Ombudsman's Determination

Applicant	Mr Y
Scheme	Prudential Retirement Account
Respondent	Prudential

Outcome

1. Mr Y's complaint against Prudential is partly upheld. To put matters right Prudential shall pay Mr Y:

   - three months' simple interest at the agreed rate of 8% per annum on the £100,000 tax-free cash lump sum not taken;

   - the £238 gift aid tax with simple interest at 8% per annum from 31 October 2019 until date of settlement; and

   - the additional £5,000 fee which he paid to his IFA for arranging the subsequent transfer to Aviva.

2. Furthermore, provided that Mr Y reasonably demonstrates to Prudential that he has taken the additional £46,350 in pension payments from his pension fund with Aviva, which he said he would have taken in the 2018/19 tax year, then Prudential shall award him the loss of the unused tax allowance/threshold for the 2018/19 tax year of £11,641. Prudential's payment under this head of loss remains valid until 5 April 2021.

Complaint summary

3. Mr Y has complained that:

   - Prudential failed to carry out a transfer of his deferred pension rights available from a final salary occupational pension scheme administered by Equiniti into a Prudential Retirement Account in a timely manner;

   - the delay resulted in a significantly lower transfer value being available, for which he would like to be suitably compensated;

- Prudential did not seek an update from Equiniti on how the transfer was progressing; and

- he has suffered considerable distress and inconvenience dealing with this matter and by Prudential's subsequent failure to resolve his complaint satisfactorily.

Background information, including submissions from the parties

4. On 5 September 2018, Mr Y's Independent Financial Adviser (**the IFA**) applied on-line for a transfer and sent Prudential all the requisite supporting paperwork by post on the following day. Mr Y's cash equivalent transfer value (**CETV**) totalled £2,830,891 and was guaranteed until 15 September 2018.

5. According to its service level agreement (**SLA**), Prudential had five working days to send Mr Y's completed discharge forms to the ceding scheme administrator, Equiniti. Prudential failed to meet its SLA and Equiniti received these forms on 20 September 2018.

6. On 2 October 2018, Mr Y asked Equiniti for an update on the transfer. Equiniti replied that as it did not receive all of the required paperwork before 15 September 2018, it would have to recalculate the CETV before the transfer could proceed.

7. In early December 2018, Equiniti issued Mr Y with a revised CETV of £2,768,197. This was £62,694 lower than the original CETV figure.

8. On 10 December 2018, Prudential wrote to Mr Y and accepted that it was responsible for missing the CETV guarantee deadline date of 15 September 2018.

9. In order to carry out its actuarial calculation to determine whether Mr Y had been financially disadvantaged by the delay, Prudential asked him to complete the transfer as soon as possible. It also said that it would compensate him for any distress and inconvenience which he had suffered dealing with this matter.

10. Mr Y was dissatisfied with Prudential's response. He said that:

> "I needed clarity and transparency of what Prudential would do to make my financial position whole and a guarantee…that I would not…be out of pocket… This needed to cover agreement on the delay period, …the tax impacts to me, the reduced pension value and the loss of growth. In return I would be happy to proceed with the transfer and suggested a target date of 6 January 2019 to get everything agreed and back to Prudential...
>
> Prudential refused to provide me the information, saying this would only be done after the transfer…
>
> On 21 December 2018, I took the difficult decision to write to Prudential advising them I could no longer proceed with the transfer because they had not treated me fairly…

On 10 January 2019…Prudential rang me. Whilst we agreed the problems were caused by Prudential, we could not agree a way forward. My view is that I need to understand the revised outcome in order to test if it still makes sense to do the transfer, whilst Prudential say transfer the pension and look to resolve later…From my perspective that doesn't work because once moved I cannot then return it back to Equiniti…

Had the transfer request been processed on time, then Equiniti would have transferred the funds…At the time my plan was to take a £100,000 tax-free lump sum and then monthly payments to ensure I withdrew up to my 20% tax limit for 2018/2019 tax year. With seven months available from 6 September 2018 and the end of the tax year on 6 April 2019 this was readily achievable. (Note due to the delay I no longer want to take a £100,000 tax-free lump sum).

…

I don't think it is possible to add money to my pension pot due to HMRC rules I also have Fixed Lifetime protection. Therefore, to not be disadvantaged, my view is Prudential should make a one-off net payment to me covering:

1. The shortfall between the CETV from June 2018 and the CETV from December 2018.
2. The lost growth from 6 September 2018 to date of resolution of this complaint…
3. At the time of agreeing to do the transfer in August 2018, my plan was to take a tax-free sum of £100,000 and then monthly payments to take up to 20% annual tax threshold. Therefore, interest should be paid on the money I planned to withdraw which I have not had.
4. Since I can no longer use my pension to ensure tax efficiency in 2018/2019, … Prudential make up the impact of me having to take additional monies in 2019/2020 tax year to cover what I should have been able to take in 2018/2019 had I been able to use my personal tax allowances…"

11. In November 2019, Mr Y transferred his deferred pension to Aviva. He said that:

"In terms of loss of growth in the period September 2018…to November 2019…since my pension has not gone to Prudential and never will now, I accept …that the pension growth cannot be calculated. I have made a judgement call to transfer elsewhere and that is my decision…Therefore, that element of my complaint can now be considered complete.

…I have three outstanding specific requests:

- I should have received my £100,000 tax-free pension commencement lump sum (**PCLS**) in September 2018. This money is now only available to me in November 2019. Prudential…had previously stated they would pay 8% annual interest outside of the pension as redress if any delay was agreed to be their fault. My view is Prudential are responsible for the 14 months delay and should pay 8% interest on that £100,000 to me.

- I have been unable to use my 2018/2019 tax allowances and have lost the chance to take £11,850 at 0% and £34,500 at 20%. Prudential should pay me the tax impact plus 8% interest on the monthly withdrawals I have not had*.
- My financial advisors increased the transfer charge to £20,000 from the original £15,000. Prudential should pay me that £5,000 difference."

*Mr Y says that he could only have received "withdrawals" during 2019/2020 tax year in addition to his missing "2018 /2019 withdrawals" from December 2019.

Prudential's Position

12. Any redress available to Mr Y would be paid on an ex-gratia basis and calculated by comparing the pension and tax-free cash available to him assuming there had been no delay in the transfer process with his actual benefits payable once the transfer had taken place. It would allow for any charges and regular income payable to Mr Y in its calculations.

13. Until the transfer had occurred, it could not provide Mr Y with details of its redress calculations because (a) the actual CETV payable could have increased or decreased on recalculation and (b) his deferred pension rights could have benefitted from investment returns while they remained in the transferring scheme.

14. On learning that Mr Y had transferred his pension rights to Aviva, it proposed a final compensation offer and said that:

> "Our original offer was to calculate any loss Mr Y had made, however, we stated that this must be done in a timely manner. I appreciate that Mr Y was unwilling to transfer his benefits to us unless we were able to provide more detailed calculations of our offer. However, until the transfer went ahead, we were obviously unable to provide this. We do not consider that…we should be paying the full 8% for 14 months as these delays were not the responsibility of Prudential.
>
> …We would consider three months to be a timely manner [sic] and therefore are willing to pay three months' interest on the tax-free cash sum of £100,000.
>
> Mr Y has stated that he has been unable to use his 2018/19 tax allowance, £11,850 at 0% and £34,500 at 20%, total allowance £46,350 and all this would have been taken from his pension…he wanted to take income for the remaining seven months up to the 20% tax threshold…
>
> We would require evidence that Mr Y had no other income for the 2018/19 tax year. We would also require evidence that Mr Y has had to take additional income for the 2019/20 tax year, and this has resulted in additional tax…

I understand that Mr Y originally wanted to take a tax-free cash sum of £100,000…I assume he would have been entitled to take a maximum of 25% as a tax-free cash sum. Would it have been possible for Mr Y to have taken an additional £46,350 tax-free cash in order to help mitigate his tax position?

…he would then have still received the equivalent of his lost income for the 2018/19 tax year and this would not be taxable and therefore would not increase the tax he was due to pay.

If Mr Y had taken an additional £46,350 in the 2018/19 tax year…the total tax due this period: £6,899.80.

If Mr Y takes up the higher tax threshold for 2019/20 (£50,000).…the total tax due to date: £7,498.00.

If he takes both payments for the 2019/20 tax year…the total tax due to date: £26,039.60.

If he had taken £46,350 in 2018/2019 and £50,000 in 2019/20, he would have paid £14,398 in tax. The difference being £11,641.00.

We cannot agree to pay the £46,350 that Mr Y would have taken as income in 2018/19. The option to transfer the benefits to us in the 2018/19 tax year was still available to him. Prudential has not received these funds…

Although Mr Y states that the impact of not receiving these funds will have a longer impact due to the protection…which is limited to £1.8 million, he will still receive these funds over time. If Prudential were to agree to pay these funds, then this would mean Mr Y would receive these funds twice…

We would agree to pay the £238 gift aid tax…

He mentions he is concerned that by increasing the tax-free cash he took by the same income he wanted in 2018/19 tax year, there would be less funds in his policy…Regardless of whether the additional £46,350 was taken as income or as additional tax-free cash the same total funds would have been taken out of the policy. His concern is that he now has only 19 years rather than the original 20 years before the Lifetime Allowance (**LTA**) check. Again, taking the additional amount as part of his tax-free cash sum would reduce the value of his policy before the LTA check.

In order to try and resolve this case we can offer to pay the gift aid of £238, the IFA charges providing the only charge is in respect of the advice given for the non-Prudential transfer, if Mr Y takes the additional £46,350 in one tax year, we will pay the additional tax charge due (…this would have been £11,641 for the previous tax year). In respect of the interest, we await your opinion with regards to this.

Before any of these payments are made, we will require evidence of these financial losses".

15. Prudential has also said that:

"With regards to our 'negligence' on this case, we received the completed forms on 6 September 2018 from the IFA and the expiry date of the CETV was 15 September 2018. Had we met our standard 5-day SLA, it is possible that the paperwork would not have been received by the scheme before the expiry of the CETV…However, as we did not meet our SLA, we cannot confirm this for certain...

Mr Y has said he was unable to obtain another CETV until the following year. It is generally true that a scheme will only provide one free CETV each year, however a second could have been requested at a charge. At that stage, we had agreed to make sure he was not financial disadvantaged, we would have reimbursed him for the cost of the new CETV.

I appreciate that Mr Y will have wanted financial advice based on the new value. However, CETVs are guaranteed for 3 months, so I feel that 3 months, (interest) is a reasonable time in this case".

Mr Y's position

16. Mr Y rejected the final compensation offer from Prudential. He said that:

"*1. Conditionality of offer*

Prudential have stated they will pay the additional tax charge of £11,641 if I take the additional £46,350 in one tax year. The condition of taking in one tax year doesn't work and makes their final offer potentially worthless.

When I drawdown from my pension is entirely down to me …Therefore only I have the right to say what I take from my pension and when. The flexibility is crucial to me and one of the reasons I have transferred my pension.

When I take the money that Prudential didn't pay me in 2018 and 2019 (either in one specific year, over 18 separate years or any combination in between) does not affect the impact that has occurred in the PAST for tax year 2018-2019. If I never take it then at age 75, I pay an additional 25% tax charge as part of the LTA Check plus the prevailing tax charges…

The reason it is important I retain total flexibility over my pension (as is my right) is if you look at the current financial situation it could be extremely damaging to take a large sum of money out of my pension when markets are low just because Prudential say so...

If my pension value was £1,000,000 in 2018-2019 and I withdraw £50,000 in 2018-2019 then I have used 5% of my pension to secure the value. Now if the value of my fund has dropped by 20% because of the crash and is now worth

£800,000 and I withdraw £50,000 then I have used 6.25% of my pension. In this illustrative example, taking 5% per year crudely means the pension lasts 20 years, taking 6.25% crudely it lasts only 16 years…That means the sustainability of the pension is threatened.

It is therefore imperative I retain the full flexibility afforded to me by the government legislation so that I can manage my pension in conjunction with my personal circumstances and withdraw monies flexibly based on sound professional financial advice, market circumstances, tax situation and my judgement…

2. Evidence of financial losses

I have previously stated I won't supply any further information to Prudential and that hasn't changed…I have supplied everything asked to date either directly to Prudential for 18 months after I raised the complaint with them and more recently only to your office…

3. Taking additional monies from my pension

Prudential's statement regarding taking an additional £46,350 from my pension means "the same total funds would have been taken out of the policy" shows a lack of understanding how a pension works both from a tax-free perspective and ongoing withdrawals…

Assume someone had a pension of £10,000 and they decided they wanted to take the funds over 2 years at £5,000 per year to use up the funds. They take the first £5,000 and then there is a shock to the financial markets (such as a global pandemic) and the stock market and their fund drops by 20%. The remaining £5,000 they had expected to take is therefore now worth £4,000, so they get a total amount of **£9,000**…

Now if (as in my case) they don't get the £5,000 when they want because of the provider and the same financial shock occurs with 20% drop they have only **£8,000**. They lose a further **£1,000** because of the timing of the withdrawals. The first £5,000 doesn't cost 50% of the pension anymore. It now costs 62.5% of the pension...In the (incorrect) Prudential world they imply there is no impact…In the real pension world, the policy has dropped in value because of the delay so the £5,000 has cost 62.5% of the policy and not the 50% it should have. Only £3,000 remains and not the £4,000 it would have been had there been no delay…

…the same applies to bringing forward tax free withdrawals. To do that when markets are low has a serious negative impact on the pension. For the tax-free element, I already have my own plans to use my full allowance so Prudential suggesting using my own money from the future to pay me what Prudential have cost me in the past remains unacceptable.

4. Pension Commencement Lump Sum

I believe they (Prudential) should pay 8% interest on the £100,000 for the period September 2018 to November 2019 when it transferred to Aviva.

They limited the offer to three months because they said I had the choice that I could have still moved the pension to Prudential or elsewhere.

I believe that is misleading when you look at the consequences to me of Prudential's actions. Firstly, at the time (December 2018) Prudential refused to acknowledge there were impacts outside of the pension…when the failure occurred. They now presumably acknowledge there were tax impacts since they are offering to pay some of those impacts (gift aid tax, income tax, IFA charge increase), albeit with unacceptable conditions attached. But by refusing to address those issues at the time meant if I were to have transferred to Prudential I would have been seriously out of pocket. Secondly saying I could transfer elsewhere is not true. I had financial advice to transfer to Prudential, nowhere else. It is unreasonable to think I…would line up multiple transfer options just in case the first company didn't bother to do the transfer…

The consequence of Prudential failing in September 2018 was that a new transfer value was requested. My understanding is this was paid for by either Prudential or my advisor. I certainly didn't pay but I was entitled to only one free transfer valuation per year and I had received that from Equiniti around June 2018 for the initial valuation…The consequence of not resolving the complaint was that the whole process had to restart again for a third time, i.e. I had to get a third transfer quote. The next time I could request this was June 2019, i.e. a year after my last "free" one. I did that and it then took another four to five months to get the revised financial advice and move the pension. This time period is all as a consequence of Prudential failing...to say they will pay for a three month delay ignores the consequence of their actions, namely the process had to be restarted twice, it went as fast as could be expected following Prudential's multiple failings.

5. Gift Aid impact

Prudential's final offer refers to paying £238. I think it should be £238 plus interest to date of settlement from when I paid this to HMRC.

6. Income Tax impact 2018-2019

Prudential have offered to pay me £11,641, conditional on me taking an additional amount of £46,350 in one tax year from my pension. As explained above the conditionality is unacceptable since it is my right to access my flexible pension as I decide. Prudential have no say in that matter.

I am satisfied that the £11,641 figure addresses the 2018-2019 income tax impact that has occurred, providing Prudential pay all taxes on that figure…

Interest should be added to date of settlement since I have not had the money in 2018-2019 and that is evidenced on my 2018-2019 tax form…

7. The September 2018 - November 2019 pension payments

Prudential have made no offer to settle this. They have previously stated they shouldn't pay because the money may still be in the pension and it may have grown…and I could be over compensated…

It is a fact I did not receive the payments that I would have received had Prudential done the transfer. To say the money may still be in the pension is flawed because Prudential have been unwilling or unable to calculate what the pension value would be had it moved to Prudential. Therefore, whether the value is up, down or equal…is irrelevant. It cannot be compared to what would have happened at Prudential since they would not or could not define what the value would be if it had gone to Prudential.

I do not have enough years to take my full LTA by age 75…The period from September 2018 to November 2019 has gone without me having any pension. I do not receive extra years because I didn't get to take my pension when I wanted, the LTA check applies at age 75 irrespective of when a pension starts to be drawn…I have lost one full year and 1 partial year of withdrawals I can never get those back. This is unusual but is a consequence of me having the increased LTA protection and the fund size…

...it's not credible to say these (payments) may be in the pension and growing. The payments should have been made and were not because Prudential did not do the transfer.

I also note that resolving this item as I request means that item 6 regarding the past income tax impact is not required.

8. IFA charge

…My financial advisor was charging me £15,000 to provide advice and move the pension to Prudential in September 2018, the same advisor charged £20,000 to provide advice and move it in November 2019 to Aviva. The cost to me was an additional £5,000.

9. Reason for failure

I continue to wait for an explanation why Prudential failed.

10. My offer and concluding points

I have added a couple of points following Prudential's addition of new conditions in their final offer. My position is:

a. Pay me interest on the £100,000 from September 2018 to November 2019…

b. Pay me the gift aid tax impact of £238 plus interest from 31 October 2019, until date of settlement.

c. Pay me the tax impact because I have lost my 2018-2019 income tax allowances. I would be OK with Prudential's £11,641 calculation providing there is no tax to be paid by me on that amount and it is unconditional…

d. Pay me the £46,350 plus interest I should have had in 2018-2019, with prevailing tax rate at the time to be applied. Interest to be applied from planned withdrawal dates to date of settlement.

e. Pay me half my 40% tax threshold for 2019-2020, namely £25,000 plus interest. Interest to be applied from planned withdrawal dates until November 2019 when I gained access to my pension.

f. Pay me the additional £5,000 IFA charge I have incurred with interest from November 2019 until date of settlement.

g. Interest rate of 8% per annum to be used…

h. If item (d) is paid in full, then item (c) need not apply since the income tax impact for 2018-2019 is part of the 2018-2019 loss of pension payments.

i. All my existing pension rights must be maintained. This includes (but not limited to) my right to use flexible drawdown that means I decide on what is withdrawn and when from my pension...No conditions to be applied to the settlement that affect my pension rights.

j. No more documents, correspondence or materials required to be produced or submitted by me to Prudential ever…"

17. He could only commence taking monthly pension payments from December 2019 after his pension rights had been transferred to Aviva. He did not therefore have the whole 2019/20 tax year to receive pension payments. The tax impact to him remained the same however and it had "simply rolled forward".

18. The transfer delay materially changed his "requirements" which meant that he needed new financial advice which was appropriate to his "requirements" at the time. His IFA informed Prudential in January 2019 of the "requirement change" caused by the delay. Prudential replied that it would complete the transfer using existing information. Prudential's offer was therefore on a basis he "did not want… and without financial advice had no merit and was worthless". It would be using "out of date, incorrect information" to carry out a transfer that did not match his "documented needs".

19. It is unreasonable to expect that he could find an IFA who would be willing to give him appropriate financial advice on the transfer when there were so many outstanding issues left unanswered by Prudential. By not being diligent and ignoring what he had proposed as a way forward, Prudential's actions "killed the transfer".

20. The loss of his tax allowances was foreseeable once he told Prudential in December 2018 that “there was a tax problem that needed resolving” and again in January 2019 when Prudential said it could only complete the transfer on a basis which he deemed unacceptable.

21. In his view, he could not have legally transferred to Prudential at any time.

22. Mr Y has also said that:

> “My comment regarding the Lifetime Allowance check at Age 75 was purely to show that even if I never withdraw it from my pension, the £11,641 remains the minimum tax impact because of how the Lifetime Allowance check works. I cannot avoid the impact – it is in the past and specifically in tax year 2018-2019 when I received £0 instead of £46,350. Annual income tax allowances cannot be carried forward…
>
> …The £46,350 lost income is in the past. I have not had the money, so asking me to wait for the £11,641 until I take the additional money makes no sense and I want to retain my right to withdraw what I feel I can afford to from my pension when I want. Whatever is withdrawn and when does not change the loss, that occurred in 2018-2019 when I had no pension. Therefore the £11,641 should be paid without further delay.”

Adjudicator’s Opinion

23. Mr Y’s complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of Prudential. The Adjudicator’s findings are summarised below:-

    - Prudential failed to provide Equiniti with the required discharge forms before the original CETV guarantee expired on 15 September 2018. Prudential upheld Mr Y’s complaint on the basis that it had breached its SLA. Its failure was therefore one of negligence as it had failed to act with reasonable care and skill towards Mr Y, to whom it owed a duty of care.

    - Although Mr Y and Prudential had identified various heads of loss, they were unable to reach agreement as to the compensation amount which should be paid to Mr Y.

    - The legal position is that when a negligent act has taken place, a party is entitled to be put in the position in which it would have been had the negligent act not occurred. This means that the loss the party has suffered as a result of the negligent act is recoverable, but only to the extent that the loss is a reasonably foreseeable consequence of it. A party is also under a duty to mitigate its loss where possible.

- As a result, Mr Y was only entitled to receive compensation for losses which were reasonably foreseeable consequences flowing from the negligent act and for which he had mitigated where appropriate.

- Prudential had said it would ensure that Mr Y was not financially disadvantaged by the delay and suggested it would put him back into the position he would have been had the transfer proceeded in a timely manner. This reflected the correct legal position that Mr Y should be put into the same position had the negligent act not taken place.

- However, this had not been possible as the parties could not agree a way forward which would have framed Mr Y's loss in a manner which was acceptable to both parties. The consequent issue was whether the losses Mr Y was now claiming for were foreseeable consequences of Prudential's negligence, and whether he had appropriately mitigated his losses.

- Mr Y's claim regarding loss of investment growth during the period from September 2018 to November 2019 no longer needed to be investigated, at Mr Y's request.

24. The Adjudicator took Mr Y's most recent list of conditions as the basis from which to consider the claims of loss and addressed each in turn:-

Prudential to pay interest on the £100,000 tax-free cash lump sum from September 2018 to November 2019.

- There was no dispute that there was a delay caused by Prudential's negligence. However, in determining what was reasonable, the Adjudicator correctly stated that I would have regard to the period for which the loss could be said to be reasonably foreseeable.

- As it was the common intention of the parties at the time of the negligent act to effect the transfer to Prudential as quickly as possible, it was not reasonably foreseeable at the time that the transfer would be delayed until November 2019, and then ultimately not proceed at all.

- A reasonable period of delay could therefore be said to be three months, because the Adjudicator agreed with Prudential that it had been open for Mr Y to complete the transfer to Prudential as soon as possible or at any time prior to the eventual transfer to Aviva in November 2019.

- Prudential's offer to provide three months' simple interest at the agreed rate of 8% per annum on the £100,000 tax-free cash lump sum not taken was therefore fair as the three months period would have been a reasonably foreseeable result of its negligence.

Prudential to pay the gift aid tax of £238 with interest from 31 October 2019 until date of settlement.

- Prudential had agreed to payment of the £238 gift aid tax if evidenced by Mr Y. In the Adjudicator's view, Mr Y's request that Prudential should pay interest at 8% per annum on this amount from 31 October 2019 until date of settlement, was reasonable.

Prudential to pay (a) £11,641 representing the tax impact of losing his 2018-2019 tax allowances, (b) pension payments of £46,350 with interest which he should have taken during the 2018-2019 tax year and (c) half of his 40% tax threshold for 2019-2020 tax year of £25,000 with interest.

- The loss of Mr Y's 2018/2019 and 2019/2020 tax year allowances were not reasonably foreseeable consequences of Prudential's original negligence in September 2018. However, Prudential appears to have accepted that the loss resulting from not paying an income in the 2018/19 and 2019/20 tax years was recoverable in principle.

- Prudential argued that Mr Y could have mitigated his losses by paying himself the equivalent amounts as a tax-free cash sum from his Aviva arrangement. The question therefore was whether Mr Y's argument that he could not have mitigated his loss of his tax allowances by paying himself a higher tax-free cash sum was correct.

- Prudential had requested confirmation of the tax-free cash sum taken by Mr Y and whether he took an additional amount to help mitigate his loss of income in the 2018/19 tax year. This request was not reasonable because it would be asking Mr Y to use his tax-free cash to compensate himself. By doing this he would simply delay the time when he would have to pay tax.

- Furthermore, his pension funds would be used up more quickly than otherwise, and the residual paid as a taxable pension. Prudential should not therefore expect Mr Y to draw a further tax-fee cash sum to mitigate this loss.

- Prudential had calculated Mr Y's loss in respect of unused tax allowance/threshold for 2018/19 tax year as £11,641.00 and Mr Y accepted this figure as correct provided he did not have to pay tax on it. As Prudential should only be compensating Mr Y for actual financial loss and not a loss of expectation, it should strictly be requesting evidence that Mr Y has received £96,350 in pension payments during the 2019/20 tax year from his Aviva funds before paying the £11,641.00 to him. However, the Adjudicator noted that Prudential had said it only required evidence that Mr Y had taken pension payments totalling £46,350 in one tax year before agreeing to do so. Prudential was perfectly entitled to do this if it wished in order to try and resolve Mr Y's complaint.

- The pension payments which Mr Y could have received during the 2018/19 tax year if the transfer to Prudential had gone ahead, were still held within his pension fund, now with Aviva. Mr Y had not therefore suffered an actual loss of these payments and any compensation payable by Prudential for them, including interest, would constitute unjust enrichment.

- Mr Y had also requested that half of the 40% tax threshold for 2019/20 tax year be paid to him by Prudential. The issue of having to pay tax at 40%, as a result of pension payments due in the 2018/19 tax year being paid in the 2019/20 tax year, had already been addressed. Prudential's current offer allowed for the fact that 40% tax would be paid in the 2019/20 tax year when it would otherwise not have been, so it was unclear what further loss Mr Y had suffered in this regard.

Prudential to pay the additional £5,000 IFA charge incurred with interest from 1 November 2019 until date of settlement.

- Neither the £5,000 IFA charge nor the interest upon it were recoverable. It was a personal expense incurred by Mr Y, and was not a reasonably foreseeable consequence of Prudential's negligence. Also, Mr Y could have transferred to Prudential at any time.

- Prudential had, however, agreed to this payment in order to try settling his complaint which it was perfectly entitled to do. Payment of interest on this additional IFA fee by Prudential was unnecessary.

Interest rate of 8% per annum to be used

- This rate of interest had not been disputed by either party, only the period over which the interest was payable.

25. Mr Y's demand for an apology and explanation from Prudential for the transfer delay was outside any legal duty it had towards Mr Y and it was entirely at Prudential's discretion to provide this or not.

26. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y.

Ombudsman's decision

27. Mr Y's IFA applied on-line for the transfer on behalf of Mr Y on 5 September 2018, and sent the necessary supporting paperwork by post to Prudential on the following day. The CETV available to Mr Y was £2,830,891, and was guaranteed until 15 September 2018. Prudential had approximately one week to send Mr Y's completed discharge forms to Equiniti before the CETV guarantee expired.

28. The timescale for returning the completed forms to Equiniti was therefore tight with no margin for error. But, as Prudential's SLA for completing this task was five working days, this meant that if it had been able to meet its SLA, then Equiniti would, more likely than not, have received the completed forms in the post before the CETV

guarantee period expired. There was always a slim possibility that the forms would have been lost in transit in the post which would have resulted in the deadline being missed, but this would have been outside of the control of Prudential.

29. Prudential, has conceded that it was as a consequence of its failure to meet its SLA for returning the completed forms to Equiniti which resulted in the CETV guarantee deadline date of 15 September 2018, being missed. This shortcoming and Prudential's subsequent failure to seek an update from Equiniti on the progress made with the transfer, in my view, represents maladministration.

30. Prudential tried to put matters right by proposing to perform an actuarial calculation in order to determine whether Mr Y had been financially disadvantaged by the delay, but only after Mr Y had completed the transfer. Its proposals, however, were unacceptable to Mr Y because he needed "clarity and transparency" of what Prudential would do to ensure that he would not suffer any actual financial loss before agreeing to continue with the transfer.

31. Prudential has said that any redress available to Mr Y would be calculated by comparing the pension and tax-free cash available to him assuming there had been no delay in the transfer process, with his actual benefits payable once the transfer had taken place. Clearly, until the transfer had occurred, Prudential could not provide Mr Y with details of its redress calculations.

32. In my view, it would have been useful if Prudential had provided details of its redress calculation method to Mr Y at the time of notifying him that it could only carry out the calculation on completion of the transfer. This would have helped to explain to Mr Y why Prudential could not provide him with this information until the transfer had taken place.

33. Furthermore, while Mr Y's deferred pension benefits remained in the pension scheme administered by Equiniti, he had not suffered any actual financial loss. The subsequent reduction to Mr Y's CETV on recalculation was only a loss of expectation until he crystallised the loss by proceeding with the transfer.

34. I accept Prudential's view that it was unable to provide the information which Mr Y had requested until the transfer went ahead.

35. In addition, Mr Y had a duty to mitigate his financial loss and cannot claim for a loss that he could have mitigated, whether he in fact did so or not.

36. After learning, on 2 October 2018, that the CETV would have to be recalculated before the transfer could proceed, in my view, if Equiniti had been asked to provide a revised CETV figure without undue delay, it was possible for Mr Y to have obtained the requisite financial advice based on the new CETV figure to enable the transfer to proceed within three months of 2 October 2018, if still appropriate. I consider this timescale was achievable, but it would clearly have depended on precise and swift action by all the parties involved.

37. In order to determine what was acceptable redress for Mr Y, the Adjudicator set out, in his Opinion, the legal position on recovering loss arising from negligence and what he considered to be reasonable. The Adjudicator also considered each of Mr Y's claims of loss and whether Prudential's response in respect of each one was equitable.

38. In my opinion, the approach taken by the Adjudicator was the correct one and I generally concur with his conclusions.

39. I agree that Prudential's offer to provide three months' simple interest at the agreed rate of 8% per annum on the £100,000 tax-free cash lump sum not taken was therefore equitable for the reasons given above.

40. I also agree with the Adjudicator that, as Prudential should only be compensating Mr Y for actual financial loss and not a loss of expectation, it is reasonable for Prudential to request evidence that Mr Y had taken the payments which he said he would during the 2019/20 tax year before paying £11,641 (representing the tax impact of losing his 2018-2019 tax allowances). This would mean submitting evidence that he had taken an additional £96,350 in pension payments during the 2019/20 tax year before paying him the £11,641. However, as a concession, Prudential has said that it will compensate Mr Y for this loss provided that that he evidences that he has at least taken pension payments totalling £46,350 before the end of the tax year ending on 5 April 2021.

41. While I fully appreciate the points which Mr Y has made, that taking additional funds out under current investment conditions may not be to his advantage, the £11,641 tax impact does not become an actual financial loss until he has taken the extra pension payments as he has indicated. Prudential's concession was a fair and pragmatic approach for it to take in order to try to settle Mr Y's complaint.

42. Mr Y's complaint is partly upheld; my directions are set out below.

Directions

43. Within 21 days of the date of this Determination, Prudential shall pay to Mr Y:

- three months' simple interest at the agreed rate of 8% per annum on the £100,000 tax-free cash lump sum not taken;

- the £238 gift aid tax with simple interest at 8% per annum from 31 October 2019 until date of settlement; and

- the additional £5,000 fee which Mr Y paid to his IFA for arranging the subsequent transfer to Aviva.

44. Furthermore, if Mr Y can demonstrate to Prudential that he has taken an additional £46,350 in pension payments from his pension fund in Aviva, which he said he had in

the 2018/19 tax year, then Prudential shall award him the loss of the unused tax allowance/threshold for the 2018/19 tax year of £11,641. Application for this award shall be made, together with the required evidence of payment, before 5 April 2021. The offer becomes invalid should no evidence be forthcoming by this date

Anthony Arter

Pensions Ombudsman
9 October 2020