

## **The complaint**

Mr S complains about the way the Prudential Assurance Company Limited dealt with the calculation of redress owed to him following a pension review into the sale of his personal pension.

## **What happened**

Mr S had a personal pension with Prudential. He was due to retire and take his pension benefits in July 2020.

Following an industry-wide pension review, Prudential agreed to see whether Mr S had lost out as a result of transferring his pension from an employer's pension scheme to the Prudential pension. In June 2020 Prudential wrote to Mr S saying it had now calculated the value of the lost benefits. Prudential offered a payment of £10,525.05 for the loss of benefits from the employer's scheme.

The letter gave details of how the sum had been calculated and invited Mr S to challenge any of the assumptions used in the calculation. It also said his pension couldn't be paid until the redress offer had been accepted.

Mr S emailed with some concerns he had about the calculation, which related to the State Earnings Related Pension Scheme (SERPS), his past self-employment, and the tax deduction made. Prudential replied with an explanation and asked Mr S to provide documentation if he wished to challenge any of the assumptions.

Correspondence followed about the reasons for deducting notional tax from the redress payment. Prudential invited Mr S to provide evidence if he believed he wouldn't be a taxpayer in retirement.

In August 2020, Mr S provided some information he'd received from the Department for Work and Pensions ("DWP"). Prudential did another recalculation and offered a revised payment of £25,791.42. Prudential included an explanation for the adjusted figure and again explained why it had deducted a notional amount for income tax.

Mr S replied with questions about the calculations and challenged the tax deduction. On 4 September 2020, Prudential sent a full explanation of the difference between the original and revised offer, together with the updated assumptions and an updated summary of the guarantee calculation. Prudential once again explained how the notional tax had been deducted in line with the appropriate guidance.

Mr S remained unhappy and made a complaint about the redress calculations, the delays in accessing his pension benefits and the notional tax deduction. Prudential responded to his complaint on 1 December 2020. Following further correspondence, it sent another response on 17 December 2020, and further responses in September 2021 and January 2022.

After Mr S accepted the revised calculation his pension was put into payment in January 2021 but he remained unhappy about the delay and about the deduction for tax.

Prudential maintained that the tax deduction was correct. In September 2021 it accepted that benefits should have been paid in December 2020 (rather than January 2021) and said it had calculated this caused a loss of £265.90. It paid this sum to Mr S, together with £150 in respect of the distress and inconvenience caused to him.

In the response sent in January 2022 Prudential said it now agreed the correct redress payment should have been available in July 2020. It carried out a new calculation of the loss caused by the delay and said this was £2,296.51, so it made a further payment to bring the total up to this amount. It also agreed to increase the compensation for distress and inconvenience and paid a further £850 to bring the total for this up to £1,000.

Mr S still felt the offer was not enough and referred his complaint to this service, but our investigator didn't think it should be upheld. He said:

- There had been delays but Prudential had compensated him for the loss caused by this, and the payment of £1,000 was a fair reflection of the distress and inconvenience caused.
- The notional tax deduction was in line with the relevant guidance and was fair; it put Mr S in the same position he would have been in, if he'd remained in the employer's pension scheme. Prudential had explained to Mr S that if he didn't want any deduction to be made for tax he would need to provide evidence that he would not be a tax-payer and he hadn't provided this.

Mr S didn't agree and provided further comments but these didn't lead the investigator to change his view. So the complaint has been passed to me to decide.

I won't set out all of the comments Mr S has made but they include:

- The tax deduction should represent tax payable to HMRC.
- Prudential has made deductions for tax that won't be paid to HMRC and is therefore making a gain at his expense, which is not fair.
- His total income for the year to April 2021 was around £21,000; after deducting his personal allowance, he only paid tax on approximately £9,000 which is a tax rate of 7% of his income, not 15%. So the deduction should not be more than 7%.

### **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.

As I've explained, I haven't set out every point that Mr S has made but I have considered everything he's said. Having done so, I don't think the complaint should be upheld.

Prudential agreed to calculate and pay redress at the point Mr S decided to take benefits from his pension. This was in line with an industry-wide pension review. The redress was intended to compensate Mr S for any loss he had suffered as a result of transferring from his employer's pension scheme to a Prudential personal pension.

Mr S challenged the amount initially offered. After Prudential re-calculated the redress Mr S accepted the payment that was offered. So that's not in dispute. The issues I need to consider are whether the compensation Prudential has paid in respect of the delays are fair; and whether it was right to make the notional deduction for tax.

If something has gone wrong and Mr S has suffered any loss or harm as a result, the aim is, where possible, to put him back in the position he would have been in if things hadn't gone wrong.

### *Delays and compensation*

Prudential has acknowledged it should have been able to provide the correct redress offer at Mr S' retirement date in July 2020, and that it was responsible for unnecessary delays before he was able to take his pension. But it has calculated the lost growth on the pension investments between 21 July 2020 and 26 January 2021 and paid £2,296.51 in respect of this. That means Mr S has been put back in the position he would have been in if the transfer had proceeded on 21 July 2020. It's in line with what I'd expect to see for this type of situation - the loss calculation covers the lost growth suffered between those dates.

Prudential also paid £1,000 to compensate Mr S for the delays and inconvenience suffered as a result of its errors. Mr S has said this is too low and doesn't adequately reflect everything he went through during that period. I appreciate this was a distressing time for Mr S and he would have been very upset to think he might not receive the correct payment. The amount agreed was around £15,000 more than the original offer. But taking into account the amount of time involved and the fact Prudential did respond to him and put things right, I think £1,000 is a fair amount to acknowledge the impact on Mr S and the trouble he was put to.

### *Tax deduction*

Mr S feels very strongly that it's wrong to make a deduction for tax, unless it's tax which Prudential is actually going to pay to HMRC. But I think this misses the point of what the deduction is for.

The relevant guidance on how to calculate redress says that if it's not possible to pay the redress into the customer's pension, it should be paid in the form of a lump sum to them and, where that happens, it should be adjusted to take into account the tax position.

The aim is to ensure the customer is put in the position they would have been in if they had taken the benefits as pension income. The income would have been taxable, so a deduction needs to be made to reflect this. It's not a payment of income tax – it's an adjustment in respect of income tax Mr S would otherwise have paid. And for these purposes, we'd look at his likely marginal (highest) rate of tax when he's retired and taking his pension as income.

If Mr S accessed the money within the pension scheme he would be taxed on it and receive the net amount after tax. The notional tax deduction is there to ensure he receives what he would have been entitled to. If no deduction is made, he would be receiving more than he should.

The notional deduction should be calculated using Mr S' actual or expected marginal tax rate at his selected retirement age. Generally, 25% of the funds would be tax-free and 75% would have been taxed at his income tax rate in retirement (20%). So making a notional reduction of 15% overall from the loss reflects this.

Mr S could avoid this if he showed that he's not a taxpayer in retirement. Prudential invited him to provide evidence of this if it were the case, but he has hasn't done so. Indeed, the information he's provided shows that he is subject to income tax. And if he's a taxpayer, then a notional deduction should be made.

From the evidence I've seen, Prudential has followed the relevant guidance in making a notional deduction from the redress payment and this is in line with normal practice. So I don't think it has done anything wrong in making this deduction.

**My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 February 2023.

Peter Whiteley  
**Ombudsman**