

The complaint

Mr C has complained about the handling of a pension withdrawal by Scottish Widows Limited, trading as Halifax Financial Services (HFS).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr C contacted HFS on 29 March 2022 to make a drawdown request of £31,000 from his pension. He wanted to receive the payment before the end of the 2021/2022 tax year to maximise income tax savings and HFS had confirmed that he should receive the payment before the end of the tax year. However it only managed to make the payment on, or around, 11 April 2022.

Mr C complained to HFS about this, saying that it hadn't treated him fairly and had delayed the payment of his withdrawal. Mr C said that, as a result of the delay, he'd received the payment in the 2022/2023 tax year and would incur an unnecessary tax liability.

HFS issued three final response letters. The first letter of 21 April 2022 acknowledged that it had caused a delay. It said that the payment should have been settled on 5 April 2022. It offered to pay interest of £10.87 for the delay. In terms of the inconvenience, it accepted that the service fell far short of the standard Mr C was entitled to expect and it offered £50 for the trouble and upset caused to him.

Regarding the tax liability issue, it stated that any potential future tax liability was dependent upon several unknown factors. It also asked Mr C to provide evidence of the potential loss incurred as a result of the delay.

On 6 May 2022, Mr C contacted HFS and said he hadn't received the final response letter or the compensation it had suggested. HFS arranged to resend the final response letter and confirmed the compensation payment of £60.87 was paid into Mr C's preferred bank account on 21 April 2022.

On 22 June 2022, Mr C wrote to HFS and expressed his dissatisfaction with the poor service. He also maintained that he would incur a tax liability of around £6,200 arising from the delay and provided his loss calculations to support that position. Mr C remained unhappy with the delay and errors made by HFS and he wanted it to make up the financial loss he said had stemmed from the delay in payment.

On 23 June 2022, HFS issued the second final response letter and said that it hadn't changed its position on the matter. After reviewing the evidence Mr C had sent, it did however explain that it wasn't always possible to reach a definitive verdict on some issues, particularly when speculating about hypothetical future tax liability. It agreed to indemnify Mr C for any tax for which he might become liable as a result of the delay.

Between late July 2022 and early September 2022, Mr C made several phone calls to HFS. Much of the discussion between him and HFS centred around the responsibility for the tax liability. Mr C remained sceptical of HFS' reassurances. HFS treated Mr C's concerns as a new complaint.

On 7 September 2022, HFS issued the third final response letter and concluded it had caused further inconvenience and offered £100 for the trouble and upset caused. It reaffirmed its earlier position on the tax liability issue and explained that it wasn't reasonable to expect it to compensate Mr C for a hypothetical loss – particularly one that may materialise sometime in the future based on a large number of assumptions. Mr C remained unhappy with this and referred the matter to this service.

During the course of the investigator considering the complaint, Mr C has said that he thinks the evidence strongly suggested that his taxable income has changed significantly from one year to the next, and it appeared to have a considerable impact on his annual tax bill by making investment and other decisions with the liability in mind.

The investigator issued his assessment on 9 March 2023, in which he set out his rationale for not upholding the complaint. He said the following in summary:

- HFS had since confirmed that it clarified with HMRC that the units had been sold, and that therefore payment had technically been made, in the 2021/22 tax year and had issued a P60 attesting to this. And so HFS had taken appropriate corrective action to resolve that particular issue.
- There had been a delay in payment, but HFS had paid £10.87 in interest to reflect this.
- With regard to the customer service Mr C had experienced, complaint handling wasn't a regulated activity, and so he couldn't consider that aspect.
- In terms of the payment for the trouble and upset caused to Mr C by HFS's error, HFS had agreed that it had made mistakes and that the level of service had been poor. He agreed, but he considered that the £150 offer was fair in the circumstances.

Mr C disagreed, however, saying the following in summary:

- He'd received the P60 confirming that the transaction took place in the 2021/22 tax year, but he thought it would be interesting to know when HFS had decided this, as this had been the essence of this complaint from the start. It would also be reassuring to have it confirmed by HFS that this was HMRC's understanding of the situation also.
- He'd already completed his tax return for the 2021/22 tax year and he presumed that he couldn't resubmit on the basis of the new information from HFS. He also sought confirmation that he could make a further withdrawal in the 2022/23 tax year without the previous withdrawal being counted in the same tax year.
- HFS had been inconsistent in the information it had provided him, and had from the beginning maintained that the payment couldn't be backdated into the 2021/22 tax year. It now appeared that it could, and that there would be no additional tax liability if he made his withdrawal for the 2022/23 tax year as planned.

- But given the circumstances, the £150 offered by HFS in no way compensated him for the inconvenience and stress that the matter had caused him. And he remained unsure of whether he would face a penalty as a result of the “incorrect” tax return he’d submitted.

The investigator responded as follows:

- He couldn’t confirm as to when HFS had realised the error in its stance on the tax year issue, but he was satisfied that it had now put that matter right.
- HFS had confirmed that the transaction record had been amended to show it occurring in the 2021/22 tax year. It had also said that Mr C would be able to update his tax return, without penalty, and if it couldn’t be done online, then Mr C could send a letter to HMRC.
- HFS had also said that Mr C would be able to withdraw in the 2022/23 tax year without this being impacted by the previous payment from a tax perspective.
- The investigator agreed that the matter would have been difficult and distressing for Mr C, but he said that the awards made by this service in respect of distress and inconvenience tended to be modest. He also took into account the steps which HFS had taken to correct the matter. And so he remained of the view that the £150 offered to Mr C by HFS was appropriate.

Mr C continued to disagree, however, saying the following:

- HFS had told him from the beginning that the transaction couldn’t be backdated to the 2021/22 tax year – and this is what had prompted him to refer the complaint to this service.
- It was only in an email from the investigator on 9 March 2023 that he was advised that the transaction had been recorded in the 2021/22 tax year. He still hadn’t been officially advised of this by HFS itself, other than by receipt of the P60.
- There had been a further instance of poor customer service when trying to make his most recent drawdown, when he’d sought clarity as to the tax year in which this would be included. His call to ascertain this had been disconnected and when he received a follow up call some weeks later, he was told that the information he’d been given about the turnaround times for the payment were wrong – and HFS apologised.
- Mr C therefore considered that HFS was still demonstrating poor levels of customer service and that if it only needed to pay him £150, then it would feel emboldened to continue this behaviour with impunity.
- The only way that the actions of financial institutions would change is if they were aware that their actions had consequences, either in the form of compensation or a fine from an organisation such as this service.

A phone call then occurred between the investigator and Mr C, in which the investigator reiterated his points that HFS had taken appropriate action to correct matters, and Mr C accepted that, although things could have been different, he would now suffer no financial loss as a result.

But in terms of the customers service and the trouble and upset caused to him, Mr C said that he'd paid around £3,000 in administration charges to HFS and that these should therefore be refunded to him.

But the investigator said that this wouldn't be fair or proportionate, and also that HFS would have incurred costs whilst administering Mr C's policy.

Mr C said that, if he'd sought the services of a financial adviser or tax adviser to resolve the issue, he would have incurred costs, but the investigator said that, as no such costs had in fact been incurred, he wouldn't be asking HFS to make a payment in that regard.

With regard to the recent events relating to Mr C's drawdown, the investigator said he could raise a new complaint, and if he remained dissatisfied with the response, he could refer to it to this service.

He added that this service doesn't have the power to fine or punish businesses, and that if Mr C was concerned about HFS's processes and procedures, he could refer this to the regulator.

In a subsequent call, the investigator reiterated the same points, but also noted that HFS had at all times said that it would be prepared to consider any tax liability incurred by Mr C as a result of its error if he could provide evidence of that impact.

But Mr C considered that HFS should face further sanctions and, as agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on the matter on 18 July 2023, in which I set out my reasons for partially upholding the complaint. The following is an extract from that decision:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached some of the same conclusions as the investigator and for similar reasons – with one notable difference as set out below.

At the outset, I'd reiterate the investigator's comment relating to our purpose and remit, which is to right financial wrongs. We're not responsible for imposing sanctions on businesses, punishing them for errors, or imposing fines. Our role is to address what has happened in the individual complaint and ensure that, as far as is possible, any error is corrected.

In this instance, I agree with the investigator that HFS has now taken the appropriate steps to correct the matter, and I can see that Mr C agrees that, now that HFS has confirmed the transaction date within the 2021/22 tax year and that HMRC will accept both this and a penalty-free amended tax return, there will now be no financial disadvantage to him as a result of the initial error.

And so this then leaves the matter of the appropriate award to Mr C in respect of the poor customer service he received, along with the trouble, stress and upset caused to him by what happened. I can see that Mr C feels very strongly about this, and I understand both the underlying sentiment and his specific concerns about what he considers to be HFS's ongoing poor level of service.

As the investigator said, if Mr C has specific concerns about his more recent experience with HFS, then this is something he may raise with it, and provide it with the opportunity to

respond and, if it feels it appropriate, take corrective steps.

My consideration is therefore more focussed on the subject of this particular complaint, and I agree that Mr C hasn't received the standard of service to which he should be entitled – as does HFS.

But excluding – for the reasons set out above - any punitive award, I need to think carefully about the type of award which would address the impact specifically on Mr C as a result of the errors made here.

And having done so, I think Mr C has a point in terms of the fact that it was only once the case had been referred to this service that HFS confirmed that it could amend the transaction date to reflect the payment as having been made in the 2021/22 tax year.

Although I acknowledge that HFS said that it would consider any additional tax liability caused to Mr C as a result of its inclusion in the following tax year, there was a prolonged period of uncertainty here and the knock on effect of Mr C being uncertain as to what payment he could or should take in the 2022/23 tax year.

And these aren't minor inconveniences when an individual is reliant on pension income. They can have a substantial impact on financial planning and an individual's enjoyment of life in retirement.

And so I think the payment in respect of the trouble and upset caused should be higher. Taking into account the types of award which this service might make in similar situations of prolonged uncertainty, and that it was necessary for the complaint to be referred to this service before HFS confirmed that it could be resolved with HMRC, I think a payment of £350 is probably about right."

HFS acknowledged my provisional decision, but had no additional comments to make.

Mr C also said he agreed and accepted the outcome, but he wished to clarify a technical point.

Mr C said that he didn't receive payment on 6 April 2022 (as I had set out in the "what happened" section of the provisional decision) – rather this was received on or around 11 April 2022. He said that he didn't expect payment to be made any sooner, but did expect that the transaction would have taken place in the 2021/22 tax year.

Mr C said that he considered the whole issue in that instance – and indeed the more recent situation in March 2023 – to be the lack of understanding on behalf of HFS between the transaction and payment date.

Mr C added that he'd always stressed to HFS that it hadn't been about when he received the funds, but when the transaction occurred for tax purposes.

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'd like to thank Mr C for the correction to the date of payment in April 2022. I've amended the "what happened" section above accordingly.

And I also acknowledge what Mr C has said about the fundamental issue here, and I'm sure,

or certainly hopeful, that this won't be lost on HFS. It would certainly be unfortunate if a similar situation has arisen in March 2023, but as previously set out, I haven't considered that specific matter in this complaint.

Mr C has indicated that he's happy to accept the proposed outcome, and as HFS hasn't made any further submissions, my view on the matter remains the same as that outlined in the provisional decision.

Putting things right

For the reasons given in the provisional decision, Scottish Widows Limited, trading as Halifax Financial Services, should pay to Mr C £350 in respect of the distress and inconvenience caused by this matter.

My final decision

My final decision is that Scottish Widows Limited, trading as Halifax Financial Services, should pay Mr C £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 August 2023.

Philip Miller
Ombudsman