

complaint

Mrs T's complaint against The Prudential Assurance Company Limited is about a tax-free cash payment it made to her in error from her pension. Prudential asked for the money to be repaid.

background

Mrs T received a portion of her ex-husband's pension through a pension sharing order. Mrs T's fund was held with Prudential for several years, during which time she was sent annual statements. These statements showed that she would be entitled to take a 25% tax-free cash lump sum from her fund at retirement.

Some seven years later on reaching her retirement date Mrs T selected an annuity with the 25% tax-free lump sum. On 3 June 2014, a few days before her lump sum payment was due, Mrs T spoke with a representative of Prudential on the phone. During this call Mrs T was told that the tax-free lump sum wasn't available to her because her ex-husband had taken the full tax-free entitlement prior to the pension sharing order.

Unhappy with this information Mrs T asked her financial adviser to contact Prudential. On the same day the adviser spoke with a representative from a different department. Following the call the representative emailed the adviser to say the tax-free lump sum was being processed.

Approximately £31,000 was paid to Mrs T two days later. Mrs T proceeded to spend the money.

On 21 August 2014 Prudential wrote to Mrs T in response to the complaint she raised in the phone call of 3 June 2014. In this letter Prudential apologised for its error and agreed that the annual statements had incorrectly said that the tax-free cash sum would be payable. It acknowledged that it had paid the lump sum even though it wasn't due and asked Mrs T to return it.

Unhappy with this Mrs T referred the case to us.

One of our adjudicators investigated the case. She asked Mrs T to show how much money had been spent. Mrs T provided receipts and invoices to support her claim that it was around £20,000. The adjudicator noted that the HMRC Pensions Tax Manual said that a payment may not be classed as 'unauthorised' if the payment was made in genuine error and if steps were taken within a reasonable time frame to rectify the error. The adjudicator was of the opinion that this was the case in this instance.

The adjudicator wrote to Prudential proposing that Mrs T be allowed to keep the lump sum payment on the basis that it was made in genuine error. The adjudicator did note that the lump sum, which she thought would now be viewed as a member payment, could be liable to income tax. The adjudicator was of the view that if HMRC contacted Mrs T about this it would be her responsibility to pay any income tax given that it was an individual's responsibility to pay any tax due on income they received. Prudential agreed with the adjudicator's understanding of the HMRC rules and with the proposed settlement.

Mrs T wasn't happy with this and requested that an award for the trouble and upset caused be made to her. The adjudicator responded to say that Mrs T had been able to take

advantage of the £31,000 lump sum amount when she shouldn't have received this. As the proposed settlement involved Mrs T no longer having to return this amount the adjudicator felt that this was a fair and reasonable resolution to the complaint.

In addition to this the adjudicator recognised that following the letter confirming that Mrs T wasn't entitled to the money and where Prudential asked for its return, Mrs T continued to spend the lump sum – albeit she appreciated that, on the same day as the initial phone call, a separate contact at Prudential emailed Mrs T's adviser to say that the tax-free lump sum would be paid.

Mrs T didn't accept the adjudicator's findings. She said, in summary, that having being told by Prudential that she wouldn't receive the lump sum on 3 June 2014 but that it would check the position, her adviser had spoken to a manager at Prudential to confirm that it would be paid. On receipt of the 21 August letter she only continued to spend what she had already contractually committed to. The matter had caused considerable distress and anxiety and she thought Prudential should pay any tax liability. She also said that without a ruling from HMRC she may also subsequently become liable for the higher tax charge. She thought that Prudential should be liable for any additional tax due over and above the normal income tax rate.

my findings

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

It's not in dispute that Prudential provided incorrect information to Mrs T that led her to understand that a tax-free lump sum was payable. And when Mrs T's adviser contacted it to clarify the position it gave him the incorrect information as well. But ultimately, the reality of the situation was that no tax-free cash should have been paid – instead Mrs T should have got a higher income. And depending on what other income Mrs T received this could have been subject to income tax.

The adjudicator didn't think that an unauthorised payment charge would apply as the payment was made in genuine error and steps were taken within a reasonable time frame to rectify the error. Prudential agreed with the adjudicator's understanding. HMRC said that the general position was as described by the adjudicator. But HMRC didn't consider the specifics of Mrs T's case.

Prudential has agreed for Mrs T to keep the lump sum payment it made. Mrs T is, effectively, paying it back through the reduced income payable through the annuity. However it has said that HMRC may ultimately require income tax to be paid.

Given that income tax would have been payable had the lump sum been correctly paid through the annuity I don't think Prudential should have to pay it. And my understanding is that Mrs T had a significant amount of the lump sum that still wasn't spent when she was alerted that Prudential wanted her to repay it. So I think she should be in a position to pay any income tax when it is payable.

It's clear that Prudential initially caused the problem. And I appreciate that the matter has caused Mrs T considerable anxiety and distress. But Mrs T has had the use of that cash lump sum and spent a significant proportion of it. She has therefore had the benefit and enjoyment of what she bought with those monies that she would otherwise likely not have

had. So I don't intend to make a separate award for the distress and anxiety that's been caused to Mrs T.

Overall, therefore, on the basis that my understanding is an unauthorised payment charge won't apply, I consider the Prudential's agreement that Mrs T retain the money is a fair and reasonable settlement in the circumstances.

my final decision

My final decision is that I uphold the complaint, but that given Prudential has agreed for Mrs T to keep the lump sum I don't require it to do more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 October 2015.

David Ashley
ombudsman