

Ombudsman's Determination

Applicant	Mr N
Schemes	The Shipbuilding Industries Pension Scheme (the SIPS) Prudential Personal Pension Plan (the Plan)
Respondents	Prudential Hadrian Trustees Limited (the Trustees)

Outcome

1. Mr N's complaint is upheld against Prudential only and to put matters Prudential should calculate the current value of the cash equivalent transfer value of £2,727.02 assuming that it had been paid into the Plan on 29 July 1992 and then transfer this amount to Mr N's current pension arrangement administered by AEGON.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that either:
 - the Trustees are wrongly refusing to pay the deferred benefits available to him from the SIPS if the transfer of his pension rights to the Plan did not proceed in 1992; or
 - Prudential have failed to transfer these benefits which should have been paid in the Plan to his pension arrangement with AVIVA in September 2002

Background information, including submissions from the parties

4. Mr N was a deferred pensioner in the SIPS which is a contracted out final salary pension scheme.
5. In 1991, Mr N considered transferring his pension rights in the SIPS to the Plan.
6. In May/June 1992, Mr N and the District Manager of Prudential's office in Middlesbrough completed a SIPS discharge form which said that:
 - the Trustees would be discharged from the entire liability of Mr N's deferred benefits in the SIPS once they had transferred it to the Plan; and

- Prudential had granted Mr N appropriate benefits in the Plan in consideration of n receipt of the transfer payment totalling £2,727.02.
7. Despite the form of words used in the SIPS discharge signed by Prudential it appears that the transfer payment had at that point not been received. The SIPS administrator requested a cheque for £2,727.02 to be made payable to Prudential on 28 July 1992. On the following day, they sent the cheque to Prudential's office in Middlesbrough with a covering letter which said that:
- “...I now have pleasure in enclosing our cheque for £2,727.02 in settlement of the transfer payable.
- Please also find enclosed the completed transfer form as requested.”
8. In 1997, Mr N contacted Prudential to enquire about the transfer. Prudential responded in their letter dated 14 May 1997 that, according to their limited records, the proposed transfer from the SIPS to the Plan in 1991/2 did not proceed at his request.
9. Mr N had two policies with Prudential. One was the Plan and the other was a FSAVC arrangement. They were established in April 1989 and May 1995 respectively. The Plan was set up to enable Mr N to contract out of the State Earnings Related Pension Scheme (**SERPS**) with the commencement date backdated to 6 April 1987.
10. In January 2002, Mr N requested the transfer of these two policies to AVIVA. This transfer was completed in September 2002.
11. Prudential informed AVIVA that the transfer value of £17,268.14 from the Plan was wholly in respect of protected rights including £2,211.60 accrued after April 1997.
12. Prudential say that their records indicate that:
- the transfer value only contained contracted out rebates paid directly into the Plan and did not include any protected rights transferred into it from the SIPS;
 - the evidence supplied by the Trustees is inconclusive and does not prove that Prudential had received the transfer cheque and accepted the payment in 1992;
 - if the transfer had taken place, Mr N would have received a member's certificate confirming that the payment had been credited to the Plan;
 - his annual Plan statements would have shown how well this payment had been invested over the years;
 - the representative who arranged Mr N's transfer would have received commission on completion of the transfer but no such commission payment was made in 1992;
 - screen shots taken from their archive records show that:

- a) their field staff had contacted Mr N in August 1992 to enquire whether or not he still wished to continue with the transfer in light of the European Court of Justice's recent decision on unequal retirement ages and benefits;
- b) in order for the transfer to proceed, any outstanding requirements would subsequently be sent to the Trustees;
- c) they did not receive a response from Mr N despite sending him several reminders; and
- d) Mr N's record was closed on 30 September 1993 after it had been amended to show that the transfer was "not taken up"

13. Prudential assert that the transfer did not proceed either because Mr N changed his mind or because all of their requirements had not been met by the Trustees. They also contend that if Mr N wanted to transfer his SIPS deferred benefits to Prudential, he should have requested this again in 1997 after they had informed him that the proposed transfer in 1992 was not finalised.

14. Prudential also contend that:

- HMRC have not been able to provide any evidence that corroborates the contracted out information they hold on file for Mr N which is just as likely to be incorrect;
- according to their letter dated 21 March 2002 to AVIVA, the contracting out start date for the Plan was 6 April 1987;
- although they accept that this letter does not prove categorically that they did not receive the transfer payment in 1992, it does strongly suggest that this was the case;
- when Mr N queried the transfer in 1997, they would have been able to access its details if available on their records as it was only five years after the event had allegedly occurred;
- they were unable to find any relevant correspondence at this time and no further information was provided by Mr N or the Trustees in connection with this; and
- whilst they accept that they could have pursued this further at the time, it would have been reasonable for Mr N and the Trustees to have done the same

15. The Trustees say that:

- they have provided sufficient evidence to show that Mr N's SIPS pension rights were transferred to Prudential;
- any transfer cheque issued but not encashed within one month would have been investigated by the SIPS administrator;
- this did not happen with Mr N's cheque which would suggest that Prudential had encashed it;
- Prudential should have contacted them if they had not received the transfer cheque;
- they have not been able to find any evidence confirming that the cheque was encashed by Prudential in 1992 because it would have been destroyed by now; and
- the screen shots cannot be relied upon to establish the correct sequence of events because they have most likely not been properly updated, a contention which Prudential strongly refutes

16. Mr N says that:

- Prudential told him in 1997 that the transfer had been completed but subsequently sent him a letter to notify him that it had not;
- he consequently believed that he was still entitled to a deferred pension in the SIPS;
- he only contacted the SIPS administrator in June 2012 to enquire about his pension because he was unsure what he had to do in order to trace his benefits;
- it was only at this point that he first became aware that he was no longer entitled to any benefits in the SIPS; and
- he has now transferred his pension rights from AVIVA to AEGON

17. In June 2013, the SIPS administrator received a letter from HMRC which said that their records showed:

- Mr N was contracted out of the State Earnings Related Pension Scheme (**SERPS**) for the period 12 June 1981 to 5 April 1987 whilst he was a member of the SIPS; and
- the contracted out liabilities for this period were transferred into the Plan until the tax year ending on 5 April 2003 when they were subsequently transferred to AVIVA.

18. Prudential received a similar letter from HMRC in October 2016 confirming the above position. This letter also said that Mr N's protected rights for the period 6 April 1987 to 5 April 2003 in the Plan had also been transferred to AVIVA and that HMRC no longer held a copy of the form completed by the SIPS administrator informing them that Mr N's contracted out liabilities in the SIPS had been transferred to Prudential.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Prudential only. The Adjudicator's findings are summarised briefly below:
- By signing and returning a SIPS discharge form to the SIPS administrator in June 1992, Mr N and Prudential had confirmed to the Trustees that they wished to proceed with a transfer of Mr N's pension rights from the SIPS to the Plan.
 - The SIPS Administrator complied with Mr N's instructions by sending to Prudential on 29 July 1992 a cheque for £2,727.02 together with the completed transfer form as requested by Prudential.
 - After taking all the available evidence into account, on the balance of probabilities, the transfer of Mr N's pension rights from the SIPS to the Prudential most likely did proceed.
20. Prudential did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Prudential provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Prudential for completeness.

Ombudsman's decision

21. Prudential contend that the transfer of Mr N's pension rights in SIPS to the Plan did not take place back in 1992 and have relied heavily on what is shown on some screen shots taken from their archive records to justify their position. However, these screen shots provide no evidence of the transfer process which was in place at the time. Conversely SIPS have produced a record of the cheque being issued, and a completed discharge form obtained. They also say they had a process in place at the time for querying uncashed cheques which was not triggered. I am satisfied from this evidence that it is more likely than not that the transfer proceeded and any failure to document the transfer process was the fault of Prudential rather than Mr N or SIPS.
22. Prudential signed the discharge form acknowledging receipt of a cheque before it had been issued. It appears they then asked for another form to be completed by SIPS which was sent with the cheque. If there was outstanding information required from the Trustees in order for the transfer to be processed through Prudential's systems, I

PO-8517

consider it reasonable to expect Prudential to have asked for it when they received SIPS request for discharge, rather than sign it then ask for different forms.

23. Prudential say that contracted out liabilities in the SIPS were not transferred into the Plan or the FSAVC arrangement. Whilst this may be the case, the available evidence from HMRC does not support their view that they did not receive the transfer payment at all. HMRC's records indicate that the contracted out liabilities for the period 12 June 1981 to 5 April 1987 whilst Mr N was a member of the SIPS were transferred to AVIVA via Prudential and only Prudential could have notified HMRC of this by completing the appropriate form.
24. Prudential say that notwithstanding the HMRC record they have no record of a third policy for Mr N into which the transfer value could have been paid. If that statement is correct it may explain why the transfer was not allocated to Mr N, but does not alter my conclusion that the transfer process was completed by SIPS according to the instruction issued by Mr N.
25. I can only reach a conclusion based on the evidence available, including the incomplete documentary record and the conflicting views of what happened to the cheque. I conclude that on the balance of probabilities the transfer of Mr N's pension rights from the SIPS to the Prudential most likely did proceed according to his instruction, but Prudential failed to exercise appropriate control over the transfer process and documentation at its end, which was maladministration causing Mr N financial loss equal to his misplaced transfer value.
26. Therefore, I uphold Mr N's complaint.

Directions

27. Prudential should within 21 days of the determination calculate the current value of the cash equivalent transfer value of £2,727.02 assuming that it had been paid into the Plan on 29 July 1992 and then transfer this amount to Mr N's current pension arrangement administered by AEGON.

Karen Johnston

Deputy Pensions Ombudsman
22 March 2017