

## Ombudsman's Determination

Applicant	Mr E
Scheme	Prudential Personal Pension Plan (the <b>Plan</b> )
Respondent	Prudential

## Outcome

1. I do not uphold Mr E's complaint but there is one point requiring action by Prudential.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr E had complained that following a mistake made by Prudential in late 2008 (prior to part of the Plan being transferred to another provider), his remaining assets in the With-Profits fund were not subjected to the correct level of guaranteed increases.
4. More generally, Mr E has complained that the application of Final Bonus was not adequately covered in Prudential's With-Profits literature, particularly what happens when a Selected Retirement Date (**SRD**) is reached, or deferred until a later date, or if partial benefits are taken at SRD. Mr E believes a crystallisation event occurred in 2008, when he altered his pension benefits with Prudential and says any Final Bonus at that time should have been amalgamated with his remaining With-Profits funds.

## Background information, including submissions from the parties

5. Mr E has four With-Profits funds with Prudential. As these are ex Scottish Amicable contracts, three of the four funds (before any addition of a final bonus) attract a Guaranteed Price Increase (**GPI**) of 4% p.a. whilst the fourth fund has no GPI.
6. In the run up to Mr E's initial SRD on 5 October 2008 (age 55), transfer instructions were provided to Prudential confirming that pension benefits from his Protected Rights funds would be taken after he attained age 55, and that all remaining non-Protected Rights funds would be taken at a later date. Around this time, Prudential also confirmed to Mr E that his SRD had been deferred to 5 October 2013 (age 60).
7. Discharge papers were signed on 5 December 2008, allowing Prudential to transfer the sum of £52,121 (all Protected Rights) to Legal & General (**L&G**). L&G then made

a tax free cash payment of £13,030 to Mr E, with the residual Protected Rights transfer value of £39,091, being used to purchase an immediate annuity with L&G.

8. In the run up to age 60 Prudential contacted Mr E on 20 May 2013. He confirmed that he wanted to defer his SRD to 5 October 2018 (age 65). But Mr E said he wanted to switch his two post transfer non-Protected-Rights funds as they were sitting in the Cash Fund and had received no investment growth since the transfer to L&G in 2008.
9. On reviewing Mr E's policies in 2013, Prudential accepts that a mistake was made after the transfer to L&G had been finalised. Prudential should not have switched the two non-Protected Rights funds into the Cash Fund following the transfer value in 2008 (the terms and conditions allow for a switch into the Cash Fund in the run up to retirement as it helps eliminate market volatility on the impending maturity of policies, but Mr E had not taken any retirement benefits with Prudential at that time).
10. Prudential put Mr E back into the correct position he would have been in had the original mistake not taken place, and his remaining non-Protected Rights funds (which had been incorrectly invested in the Cash Fund) were reinvested into the With-Profits fund and backdated to 2008 (on the basis that the switch had never occurred).
11. Transfer values were provided to Mr E later in 2013. He complained that his corrected funds were lower (based on transfer values in 2008) and had not increased by the minimum of 4% p.a. as a result of the incorrect switch that had taken place in 2008.
12. Prudential say this has been thoroughly investigated and can be explained because a revision of Final Bonus rates took effect from 13 November 2008. They said:

“The revision of our Final Bonus rate was in response to the sustained downturn across world markets and the continuing poor investment environment, experienced at that time. As a result we reduced the final bonus (terminal) bonus rates on some of our With-Profits policies.

Given the global market conditions and in particular the volatility we experienced in equity markets and its impact on our With-Profits Fund, we decided to introduce this change in order to safeguard Prudential's With-Profits Fund and protect the interests of customers over the medium to long term. I have enclosed a Press Release that was made at that time.”

13. Mr E agreed the headline transfer figures in 2008 were correct but he disputed the method used by Prudential when applying Final Bonus to his funds. He used the analogy of ‘2 bags of money without segmentation in either bag’, particularly in 2008. By this he meant he had altered his Prudential pension holdings in 2008, one bag held his pension fund, and the other bag held Final Bonus. He says a crystallisation event took place in 2008 and so Final Bonus should have been calculated at that point in time, converted into units, and then added to his pension fund to create one ‘new bag of money’ which would then increase in the normal way at the GPI of 4% p.a.

14. Prudential's Chief Actuary added his comments to try and provide some additional reassurance that Mr E's benefits were being managed correctly. He said:

**"Changes to the Selected Retirement Date**

As Mr E did not vest his benefits on the originally selected retirement date of October 2008 a new selected retirement date, October 2013, was chosen. His policies continued to be invested in the With-Profits fund (after the erroneous transfer to the Cash Fund was reversed) .....

**Final Bonus**

In addition a final bonus, that is not guaranteed, may be added when taking the benefits or on the transfer to another pension policy. Final bonus is not guaranteed to allow greater investment freedom, this is expected to generate higher investment returns for the policyholder in the long term. The final bonus is only added to the policy when the benefits are taken or transferred to another pension policy."

15. In response Mr E says:-

"... I cannot find any evidence in any of the Prudential supplied literature including their technical guide dated applicable from April 2015 on, how we manage your With-Profits Fund, to contradict my opinion or support Prudential's view. [The actuary] (Prudential), states that crystallisation of my fund has never taken place in either 2008 or 2013 which were my Selected Retirement Dates. With respect to 2013, I fully accept this is the case, since in reality it was no more than a deferral to 2018, requiring no movement of funds from their place in the With-Profits Fund to any other fund or provider. Events in 2008 are in stark contrast to 2013.

Having been notified by Prudential of my impending S.R.D in October 2008, I reviewed my circumstances and decided to significantly change my pension fund holding with Prudential. Reaching my S.R.D in my opinion and supported by Prudential's literature, this is maturity and attracts Final Bonus attachment to maturity value (transfer value). Discussions between Prudential and myself continued through October and November during which time my total fund value was transferred to the cash fund, which may be standard practice. My final decision was to only take the protected rights portion of my pension pot and reinvest the total value of non protected portion back into the With-Profits Fund."

**Adjudicator's Opinion**

16. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised briefly below:

- Prudential accepts it made a mistake in 2008. When they knew Mr E only wanted to transfer part of the Plan they should have reinvested the remaining part of the Plan back into the With-Profits fund (from the Cash Fund). However, all parties agree the original Protected Rights transfer values paid to L&G in December 2008 (£21,727 and £30,391), were correct. Furthermore, all parties agreed that the remaining non-Protected Rights total fund value, as at November 2008, was £64,027, which included a final bonus of £20,487.
- Prudential has managed Mr E's funds correctly in accordance with the terms and conditions of the Plan and HMRC guidelines.
- There was no crystallisation event in the way in which Mr E first thought (particularly in 2008). His final bonus would not be calculated at each SRD and then converted into additional units and added to his pension fund, which was then subjected to 4% per annum increases. This implied a new layer of final bonus would start afresh each time Mr E had reached age 55, 60 and 65 etc.
- The correct position in 2008 was that Mr E had taken partial benefits with L&G but that was not a crystallisation event with Prudential. The main change to his benefits under the Plan was that his SRD had changed to age 60. That meant any final bonus and pension fund would remain as two separate components until Mr E decided to take his benefits with Prudential, and they would not be combined to make one new pot of money.
- The original mistake in 2008 was maladministration but Prudential had adequately compensated Mr E for any distress and inconvenience the mistake had caused.
- Information supplied by Prudential showed fund values included final bonus, and two of Mr E's policies had reduced, hence the original complaint that Prudential had not increased the policies by 4% per annum. The reduction in figures at 2013 compared to 2008, was not because of any maladministration by Prudential. Mr E had not appreciated Prudential had reduced its final bonus rates on 13 November 2008, following the downturn in global markets. This had affected Mr E's fund and transfer values, which became more visible in 2013 when compared to his 2008 statements, as it included (higher) pre 13 November 2008 levels of final bonus. It was evident that Prudential had increased the correct part of the fund annually in line with the GPI (but that the final bonus was lower in 2013). However, final bonus was never guaranteed and can be removed, reduced or suspended at any time.

## **Ombudsman's decision**

17. I believe Mr E has received the correct 4% per annum increase on his various With-Profits funds with Prudential, and I am satisfied that Prudential has managed those funds correctly from November 2008 onwards.
18. Whilst I can appreciate Mr E's pension pot analogy I do not agree with his logic. Mr E had decided to transfer out his Protected Rights liability from Prudential to another

provider. In other words, he was fully extinguishing all past Contracted-Out liability under the Plan. That is not a crystallisation event with Prudential because he was not taking benefits with them. And because Mr E was taking no benefits with Prudential his final bonus would not be calculated and amalgamated into his remaining With-Profits funds in the way he thought. Mr E said that because he had transferred his Protected Rights funds in 2008 he had “reinvested” his non-Protected Rights funds back into the With-Profits fund. Ordinarily that would not happen following a transfer as there was nothing to reinvest (except for the mistaken switch). Mr E’s non-Protected Rights funds had always remained in the With-Profits fund and so there was no final bonus to amalgamate into those funds at that point in time.

19. As it was L&G making the tax-free cash payment and setting up Mr E’s annuity, the crystallisation event was with L&G, and they were responsible (not Prudential) for ensuring Mr E’s benefits were tested against the Lifetime Allowance.
20. I agree with Prudential’s actuary when he says Mr E did not vest his benefits in 2008. The actuary also makes a generic statement that a final bonus may be added onto the transfer to another provider. It would have been helpful if the actuary had confirmed what final bonus was included in the transfer values to L&G (£21,727 and £30,391). I make no formal directions within this determination (because I am not upholding the complaint), but for absolute transparency and final reassurance to Mr E, I would ask that Prudential, on receipt of this document, provide Mr E with a breakdown of the transfer values paid to L&G in 2008, showing what final bonus was included.
21. The With-Profits literature and technical guides are sufficiently clear in my view; certainly clear enough for the layman on the mechanics of the With-Profits fund. However, I would agree that the literature is possibly lacking specific detail when it comes to ex Scottish Amicable contracts, which is the legacy policy Mr E belonged to. That is merely an observation on my part and not a maladministration event in itself.
22. The circumstances of Mr E’s complaint, and the individual actions he took in 2008, are slightly unusual and probably not typical day-to-day events that take place within Prudential. It is therefore unlikely in my opinion that literature exists in the public domain covering the specific circumstances of Mr E’s transfer and resulting SRD deferrals, or the impact this had on his pension fund and final bonus allocation, and so on. And, as stated above, as an ex Scottish Amicable client it is not unreasonable to conclude that the literature Mr E wanted to see did not exist as a public document.
23. Therefore, I do not uphold Mr M’s complaint.

**Anthony Arter**

Pensions Ombudsman  
4 July 2016