DRN-4060380

The complaint

Mr P complains that, because of the problems that occurred with The Prudential Assurance Company Limited's (Prudential) online systems when he asked an adviser to make a single contribution to his pension plan, it was allocated to the following tax year – which meant he infringed the allowance rules and suffered a tax penalty on his contribution.

He wants the contribution to be backdated to the tax year that his application was made and accepted by Prudential.

What happened

Mr P wanted to make a single net contribution of £40,000 to his Prudential Retirement account. So his adviser sent the money to Prudential and keyed an application onto its systems on 31 March 2021. Prudential acknowledged the request and said it was being processed that same day. It said it would revert to Mr P's adviser if any further information was needed. It provided an illustration for the single premium contribution.

The following day Prudential emailed Mr P's adviser and said it required a signed declaration to continue with the application. The declaration could be in the form of a form signed and completed by Mr P, an e-signature, or an adviser digital declaration on Mr P's behalf. Prudential provided a link for the digital declaration and set out its other requirements which related to the lifetime and annual allowances.

As no reply was received Prudential sent out the request again on 9 April 2021. Mr P's adviser returned the declaration on 12 April 2021 asking if the contribution would still be applied for the previous tax year as requested, or the new tax year. When it was clear the contribution would be applied to the new tax year the adviser complained on Mr P's behalf. He said he had input the application for the single contribution on 31 March 2021 and had been advised the previous month that a signed declaration wasn't required for that kind of transaction. So he didn't think Prudential should have delayed applying the funds until a declaration had been received.

Prudential didn't uphold the complaint. It said the application had been made through one of its two systems that required a separate client declaration. It said it had requested the declaration on 1 April but didn't receive a completed form until 12 April 2021 – which meant the contribution wasn't applied to Mr P's plan until the new tax year. Prudential also noted that to guarantee the contribution being applied within the 2020- 2021 tax year it needed to receive an application by 26 March 2021 – so it couldn't have guaranteed the contribution would be allocated in time anyway.

The adviser said that he wasn't able to choose the channel through which he carried out an "online journey" to make the single contribution. Prudential explained that if the adviser had used a particular route to make the application it would have come through to it on a different system with the requirement of a signed declaration.

But as the adviser didn't accept that he had made an error with the keying of the application – and that a declaration shouldn't have been required and therefore Mr P's contribution could have been allocated in the correct tax year, the complaint was brought to us where one of our investigators looked into the matter. He didn't think Mr P's complaint should be upheld making the following points in support of his view:

- It would seem that Prudential operates two methods for advisers to submit applications on their client's behalf. One that requires a signature and one that doesn't. He didn't think it was entirely clear to the adviser which method he should have used.
- He thought Prudential ought to have made Mr P's adviser aware of the specific requirements of each system if it operated two different systems.
- However, he had taken into account that Prudential did make the adviser aware of its requirement for a declaration on 1 April 2021 – which would still have given the adviser enough time to provide the necessary information and ensure the application of the contribution before the end of the tax year.
- He sympathised with Mr P for the confusion over how his contribution was processed but thought that his adviser ought to have responded to the email of 1 April 2021 – which he thought would have resolved the issue.

Mr P's adviser didn't agree. He said that Prudential had received and accepted the contribution within the tax year that Mr P wanted it to be applied to. He thought the reason for the subsequent delay in applying the money was because of problems with Prudential's online declaration system – which he believed shouldn't have delayed the contribution being applied to the plan. He also noted that Prudential simply applied the contribution to the following tax year without confirming if this was Mr P's intention, which has led to him overfunding his pension plan and incurring annual allowance charges.

The adviser thought it would have been simple for Prudential to have contacted HMRC and corrected the date the contribution should have been applied – which he believed was in Mr P's best interest and "*treated him fairly*".

But as no resolution could be found the complaint was referred to an ombudsman and so it was passed to me to review.

My provisional decision

In my provisional decision I reached a different outcome to the investigator. I thought that Mr P's complaint should be upheld and that Prudential should, in the first instance, take the necessary steps to ensure Mr P was now in the position he would be had the single premium contribution been allocated to the 2020-2021 tax year. I made the following points in support of my findings:

- Mr P's adviser received correspondence from Prudential a few weeks before he applied a single premium contribution using an online process. The correspondence set out the improved online "journey" that single premium contributions would benefit from – one of which was signatureless submissions.
  So as Mr P's adviser knew he was submitting an application for a single premium payment, it was unlikely he would have expected to provide a signed declaration alongside the application.
- It seemed unlikely the adviser would have chosen the wrong option when he keyed the application and Prudential had been unable to demonstrate – using screenshots of the process for example - that the adviser made an error during the online process.
- But even if my assumption was incorrect Prudential knew the application was for a single premium addition to Mr P's pension and ought to have processed the

application in line with its new “enhanced journey” and waived any requirements for a signature or told the adviser to rekey the application using the new system – if the application was received using the old system.

- I accepted that Prudential had processed Mr P’s application correctly but thought it ought to have realised the situation and processed it using its new “top up journey” guidelines.
- I then considered how long the process took when the adviser acted upon Prudential’s request for a signed declaration in order to work out whether the application could have been processed if Mr P’s adviser had acted upon Prudential’s first request on 1 April 2021. But I didn’t think it was likely the application could have been processed within the 2020-2021 tax year.
- I also considered Prudential’s’ assertion that it couldn’t guarantee any application would be processed for that tax year if it wasn’t received by 26 March 2021 – which I accepted was a safeguard to protect itself because of the likely large volume of applications at that time of the year. But the reality was that Prudential was ultimately able to process Mr P’s application within four working days which, if it had processed the application when it was received instead of asking for a signed declaration, would, more likely than not, have led to the contribution being applied to the 2020-2021 tax year.
- I said Prudential should therefore try to ensure Mr P is now in the position he would have been had his single premium pension contribution been made in time to count towards the 2020-2021 tax year, or if not that it should refund all the tax charges incurred by Mr P as a result of exceeding the annual allowances.

Responses to my provisional decision

Mr P’s adviser accepted the provisional decision but also explained that there was in fact only one system that an adviser could use to submit the contribution which was called “retirement account.” He said that the “old versus new system” argument was something that happened internally with Prudential, and he had no sight of these different systems when submitting the application. He also confirmed it wasn’t usual practice for him to sign a declaration on behalf of a client, so he sent the declaration to Mr P by post – which was the only option considering how far away he lived. He thought the timeline in obtaining the signature was reasonable in the circumstances.

But Prudential didn’t agree and wanted the following points to be taken into account prior to a decision:

- It’s unable to tell from its records which system Mr P’s adviser logged into. But if there are further requirements – which there were in this case - the application process would default to the appropriate system.
- It asked the adviser to sign and return a simple declaration instead of asking for an application form that needed to be signed by Mr P.

  The reason it required a declaration was because the adviser had requested an initial advice charge (IAC) and the policy terms and conditions (T&Cs) dictated the need for a declaration in that situation. It noted an extract from the T&Cs which said “*we won’t take instructions from your financial adviser in relation to setting up adviser charges (except where they submit your initial application form, as your agent).*
- It reaffirmed its tax year end processing requirements for 5 April 2021 – which noted that “*single contributions as a top up to existing business*” needed to be submitted by 26 March 2021 to ensure processing within the tax year. The additional Easter public holidays needed to be taken into account when considering the opportunity that it had to apply the contribution within the 2020-2021 tax year.

- It didn't agree that Mr P's adviser should have ignored its email of 1 April 2021. It wasn't made aware by the adviser that the contribution needed to be applied within that tax year. Therefore, it thought the adviser ought to have followed up the email and queried any inconsistencies around the processing.
- There was no guarantee the contribution would be applied based on the date the submission was made and no indication from the adviser that the contribution needed to be applied to that tax year.

But I didn't think Prudential had raised the issue of the IAC declaration previously and it hadn't given this as a reason for requiring a customer declaration in its final responses. So I asked it to provide the full extract from its T&Cs which demonstrated its point. I thought the excerpt it provided hadn't made any reference to the need for a signed declaration. I also asked Prudential to provide evidence of any other communication which may have made the adviser aware of this matter, as I didn't think it was reasonable for the adviser to read the full T&Cs of Mr P's plan before submitting the application.

I also asked Mr P's adviser to comment on a letter from Prudential to Mr P dated 31 March 2021 thanking him for his top up application, which might have suggested that a signed declaration would be required. The letter said "*changes to signature requirement - as part of the terms and conditions of your plan, we would normally ask you for your signature for some transactions. However, with the current restrictions in mind, we're waiving this requirement for the moment to help make it easier for you during these times. For example we'll no longer require your signature for certain transactions, including top-ups. This means your adviser can make changes to your plan, by submitting a declaration to us."*

The adviser thought the letter applied to "money out" requests and "changes" as opposed to a single contribution top up to an existing plan. He also confirmed that Prudential had facilitated "adviser charging" which he demonstrated by providing a copy of the illustration that was given to Mr P at the time – which included an adviser charge. He thought that Prudential's T&Cs allowed for charging to be added without a declaration through the "*except where they submit your initial application form, as your agent"* part of the T&Cs.

Prudential then provided the full T&Cs for Mr P's plan. It made the following additional points in support of its view:

- When an adviser keys an application onto the system there are a number of options which dictate which system the case is filtered into. In this case a "work item" was created one minute after the case was keyed which would suggest it wasn't keyed correctly. A work item can only be created if a case "falls out" which means Mr P's application wasn't keyed correctly and it wasn't a system error.
- It provided screenshots of the digital journey Mr P's adviser would have had when submitting the application. When he reached the section headed "*money in*" the adviser would have been faced with the two options of "*transfer in, single and regular contributions"* and "*top ups with money out".*
  Had the adviser chosen the first option the application would have proceeded using the new enhanced journey. But selecting the second option – which it thought the adviser must have done, would have brought in the requirement for an online declaration.
- As Mr P's policy is an advised product, the application could only have been made by an adviser. And the adviser was from the same firm which arranged the policy initially, so he ought to have been aware of the plan's T&Cs. It thought that an adviser should always be aware of the T&Cs of a plan it was adding contributions to.
- It didn't agree that it was reasonable for the adviser to have ignored the email from

1 April 2021. If he had responded to the email and provided the declaration the matter could have been resolved much sooner. And it didn't think the adviser had submitted the application in sufficient time to apply the contribution in any case. It believed the submission was outside of the dates it had set out to ensure processing for that tax year could be guaranteed.

- It thought it was the adviser's responsibility to key the application correctly, meet its deadlines, and to respond to its subsequent emails. It didn't think it was therefore responsible for the contribution being applied to the following 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 carefully considered the additional submissions and points raised by both parties I see no reason to depart from my provisional findings. I think Prudential should try to put Mr P as close as possible to the position he would have been in had his single premium pension contribution been made in time to count towards the 2020-2021 tax year. I'll now set out my reasons for reaching this conclusion.

<u>*The process of applying for the single contribution*</u>

Mr P's adviser has explained that, following a letter he received from Prudential in February 2021, it noted that the "top-up journey" for single premium additions to Mr P's plan would no longer require signatures. I've looked carefully at that letter which stated *"last month we updated the top-up journey for transfer in transactions, and we're now very pleased to announce we've also enhanced the journey for single contributions as well.*

What benefits will this bring you

This enhancement means the top-up journey for single contributions has now been added to the improved online services for Retirement Account.

You and your clients will benefit from:

• Signatureless submissions
• Straight through processing
• Ability to save illustrations and use them at a later date for the relevant application
• More automated checks, streamlining the process
• Consistency with the new business journey.

In the meantime, if you're looking to submit other top-up transactions, such as a regular contribution, or those including a money out request in the same transaction, you'll need to use the existing journey which requires a declaration."

I think this letter was clear that any single premium top up to an existing plan wouldn't require any additional processing or a signature – as well as some other processing benefits. So I think it was reasonable to assume that, as Mr P's request was to add a significant contribution to his existing pension plan, an application to apply this contribution would be processed under this new enhancement.

Of course the letter did also note that a signed declaration would be required for other top-up transactions such as regular contributions, so the adviser would have been aware that an alternative "system" would be in place when he submitted Mr P's application. But I think the adviser was entitled to assume Mr P's contribution would be "signatureless". And as I've seen no evidence of any further correspondence from Prudential on the matter, I think it's reasonable to assume the application would have been submitted with those requirements in mind.

What actually happened here is that when Prudential received the application it had gone through the "existing journey" which meant it was highlighted as requiring a declaration. By the time these requirements were met the contribution wasn't applied to that tax year which meant Mr P had suffered a financial disadvantage. So I've first looked at the process involved here to decide where the fault lies in submitting the application.

Mr P's adviser says that when an application is made there is only one system to follow and any "sifting" of which digital journey an application follows is simply an internal matter for Prudential and not something an adviser can influence. Whereas Prudential has subsequently provided screenshots of its online application journey and explained that at a certain point in the process there are two options of "*transfer in, single and regular contributions"* and "*top ups with money out".* It said if the adviser had chosen the first option the application would have proceeded using the new enhanced journey, but he must have selected the second option which brought in the requirement for an online declaration. It said that a "work task" was created soon after the application was keyed, and they are only created if an application isn't keyed correctly.

Prudential's explanation of what may have happened is entirely reasonable, but it hasn't been able to provide any actual screenshots of Mr P's application, so its view of what must have happened can only be supposition. Mr P's adviser has been consistent in his submissions that he didn't key the application incorrectly and wasn't faced with a choice of how to make the application through one system to ensure it didn't require a declaration.

But I'm not persuaded that the keying of the application or that the system which the application eventually went through is the most important factor here. Prudential knew this application was for a single contribution – which fitted the requirements for the new enhanced signatureless journey. So it should have known that the application should have been submitted under the new system and if it was received after going through the old system Prudential ought to have either waived its requirement for a signed declaration or made the adviser aware that he should rekey the application.

Prudential had made it clear in its letter from February 2021 that a single contribution top up of an existing plan would qualify for the new enhanced digital journey. It didn't state that the need for a declaration depended on which system the application arrived through, it simply listed the benefits of such contributions which included no signature requirements and "straight through processing", so I think any application that was eligible for the new journey should have treated in that way. It seems to me that if the only reason Prudential asked for the declaration was because the application was made under the old system and not because of its actual requirements under the new system, then it ought to have reconsidered its position regarding Mr P's application and processed it without any further requirements. Prudential did suggest that the reason for the declaration being required was that, under its terms and conditions, as the adviser requested that his charges were to be deducted from the investment this would necessitate a declaration.

I asked Prudential to provide the relevant part of the T&Cs which confirmed this point. It referred to "*section 32 taking instructions*" which said, "*we won't take instructions from your financial adviser in relation to setting up adviser charges (except where they submit your initial application form as your agent) increasing adviser charges, a transfer payment or drawdown transfer from your retirement account, using the value of your retirement account to purchase an annuity from an insurance company or if you have died."*

But I don't think this statement relates to the charges the adviser wanted to charge here. He was submitting the initial application as Mr P's adviser and in any case Prudential had already set out the adviser charges in its illustration to Mr P, so it must have been content with them. But even if I am wrong here in my understanding of this condition, I haven't seen any reference to these scenarios above requiring a declaration – which is one of the reasons Prudential gave for it requiring such a document.

There's no suggestion here that Prudential didn't process the application in line with how it said it would process any application under its old system – but I don't think that's a fair and reasonable position here given the circumstances. I think it Prudential should have processed the application under the new system requirements and not asked for a signed declaration.

<u>*Would the application have been applied to the correct tax year if the adviser had acted promptly to the first declaration request?*</u>

Although I've said that I think Prudential should have processed the single premium contribution without a declaration – regardless of which system it appeared to it on, I then also have to consider whether the contribution would have been applied before the end of the tax year if the adviser had acted upon Prudential's request for the declaration on 1 April 2021. It wouldn't be fair to uphold Mr P's complaint if it was clear that the adviser's actions might still have mitigated the situation and ensured the contribution could have been applied in the tax year.

In order to determine if the application could have been processed in time, I've looked at what did happen when Mr P's adviser acted on Prudential's request for a signed declaration on 9 April 2021. At that time Prudential had all the outstanding requirements and was then able to apply the contribution to the plan on 14 April 2021 – which was four working days. Applying that timescale to the 1 April 2021 means the contribution would have been applied on Tuesday 6 April 2021 which was the first day of the new tax year. So even if the adviser had acted upon Prudential's instructions immediately it's still unlikely the application could have been processed within the correct year.

Prudential doesn't think it's reasonable for me to have concluded that the adviser had good grounds to ignore the email it sent on 1 April 2021, requesting a signed declaration be returned to it. I can understand why Prudential would say that and there's no dispute about the clarity of its request. But as I said previously, I think the adviser's expectation of this transaction was that no signature or declaration would be required, so I don't think it's unreasonable that he might have dismissed the email as irrelevant or had simply been generated generically because Prudential had received an application.

However, even if I am wrong in my assumption of why the adviser didn't respond, if it follows from my earlier findings that Prudential ought to have processed this application without the need for a declaration or signature then the question of the email from 1 April 2021 becomes immaterial to the outcome of the complaint, as I don't think a declaration ought to have been requested.

Prudential has also reiterated the guidelines it issued prior to the end of the tax year outlining its processing requirements. These stated that for a top-up to existing plans, a single contribution application needed to be received by 26 March 2021. The requirements confirmed that "*there is no guarantee that your business will be processed under the 2020/2021 tax year if the application is received after the above dates.*" So I need to be mindful that Prudential did set out its end of tax year processing standards and on the face of it Mr P couldn't have been sure his application would be processed.

But I note the "*tax year end processing requirements*" document also had section titled "*new business application- Digital account*" for which single contributions needed to be submitted by 1 April 2021 (*straight through processing only*). There's no evidence to show that Mr P's application wasn't digital – Prudential told the adviser to key the application online himself - so this would suggest that if Prudential had processed the contribution as I believe it ought to have done then it had effectively guaranteed processing it within that tax year.

But in any case, I've already established that Prudential was able to process Mr P's application within four working days in the end, and I note that much of the process was automatic and carried out digitally – including the money already being paid to Prudential by 31 March 2021.

So I don't think there's sufficient evidence to support the claim that Prudential couldn't have processed this application within the 2020-2021 tax year. I know that the 2020-2021 tax year wasn't specified by the adviser on the application form and that Prudential would have had to process a large volume of business before the tax year end. But I think if a different tax year had been required by Mr P that ought to have been noted on the form – but not if the application was submitted during the current tax year. I'm also mindful of the fact that there was a public holiday over this period, but I'm satisfied that it would have been reasonable for Prudential to have processed the application when it was received, instead of asking for a signed declaration. And in my view if no declaration had been requested the contribution could have been allocated to and included in the 2020-2021 tax year.

Putting things right

Although I think Prudential's actions were primarily responsible for the fact that Mr P's single contribution wasn't allocated to the 2020-2021 tax year, Mr P isn't looking for compensation other than to have the contribution backdated to the correct tax year. And Prudential said it wasn't willing to contact HMRC to do that as it hadn't made an error.

My understanding is 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 Mr P is now in the position he would have been, had his single premium pension contribution been made in time to count towards the 2020-2021 tax year. That seems a reasonable resolution to the matter in this case.

However, if HMRC is unable to correct the transaction, then an alternative resolution would require Prudential to refund all the tax charges incurred by Mr P as a result of exceeding the annual allowances – so that he doesn't incur any financial losses as a result of Prudential's "error" here.

My final decision

For the reasons that I've given I uphold Mr P's complaint against The Prudential Assurance Company Limited.

The Prudential Assurance Company Limited should correct Mr P's tax position as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 3 August 2023.

Keith Lawrence
Ombudsman