

Ombudsman's Determination

Applicant	Mr M
Scheme	Lancashire County Council Pension Fund 'In-House' AVC Facility (the Pension)
Respondent	Prudential

Outcome

1. Mr M's complaint against Prudential is partly upheld. To put matters right for the part that is upheld, Prudential shall pay Mr M £500 in respect of significant distress and inconvenience caused by poor complaint-handling.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr M's complaint is in two parts. First, he was not notified that a cash deposit fund in which he was considering investing was about to close to new investors. Second, he received no response to his complaint in relation to this.

Background information, including submissions from the parties

4. In 1987, Mr M started working for Lancashire County Council (**the Council**). Later, he became a member of the Lancashire County Pension Fund.
5. In 2014, Mr M joined the Pension and started making Additional Voluntary Contributions (**AVCs**).
6. In or around November 2016, Mr M increased his AVCs to £1,500 a month. Later, he discussed with Prudential the possibility of re-directing his AVCs from a lifestyle fund to the Prudential Deposit Fund (**the Deposit Fund**). But did not actually do so.
7. In April 2017, Prudential emailed its contacts at the Council, being the administering authority of the Lancashire County Pension Fund. The email included a link entitled "member contributions" which itself included a letter to be sent to policyholders who were invested in the Deposit Fund. The letter said:

“From 31 May 2017, we’re closing [the Deposit Fund] to new investors. As you’re currently invested in this Fund, we’re writing to let you know more about it. As an existing investor in the Deposit Fund, you can remain invested in the Fund and can continue to make ongoing contributions as well as increasing contributions to the Fund. If you switch all your existing investment out, you won’t be able to switch back into the Deposit Fund. Your plan may offer a lifestyle option that includes the Deposit Fund. If it does, this will continue to be available to you. Because we’re closing the Deposit Fund to new investors, we’ll make the Prudential Cash Fund available to all plans with a charge of 0.55% a year. This is the other fund within our range that we classify as minimal investment risk.”

8. In May 2017, the Deposit Fund was closed to new investors.
9. In March 2018, Mr M reviewed his pension benefits. Being less than four years from his retirement date, he decided to switch his existing and future AVCs to the Deposit Fund but discovered it had closed to new investors in May 2017. On 19 March 2018, Mr M complained to Prudential about this. Between 19 March and 9 April 2018, Mr M corresponded with Prudential in relation to this complaint.
10. On 3 May 2018, Mr M transferred his existing AVCs to the Prudential Cash Fund (**the Cash Fund**). He also arranged for his future AVCs to be invested in the Cash Fund.
11. Between 4 May and 2 July 2018, Mr M continued to correspond with Prudential. He says it promised to send him a response but failed to do so.
12. In September 2018, Mr M referred his complaint to this Office.
13. In March 2019, Prudential provided its formal response to this Office. It said it was unable to locate a copy of its final response to Mr M’s complaint. So, it had reviewed his complaint and issued a revised final response. In the revised response, it outlined its reasons for closing the Deposit Fund and said it had informed the trustees and administrators of schemes offering the Deposit Fund at the time. But whilst it believed it had sent Mr M a response in April 2018, to explain this and refute his complaint, it was unable to substantiate this. So, it apologised, upheld the complaint and offered him £300 for the “trouble and upset” caused.

Adjudicator’s Opinion

14. Mr M’s complaint was considered by one of our Adjudicators, who concluded that in light of these admissions no further action was required by Prudential. His findings are summarised below: -
 - The first part of Mr M’s complaint was about the closure of the Deposit Fund. It was unfortunate Mr M was not notified that the Deposit Fund was closing to new investors, as he had expressed an interest in investing in it and might have done so. However, Prudential was entitled to close its funds to investors; this was not maladministration.

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- It was reasonable for Prudential to inform only the Council, but not individual members, that the Deposit Fund was closing; this was not maladministration either.
 - Nor did Prudential act incorrectly when it did not follow up calls in which Mr M said he was interested in investing in the Deposit Fund. Even if he did so inform Prudential, it was for Mr M to provide a clear instruction, which he did not do.
 - There were several reasons a fund like the Deposit Fund might close to new investors. In its revised response, Prudential explained its reasons; the Adjudicator did not think they constituted maladministration or justified further action.
 - Mr M was unhappy with the performance of the Cash Fund. He said if he continued investing in it, he might lose money, as the current annual management charge had exceeded the return on investment in recent years. But the Adjudicator said this was not maladministration.
 - The second part of Mr M's complaint was that he received no response to his complaint. The Adjudicator considered this. In summary, Prudential's position was that a written response was sent to Mr M in April 2018, and the complaint was not upheld, although there was no evidence of this. So, Prudential issued a revised final response. Because Prudential was unable to show it responded to the complaint, it apologised, upheld Mr M's complaint and offered him £300 for the "trouble and upset" caused.
 - Based on the available evidence, it was unclear if a response was sent to Mr M in April 2018. But the Ombudsman would only make an award for "non-financial injustice" if the distress and inconvenience was significant. In the Adjudicator's view, the facts did not support an award of £500, i.e. the minimum award. As such, the Adjudicator did not consider that Prudential was required to increase its offer.
15. Prudential accepted the Adjudicator's Opinion but Mr M did not. On 26 March 2019, Mr M provided extensive further comments. The key points were: -
- It was untrue, as Prudential claimed in its revised final response, that Prudential did not know he had received no response in April 2018. Actually, he had corresponded with it after that, in May 2018, and it promised to issue a response but failed to do so.
 - In any case, Prudential should not have closed the Deposit Fund as it was the only "safe haven fund". Prudential's decision to close the Deposit fund was unreasonable.
 - It was also unreasonable that Prudential did not directly inform Pension members, and potential Deposit Fund investors, that it was closing to new investors.
 - It was unreasonable that Prudential did not specifically instruct the Council to inform potential investors that the Deposit Fund was closing to new investors.
 - It was also unreasonable that Prudential did not give the Council more time to decide how to proceed; had it done so, the Council might have decided to inform potential investors too.

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- He had carried out his own calculations, which showed that he had incurred and would incur a loss as a result of being unable to invest in the Deposit Fund.
16. The Adjudicator shared Mr N's further comments with Prudential. On 16 April 2019, Prudential responded. The key points were: -
- Having checked its records, it was unable to find copies of the letters sent to Mr M as part of its complaint process. However, having investigated further, and listened to some phone calls between it and Mr M, it agreed that it was aware, when it spoke with him in May 2018, that he was still waiting to receive a response. Further, Mr M also spoke with Prudential in June 2018, and explained he had not received a response, but Prudential subsequently failed to provide one. Therefore, it now agreed that it had provided Mr M with incorrect information during its investigation of his complaint.
 - Regarding its decision to write to only existing investors, had it also informed potential investors, this could have been deemed "leading" or giving advice. It could also have resulted in an "influx" of investors into the Deposit Fund and an adverse effect on with-profits policyholders.
 - Its records indicated that it emailed four contacts at the Council on 21 April 2017 and it provided evidence of this.
 - Members of the Pension had the option to join the Deposit Fund up until 31 May 2017; had they done so, it was likely they would have been better off than in the Cash Fund.
 - Prudential administered the Pension on behalf of the Council; it was for the Council to decide if further information about changes to the Pension and/or the investments was required. Further, Prudential did write to existing investors of the Deposit Fund.
17. The Adjudicator sent Prudential's further comments to Mr M. On 6 May 2019, Mr M added the following key points: -
- Prudential had conceded that customers would have been better off investing in the Deposit Fund, so it should provide him with appropriate compensation.
 - He had never argued that Prudential was not allowed to close the Deposit Fund. But it should have done so in a "reasonable and appropriate way", giving all investors notice so they could invest a nominal sum and secure the option of investing in it in future.
 - Prudential said its decision to inform only existing investors was to avoid an "influx" of investors. But Prudential had continued to accept new business into the Deposit Fund after May 2017 from its lifestyle funds.
 - Prudential said it only administered the Pension on behalf of the Council, and its duty was to provide relevant information to the Council. But when it told the Council that the Deposit Fund was closing, it did not provide all the relevant information, e.g. it did not make clear that whilst the Cash Fund had a fee, the Deposit Fund did not.

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- Finally, Prudential gave the Council very little time to act. It did not inform the Council of the closure until 21 April 2017, i.e. only 25 working days beforehand. So, even had the Council informed potential investors, there would have been insufficient time for them to make the necessary arrangements.
18. Because Mr M did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's findings about the first part of the complaint and deal below with those issues about the second part which have arisen since the Opinion.

Ombudsman's decision

19. Mr M accepts that Prudential was not obliged to continue offering the Deposit Fund. I appreciate he is disappointed that he was not informed that he could invest in the Deposit Fund whilst this was still an option for him, but I do not find Prudential acted incorrectly when it closed the Deposit Fund without telling Scheme members who were not already invested in it.
20. Mr M has questioned the reasonableness of Prudential's decision to inform the Council, but not individual potential investors. I do not find there was maladministration in Prudential's decision only to inform the Council. Nor was there maladministration in its decision not to instruct the Council to inform potential investors.
21. Mr M has also questioned the reasonableness of Prudential's decision to send the Council notice of the Deposit Fund's closure only five weeks beforehand. He says had it informed the Council sooner, the Council could have decided to inform potential investors. However, there is no evidence that the Council would have acted any differently had it received notice of closure sooner. In these circumstances I do not consider that Mr M can prove that Prudential caused him financial loss.
22. Mr M says since Prudential did not provide a final response to his complaint sooner, he was unable to investigate whether the Council's actions were appropriate and sufficient. Since the Adjudicator issued his Opinion, Prudential has acknowledged that it did not properly respond to Mr M's complaint; and, that it should have known it had not responded, because Mr M so informed it in May/June 2018. This admission does not affect my conclusion above. Even if Prudential had responded to Mr M's complaint in or around June 2018, it would not have changed the fact that, by that time, he would have been unable to invest in the Deposit Fund, because by then it had already been closed for over a year.
23. Mr M has carried out his own calculations of the loss which he considers he has incurred as a result of being unable to invest in the Deposit Fund. However, I do not consider that such a loss was caused by any maladministration on the part of Prudential. For the reasons I have outlined above, I do not find that Prudential acted

incorrectly, either in deciding to close the Deposit Fund, or in the way it communicated this decision to the Council but not to individual potential investors.

24. Therefore, while I uphold Mr M's complaint, I do so only to the extent that Prudential failed properly to respond to his complaint regarding the closure of the Deposit Fund. After Mr M formally complained in March 2018, Prudential ought to have provided a proper response. The fact that it did not do so, and that it initially failed to investigate its records and acknowledge that fact, will have caused Mr M significant distress and inconvenience.
25. However, awards for distress and inconvenience are modest. Specifically, they are not intended to compensate for perceived financial losses. In accordance with this Office's guidance, an award of £500 is appropriate where, as here, there have been errors on one or more occasion, there has been a short-term effect; and, the respondent took reasonable steps to put matters right. I make a direction below accordingly.

Directions

26. Within 21 days of the date of this Determination, Prudential shall pay Mr M £500 in respect of significant distress and inconvenience.

Karen Johnston

Deputy Pensions Ombudsman
24 May 2019