

The complaint

Mrs S complains that Legal and General Assurance Society Limited (“L&G”) failed to update a tax code supplied by HMRC on her records. As a result she says income tax was deducted from her annuity payment that she was unable to reclaim for several months.

What happened

I issued a provisional decision on this complaint in June 2024. In that decision I explained why I thought the complaint should be upheld and what L&G needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mrs S purchased an annuity from L&G in September 2021. The annuity would pay her income annually, in arrears. So the first income payment Mrs S received was in September 2022, followed by a second payment in September 2023. It is the taxation treatment of the payment Mrs S received in 2023 that forms the subject of this complaint.

The payment that Mrs S received in 2023 had income tax deducted using a BR tax code. Mrs S says that code was incorrect, and had been replaced by a code of 1253L that was issued on 27 February 2023 for use from 6 April. L&G says that notice of the change in the tax code was not received. So it says that it has correctly applied the income tax under HMRC rules. And it points out that Mrs S would be able to reclaim any income tax that she wasn't liable to pay. Unhappy with that response Mrs S brought her complaint to us.

Mrs S received an annuity income payment from L&G in September 2023. That annuity payment had income tax of £695.40 deducted from it. L&G says that was correctly deducted in line with the tax code of BR that it held for Mrs S. I understand that Mrs S's circumstances meant that she wouldn't expect to pay income tax on her annuity payment so she has now requested a refund from HMRC. The last update she gave to us was that the refund should be paid sometime between June and October of this year.

I don't think there is any dispute that, if it correctly held a tax code of BR, L&G acted fairly in applying a deduction for income tax to Mrs S's income payment. So what I need to consider in this decision is whether L&G has correctly recorded Mrs S's tax code on its systems.

L&G has provided us with an extract from its systems showing the tax codes it has held for Mrs S over the past couple of years. In summary those codes, and the dates they were applied are;

06/04/2022	1257L	
03/10/2022	BR	
06/04/2023	BR	(Update issued by HMRC on 01/02/2023)
27/09/2023	1120N	

16/01/2024 540N

So based on the information L&G holds on its systems it appears that the correct tax code has been applied to the income payment that was made to Mrs S on 29 September 2023 since it is likely that payment would have been processed a few days earlier (and so before the tax code update) to allow for normal payment processing deadlines to be met.

But I am mindful that Mrs S's complaint isn't that L&G failed to apply the information it held on its systems. Her complaint is that L&G had failed to update its records to show new information that had been issued by HMRC. It seems entirely logical that, if the updates had not been made, they wouldn't appear on L&G's records of Mrs S's tax codes.

HMRC has provided Mrs S with an summary from its systems showing the tax codes it issued to L&G in relation to her annuity payments. In summary, those codes, and the dates they were issued are;

25/09/2022	BR
27/02/2023	1257L (for use in tax year ending April 2023)
27/02/2023	1253L (for use in tax year starting April 2023)
16/01/2024	540N

There are clearly some discrepancies between the two lists. L&G doesn't show either of the updates issued by HMRC in February 2023. And HMRC doesn't show the update that L&G says it received in September 2023. So I think I need to apply a degree of caution to the findings I am now about to make.

But, as I explained earlier, my findings are based on the balance of probability – or in other words what I think is most likely to have happened. Here, I am persuaded that the updates that HMRC says were issued are likely to have been sent to L&G. And I am less concerned about the missing information from September 2023. Given that HMRC appears to have compiled the information sent to Mrs S manually, rather than simply showing an extract from its systems, it is entirely possible that update might have been overlooked. I think it unlikely the same logic would support two updates being erroneously included in the information sent to Mrs S.

I have noted that the two updates to Mrs S's tax code that are missing from L&G's systems were issued on the same day. I have no understanding of how L&G's system operates when receiving information from HMRC. But I would think it possible that errors might arise if two updates were received at the same time. That might require some manual intervention that might not have happened. So on balance I currently think it likely that the updates sent by HMRC in February 2023 were not applied correctly to L&G's systems.

So, having reached that conclusion, it follows that if nothing had gone wrong income tax would not have been deducted from Mrs S's income payment in September 2023. L&G is correct to say that Mrs S will be able to claim a refund of that tax from HMRC. And she tells us that she has made that claim and is awaiting payment. But that does mean that Mrs S has been without the money that was deducted as income tax for a period of time. As I said earlier, HMRC estimates that the refund will be made sometime in the next four months. So I currently think that L&G should pay Mrs S some interest, to reflect her loss of use of that money, for a period of one year.

I'm also currently persuaded that L&G's error will have caused Mrs S some inconvenience. So I intend, subject to any representations I receive on this decision, to further direct a payment of £200 be made to Mrs S for her inconvenience.

But, for the avoidance of doubt, that payment doesn't reflect the way in which L&G has handled Mrs S's complaint. Complaint handling is an unregulated activity and so falls outside of my jurisdiction to consider. So, the way L&G handled Mrs S's complaint hasn't been considered as part of my decision, and so I make no directions that compensation should be paid in that regard.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mrs S has said that she accepts my provisional findings. L&G doesn't agree with what I said and has provided some further information. Although here I am only summarising what L&G has said, I want to confirm that I have read, and carefully considered, the entire response.

L&G says that it sends and receives information from HMRC electronically. It says that it migrated some records to a new tax office in November 2022, so it submitted a leaving date for Mrs S at that time. It hasn't been able to trace the new tax code being issued by HMRC but says if that code had been sent using the old tax office reference it wouldn't have been applied. It said it wouldn't report a new start date to HMRC until the next payment was made – in September 2023 – so some tax codes might have been sent during that “limbo” period. It says that it doesn't know whether it would send HMRC details of records it had migrated but thinks HMRC wouldn't be able to send updated tax codes before it reported a new start date.

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 set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs S and by L&G. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional information that L&G has sent regarding what might have happened when HMRC sent the updated tax code information in February 2023. I am not persuaded that information, whilst being helpful in getting to the bottom of what happened, means that I should change my conclusions on this complaint. But I would like to comment further on what happened.

I don't know why L&G migrated Mrs S's income payments to a new tax office reference. It might have been for L&G's administrative benefit. Or it might have been following directions from HMRC. But ultimately it falls to L&G to ensure that any administrative changes it

makes, or is asked to make, do not adversely affect a consumer. Whilst it is generally thought acceptable that an initial income payment might have emergency taxation applied, it isn't expected that similar tax treatment will occur on subsequent payments.

I am satisfied that HMRC issued a new tax code for Mrs S to L&G in February 2023. It was for L&G to decide how that information should be handled if, as it thinks might be the case, it arrived during a "limbo" period where Mrs S didn't have an active payment record due to the migration of her tax office. Had that information been handled more effectively then, at the very least, HMRC could have been advised that the tax code hadn't been applied and needed to be resubmitted against the updated tax office reference. Without evidence of that request of HMRC I must find that responsibility for the problems lies with L&G.

So having reached that conclusion, it follows that if nothing had gone wrong income tax would not have been deducted from Mrs S's income payment in September 2023. Mrs S has been without the money that was deducted as income tax for a period of time. As I said in my provisional decision, HMRC estimated that the refund would be made sometime before the end of September 2024. So I think that L&G should pay Mrs S some interest, to reflect her loss of use of that money, for a period of one year.

And, as I again set out in my provisional decision, I'm also persuaded that L&G's error will have caused Mrs S some inconvenience. So I further direct a payment of £200 be made to Mrs S for her inconvenience.

Putting things right

I direct L&G to do the following to put things right;

- Pay interest to Mrs S, at a rate of 8% simple for a period of one year, on the income tax deducted from her annuity payment in September 2023. HM Revenue & Customs requires L&G to take off tax from this interest. L&G must give Mrs S a certificate showing how much tax it's taken off if she asks for one.
- Pay Mrs S £200 for the inconvenience she has been caused.

My final decision

My final decision is that I uphold Mrs S's complaint and direct Legal and General Assurance Society Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 30 August 2024.

Paul Reilly
Ombudsman