Defined Contribution Arrangement Unipart Rail Section (**the Scheme**).
8. In January 2014, Mrs R requested to transfer her benefits under the Prudential plan to the Scheme.
9. In April 2014, transfer forms were presented to the Administrator then forwarded onto Prudential. The Administrator's letter to Prudential of 14 April 2014 stated: -

“This member has chosen to transfer the pension benefits held in your scheme into [the Scheme] and I enclose the necessary documentation. Please send a BACS payment to; Railway Pension Trustee Company Ltd Business Current a/c quoting the member reference number with the payment.

Please address all correspondence to: Rail DC & BRASS Team; RPMI; PO Box 377; Darlington; DL3 6XY.”

10. Prudential sent back a “Receiving Scheme/Policy Declaration (Transfer Undertaking)” form to the Administrator. Under the section “Receiving scheme details (your details)” the Administrator completed the form by hand as follows: -

“Cheque made payable to: The Railway Pension Trustee Company Ltd...  
Address: RPMI PO BOX 377 DARLINGTON DL3 6XY”

11. On 14 April 2014, the Administrator wrote to Mrs R stating: -

“Further to previous correspondence about the transfer of your pension benefits from The Prudential Assurance Company to [the Scheme].

I have asked them for payment of the transfer value. When the payment has been invested I will write to you to confirm how many units the transfer has purchased.”

12. In May 2014, after selling the units and disinvesting Mrs R’s benefits in the Prudential plan, Prudential sent the Administrator, or says that it sent, a cheque in the amount of £26,361.64, being the value of Mrs R’s benefits in the Prudential plan on 9 May 2014.
13. On 22 January 2015, after carrying out a routine audit, Prudential wrote to the Administrator, saying the cheque had not been cashed. This has been confirmed by the Administrator. The Administrator wrote to Prudential saying that it had no record of receiving the cheque and that it could not be traced.
14. In February 2015, Mrs R received an annual pension statement for her benefits under the Scheme, thereby discovering that the benefits of the Prudential plan had not been received into the Scheme. She contacted the Administrator and asked it to investigate and it then proceeded to do so.
15. Prudential then wrote to the Administrator, saying it would send the transfer funds by BACS instead. On 19 February 2015, the funds were received by the Administrator. The Administrator wrote to Mrs R, confirming that the funds had been received and the number of units that had been bought within the Scheme.
16. Between May and August 2015, there was various correspondence between Mrs R, Prudential and the Administrator. This was with regards to who was responsible for the delay and any associated investment losses. Mrs R also complained to Prudential around this time.

17. In September 2015, Prudential sent its final response to Mrs R's complaint. The key points were: -
- On 23 April 2014, it received a payment instruction from the Administrator. Whilst the covering letter requested payment by BACS, the payment form asked for payment by cheque.
  - At the time, it was unable to issue transfer payments by BACS; its process was to issue them by cheque. The letter and cheque were sent correctly and it could not explain why the Administrator had received neither.
  - The transfer payment was made following its correct procedure and timescales. So, it did not agree to redress Mrs R for loss of potential investment growth from May 2014 to February 2015. Nor did it agree to compensate her for her time resolving the matter.
  - It informed Mrs R that she could refer her complaint to the Pensions Advisory Service (**TPAS**) and the Pensions Ombudsman.
18. Mrs R complained to the Administrator and asked if she had exhausted its complaints process. It said it had escalated her complaint. Mrs R asked Prudential to reconsider her complaint, which it did in October 2015, but it did not uphold it. The Administrator then wrote to Mrs R rejecting her complaint, after which she asked it to consider her complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), which it acknowledged.
19. In January 2016, Mrs R chased the Administrator for an update and it said it had been waiting for her to provide a copy of Prudential's response. Mrs R said she would not do so and she was unhappy with this delay.
20. In February 2016, the Administrator wrote to Mrs R under stage one of the IDRP. The key points were: -
- It had requested that Prudential send the transfer payment by BACS but Prudential had sent it by cheque.
  - The cheque Prudential claimed to have sent was not received.
  - It had informed Mrs R it would write to her when the funds had been received but the funds were never received, hence it did not correspond with her further.
  - Prudential should have had a process to verify whether the cheque had been received and cashed.
  - It had corresponded appropriately, and in a timely manner, with Prudential, during the transfer, and after non-receipt of the transfer had been raised.
21. Mrs R appealed. She asked the Administrator to confirm if this was the last stage of its internal complaints process, so she could approach the Pensions Ombudsman.

22. In May 2016, the Administrator wrote to Mrs R under stage two of the IDRP. The key points were: -
- Mrs R should be compensated but this was not solely the Administrator's responsibility.
  - As the transfer funds remained with Prudential between May 2014 and February 2015, it was for Prudential to ensure she received her benefits and cover any losses.
  - It did not generally chase the sending scheme for transfer payments and was not under any legal obligation to do so.
23. From June to November 2016, there was a delay whilst the Administrator tried to find agreement with Prudential with regard to covering any investment losses Mrs R had incurred, which Mrs R agreed to.
24. In December 2016, Prudential wrote to the Administrator, turning down its request to split Mrs R's losses but offering Mrs R £100 as a goodwill gesture. It also stated: -
- “In your letter of 15 July 2016, you have covered the matter of BACS being available for another scheme that you administer. Under the arrangement to which [Mrs R's] fund was held however, the BACS facility did not form part of the service proposition until December 2014. This ultimately meant that we had no other option than to act on the request to release the proceeds by cheque as noted above.”
25. In February 2017, the Administrator wrote to Mrs R confirming the above.
26. Dissatisfied with the responses, Mrs R referred her complaint to this Office

### **Adjudicator's Opinion**

27. Mrs R's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Prudential, but that further action was required by the Administrator. The Adjudicator's findings are summarised briefly below: -
- Prudential's process at the time was to issue payment by cheque. The Administrator asked for payment by BACS. But, Prudential's process was not incorrect. Guidance from the Pensions Regulator's – “Guide to Administration” – stated that in most cases transfer payments should be made electronically. But this post-dated Mrs R's transfer and in any case was not binding. There were no other rules requiring BACS payment.
  - The Administrator's payment request of 14 April 2014 asked for payment by BACS, but it also processed Prudential's transfer form which asked for cheque payee details and a physical address. Prudential could have resolved this, but its form only mentioned payment by cheque and there was no option to select a BACS payment to a UK pension scheme.

- The Administrator acted incorrectly, when completing the cheque section, if it was true that it could only accept payment by BACS. Prudential made the payment by BACS in February 2015, but it was unable to do so in May 2014.
  - Prudential could not provide evidence that the letter and cheque were received by the Administrator. But this was not an administrative error, and it had provided evidence that they were sent to the correct address specified by the Administrator, so it was more likely than not they were correctly sent.
  - Prudential had sent the letter and cheque under separate cover. It was more likely than not at least one of them was received by the Administrator. Nor was there any sign that the letter or cheque were returned.
  - The Administrator should have been expecting payment by BACS as it had said it could only accept payments that way. But there was no sign that the Administrator took any further action when no BACS payment was received in respect of Mrs R.
  - Section 24 of the Administrator's transfer guidance stated a chaser letter would be sent to the ceding scheme if no funds were received after four weeks. But the Administrator had taken no further action after that period (or thereafter).
  - The funds were with Prudential from May 2014 to February 2015. However, it was not responsible for any loss Mrs R had suffered because it had acted correctly by issuing a cheque and letter to the Administrator. Prudential could have done more but it had not made any administrative errors. So, it did not need to take further action.
  - The Administrator should have done more and, if it had, a significant delay would have been avoided.
  - Mrs R complained to Prudential in July 2015 and it issued its final response in September 2015. This was a reasonable period of time. Its response correctly referred Mrs R to TPAS and this Office. So, she could have referred her complaint in relation to Prudential after that. Prudential had not made any administrative errors in this regard.
  - Mrs R complained to the Administrator in September 2015 and it responded under the Scheme's IDRPs in February and May 2016. It also acted reasonably when it tried to resolve the complaint with Prudential. Any delays after May 2016 were down to the Administrator but it was acting in Mrs R's interests and she had agreed to this.
28. Mrs R and Prudential accepted the Adjudicator's Opinion but the Administrator did not. So, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by the Administrator for completeness.

## Ombudsman's decision

29. The Administrator requested the following points be taken into consideration. First, it says its letter of 14 April 2014 clearly requested a BACS payment to its "Railways Pension Trustee Company Ltd Business Current Account" and noted the account details but Prudential chose to send the payment by cheque anyway.
30. But the evidence indicates that Prudential did not choose a cheque among several payment methods open to it. Rather, cheque was the only method it could use at the time. If this has been made clearer by Prudential, the Administrator would have been looking for a cheque. But I do not find that the mismatch of expectation regarding the method of payment was the cause of the delay. I find the Administrator should have been looking for payment in respect of Mrs R anyway. She had recently asked it to request her benefits under the Prudential plan. And it had written to her, following its request to Prudential, confirming it would update her when payment was received and invested. Despite its own process, the Administrator did not chase Prudential after four weeks when no payment was received. I find this amounts to maladministration as the Administrator failed to take action it should have taken.
31. The Administrator disagrees that the onus was on it, as the receiving scheme, to ensure the funds were received. It says, on the basis that Prudential held Mrs R's funds during the relevant period, Prudential needed to take responsibility for ensuring the funds were transferred securely and promptly. It says the best way to achieve this was to make payment by BACS. It is accepted that a delay could have been avoided if Prudential had made payment by BACS. But I do not find that Prudential's making payment by cheque amounts to maladministration. On the other hand, I find that the Administrator's requesting payment by BACS and also completing the cheque section of Prudential's form does amount to maladministration. Moreover, as I have explained above, I find that its failure to follow up on its initial request was maladministration.
32. The Administrator states that, as the receiving scheme, it was not common practice to chase third parties for payment. It says it operates on a cash basis, i.e. it invests what it receives. Further, members sometimes intimate their intention to transfer funds but then change their minds. But there is no sign that Mrs R had changed her mind about transferring. Moreover, the Administrator's statement that it does not routinely chase third parties for transfer funds is contradicted by its own process.
33. Furthermore, the Administrator states that, after Prudential made payment by cheque, it should, as a "responsible organisation with appropriate financial controls" have had a reconciliation process in place to immediately track down and review all uncashed cheques. The evidence indicates it was Prudential that alerted the Administrator to the fact that the cheque had not been cashed (albeit more than six months after the original transfer request). However, in circumstances where the Administrator had erred in specifying payment by cheque, I consider that the onus was on it to look out for a cheque (or at least chase the ceding scheme in line with its process, to ensure that the transfer funds were received and invested in a reasonable period of time.

34. Therefore, I do not uphold Mrs R's complaint against Prudential but I uphold it against the Administrator. My directions below seek to put Mrs R as closely as possible back into the position she would be in now, if there had been no significant delay.

## **Directions**

35. Within 28 days of the date of this Determination, the Administrator shall calculate: -
- i. How many additional units (if applicable) the transfer payment of £26,361.64 would have bought if it had been transferred to the Scheme within three weeks of the date of Prudential's cheque (being a reasonable period for a transfer of this time, taking into account time required for the cheque to clear).
  - ii. If additional units are required, the value of Mrs R's benefits in the Scheme should be adjusted to reflect the additional value, making allowance for any associated tax relief and costs (including but not limited to any dealing costs).
  - iii. The calculation should take account of any loss of investment return to date on any loss identified in (i) above, as if any investment return had been invested from February 2015 to date (assuming the same investments as at May 2014).
36. The Administrator should also pay Mrs R £500, in recognition of significant distress and inconvenience caused to her by the delayed transfer.
37. As I understand it, Prudential's offer of £100 is still available, therefore I leave it with Mrs R to decide whether she wishes to accept this.

**Karen Johnston**

Deputy Pensions Ombudsman  
5 June 2018