

PO-22236

## Ombudsman's Determination

Applicant	Ms N
Scheme	The Prudential Personal Pension Scheme ( <b>the Scheme</b> )
Respondent	Prudential

### Complaint Summary

1. Ms N's complaint concerns the delay caused by Prudential when processing her transfer request. She had asked for her benefits in the Scheme to be transferred to Computershare Trust Company of Canada, Edward Jones Locked-in Registered Retirement Savings Plan 574-599 (**the receiving scheme**), but she claims Prudential's delays prevented the transfer from taking place. As a result, this has caused a loss of investment growth, as well as distress and inconvenience.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld because, due to Prudential's acts and omissions, Ms N's transfer did not take place when it should have done, on 13 June 2016, which Prudential has accepted.
3. Had there been no delay, Ms N's benefits would not have been subjected to the suspension on the Property Fund, and the transfer could have been made while the receiving scheme was still on HM Revenue & Customs' (**HMRC**) Qualifying Recognised Overseas Pension Scheme (**QROPS**) list. Therefore, Prudential shall provide redress to Ms N in accordance with the Directions set out in paragraphs 68 to 70 below.

## **Detailed Determination**

### **Material facts**

4. On 7 April 2016, Ms N contacted Prudential to request transfer paperwork, so that she could transfer her pension to Canada, where she resides.
5. On 16 April 2016, Prudential issued a transfer quote, which did not include overseas transfer paperwork.
6. On 19 May 2016, Prudential received a letter and documents for a transfer to the receiving scheme.
7. On 31 May 2016, the receiving scheme called Prudential to ask for an update on the transfer.
8. On 8 June 2016, Prudential wrote to Ms N with an overseas transfer quote.
9. On 14 June 2016, the receiving scheme called Prudential asking for confirmation of what was required for the transfer to take place. It called again on the following two days.
10. On 17 June 2016, Prudential sent a letter and documents to the receiving scheme for completion.
11. On 21 June 2016, the receiving scheme called Prudential requesting that the transfer be processed urgently. The receiving scheme believed that Prudential had received all that was required to process the transfer.
12. On 23 June 2016, Prudential informed the receiving scheme that it had sent it a letter on 17 June. In the letter Prudential confirmed that it needed:
  - (i) confirmation from the receiving scheme's administrator or a third party, that Ms N was an employee of the employer that established the receiving scheme; and
  - (ii) a copy of the receiving scheme's rules.
13. Prudential also explained that Ms N could ignore its letter dated 8 June 2018, which had contained further requirements, as this was incorrect. Prudential only required information of the receiving scheme.
14. On 30 June 2016, Prudential faxed the applicable requirements to the receiving scheme.
15. On 11 July 2016, Prudential received a letter in response and the necessary documents from the receiving scheme.

16. On 18 July 2016, the receiving scheme called Prudential to ask for an indication of the likely timescale concerning the transfer. Prudential advised the receiving scheme that the information would be processed no later than 21 July 2016.
17. On 22 July 2016, Prudential noted that Ms N was invested in its Property Fund, and so internal confirmation as to whether the transfer could take place was requested.
18. On 25 July 2016, the receiving scheme called for an update on the transfer. It was informed that Prudential would chase a response in relation to the Property Fund and call back the following day.
19. On 26 July 2016, Prudential called the receiving scheme and advised it that the transfer would not take place due to the suspension of transfers from its Property Funds. Prudential confirmed that it was planning to write to customers regarding that suspension from the beginning of August, but did not have a timescale on how long the suspension was likely to remain in place.
20. On 27 July 2016, Ms N called Prudential to express her dissatisfaction that the Property Fund had been suspended and that her transfer had not proceeded as requested. As a result, Ms N complained. Prudential also sent the receiving scheme a letter confirming the suspension on this day.
21. In August 2016, Prudential wrote to Ms N to confirm the suspension of its Property Funds. It explained that the high level of uncertainty in the markets had impacted the demand for commercial property. As a result, fund managers had acted to protect long-term interests of investors by temporarily suspending transactions.
22. On 5 August 2016, Prudential issued its response to Ms N's complaint. It agreed that it had provided a poor level of service and that, had it not caused any delay, the transfer would have taken place on 13 June 2016. It confirmed that as soon as the suspension had been lifted, it would "ensure [Ms N's] transfer payment is made as soon as possible." Prudential confirmed that the amount to be transferred was £76,687.61, which was the sum that would have been transferred on 13 June 2016. It would also find out whether Ms N had been financially disadvantaged by the delay and would forward funds to cover any such financial disadvantage. In addition to this, Prudential offered £175 for the cost of phone calls incurred by Ms N and the distress and inconvenience experienced by her. The payment for distress and inconvenience was made on 7 September 2016.
23. On 28 October 2016, Prudential wrote to Ms N to confirm that the suspension on the Property Fund would be lifted on 4 November 2016.
24. On 16 November 2016, Prudential confirmed that the suspension had been lifted. It advised Ms N that it would write to the receiving scheme once the transfer had completed to establish if there had been a financial loss.

25. On 29 November 2016, after contact from Ms N, The Pensions Advisory Service (TPAS) wrote to Prudential in relation to her complaint. It asked:-
- (i) Whether Prudential's assessment to ensure Ms N would not be financially disadvantaged had incorporated the fall in value of the pound.
  - (ii) For a copy of the scheme's terms and conditions, to check whether the deferment of Ms N's transfer was permitted.
  - (iii) Which Property Fund Ms N was invested in and when the suspension on transfers applied to Prudential's property funds.
  - (iv) For confirmation of the current position regarding the transfer out of the funds in the Scheme.
26. On 7 December 2016, Prudential wrote to TPAS. It stated that the Property Fund suspension was implemented on 6 July 2016, and confirmed that Ms N was in the Prudential Property Pension Fund, as well as four other Funds. Alongside this, Prudential provided a copy of the Member's Explanatory Booklet of which Section 4.8 outlined Prudential's right to delay in buying, selling or switching units:
- “4.8.1 Reasons for delaying transactions
- There may be a delay in buying, selling or switching units in any fund. [...] we may need to effect a delay where we believe that otherwise the remaining policyholders would suffer an unfair reduction in the value of their policy or would suffer some other form of unfair treatment.”
27. Prudential also confirmed that it would honour its offer to Ms N; it would transfer the fund value as at 13 June 2016, and would contact the receiving scheme to calculate if there had been a financial loss, once the transfer was made.
28. As the receiving scheme had been removed from HMRC's QROPS list on 1 November 2016, the transfer could not go ahead. Prudential offered Ms N a further £250 for the inconvenience caused, which was paid on 17 January 2017.
29. On 9 January 2017, TPAS informed Ms N that Prudential had confirmed that, “Servicing will arrange for the current value and will calculate the value as at 13 June 2016 in Canadian Dollars assuming it had been received by Telegraphic Transfer the same day. We [Prudential] will also calculate the value as at today's date once we receive this from Servicing.”
30. On 23 February 2017, Ms N confirmed to TPAS that she was still pursuing her complaint, because when she applied for the transfer, the receiving scheme was named on the QROPS list. She stated that she would now have to find another financial institution to transfer to, or wait until the receiving scheme was added to the

QROPS list again. Ms N informed TPAS that she had chosen the second of those options, as she was under the impression that the receiving scheme's reinstatement onto the QROPS list would happen within the next couple of months.

31. On 14 December 2017, Ms N contacted TPAS to say that nothing had progressed as there were no Canadian schemes on the QROPS list. Ms N believed this was unfair as she continued to lose investment opportunities with no indication of when the QROPS list would change.
32. On 15 December 2017, TPAS wrote to Prudential to ask about the settlement it had previously offered, and whether this would still be honoured once the receiving scheme was added to the QROPS list.
33. On 2 January 2018, Prudential wrote to TPAS to confirm that there were no Canadian schemes on the QROPS list. It was concerned that the receiving scheme may never be re-added to the QROPS list, and that Ms N would be waiting indefinitely, which would not be the best outcome for either party. As such, Prudential asked whether Ms N would consider an alternative QROPS in which to transfer.
34. On 3 January 2018, Ms N responded to Prudential's suggestion. She did not see how transferring her funds to a different country would be beneficial to her, as she was a resident of Canada. After a further review, Ms N emailed TPAS on 9 January 2018, to say that it appeared as if her funds were "stuck" with Prudential for the foreseeable future until HMRC eased its restrictions on Canadian financial institutions.
35. On 26 January 2018, Prudential suggested obtaining a "hypothetical value of the transfer of funds, had it occurred and compare it to the value of her pension with us [in the Scheme]." It noted that this would not take into account any potential future losses though.
36. On 30 January 2018, Ms N asked for this to take place. She said that she would then consider her options and decide whether to accept the compensation offered. Prudential subsequently informed Ms N that, upon acceptance, this would be a final settlement and that it would not do the same calculations again or consider any future potential losses. In addition to this, it could not keep its offer open indefinitely.
37. On 31 January 2018, Ms N responded to Prudential. She said that the process should be negotiable if Prudential's initial figure was not satisfactory. However, Ms N accepted that if or when a figure had been agreed, this would not affect her existing pension fund with Prudential and that it would be a full and final settlement.
38. On 7 February 2018, Prudential wrote to the receiving scheme. It explained what had happened with Ms N's transfer request and how it could not take place. It asked the receiving scheme to confirm what the current value of Ms N's investment would have

been, had Prudential sent the receiving scheme £76,687.61 on 13 June 2016. Prudential also informed TPAS of this, on the same day.

39. On 28 February 2018, the receiving scheme confirmed that the \$140,530.04 Canadian Dollar equivalent on 13 June 2016, would be worth \$177,959.62 after the 21 months that had passed.
40. On 7 March 2018, Prudential contacted TPAS to provide an update. It explained how the figures it had received from the receiving scheme were higher than expected. As a result, Prudential was going to have a meeting about the situation.
41. On 6 April 2018, Prudential let TPAS know that it did not believe there was an obvious outcome to Ms N's complaint or situation. This was because there was a known investment loss, but Prudential did not know what this loss might be when Ms N came to take her benefits. As a result, Prudential felt it would be best if the case was investigated by the Pensions Ombudsman, with the view of reaching an agreement that way.

#### **Summary of Ms N's position**

42. Ms N considers that, as a result of Prudential's acts and omissions, she has been unable to transfer her pension benefits to the receiving scheme. This has caused an investment loss which is ongoing. As a result, Ms N would like:-
  - (i) £76,687.61 transferred to the receiving scheme at the exchange rate from 13 June 2016;
  - (ii) Prudential to "reimburse" any returns from investments in the receiving scheme since 13 June 2016;
  - (iii) Compound interest accrued from (ii); and
  - (iv) Compensation for the distress and inconvenience caused.
43. If the transfer cannot take place, Ms N has said that Prudential should consider:-
  - (i) The difference between the value of her benefits in the Scheme, and what the value would have been in the receiving scheme;
  - (ii) How much her Canadian fund could have been worth in 2020, when she plans on claiming the benefits, compared to the value of her benefits in the Scheme once she is able to claim the benefits in 2020;
  - (iii) Compound interest accrued from (i) and (ii); and
  - (iv) Compound interest that could have been accrued upon final maturity of a Canadian investment fund.

## Summary of Prudential's position

44. Prudential agrees that, without the delays it caused, the transfer would have been processed by 13 June 2016. It notes that even if it had issued the correct information on the transfer quote dated 16 April 2016, the transfer request Prudential received from the receiving scheme on 19 May 2016, would still have needed further information from the receiving scheme. However, it would have requested this information by 23 May 2016. If the response had been faxed, it could have received the required information by 7 June 2016, meaning the payment could have been made by 13 June 2016.
45. By the time the suspension on the Property Fund had been lifted, Prudential was unable to make the transfer to the receiving scheme because it had been removed from the QROPS list on 1 November 2016. To date, no Canadian Pension schemes are on the recognised overseas pension schemes (**ROPS**) notification list (which is required of a pension scheme in order for it to be a QROPS), so Prudential is unable to effect the transfer. Prudential has also confirmed that this is the only reason why it did not pay the transfer.
46. Had Prudential made the transfer payment after the receiving scheme had been removed from the QROPS list, it is likely that it would have been treated as an unauthorised payment by HMRC<sup>1</sup>. This would have incurred severe tax penalties for both Ms N and Prudential, and in accordance with the Scheme Rules, effective from 6 April 2012, "No person shall have a right under the Scheme to any payment of benefits to or in respect of him or her which, if paid, would be an Unauthorised Member Payment."
47. As a result, Prudential has looked to compare the current value of Ms N's pension with Prudential to the fund that she would have transferred to. However, it has noted that this would only compensate Ms N up to the calculation date and not going forward.

## Conclusions

48. It is undisputed that Prudential caused delays which amount to maladministration and, as a result, Ms N has suffered a loss. Nevertheless, a resolution has not been found. Generally, this would be to put Ms N back into the position that she would have been in, had it not been for Prudential's maladministration. That is because the specific maladministration which occurred here was negligent administration; failing in its duty to efficiently process and ultimately complete a transfer to which Ms N was entitled, and which should have gone through before the opportunity was lost and or

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<sup>1</sup> In order for a transfer out of the Scheme to be an authorised payment, Section 169(1) of the Finance Act 2004 provides that the transfer must be made to either another registered pension scheme or a QROPS.

further delayed. As a result, Ms N suffered a financial loss. However, there are a couple of factors which complicate this matter and which will affect the directions that I make under this Determination.

### The Scheme's Rules

49. It appears to me that the rules which govern the Scheme (**the Rules**) might prevent Prudential from being able to transfer funds from the Scheme to the receiving scheme, as explained below.
50. Under section 169(1) of the Finance Act 2004<sup>2</sup> (**the 2004 Act**), in order for a transfer out of a registered pension scheme to be an authorised payment, the transfer must be made to either a registered pension scheme under section 153 of the 2004 Act<sup>3</sup>, or to a QROPS. As the receiving scheme is neither a registered pension scheme nor a QROPS, a transfer of the Scheme's funds to the receiving scheme would constitute an unauthorised payment.
51. Under Rule 7.2<sup>4</sup> of the Rules, it is expressly stated that no member has a right to a payment which would constitute an unauthorised payment and I have found no provision in the Rules granting Prudential discretion to make an unauthorised payment.
52. Further, if Prudential were to transfer Ms N's benefits, it would not be considered a statutory transfer under Part 4ZA of the Pension Schemes Act 1993 (**the 1993 Act**), as one of the requirements of a statutory transfer under Part 4ZA of the 1993 Act is that the receiving scheme is a registered pension scheme under section 153 of the 2004 Act or a QROPS<sup>5</sup>. Rule 5.1<sup>6</sup> of the Rules requires the receiving scheme to be a QROPS if it is not a registered pension scheme under section 153 of the 2004 Act. The Rules do not contain a provision whereby Prudential has the discretion to make a non-statutory transfer of funds out of the Scheme to a receiving scheme that is not a registered pension scheme or a QROPS, so it seems that Prudential has no power to effect the transfer of Ms N's funds in the Scheme to the receiving scheme.
53. At the present time, there is no Canadian pension scheme that is a QROPS, so any direction I make to Prudential, to pay the transfer to another Canadian scheme of Ms N's choosing, would be equally as ineffective as if I were to direct Prudential to pay the transfer to the receiving scheme that Ms N originally had in mind.

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<sup>2</sup> The relevant excerpt can be found in the Appendix

<sup>3</sup> *ibid*

<sup>4</sup> The relevant excerpt can be found in the Appendix

<sup>5</sup> Section 95(3) of the Pension Schemes Act 1993 and Regulation 2 of The Personal Pension Schemes (Transfer Values) Regulations 1987. The relevant excerpts can be found in the Appendix

<sup>6</sup> The relevant excerpt can be found in the Appendix



Unauthorised payment charge

54. In most cases where an unauthorised payment is made, both a scheme sanction charge<sup>7</sup> and an unauthorised payment charge are payable by the scheme and the member respectively. Section 241(2) of the 2004 Act, exempts certain unauthorised payments from being 'scheme chargeable' (so no scheme chargeable payment would be payable in respect of any such unauthorised payments), as follows:
- “(2) An unauthorised payment is exempt from being scheme chargeable if -
- [...] (c) It is made to comply with an order of a court or a person or body with power to order the making of the payment.”
55. In my role as Pensions Ombudsman, I have the power to order Prudential to make the transfer of Ms N's funds out of the Scheme, under section 151(2) of the 1993 Act:
- “where the Pensions Ombudsman makes a determination under [Part X of the 1993 Act]...he may direct any person responsible for the management of the scheme to which the complaint...relates to take, or refrain from taking, such steps as he may specify in the statement referred to in subsection (1) or otherwise in writing.”
56. On that basis, a transfer from the Scheme to the receiving scheme made by Prudential in accordance with my directions to do so under this Determination would be exempt from being scheme chargeable, by virtue of section 241(2)(c) of the 2004 Act. A further benefit of the exemption under section 241(2)(c) would be that the transfer, although constituting an unauthorised payment, would not jeopardise the Scheme's registration by contributing to the amount of scheme chargeable payments made<sup>8</sup>.
57. However, the Act does not create an exemption for the member to whom the transfer relates. The member would still have to pay an unauthorised payment charge in respect of the transfer, in accordance with section 208 of the 2004 Act<sup>9</sup>.
58. Had the transfer taken place as it should have done, Ms N would not have had to pay an unauthorised payment charge. It follows that Prudential should cover any tax liability incurred by Ms N that results directly from the transfer to the non-QROPS receiving scheme.

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<sup>7</sup> Section 241(1)(a) of the 2004 Act, which can be found in the Appendix

<sup>8</sup> Under section 158(1)(a) of the 2004 Act, a pension scheme's registration may be withdrawn if it appears to HMRC that the amount of the scheme chargeable payments made by the pension scheme during any period of 12 months exceeds the de-registration threshold. The excerpt can be found in the Appendix

<sup>9</sup> The relevant excerpt can be found in the Appendix

Determination

59. Prudential shall make a payment to the receiving scheme or to another scheme of Ms N's choosing, covering the amount of Ms N's funds currently in the Scheme, whether that be by transferring Ms N's funds from the Scheme, or by Prudential making the payment out of its own funds (see paragraph 61 below).
60. I make this direction in recognition that Ms N made a valid request for a statutory transfer of her fund under Rule 5.1 of the Rules, and, had it not been for the initial delay to the transfer caused by Prudential's maladministration, the transfer would have been made while the receiving scheme was still a QROPS. I note that Prudential made a contractual promise to effect the transfer as soon as the suspension of its Property Fund was lifted, as explained in paragraph 22 above.
61. Taking into account that there is no provision in the Rules that gives Prudential the discretion to make an unauthorised payment or to make a transfer to an overseas scheme that is not a QROPS, I acknowledge that Prudential may consider itself unable to follow a direction to effect the transfer of Ms N's fund. Should this be the case, Prudential should pay the required sum from its own funds into the receiving scheme, rather than (and in lieu of) transferring Ms N's funds from the Scheme.
62. Turning to the potential loss of investment growth, Prudential has agreed to ensure that Ms N has not suffered a financial loss due to the delay in effecting the transfer of her funds out of the Scheme. As Prudential has noted, this includes any lost investment returns that Ms N would have received had her benefits been in the receiving scheme. In my judgment, a comparison and calculation, similar to the one Prudential actioned in February 2018, is necessary to determine whether Ms N would have received a higher return from her investments, had they been in the receiving scheme. So that Ms N does not experience any financial detriment from Prudential's delays, should Ms N provide Prudential with satisfactory evidence to: show that the investment of Ms N's funds under the receiving scheme would have performed better than they have done under the Scheme during the same period; and quantify the investment loss incurred by Ms N while her fund has remained in the Scheme as a consequence of the delay in the transfer, Prudential should make good any such investment loss out of its own funds.
63. With regard to Ms N's claim for compound interest, I do not uphold that claim. Had Ms N's pension benefits been transferred in June 2016, she would have had \$140,530.04 Canadian Dollars in the receiving scheme. The value would have fluctuated depending on investments made, but it would not have been subject to compound interest. In any case, any difference between what Ms N has received from the Scheme and what she would have received from the receiving scheme, would be encompassed by the profit or loss calculation. In addition, as the transfer will take place, there will be no need to consider whether compound interest would

have accrued upon final maturity of a Canadian investment fund, so, I do not consider that additional compound interest is appropriate.

64. Further, should Ms N incur any tax liability under the 2004 Act, as a consequence of any payment made by Prudential into the receiving scheme, I find that Prudential is liable to pay an amount covering that tax liability to Ms N or into the receiving scheme, as the case may be.
65. I now turn to the claim of distress and inconvenience. I agree that this process must have been extremely frustrating for Ms N. Prudential agreed on 5 August 2016, that without its delays, the transfer would have taken place before the suspension of the Property Fund and the receiving scheme's ceasing to be a QROPS, and the matter would have been resolved in June 2016. Although, Prudential was entitled to suspend transactions, as explained in the Member's Explanatory Booklet that was made available to Ms N upon joining the Scheme, had it not been for Prudential's delay in effecting the transfer, the suspension of the Property Fund would not have prevented the transfer from taking place.
66. I find that the long duration of the delay will have contributed greatly to Ms N's general distress and inconvenience. I note that Prudential has already paid Ms N £425, as explained in paragraphs 22 and 28 above. However, given the serious level of the distress and inconvenience caused to Ms N, I consider £1,000 to be a more appropriate level of award. Prudential should therefore pay the outstanding £575 to Ms N, as directed below.
67. I uphold the complaint.

## **Directions**

68. Within 28 days of the date of my Determination Prudential shall:
  - (i) arrange for the transfer of an amount equivalent to the value in Canadian Dollars of Ms N's Scheme fund as at 13 June 2016, into either: the receiving scheme if it will accept it; or, if that scheme will no longer accept the funds, into another scheme of Ms N's choosing that is either: a registered pension scheme under section 153 of the 2004 Act; or an overseas scheme that was a QROPS on 13 June 2016;
  - (ii) pay to HMRC any amount necessary to cover any tax charge that arises under the 2004 Act in consequence of the payment under (i) above not being a recognised transfer under section 169 of the 2004 Act;

(iii) in the event that Prudential is not able to effect the transfer from the Scheme, it shall make the payment under (i) above from its own funds held outside the Scheme, in lieu of Mrs N's entitlement in the Scheme, in which case:

- (a) Prudential shall pay to HMRC any amount necessary to cover any tax charge that arises under the 2004 Act in consequence of the payment under (iii) above not being an authorised payment under section 164 of the 2004 Act; and
- (b) having made the payment under (i) from its own funds and accounted for any additional tax charge under (a) above, Prudential shall no longer be liable to Ms N for any of the value of her fund within the Scheme; and

(iv) pay £575 to Ms N, increasing the overall award to £1,000, in recognition of the serious distress and inconvenience that Ms N has suffered (as explained in paragraph 66 above).

69. Within 28 days of receipt of satisfactory evidence of any investment gain that would have been made on Ms N's funds, had they been transferred to the receiving scheme on 13 June 2016, during the period from 13 June 2016 to the date of calculation, Prudential shall:

- (v) pay an amount equal to that investment gain to the receiving scheme if it will accept it, otherwise to the scheme of Ms N's choosing into which the payment under paragraph 68 has been made; and
- (vi) pay to HMRC any amount necessary to cover any tax charge that arises, under the 2004 Act, in consequence of the payment under (v) above not being an authorised payment under section 164 of the 2004 Act.

70. In accordance with my powers under section 151(2) Pension Schemes Act 1993 I direct that, in the event that the above redress options prove unworkable, Prudential shall refer the matter back to me promptly for further directions.

**Anthony Arter**

Pensions Ombudsman  
29 July 2019

## Appendix

### 2. Finance Act 2004, Part 4, Chapter 3, ‘Authorised member payments’, section 169, paragraph 1

#### 169 Recognised transfers

(1) A “recognised transfer” is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under—

- (a) another registered pension scheme, or
- (b) a qualifying recognised overseas pension scheme, in connection with a member of that pension scheme.

[F1] (1A) A transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme to an insurance company is to be treated as a recognised transfer if the sums or assets had been applied by the pension scheme towards the provision of a scheme pension or a dependants' scheme pension (but subject to regulations under subsections (1B) and (1C)).

(1B) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a scheme pension to which a member of a registered pension scheme has become entitled (“the original scheme pension”)—

- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a scheme pension (a “new scheme pension”), and
- (b) if they are so applied, the new scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original scheme pension.

(1C) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent rights in respect of a dependants' scheme pension to which a dependant of a member of a registered pension scheme has become entitled in respect of the member (“the original dependants' scheme pension”)—

- (a) the transfer is not a recognised transfer unless those sums and assets are, after the transfer, applied towards the provision of a

dependants' scheme pension (a "new dependants' scheme pension"), and

- (b) if they are so applied, the new dependants' scheme pension is to be treated, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, as if it were the original dependants' scheme pension.

(1D) The Board of Inland Revenue may by regulations provide that, where any of the sums or assets transferred represent—

- (a) a person's unsecured pension fund or dependant's unsecured pension fund, or
- (b) a person's alternatively secured pension fund or dependant's alternatively secured pension fund,

under an arrangement ("the old arrangement"), the transfer is not a recognised transfer unless all of those sums and assets become held under an arrangement under which no other sums or assets are held ("the new arrangement").

(1E) If regulations so provide they may make in relation to cases in which the sums and assets become so held provision as to the treatment for the purposes of any provision of this Part of—

- (a) the sums and assets transferred, and
- (b) the new arrangement,

including provision for treating the sums and assets transferred as remaining, to such extent as is prescribed by the regulations and for such of the purposes of this Part as are so prescribed, sums and assets held under the old arrangement.]

### **3. Finance Act 2004, Part 4, Chapter 2, 'Registration', section 153**

153 Registration of pension schemes

- 1) An application may be made to the Inland Revenue for a pension scheme to be registered.
- 2) The application –
  - a) must contain any information which is reasonably required by Inland Revenue in any form specified by the Board of Inland Revenue, and
  - b) must be accompanied by a declaration that the application is made by the scheme administrator (see section 270) and any other declarations by the scheme administrator which are

reasonable required by the Inland Revenue.

- 3) The declarations which the Inland Revenue may require to accompany an application for the registration of a pension scheme include, in particular, a declaration that the instruments or agreements by which it is constituted do not entitle any person to unauthorised payments (see section 160(5)).
- 4) On receipt of an application for a pension scheme to be registered the Inland Revenue must decide whether or not to register the pension scheme.
- 5) The Inland Revenue's decision must be to register the pension scheme unless it appears that—
  - a) any information contained in the application is incorrect, or
  - b) any declaration accompanying it is false.
- 6) The Inland Revenue must notify the scheme administrator of the decision on the application.
- 7) Unless the Inland Revenue's decision is not to register the pension scheme, the notification must state the day on and after which the pension scheme will be a registered pension scheme.
- 8) An annuity contract [E1 made with an insurance company]—
  - a) by means of which benefits under a registered pension scheme have been secured, but
  - b) which does not provide for the immediate payment of benefits, is to be treated as having become a registered pension scheme on the day on which it is made.

[E2 (8A) Where an order has been made under section 19(4) or 21(2)(a) of the Pensions Act 2004 or Article 15(4) or 17(2)(a) of the Pensions (Northern Ireland) Order 2005 (restitution by order of court or Pensions Regulator) that property or money be transferred, or a sum be paid, towards an annuity contract made with an insurance company, the annuity contract is to be treated as having become a registered pension scheme on the day on which it is made.]

- 9) Schedule 36 contains (in Part 1) provisions treating certain pension schemes in existence immediately before 6th April 2006 as registered pension schemes (and related provisions).

#### **4. Prudential Personal Pension Scheme Rules**

##### **7.2 Unauthorised Member Payments**

No person shall have any right under the Scheme to any payment of benefits to or in respect of him or her which, if paid, would be an Unauthorised Member Payment.

## 5. Pension Schemes Act 1993, Part 4, Chapter 4, section 95, paragraph 3

95 Ways of taking right to cash equivalent

- (3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are—
- (a) for acquiring transfer credits allowed under the rules of an occupational pension scheme—
    - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
    - (ii) which satisfies prescribed requirements;
  - (b) for acquiring rights allowed under the rules of another personal pension scheme—
    - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
    - (ii) which satisfies prescribed requirements;
  - (c) for subscribing to other pension arrangements which satisfy prescribed requirements.

## The Personal Pension Schemes (Transfer Values) Regulations 1987, Regulation 2

2 Requirements to be satisfied

[F1 2.—(1) The prescribed requirements referred to in section 95(3)(a) and (b) of the Act (cash equivalent of member's rights under a personal pension scheme to be used for acquiring transfer credits or rights under another scheme) are that—

- (a) the receiving scheme—
  - (i) is registered under section 153 of the Finance Act 2004 (registration of pension schemes), or
  - (ii) is a qualifying recognised overseas pension scheme as defined in section 169 of that Act (recognised transfers),

F2( b ). . . . .



- (2) Paragraph (1)(a)(i) shall not apply if the receiving scheme was immediately before the 6th April 2006 approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 (retirement annuities), unless the transfer is from a contract or scheme which was immediately before 6th April 2006 approved under Chapter III of Part XIV of that Act.]

## **6. Prudential Personal Pension Scheme Rules**

### **5.1 Transfers out of the Scheme**

- (a) The Member may direct the Scheme Administrator to transfer the Member's Fund to another Registered Pension Scheme or to a Qualifying Recognised Overseas Pension Scheme.
- (b) The Scheme Administrator may, at its discretion, permit the Member to retain part of the Member's Fund in the Scheme.
- (c) If the Scheme Administrator permits, the Member may elect for different parts of the Member's Fund to be transferred to more than one Registered Pension Scheme or Qualifying Recognised Overseas Pension Scheme.
- (d) The Member (or, where appropriate, his or her Dependant) may direct the Scheme Administrator to transfer the Drawdown Pension Fund to another Registered Pension Scheme or to a Qualifying Recognised Overseas Pension Scheme.
- (e) The transfer must be made by a direct payment between the Scheme Administrator and the scheme administrator or trustee of the other scheme.
- (f) The Member (or, where appropriate, his or her Dependant) may withdraw a request for transfer by giving the Scheme Administrator notice in writing to that effect but may not withdraw a request after the Scheme Administrator has entered into a binding agreement with a third party to make the transfer to the other scheme.
- (g) The Member and his or her Dependant will cease to be entitled to benefit under the Scheme in respect of any rights transferred in accordance with this Rule 5.1 and the Scheme Administrator and Provider will be discharged from any obligation to provide benefits in respect of those transferred rights.
- (h) The Scheme Administrator may, at its discretion, allow the transfer of a pension in payment from the Scheme.

**7. Finance Act 2004, Part 4, Chapter 5, ‘Scheme sanction charge’, section 241, paragraph 1(a)**

241 Scheme chargeable payment

- 1) In this Part “scheme chargeable payment”, in relation to a registered pension scheme, means –
  - a) an unauthorised payment by the pension scheme, other than one which is exempt from being scheme chargeable, [...]

**8. Finance Act 2004, Part 4, Chapter 2, ‘De-registration’, section 158**

158 Grounds for de-registration

- 1) The registration of a pension scheme may be withdrawn under section 157 only if it appears to the Inland Revenue –
  - a) that the amount of the scheme chargeable payments (see section 241) made by the pension scheme during any period of 12 months exceeds the de-registration threshold,
  - b) that the scheme administrator fails to pay a substantial amount of tax (or interest on tax) due from the scheme administrator by virtue of this Part,
  - c) that the scheme administrator fails to provide information required to be provided to the Inland Revenue by virtue of this Part and the failure is significant,
  - d) that any information contained in the application to register the pension scheme or otherwise provided to the Inland Revenue is incorrect in a material particular,
  - e) that any declaration accompanying that application or the provision of other information to the Inland Revenue is false in a material particular, or
  - f) that there is no scheme administrator.
- 2) The amount of the scheme chargeable payments made by a pension scheme during any period of 12 months exceeds the de-registration threshold if the scheme chargeable payments percentage is 25% or more.
- 3) The scheme chargeable payments percentage is—
  - a) if only one scheme chargeable payment is made during the period of 12 months, the percentage of the pension fund used up on the occasion of that scheme chargeable payment, and

- b) if two or more scheme chargeable payments are made during the period of 12 months, the aggregate of the percentages of the pension fund used up on the occasion of each of those scheme chargeable payments.
- 4) The percentage of the pension fund used up on the occasion of a scheme chargeable payment is—

$$\frac{SCP}{AA} \times 100$$

where —

SCP is the amount of the scheme chargeable payment, and

AA is an amount equal to the aggregate of the amount of sums and the market value of the assets held for the purposes of the pension scheme at the time when the scheme chargeable payment is made.

- 5) A failure by a scheme administrator to provide information required to be provided to the Inland Revenue by or under this Part is significant if —
- a) the amount of information which the scheme administrator fails to provide is substantial, or
  - b) the failure to provide the information is likely to result in serious prejudice to the assessment or collection of tax.

## 9. Finance Act 2004, Part 4, Chapter 5, 'Unauthorised payments charge', section 208

### 208 Unauthorised payments charge

- (1) A charge to income tax, to be known as the unauthorised payments charge, arises where an unauthorised payment is made by a registered pension scheme.
- (2) The person liable to the charge—
  - (a) in the case of an unauthorised member payment [F83 made to or in respect of a person before the person's death, is the person,]
  - (b) in the case of an unauthorised member payment made [F84 in respect of a person after the person's] death, is the recipient, and
  - (c) in the case of an unauthorised employer payment, is the [F85 person] to or in respect of whom the payment is made.

- (3) If more than one person is liable to the unauthorised payments charge in respect of an unauthorised payment, those persons are jointly and severally liable to the charge in respect of the payment.
- (4) A person is liable to the unauthorised payments charge whether or not—
  - (a) that person,
  - (b) any other person who is liable to the unauthorised payments charge, and
  - (c) the scheme administrator,are resident, ordinarily resident or domiciled in the United Kingdom.
- (5) The rate of the charge is 40% in respect of the unauthorised payment.
- (6) The Treasury may by order increase or decrease the rate for the time being specified in subsection (5).
- (7) An unauthorised payment may also be subject to—
  - (a) the unauthorised payments surcharge under section 209, and
  - (b) the scheme sanction charge under section 239.
- (8) An unauthorised payment is not to be treated as income for any purpose of the Tax Acts.