DRN-3501195

The complaint

Mr C complains that The Prudential Assurance Company Limited ("Prudential") failed to make an income payment to him in a timely manner. He further complains that when it became apparent that there was a risk the payment would not be made in the current tax year Prudential incorrectly reassured him that it would be recorded in the current tax year even if it were actually paid in the following tax year.

What happened

I issued a provisional decision on this complaint in April 2022. In that decision I explained why I thought part of the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

> *Mr C holds pension savings with Prudential. I can see that whilst we have been dealing with this complaint Mr C has raised a number of other matters of complaint with Prudential. And some of those complaints are being dealt with separately by this Service. For the avoidance of doubt, in this decision, I will only be considering what happened when Mr C requested an income payment to be made from his pension savings in March 2020.*
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> *Mr C has told us that he had taken income payments from his pension savings towards the end of the tax year for a number of years. He was supported in managing his pension savings by a financial advisor. The financial advisor was aware that Prudential implemented cut-off dates each year, by which time it would need any payment instructions to have been made in order for processing to complete before the end of the tax year. On 5 March 2020 Mr C's financial advisor was told by Prudential that the instruction cut-off date for that tax year would be 23 March 2020.*
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> *Mr C's financial advisor submitted a request for an Uncrystallised Funds Pension Lump Sum ("UFPLS") withdrawal on 12 March. On 16 March Prudential says it sent a secure message to the financial advisor requesting a copy of Mr C's bank statement to fulfil its Anti-Money Laundering ("AML") responsibilities. Mr C's financial advisor didn't receive the original request, and Prudential re-sent it on 24 March. Mr C returned the required information the same day, and on 25 March Prudential confirmed its receipt and that it would now arrange for the payment to be processed.*
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> *Mr C didn't receive the expected income payment. So, on 1 April Mr C's financial advisor contacted Prudential to check the status of the payment. He was advised that although the funds wouldn't be physically released to Mr C until the start of the following tax year, the payment would be recorded by Prudential as having been made before the end of the tax year.*
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> *That information proved to be incorrect. So, the payment Mr C received was deemed to have been made in the 2020-21 tax year. That meant that Mr C had left some of his tax allowances unused in the previous year, and would incur higher rate taxation*

on any income he took later in the 2020-21 tax year. So he complained to Prudential both about the late payment, and the incorrect information his financial advisor had been given.

Prudential accepted that it had provided incorrect information about the dating of the income payment. And it noted that it had not sold some of Mr C's pension investments, before the income payment could be made, on the required date. So it paid him £250 for the trouble and upset he'd been caused, and some interest for the one-day delay in the asset sale. But Prudential didn't agree that it should have completed the income payment before the end of the tax year. Mr C didn't accept that outcome so he brought his complaint to this Service.

I think that there are reasonably two matters that I need to consider here. Firstly whether Mr C reasonably gave his income payment instruction to Prudential before the end of tax-year deadline. And secondly, whether the incorrect information given to Mr C's financial advisor by Prudential about the backdating of the payments has caused Mr C to lose out.

I will first deal with the incorrect information that was provided about the backdating of the payment.

It seems that both parties accept that the information Prudential provided to Mr C's financial advisor at the start of April 2020 about the backdating of the income payment date was incorrect. And as I mentioned earlier Prudential has paid £250 to Mr C for the trouble and upset its failings caused to him. But I need to consider here whether Prudential's incorrect information caused Mr C any loss, or to act differently.

Generally income payments become taxable at the point they are made. As Mr C has pointed out there are some limited exceptions where payments can be deferred, or treated as having been made before the event. But I don't think those reasonably apply here. So, if Prudential failed to make the income payment to Mr C before the end of the tax year, it seems right that it should be recorded in the following tax year. So I don't think Prudential could reasonably have backdated the payment for Mr C.

When it provided the incorrect information to Mr C, Prudential says that it was already too late for the payment to be made in the earlier tax year. So even if it had provided the correct information – that the payment couldn't be backdated – I cannot see that Mr C would have been able to alter the payment date.

I have considered that Mr C might have chosen to cancel his income instruction entirely. But I have seen that more recently Prudential has agreed with Mr C and HMRC to do exactly that. Mr C has repaid the income he received, and HMRC has removed that payment from his records.

So on balance I don't think this part of Mr C's complaint should be upheld. I think the payment that Prudential has made to Mr C for the trouble and upset he was caused by its incorrect information is fair and reasonable.

I will now consider when Prudential should have processed Mr C's original instruction.

As my starting point for thinking about this part of Mr C's complaint I have first looked at the terms and conditions that were applicable to his pension savings. Mr C was requesting an ad-hoc income payment to be made. So I think the relevant section of *those terms is 23.6 which states that once all the necessary information has been received, payments will be processed "as soon as is reasonably possible".*

In its responses to Mr C Prudential has referred to a 10-working day SLA for payments to be made. And that timeframe would appear to align with the end of year cut-off date that it provided to Mr C's financial advisor. But I think it important to note that the terms and conditions only refer to a 10-working day period in relation to starting, stopping, or amending regular income payments. So I think, when considering this complaint the parameter I should bear in mind is whether Prudential processed Mr C's instruction as soon as it reasonably could have.

At this stage I think I should acknowledge the wider issues that society was facing at that time. In the lead up to end of the tax year period Prudential, like other employers, was needing to operate its activities on a remote working basis due to the restrictions imposed in response to the coronavirus pandemic. I don't mention this to excuse any delays but I am mindful of the additional pressures these working arrangements might have caused, in addition to the normal end of tax year pressures Prudential would have faced.

It seems to me that the instruction submitted by Mr C's financial advisor contained the appropriate information for Prudential to liquidate some of Mr C's pension investments and make the income payment. And Mr C has shown us that Prudential has accepted, and acted on, similar instructions in each of the three years before. But in 2020 Prudential requested some additional information from Mr C before it implemented his instructions.

Prudential asked Mr C for a copy of a recent bank statement. From the information I have seen it isn't entirely clear why that information was requested – a number of different explanations have been provided such as anti-money laundering checks or client verification. But it isn't for me to determine what processes Prudential should use when processing any instruction. It is reasonable for Prudential to take a risk-based approach, and so any checks that were performed in the past might need to be supplemented (or reduced) for future instructions. I don't think that it was unreasonable for Prudential to seek the additional evidence from Mr C to verify his identity, or confirm his bank account details.

But I cannot agree that the provision of the bank statement should be seen as a fundamental part of Mr C's instruction. If that were the case then I would expect Prudential to make that clear at the outset, and allow consumers the opportunity to provide all the necessary information as part of their original submission. And that would mean that similar information should have been requested from Mr C for previous, and subsequent, payment instructions. So that would lead me to conclude that it would be unfair for Prudential to effectively place the instruction it had received from Mr C on hold until he had provided the bank statements.

It is clear that Prudential had started to process Mr C's instruction shortly after it had been received, and well before its end of year processing cut off – that is why it asked for the additional evidence. So I don't think it right that, considering the transaction should be processed "as soon as is reasonably possible", Prudential has applied the strict terms of that cut off to Mr C's instruction. I think the provision of the bank statements was part of the processing activity, rather than the starting point. Mr C had provided a valid instruction more than one week before the deadline Prudential had set – so I think that he had a reasonable expectation that the income payment would be received before the end of the tax year.

I have considered that there was a delay between Prudential's original request for the bank statement, and it being sent by the financial advisor. There is some suggestion that the financial advisor didn't have appropriate access to the secure messaging service that Prudential originally used. But it appears that once the request had been received (when it was resent by email) that it was acted upon almost immediately.

But that then leads to a further complication on this complaint. Prudential's emailed request was sent on 24 March – that was after the processing cut-off date. But the email gave no indication that there might be problems in paying Mr C's income before the end of the tax year. And the response from Prudential after the bank statement had been sent also didn't suggest any problems – the reply simply said that Prudential would now arrange for the payment to be processed.

I think the importance of the end of the tax year would have been abundantly clear to Prudential – that is exactly the reason that special deadlines are put in place. But it seems that the sale of Mr C's pension investments (that was needed before the income could be paid) didn't take place for almost a week after the bank statements had been sent in – and almost three weeks after the initial instruction had been received. I haven't seen anything that suggests Prudential had any reasonable concerns about the validity of the original instruction – so I do question why that sale took so long to be completed. And those delays are precisely what caused the income payment to not be made until after the tax year end.

So I don't think that Prudential has treated Mr C fairly. I think he provided a valid instruction to Prudential that was sufficient for an income payment to be made before the end of the tax year. Whist Prudential, entirely reasonably, might have wanted further information to verify the payment arrangements, I don't think that should have rendered Mr C's entire instruction as being replaced at the point the additional information was provided. So I currently think this part of Mr C's complaint should be upheld and that Prudential needs to put things right.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both Mr C and Prudential have provided additional information following my decision. Although I am only summarising here what each have said, I want to reassure Mr C and Prudential that I have read, and carefully considered, their entire responses.

Mr C has said that he agrees with my provisional findings. But he has clarified some points in my decision. Mr C doesn't consider that the £250 payment Prudential has already made to him is in respect of the incorrect information his financial advisor was given at the start of April 2020. Instead he thinks that payment was in relation to the delays in dealing with his complaint letters in April and June 2020.

Mr C notes that Prudential has agreed to cancel, and remove from his tax records, the payment it made to him in April 2020. He wonders why that payment was chosen, rather than the more recent income payment he received in February 2021. And he says that Prudential's willingness to alter his tax records in relation to the cancelled payment suggests that a similar approach could have been taken that would have resulted in the original income payment being classed as having been paid in the earlier tax year.

Mr C says that Prudential has not been required to justify why it requested the additional verification information from him before processing his income request. He says he is at a loss to understand how the rules as applied could be considered to be in his best interests.

Mr C has also provided some additional thoughts on the compensation that I proposed Prudential should pay. He says that he originally prepared a detailed claim of his losses, including compensatory interest for the late payment of the income and related tax repayment, the costs incurred by his financial advisor in his work dealing with the matter, and Mr C's own costs, when he first submitted his complaint. Although he hasn't recently revised that claim, he asks that he be allowed to do so should Prudential dispute the compensation I have proposed.

Mr C says that the disruption to his payment schedule in March 2020 will have impacts for a number of years to come. He has needed to alter the timing of his income payments – from the end of a tax year to the start resulting in excessive tax deductions and additional time to recover any overpayments. And at some stage, most likely in 2024 he will need to take an additional income payment to put things back on track – an income payment that will attract higher rate taxation.

Prudential doesn't agree with my provisional findings. It has shown evidence that its AML checks on Mr C's instruction resulted in a failure – although it isn't able to explain why this check failed when checks in previous years had been passed successfully. So it says that when the additional information is requested the SLA clock stops and it is unable to proceed with the transaction. It says the processing clock restarted at 10 working days when the information was received.

Prudential has said that the original request from the financial advisor did not "lock in" the withdrawal request – it says the withdrawal could only be completed once all the necessary requirement had been completed. That didn't happen until the bank statements were received, and processing Mr C's instruction otherwise would mean other customers had not been treated fairly.

It points out that the relevant terms and conditions require income payments to be made from the cash account. So some of Mr C's pension investments needed to be sold before the withdrawal could be completed. It says that sale takes three working days and Mr C's financial advisor was aware of those timescales.

So Prudential doesn't accept that it made an error when processing Mr C's income request and so doesn't agree that it should pay any compensation. It questions the basis on which I have assessed the compensation as Mr C's tax code changes on a regular basis. It also points out that the payment Mr C took was in fact a UFPLS payment.

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 thought carefully about what both parties have said in response to my provisional decision, I'm not persuaded that I should change the outcome that I reached on this complaint. But I think it would be right that I comment further on the matters raised in response to my provisional decision.

As I originally explained I make no criticism of Prudential's decision to undertake further checks before completing Mr C's instruction. I entirely accept that, at different times, different levels of checking might be appropriate. And the decision about the level of checks needed sits entirely with the business in order that it might comply with its regulatory responsibilities. But I cannot agree with what Prudential has said about the impact of those additional checks on the instruction it received from Mr C.

Mr C's original instruction was provided to Prudential on 12 March 2020. Prudential has said that it would have expected to complete that processing within its normal ten business day SLA. So when it originally asked Mr C for the additional information, on 16 March, at least one or, potentially, two business days had already elapsed. I can agree, as Prudential suggests, that it might be reasonable to suspend the processing clock whilst it is awaiting additional information. But I cannot agree that the receipt of that information should result in the processing clock restarting from the beginning when the information is provided. I think that would mean that, admittedly in the most extreme of circumstances, a transaction might not complete for an extended period of time despite any information requests being answered immediately.

So on that basis I think that a reasonable expectation, when Mr C provided his bank statement information, would be that Prudential had eight or at most nine days of the ten-day SLA remaining. And so I think that should have led to Mr C's income being paid before the end of the tax year.

But of course, as I said in my provisional decision, the ten-day SLA that Prudential references does not appear within the relevant terms and conditional of Mr C's pension plan. They simply require that Prudential processes the instruction "as soon as is reasonably possible".

As Prudential has said, Mr C's instruction was in two parts – it required the sale of some of his pension investments, and then the subsequent payment of the proceeds of that sale. It doesn't seem unreasonable to me that the sale of the assets should have been undertaken whilst Prudential was awaiting the bank statement information from Mr C. If that information was required to support AML checks, then my understanding is that any concerns would only become applicable once any pension assets were moved to Mr C – not when the investments within the pension wrapper were simply changed.

So on balance I don't agree with Prudential that my decision means that Mr C would have been treated preferentially in comparison to other consumers. I think he provided his instruction within the processing window that Prudential provided for payments to be made in the same tax year. And I don't think it reasonable that Prudential effectively restarted the processing of that instruction, from the beginning, when that additional information was provided. So I remain of the opinion that Prudential hasn't processed Mr C's instruction in a timely manner and so it needs to pay him some compensation.

I think there is a significant difference between reversing a payment, as Prudential has done here, and altering the date of a payment as Mr C was hopeful might be achieved. In the first case the actions taken to reverse the payment mean that effectively it could be considered to have never happened – and so its removal from a tax record is entirely justified. But changing the payment date, could be considered in some ways to be a rewriting of history, with tax records reflecting something that didn't happen. So I don't think Prudential's decision to allow the reversal of the payment suggests that it had other avenues reasonably available to resolve Mr C's complaint.

I set out in my provisional decision what I intended to ask Prudential to do in order to put things right. And I have reconsidered those proposals in the light of the additional comments made by Mr C, and by Prudential.

When assessing that compensation I was aware that the payment Mr C received was a UFPLS payment. However I accept that in order to correct the payment timings, and so effectively take a second income payment within the same tax year, Mr C will still be able to benefit from the tax advantages of a UFPLS payment. So the higher rate tax that he will need to pay will only apply to 75% of that income payment – in the same way that 75% of his income payment would have been taxed if taken in the correct tax year. So I have written to Mr C to explain that I intend to modify the compensation that Prudential needs to pay to reflect the tax treatment of a UFPLS payment.

I have considered Mr C's response to that proposal in great detail. His response is comprehensive and clearly sets out the difficulties that Prudential's error has caused him. But many of the problems he faces are due to the way in which HMRC assesses and taxes income, and the reclaims that need to be made when those methods produce an incorrect annual position. Whilst I entirely accept that his strategy at the outset was intended to mitigate some of those problems, I'm not minded that I should hold Prudential responsible for any delays in, or the necessity for, Mr C reclaiming the incorrectly deducted tax from HMRC.

I remain of the opinion that any losses Mr C might have experienced in terms of a loss of use of any pension income are reasonably balanced by any investment returns those funds generated, particularly when considering they will have been generated in the tax efficient pension wrapper and can be taken as part of future UFPLS payments so partially free of income tax. And Mr C has said that his financial advisor has concluded that its costs have been offset by the amounts it receives from the investments it manages.

Mr C's original complaint to Prudential, and hence its final response covered many different points, both in terms of the timing of the payment, the information that Prudential provided both before and after the payment had been made, and the way in which Prudential had dealt with those issues. So whilst I entirely accept the goodwill payment Prudential made to Mr C wasn't solely in relation to the trouble and upset he faces in restructuring his pension income, I think those problems do form part of the basis on which the payment was made.

I don't underestimate the time and trouble that Mr C has experienced in dealing with this complaint. His issues don't just involve dealing with Prudential as he has needed to seek support and guidance from both his financial advisor and HMRC. But I do think those issues are reasonably reflected in the goodwill payment that Prudential has already made.

Putting things right

My aim, given I have found something has gone wrong, would be to place Mr C back into the position he would have been if no error had occurred. But that is clearly not possible in this case. The income payment wasn't made before the end of the tax year, and asking Prudential to suggest otherwise would be entirely inappropriate. And I understand that Prudential has reversed the income payment Mr C received in April 2020, so the later payment he took in February 2021 wouldn't have suffered any adverse income tax consequences (although I accept there was a short time where Mr C had overpaid tax before his tax position was corrected).

So in broad terms the loss that Mr C faces as a result of Prudential failing to make his income payment in the 2019-20 tax year is one of lost opportunity. He left a large part of his lower rate tax allowance unused in that tax year. And as I have seen nothing to suggest that Mr C's pension income will run out before his death, he will face an increased income tax charge should he decide to replace the income payment that he agreed for Prudential to reverse.

So I think the loss that Mr C has suffered here is the additional taxation he will need to pay when he takes the replacement income in the future, compared with the tax he would have paid if the income had been correctly paid in March 2020. The income payment that Mr C requested in March 2020 was for £43,800. Had it been paid before the end of the tax year I think it fair to assume that the majority of that income would have been taxed at the basic rate of 20%. But since in the future the replacement income will need to be taken in addition to that's year's income payment it would likely be taxed at the higher rate of 40%.

That means my estimation of the loss Mr C is likely to face is equal to 20% of the taxable income he received (since this was a UFPLS payment only 75% of it is taxable) – in total that amounts to £6,570. I accept that there might be some differences in how the tax allowances at the time are applied, and therefore any income tax that might need to be paid. And of course there is the problem that any losses might not actually arise, should Mr C choose not to take a replacement income payment. But I think this is a fair method and allows a line to be drawn under the complaint.

As I explained above I have thought about whether it would be reasonable to add any compensatory interest to this award. I have concluded that no interest should be added for two main reasons. It was Mr C's choice to accept the reversal of the income payment – and whilst those funds have remained a part of his pension savings they will have benefitted from any investment returns. And, since there is no guarantee that Mr C will actually take the additional income in the future, it might be argued that he hasn't actually been deprived of the use of those funds.

And although Mr C has undoubtedly needed to spend some time and effort in making this complaint, as I said earlier I think the award that Prudential has already paid him for his trouble and upset is fair. So I don't make any further award in that regard either.

So, in summary I think that Prudential should pay Mr C a total compensatory payment of £6,570 as a reasonable method of resolving this complaint. I think Prudential should have made the income payment before the end of the 2019-20 tax year, and so Mr C is likely to incur additional income tax liability as a result.

My final decision

My final decision is that I uphold Mr C's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 August 2022.

Paul Reilly
Ombudsman