DRN-4553523

Financial Ombudsman Service

The complaint

Mrs F complains that the Prudential Assurance Company Limited (Prudential) made three errors relating to the taxation of regular and ad-hoc income withdrawals from her retirement account. She says this led her to overpay income tax – which she is now unable to reclaim – and meant she incurred bank charges and financial difficulties.

What happened

Mrs F holds a retirement account with Prudential. In 2019 she began drawing her benefits and started to receive a monthly income from the account. In October 2022 she asked Prudential to revise the monthly income level to £750 and changed the payment date to the 28th of each month. Unfortunately, this change resulted in two payments being taken in the same month with a deduction for income tax being made on both.

So Mrs F complained about the additional tax deduction arising from the two payments which she said meant she had insufficient funds to pay her personal bills. Prudential said it should have made Mrs F aware of that possibility which may have allowed her to make alternative arrangements. It paid Mrs F £75 to cover any bank charges she'd incurred and £150 compensation for the impact the matter had on her.

In February 2023 Mrs F asked Prudential to stop the regular income payments from her plan so that she didn't make 13 payments in the tax year and pay additional tax for which she hadn't accounted.

On 3 February 2023 Mrs F contacted Prudential to ask for a lump sum withdrawal of £17,000. She explained that she understood the tax implications of the withdrawal and completed the request on the phone. But subsequently she wanted to know why she'd been taxed on her regular payments as well as her ad-hoc lump sum withdrawal. She said she wasn't told about that when asked about withdrawing the lump sum and the extra tax was now causing her problem with making payments towards buying out her ex-partner's share of their house.

Prudential didn't uphold the complaint. It said that, while Mrs F may have questioned the number of payments she received in tax year 2022-2023, her total income was taxed using the code provided to it by HMRC – over which it has no control. So it thought the total amount of tax Mrs F had paid on her withdrawals from Prudential was correct and she hadn't been taxed more than necessary. It also said its adviser had made her aware that her request for a lump sum withdrawal on 3 February 2023 may be subject to income tax.

Mrs F didn't agree. She said she understood how the tax worked and accepted the lump sum should be taxed at 20% - but noted that instead of £3,400 she paid £3,250 in tax. Thereafter the next monthly payment was taxed (incorrectly) by £150. She said she'd also had to cancel her regular payment in March 2023 to compensate for the "double" payment back in October 2022.

Prudential explained that each month is considered to be a "standalone" tax month throughout the year. It set out how the withdrawal Mrs F received in February 2023 affected her overall tax liability for the year. It said it had applied the code for that year correctly in her case.

On 2 March 2023 Mrs F contacted Prudential to discuss the possibility of closing her plan. She wanted to know the costs involved and whether she could close it online or over the telephone. She explained that she had asked HMRC to send her new tax code for the 2023-2024 tax year to Prudential and therefore didn't want to close the account and withdraw the money until the new tax year.

The adviser went through the first part of the closure process with her at that point and then said she could come back after the end of the tax year to complete it. But when he also explained that it would be quicker if Mrs F initiated a partial withdrawal instead - and said she hadn't committed to anything at that stage, they agreed that Mrs F would go and consider her options. She called back on 17 March 2023 and explained that she had decided to partially withdraw £30,000 from her plan. She asked how long the process would take. She says she followed Prudential's advice on when to submit the application, but the payment went through quicker than expected and was paid before the end of the 2022-2023 tax year - meaning tax of £8,967.80 was deducted.

Mrs F complained about the information Prudential provided. She said this led to her paying higher rate tax when she didn't need to, had the payment been paid correctly the following tax year. Prudential accepted that the information it provided during its calls with Mrs F could have been clearer and that it had discussed a variety of dates with her. But it said its last instruction was to "*wait until the beginning of April to accept the online illustration."* So it couldn't support her claim that it told her to accept the illustration on 30 or 31 March 2023. It paid an additional £100 for the trouble and upset it had caused.

Mrs F wasn't happy with the response and so she brought her complaint to us. She said:

- Prudential failed to advise her in October 2022 that, by changing the payment date of her regular income, she would receive two payments in that month and pay tax of £150 which she didn't expect, and which hasn't been refunded.
- It also failed to take the correct amount of tax from a one off withdrawal she made in February 2023 (it took too little tax), but it then took an extra £150 tax from her regular income payment that month. She says Prudential didn't make aware of that error.
- When she wanted to withdraw £30,000 for the 2023-2024 tax year in March 2023, she was advised by Prudential of the dates that she should apply to ensure the payment was made in the correct tax year. But Prudential paid the funds within the 2022-2023 tax year which meant she was taxed as a higher rate taxpayer. She had arranged her finances to ensure she would be taxed as a basic rate taxpayer in the 2023-2024 tax year and cannot now get the transaction reversed by HMRC.

One of our investigators looked into the matter but didn't think the complaint should be upheld. He made the following points in support of his view:

- Prudential could have warned Mrs F about the possible tax implications of changing her regular income payment date, so he thought it's offer of £150 compensation plus £75 to cover bank overdraft charges was fair.
- He explained that all the withdrawals from the 2022-2023 tax year were taxed on a *pro rata basis*, so Prudential's role was simply to apply the tax code it had been provided with to each income withdrawal. Although the calculation was different to how Mrs F had worked things out he thought the overall tax paid during the tax year was correct, although he suggested that any suggestion the tax collected was wrong would be for HMRC to investigate.

- It was unfortunate that Prudential's processing of the 2023 lump sum meant the payment was made within that tax year. But he thought, despite its unclear messaging at times, Prudential had done enough to suggest an application shouldn't be made until April 2023 – so he didn't think it was responsible for the earlier than expected payment.
- He didn't think Prudential had intentionally made the payment so that Mrs F would pay more tax. He thought it had acted fairly in the circumstances. Although it was most unfortunate that HMRC wouldn't allow the transaction to be amended to the new tax year.

The investigator then asked Prudential if it was possible for it to amend the transaction as it was clear that Mrs F hadn't wanted the payment for the 2023-2024 tax year – but it said it wasn't able to change the payment date as the money had been paid within the previous tax year. It said telling HMRC about the position wouldn't make any difference.

Mrs F didn't agree and said that Prudential had made a number of errors when processing her payments and applying income tax and it was solely responsible for when it made the transactions. She didn't think she'd done anything wrong and had simply followed Prudential's instructions believing this would be carried out in line with her request. She asked for her complaint to be referred to an ombudsman – so it was passed to me to review.

Provisional decision

In my provisional decision I took a different view to the investigator and thought the complaint should be upheld. I made the following points in support of my findings:

- With regards to the tax issue Mrs F said occurred in October 2022, I thought Prudential made it clear in a letter dated 4 October 2022 that it had changed her income payment date so she ought to have been aware that it was likely a second payment would be made that same month. But although I didn't think Mrs F had suffered a financial loss because of this matter, I thought Prudential's payment of £225 was a fair and reasonable solution for any lack of clarity in its correspondence that two payments might be made in October 2022.
- I didn't think Prudential was responsible for any error Mrs F may have thought occurred in February 2023 when she made an ad-hoc lump sum withdrawal request alongside her regular income payments. I thought Prudential had simply applied the tax code it was given for Mrs F by HMRC and wasn't responsible for the amount of tax that might be due on the payments – which I said Mrs F ought to query with HMRC if she believed it was incorrect. But in any case, I thought the outcome of Mrs F being both undertaxed and overtaxed on the payments meant the effect was broadly neutral.
- But looking at Mrs F's request to withdraw £30,000 in the 2023-2024 tax year – I did think that Prudential was responsible for paying Mrs F in the wrong tax year.

- I thought Mrs F was clear in her telephone conversations with Prudential that she didn't want the payment to be made in the then current tax year. I thought her meticulous management of her account suggested she would take every step possible to minimise her income tax bill.
- But although Prudential's adviser – in a call from 2 March 2023 – did set out the process involved in withdrawing the lump sum, the call ended with Mrs F saying she would call back around 6 April 2023. Another call on 17 March 2023 led to a different adviser providing inconsistent information about the dates Mrs F ought to submit her application for the withdrawal, which I think would have led to uncertainly in Mrs F's mind about which dates to begin the withdrawal process.

- I also thought Prudential gave Mrs F the impression a transaction could take up to 10 working days when the reality of an electronic application – which was the case here - would mean it was likely the funds would be credited to her in a day or two.
- I thought Prudential ought to have been clearer that the only course of action to guarantee payment in the next tax year was to submit the application after the end of the previous tax year.
- But I also went on to consider what would have happened if Mrs F had done what Prudential had suggested at the end of the 17 March 2023 telephone call and "*wait until the beginning of April to accept the illustration online.*" And looking at the actual time taken to credit Mrs F with her funds based on the actual timeline of events, I thought it was likely the same outcome would have occurred if Mrs F had taken Prudential's final piece of advice around submission dates.
- So I thought Prudential ought to work with HMRC to put Mrs F back into the position she would now be had the lump sum withdrawal completed in the 2023-2024 tax year. If that wasn't possible, I thought Prudential ought to refund the additional tax charges that Mrs F had suffered because of the payment being made in the 2022-2023 tax year.

Responses to the provisional decision

Mrs F accepted the provisional decision. She said she understood that her overall current income position meant she would be treated as a basic rate taxpayer. But she wanted confirmation that we would tell Prudential to apply for a reversal and whether HMRC could assess her case before the end of the current tax year. She also asked if Prudential, should it be unable to work with HMRC, could pay her the overpaid tax charge as a form of compensation.

Prudential didn't accept the provisional decision. It provided a further telephone call from 27 March 2023 in which it said its adviser did infer that when Mrs F received the online illustration she should wait as long as possible before accepting it - to ensure payment was made in the forthcoming tax year.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having taken into account Prudential's further submission and Mrs F's questions around her tax position, I see no reason to depart from my provisional findings. So, I'll set out my reasons for reaching my final decision below.

Mrs F first questioned the errors she thought were made regarding tax deductions for withdrawals in October 2022 and February 2023. So I've begun by looking at those.

The October 2022 and February 2023 potential tax errors

In October 2022 Mrs F asked Prudential to change the payment of her regular income withdrawals. Prudential confirmed the request had been carried out in a letter which said, "*your next payment of £750.00 before tax is due on 28 October 2022 and will be credited to your bank account on or around this date.*" Unfortunately, this led to two payments being made in October 2022 with an additional tax deduction that Mrs F was neither expecting nor had budgeted for.

But I think Prudential did make Mrs F aware that there would be payment on 28 October and as it didn't send the acknowledgment letter until 4 October 2022 – which was the same day that the normal regular payment was due to be made – I think Mrs F ought to have been aware of the possibility of two payments being made. But on the other hand, Prudential has accepted that it could have been clearer in making Mrs F aware of that possibility so that she could have made alternative arrangements or queried the matter with HMRC.

So, when taken overall, and as I'm satisfied that Mrs F didn't suffer any financial loss here, I think Prudential's payment of £225 to cover the inconvenience caused to Mrs F as well as to cover any bank charges she incurred was a fair and reasonable payment for what happened.

In February 2023 Mrs F asked Prudential to make a lump sum payment of £17,000 to her. After the payment was made Mrs F thought Prudential hadn't deducted the right amount of tax – it had undertaxed her by £150. She then realised her next regular monthly income payment was overtaxed by the same amount. She said as she wasn't made aware of these tax changes she again had to make alternative arrangements to cover her monthly bills.

So, I looked at the transaction information I was presented with for the 2022-2023 tax year. And looking at what Mrs F has told us I was able to reconcile the lump sum and regular income payments she received that tax year. The information also shows the tax that was deducted after each payment, but this wasn't at Prudential's own discretion. It was obliged to apply the tax code that it was provided by HMRC and then to reconcile the tax deducted amount with HMRC. Prudential isn't responsible for "calculating" how much tax is paid it simply applies the code accordingly. So although some of the amounts deducted don't align with what Mrs F thought should be deducted each time, that isn't Prudential's fault.

So I don't think I can reasonably say that Prudential did anything wrong over this matter, and in any case the effect of the under and over taxation of the income was broadly neutral and I can't see that Mrs F suffered any financial loss here. I understand Mrs F would have been frustrated by what she thought was a lack of communication about the tax – especially as Prudential accepted it could have been clearer about the earlier matter from October 2022. But the tax code that was applied to the income payments was provided to Prudential by HMRC, so the amount of each deduction wasn't something Prudential had any responsibility over.

Which tax year should Mrs F's £30,000 withdrawal have been paid in?

The main thrust of Mrs F's complaint was that, when she contacted Prudential to request a one off £30,000 withdrawal from her pension to buy out her ex-partners equity share of their property, she was absolutely clear that it shouldn't be paid until the 2023-2024 tax year. She says she spoke to Prudential a number of times for guidance around the dates she ought to use to submit her application to ensure it was paid in that tax year, but despite following its advice the funds were paid her within the 2023-2023 tax year.

The evidence to support what happened here comes in form of the two telephone conversations Mrs F had with Prudential in March 2023 when she asked for information about which dates to use. And following my provisional decision Prudential provided me with an additional phone call which it said better supported its position – so I've listened carefully again to all of those calls.

The first call was made on 2 March 2023. I think this was an exploratory call where Mrs F wanted help to close her pension account. The adviser correctly explained that Prudential had a two stage process whereby Mrs F would first request the closure and be provided with an illustration, then she had 13 days in which to accept the illustration and begin the payment process. He also confirmed that if he completed part one of the process with Mrs F at that time she should call back in the new tax year to complete the second stage.

However, when the adviser suggested it would take around three to four weeks to get the funds and Mrs F expressed some disappointment over that timescale, he said a partial withdrawal – which would require any amount of cash to be left in the plan – would be significantly quicker to complete. As Mrs F wanted to withdraw £30,000, which would have left some small residual fund, that option was clearly available to her. So, it was agreed that Mrs F would consider her options and "*call back around 6 April*"*.*

So, I don't think that call was definitive in agreeing what process Mrs F would follow and I think its reasonable therefore that – when she had decided on her approach – she called back for further guidance on how to go about things.

The next call on 17 March 2023 was with a different adviser. Mrs F again made it clear that she didn't want the funds to be paid until the new tax year and Prudential should use the new tax code HMRC had told her would apply to her going forward. The adviser began by telling Mrs F "*that there are timescales we have to adhere to because of service standards but if we do it now there is a chance it will go through this tax year."* She then made the following distinct separate statements about the dates Mrs F ought to use.

- "*call back maybe 27 March or closer to the end of March or even 30 it will be guaranteed to be after 7 April if you do that. Like 27, 28 that week, any day we are open."*
- *"if you do it on the 28th it will definitely not fall on the 4th, the system waits for the 10 days".*
- *"maybe wait until 30th to call us then maybe wait a couple of days to confirm".*

I've set out these statements to demonstrate the lack of clarity that was given to Mrs F, which I think would almost certainly have led to uncertainty in her mind and put the responsibility on her to try and work out what dates would ensure payment in the new tax year. I don't think it was reasonable to expect Mrs F to apply her own judgement on how quickly Prudential's systems might process her application, and the numerous references to the 10 day service standards would also have led to Mrs F having a false security of how long it would take.

In my view Prudential shouldn't have provided the variety of dates it suggested. I think it should have been clear that the only course of action Mrs F should follow to guarantee payment in the 2023-2024 tax year was to click on the link that provided her illustration in the new tax year. Had it done that, having told Mrs F previously that the illustration was valid for 13 days, then I think Mrs F would have followed that advice and applied for the funds after 6 April 2023 and this situation wouldn't have arisen.

But I've also listened carefully to another call that took place on 27 March 2023 – which Prudential says inferred "*that the once Mrs F received the form on-line, she would wait as long as possible before accepting it to make sure it definitely got paid in the 2023-2024 tax year."*

But I don't think that call provides any support to the claim that Prudential made it cleat what Mrs F should do. The adviser did explain the two stage process again, but he suggested that Mrs F ought to do what "*she was happy with".* After confirmation of the 13 day period that the illustration was valid for the adviser said, "*you will have 13 calendar days to review this from receipt of the email, if you do not accept the illustration within that timescale then the* *transaction will be cancelled, you also have the option to decline, once you do click confirm, the money should be in your bank account within the next 1-2 weeks."*

So I don't believe there was any firm direction that Mrs F should only accept the illustration after the end of the current tax year – as I've already said I think Prudential should have done. There was also further affirmation, which was repeated at the end of the conversation, that payment would take *1-2 weeks.* I think this supports the idea that Prudential itself couldn't be sure of how long the process would actually take and so I think it further demonstrates that it simply shouldn't have provided any dates Mrs F should use other than "*after 6 April 2023".* Mrs F herself had suggested she would be happy to call back on that date at the end of the first call on 2 March 2023 – which would suggest that she was comfortable with those timescales to receive her funds. Unfortunately, the other options which were discussed in that same call led to Mrs F having to rethink things and approaching Prudential for further guidance later in the month.

But Prudential also said that its last piece of "advice" in the second call was to "*wait until the beginning of April to accept the illustration online."* So I've looked at the probable position this would have put Mrs F in had she taken on this instruction. The fact is that Mrs F accepted the illustration on 30 March and payment was made directly on 31 March 2023. So if she had accepted the illustration on Monday 3 April – which was the first working day in April after the weekend - that left two working days to process the claim which, using the timeline that actually occurred, means the payment would most likely still have been made within the existing tax year. In fact, it's likely that an acceptance on 4 April 2023 would still have led to the same outcome. So I think that supports the idea that whatever dates Prudential referred to during the call of 17 March 2023 - that Mrs F might have taken on board would, more likely than not, have led to the payment being made in the then current tax year.

Summary

I don't think Mrs F did anything wrong here. She was clear that the £30,000 withdrawal shouldn't be paid to her until the 2023-2024 tax year. She contacted Prudential for help and, unsure of how its systems would work, I think she was entitled to use the date that she did to accept the illustration out of the myriad of date "suggestions" that Prudential gave during the call of 17 March 2023. I haven't seen any evidence to support the idea that Prudential was clear and concise that Mrs F should only accept the illustration after the tax year had ended because this was the only way to guarantee payment in the new tax year,

I think Prudential's messages were confusing and more clarity that the illustration shouldn't be accepted until the new tax year would have led to the right outcome here.

So I think Prudential should compensate Mrs F for the additional tax she paid in line with my recommendation below.

In relation to Mrs F's point about her tax position. I can confirm that my final decision below means that Prudential must now begin the process of calculating the redress – which in the first instance would mean it needs to liaise with HMRC to see if that is possible. As I've said previously if that isn't the case it should refund the additional tax charges directly to Mrs F. In terms of the "compensation" Prudential has already paid Mrs F, I think that's fair and reasonable for the distress and inconvenience caused by this matter and also the "double payment" that was made in October 2022.

But I'm not in a position to tell HMRC when it should process Mrs F's case or that it needs to complete any investigation before the end of this tax year. That's a matter for all the parties involved to try to resolve.

Putting things right

I understand that where an error has been made pension providers can work with HMRC to correct a transaction. Prudential should therefore take the necessary steps to ensure that Mrs F is now in the position she would have been, had her withdrawal taken place in the 2023/2024 tax year.

However, if HMRC is unable to correct the transaction, then an alternative resolution would require Prudential to refund the additional taxation charges incurred by Mrs F as a result of receiving the payment during the 2022/2023 tax year – so that she doesn't incur any financial losses as a result of that "earlier" payment.

Prudential has paid Mrs F £100 compensation for the impact the timing of the payment had on her. As well as £225 for the inconvenience caused by the lack of clarity around her October 2022 "double payment". I think that's reasonable for the impact suffered here. Prudential should confirm if it has already made that payment. If either of those payments haven't been made Prudential should also pay those amounts.

My final decision

For the reasons that I've given I uphold Mrs F's complaint against The Prudential Assurance Company Limited and I direct it to put things right as I have described above.

The Prudential Assurance Company Limited should provide details of its calculation to Mrs F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 27 February 2024.

Keith Lawrence
Ombudsman