

The complaint

Mr D complained the Prudential Assurance Company Limited had been wrongly making deductions from his annuity income.

What happened

Mr D is unhappy that Prudential have been deducting money from his pension annuity income to pay to a third-party. He says this has been without his permission and is inconsistent with his agreement with them. He wants these sums repaid.

There has been some history to this complaint. In March 2020 Prudential received a deduction of earnings order (DEO) from a third-party in respect of deductions to be made directly from Mr D's annuity payments. Mr D wasn't happy about these deductions being made. Prudential explained they were required to make the deductions. In November 2020 Prudential was instructed by the third-party to stop making the deductions.

In June 2021 a new DEO was supplied to Prudential and they started making deductions from Mr D's annuity payments in line with this.

In September 2021 Prudential replied to a further complaint from Mr D about the deductions and confirmed they were required to act in accordance with the DEO until instructed otherwise by the third-party. They reminded Mr D that if he thought the deductions were incorrect, he ought to contact the third-party.

Mr D continued to dispute the deductions and said he didn't agree Prudential were legally obliged to comply with the order. He said the third-party had admitted they didn't have evidence against him and so he thinks the DEO is illegal. He suggested it was incumbent upon Prudential to ensure a request was lawful before making the deduction.

Prudential acknowledged Mr D was concerned about the legality of the DEO, but said they were required to comply with the order. Any challenge to the DEO had to be made to the third-party. Mr D was given referral right to this service. Mr D didn't accept the response or that the DEO could be described as a court order.

Prudential didn't agree they had done anything wrong and provided Mr D with further information on the statute that set out how certain relevant orders could be applied. They explained that whilst this type of DEO is not strictly granted through the court system it is an offence to fail to comply with the order. Mr D was reminded of his referral rights to this service. Prudential went on to decline to classify the deductions made from Mr D's annuity payments as unauthorised.

Mr D told Prudential he thought it was right to say that Prudential had accepted liability for making unlawful payments to the third party as they were not prepared to make enquiries with the third party about their DEO. He also wanted Prudential to point to where his agreement confirmed Prudential could make unauthorised deductions.

On 17 December 2021 Prudential told Mr D in essence that they had nothing further to add and they would no longer communicate with him in respect of these concerns. Mr D then sent a message on 18 February 2022 complaining about payments being made to a third-party from his account without his consent.

Prudential say Mr D needs to contact the third-party if he doesn't agree with the order, and in respect of his concerns about the order's legal status. Prudential do not accept this means they accept any liability in respect of the deductions applied.

On 2 March 2022 Prudential wrote to Mr D and told him they were not upholding his complaint. They said this was in line with their previous letters to him. Their letter went on to repeat that a DEO is a legal document and as such they were required to adhere to the order. Prudential noted they could be liable to legal action if they did not.

Prudential repeated to Mr D that if he disagreed with the order then he ought to speak to the third-party organisation concerned. They also signposted to Mr D the additional information and guidance available on the UK government website, including the obligations that applied to employers and pension providers on this DEO.

Prudential explained to Mr D that because they were paying him his annuity income, they were classed in the same way as an employer when it came to such orders, as annuity income was dealt with as income.

Investigator's view

The investigator didn't uphold Mr D's complaint. He accepted the reasons why Prudential had made the deductions had been evidenced by copies of communications from the third party and that these were valid reasons. He thought Prudential had acted in line with their obligations. The investigator signposted that any concerns or issues about the DEO needed to be made to the third party. He also noted other avenues for Mr D to consider if he wanted advice.

Prudential didn't respond to the investigator's view.

Mr D's response to the investigator's view

Mr D didn't agree. He thought he had provided evidence as to why the deductions from his annuity income ought not to have been made. He felt Prudential were giving priority to the third-party over him and he didn't think this was fair. He thought Prudential had a duty to verify the debt since he had disputed it.

He also didn't agree Prudential were required to comply with the order. He referred to having seen ACAS guidance about unauthorised deductions, albeit he let us know he wasn't sure if this was correct. However Mr D said he was certain the head of the third-party had confirmed a DEO is an administrative route and that meant it wasn't a legal order. So he said Prudential had been wrong to say they were legally required to comply with the DEO.

The investigator let Mr D know that some of Mr D's thinking on ACAS didn't apply. He also explained he had not been commenting on legal issues but had considered whether Prudential had done something wrong. Here he thought Prudential had acted fairly, as they had acted in line with their obligations.

Mr D continues to disagree with the investigator. He says in summary:

- Prudential ought to have confirmed the debt was owed

- Prudential ought to have done something to clarify with the third-party whether the DEO was a legal or administrative request for money
- Based on what Mr D had told Prudential, he thinks Prudential ought to have written to the third-party (and not just a phone call) and required a written reply as to whether Prudential would be prosecuted if they withheld the money until Mr D's case with the third-party was concluded,

Mr D said he had been in dispute with the third-party for three years and so he didn't need to be advised to contact them. He said his case was finally being reviewed and he thought it looked like the third-party would admit they had been at fault.

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.

I am not upholding Mr D's complaint against Prudential. Prudential have not done anything wrong here. Prudential acted in the way they were required to do in respect of the deductions. I don't accept there was anything here that ought reasonably to have required Prudential to do anything differently. I have also seen Prudential provided information and explanation to Mr D and let him know how any challenge to the DEO and deductions would need to be approached.

Mr D feels very strongly about the deductions. But this is a matter that needs to be pursued with the third-party. I see from what Mr D has more recently told us, this is something he has been, and continues to pursue. That isn't a matter for me.

Personal and company pension annuity payments are classified as income payments in these circumstances. Where a DEO is provided by the relevant third-party agency, the annuity provider is required to make the deductions in line with the DEO. This is standard procedure and well-established, it is set out for example on the UK government website. And if deductions are not made by an employer/ annuity provider, this is considered an offence. This is covered in the statutory references Prudential previously supplied to Mr D, including section 32 of the Child Support Act 1991.

I accept this doesn't mean Prudential would necessarily be fined or even prosecuted, but equally I don't accept this means they were wrong to make the deductions.

There are only limited circumstances where a provider is able to make an authorised deduction from an annuity once it is being paid. But in general terms this is one of those circumstances. Here the DEOs provided by the third-party to Prudential were properly accepted by Prudential.

We haven't been told any detail about why Mr D thinks the DEO ought not to have been made, and that isn't relevant to what I have needed to consider. Generally a DEO is only made where there are arrears; usually where a repayment plan hasn't been able to be agreed or where a payment plan has not been adhered to. But again these aren't matters of relevance to Prudential or what I have needed to consider.

When Prudential were informed of the DEO, they were right to act in accordance with it and set up the deductions. I accept Prudential followed their usual procedure when informed by the third-party agency of the DEO. I don't accept there was any duty upon Prudential to make further enquiries on the basis Mr D said he didn't agree with the order, nor ought Prudential to have reasonably been expected to do anything differently here.

Whilst a DEO is not a court order per se, it comes with statutory and regulatory guidance and authority in terms of application and the potential penalties on an employer/ annuity provider. So whilst Prudential were technically in error when they referred on one occasion to the DEO being a court order, this was corrected later and I don't accept it would have been likely to put Mr D at any disadvantage or cause him any detriment. There is further well-established guidance available on what someone needs to do if they don't agree with a DEO. This does not involve the employer/ annuity provider at all.

Prudential are required to act in accordance with a DEO, as they did here. As such this requirement does take priority over any dis-satisfaction or challenge expressed by Mr D to Prudential. Such deductions made under a DEO are known as authorised deductions, and just because Mr D does not agree to the deduction this does not make it unauthorised.

There is guidance provided by ACAS about unauthorised deductions, but I don't accept they apply here. Such deductions are well established as lawful and authorised deductions, which need to be challenged directly with the third-party.

My final decision

For the reasons given I am not upholding Mr D's complaint about the Prudential Assurance Company Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 November 2022.

Louise Wilson
Ombudsman