

The complaint

Mr S complains that MetLife Europe d.a.c. (MetLife) made an error in the payment of tax-free cash from his pension plan which resulted in penalty tax charges. He would like compensation for the additional tax costs incurred.

What happened

Mr S is being assisted in his complaint by his IFA, but for ease, unless necessary for clarity, I will just refer to Mr S in this decision.

Mr S took benefits from his personal pension plan with MetLife in June 2014 by income drawdown. MetLife paid him a tax-free lump sum of around £151,467. In March 2017 MetLife wrote to him saying it had made an error and had overpaid the tax-free cash by £57,899. It said if he didn't repay this, it would have to inform HMRC that an unauthorised payment had been made which would incur a 40% tax penalty payable by Mr S.

Mr S said he would need three months to make the repayment. MetLife agreed and asked him to sign an agreement about this, which wasn't returned. MetLife issued a reminder and told the IFA it would need to notify HMRC.

Mr S complained to MetLife but says it didn't provide a final response. And he contacted HMRC but didn't get a response until February 2018. HMRC said no appeal was possible and with interest and penalties the tax charge now due was £25,195.76. Mr S decided to pay this. He said it wasn't fair that MetLife's error had cost him more than paying income tax on drawing the same net amount from the pension over the three-year period.

Mr S referred his complaint to our service. Our investigator looked into it, and she upheld it in part.

Our investigator said as MetLife accepted it made an error the issue was whether it was responsible for Mr S's tax liability. MetLife said any penalties levied by HMRC were a direct result of Mr S not repaying the overpayment. It said this was "*a conscious decision on his part*", in the belief that, if he referred his complaint to our service, he would only have to pay what tax would have been due on the same amount of income, rather than additional penalty charges.

Our investigator said the error didn't mean Mr S was entitled to keep the overpayment and MetLife was required to notify HMRC if it wasn't repaid. She said Mr S had given limited information as to why he was unable to repay the money back over the three months he'd requested. But if he'd responded to MetLife then, more time might have been given for him to make a repayment and mitigate his loss.

So, she didn't think MetLife was responsible for the tax charges as these were only incurred because the overpayment wasn't refunded. And as the overpayment was significant Mr S should have been aware of the problem sooner. As she said it was likely he would have received statements and projections about his pension fund and the amount of tax-free cash

payable. But she thought the error had caused Mr S distress and he should be paid £500 in compensation.

Mr S disagreed. He said he'd only recently transferred another pension to MetLife and hadn't received statements or projections. He said he'd used most of the tax-free cash to pay off his mortgage and to help his children onto the property ladder. As he was retired, he could only raise £57,899 from his pension, requiring around £96,500 to be withdrawn to raise the amount needed after tax. Whereas the tax penalty on the overpayment was £23,159, which he had been able to raise.

Mr S said if he'd drawn the same amount as income from the plan over the three years this would have been taxed at 20%. Meaning the error had cost an additional £11,579 in tax, interest, and penalties. He said he was only seeking compensation on this extra amount, not the entire tax penalty.

As Mr S doesn't agree it has come to me to decide.

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.

Having done so I am upholding the complaint in part but to be clear to Mr S I don't think MetLife is liable for the additional tax costs that have been incurred.

MetLife did make an error in the payment of the benefits, significantly overpaying the tax-free cash allowable. If not corrected, this results in an unauthorised payment charge from HMRC, payable by Mr S.

Our service usually takes the view that if someone has been incorrectly paid money, they weren't entitled to, it isn't fair that they be allowed to keep it, even if they were unaware of the error being made. But in some circumstances, it might be reasonable that adjustments be made for any tax consequences caused or financial difficulties that might result if someone was asked to make a repayment, particularly if this were a long time after the error occurred.

Mr S argues it is unfair he should suffer additional costs compared to drawing the same net sum as income over the period before MetLife notified him of the error. I don't know whether he would have drawn more income if the error hadn't been made, but he certainly could have done so. And I thought it was unusual for valuations and projections not to be provided before his benefits were paid. Which might mean Mr S might not have been unaware of the error, which wasn't notified until quite a long time later. So, his argument about excess tax costs might be reasonable. And it didn't seem surprising that he wasn't able to immediately make repayment, as it's not unusual for people to use pension benefits to pay off mortgages and to make gifts to their children.

However, I thought there were some gaps in the evidence on MetLife's file, such as the application form or other instruction for benefits to be taken. So, I asked both Mr S and MetLife for further details about this.

Mr S's IFA provided a copy of a letter it had sent to MetLife on 16 June 2014 forwarding a completed application to draw benefits. This requested that all remaining tax-free cash be paid along with a quarterly income. The letter also said it understood that MetLife was currently unable to generate illustrations and it looked forward to receiving one, once *"systems have been updated"*.

The IFA also provided a letter from MetLife to Mr S dated 24 December 2014. This confirmed the details, provided an illustration and a benefit crystallisation certificate for the tax-free cash taken on 24 June 2014. The letter apologised for the delay in issuing this information.

MetLife also provided further evidence. It confirmed that it hadn't been able to provide an illustration at the time due to systems being updated. It said it had records of generating the confirmation letter twice. Including immediately after the payment was made, but it said it couldn't be certain this first letter had been sent out.

However, MetLife also said that on the same day the IFA submitted the request for benefits to be paid it had also separately requested the split between the crystallised and uncrystallised funds. MetLife replied by email the next day. It confirmed, incorrectly, the splits were £146,497.95 and £606,692.09 respectively. It said that it appeared neither it nor the IFA had "spotted" the error.

It seems there were several errors here, with MetLife overstating the total value of the pension fund by around £146,497.95. And it considerably overstated the value of the uncrystallised fund that could be used to provide tax-free cash. And it proceeded to pay tax-free cash based on this error.

I thought that this information was important given that the IFA had been involved in arranging both the retirement benefits and the transfer to MetLife only a short time before. As it was highly likely that valuations would have been considered in doing this. So, I asked both Mr S and his IFA for comments about this information.

The IFA said it "*cannot find the correspondence from the 17th June*" – this being MetLife's reply to its own email confirming incorrect values. It said no further correspondence was received until 24 December 2014, being the confirmation details. And on 5 January 2015 the IFA had checked values to:

"make sure the income extraction had been paid in line with what was expected."

So, Mr S and his IFA's position remains that they were unaware of the error until MetLife wrote in March 2017. I've considered this and I think the evidence presented is incomplete. And where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

So, I've considered carefully whether the error should have been noticed and queried after MetLife provided incorrect values on 17 June 2014 and significantly overpaid tax-free cash a few days later. And I think Mr S and the IFA should have been aware of this.

It hasn't been confirmed whether Mr S was being advised about drawing his benefits, although I suspect that he was. He took benefits only around two months after arranging a relatively large transfer of another plan into the MetLife arrangement. Given the close proximity of the transfer and the taking of benefits I think it's likely that the transfer was made to facilitate benefits being taken. The transfer application form indicates that both initial and ongoing adviser charge was to be paid to the IFA, strongly suggesting advice was being provided. And there would be no need for the IFA to request a benefit illustration be sent when available, or to be checking on what income had been paid in January 2015, if it wasn't acting in an advisory capacity.

So, I'd expect that the values of the existing MetLife pension, the plan to be transferred and the benefits that could be provided would have been considered in detail before the transfer was made. As benefits were taken just two months later, I think it's likely that the approximate value at the time of drawing benefits would have been known to both Mr S and his IFA, including the split between crystallised and uncrystallised fund. It's clear from the IFA's letter of 16 June 2014 that it was aware that Mr S had already received some tax-free cash from this arrangement, meaning the amount payable would be less than 25% of the fund value.

I think the email MetLife sent was most likely received. Even if it wasn't or was overlooked, I'd still expect the IFA would check details of when and what payment that had been made with MetLife and or Mr S. Especially so, if no information or illustration had been provided beforehand and no actual confirmation was provided until six months later.

And the error made by MetLife was so large that the uncrystallised fund would have needed to be around £230,000 more than it actually was for the tax-free cash payment made to have been correct. That would have required a very large, and therefore highly unlikely, increase in value to have been achieved in just two months following the transfer for there not to have been a mistake.

So, from the evidence available and on the balance of probability, I think that Mr S and his IFA would have been aware that a significant overpayment had been made, which he wasn't entitled to. Even if Mr S and his IFA were not immediately aware of this, then I think they certainly should have been by December 2014, when MetLife did provide full details of the payment. And I'd expect the IFA to be aware of the potentially adverse tax consequences of any overpayment of tax-free cash, if not repaid.

It may be the case that had Mr S acted then, some action could have been taken to mitigate at least some of the tax penalty. Either by reimbursing the overpayment or treating some of it as income and taxing it accordingly. But that didn't happen and whilst I appreciate the issues around raising the necessary funds, when MetLife realised the error, he did have the option of reimbursing the overpayment to avoid the unauthorised payment charge, but he decided against that.

So, taking everything together whilst MetLife made an error, I don't think it is reasonable to hold it responsible for the adverse taxation consequences of this. Because I think Mr S should have been reasonably aware an overpayment had been made, particularly given the significant sum involved and he could have taken action to mitigate the tax consequences of this.

But at the same time, I do think what has happened Mr S has suffered distress and inconvenience. And I think this would still be the case even if he'd responded to the error promptly, so I am upholding his complaint in part.

Putting things right

As I think Mr S has been caused some distress and inconvenience I think it is fair that he be compensated for this. I think it's fair that MetLife should pay him £500 in compensation for this.

My final decision

My final decision is that I uphold the complaint in part against MetLife Europe d.a.c.

I direct MetLife Europe d.a.c. to pay Mr S £500 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 March 2023.

Nigel Bracken
Ombudsman