

## **complaint**

Mr P has complained that The Prudential Assurance Company Limited (Prudential) failed to follow his instructions to pay out the full value of his pension benefits in the tax year 2016/17. As a result Mr P states he's incurred additional tax.

## **background**

I issued my provisional decision on this complaint on 12 January 2017 which set out the background to the complaint. I have summarised this below.

On 11 February 2016 Mr P called Prudential to enquire about taking his benefits in the following tax year. Prudential told Mr P it would send him the relevant risk warnings and if he wanted to proceed he would need to call back.

On 7 March 2016 Mr P called back and states that he told Prudential that he wanted to take his pension as a lump sum in the new tax year. Prudential told Mr P that it would send him a quote that would expire in March 2016. It also went through the risk warnings with Mr P.

On 12 March 2016 Mr P received the requested quote and the forms to complete if he wished to take all of his pension as a lump sum. It explained that

*'on 28 March 2016 the single payment is £29,624.54 (before tax). This is guaranteed until 28 March 2016'.*

The letter set out that Prudential would have to deduct tax in line with the Inland Revenue regulations and that the tax to be deducted was £8,445.55. The net amount payable to Mr P was £21,178.99.

On 21 March 2016 Prudential received the completed forms. Mr P explained that he sent the forms before the new tax year because he was going on holiday.

On 29 March 2016 Prudential made the net payment to Mr P.

On 30 March 2016 Prudential sent Mr P a letter saying that it would 'be in touch within the next 2-3 weeks.' Prudential said this letter was sent out automatically.

Mr P complained to Prudential. He said he'd informed Prudential of his intention to take his pension benefits in the new tax year during the two telephone calls, in February and March 2016. Despite this Mr P's pension was processed in the 2015/16 tax year and not in the 2016/17 tax year as he wanted.

Prudential investigated the issue but did not uphold Mr P's complaint. It said the calls Mr P made to Prudential were servicing calls and would not constitute giving instructions.

Unhappy with Prudential's response Mr P brought his complaint to our service. An adjudicator considered his complaint. She said that Prudential should've been proactive in taking Mr P's instructions and advised Mr P of the steps he would need to take to guarantee his pension being paid out in the new tax year.

Prudential disagreed with the adjudicator. It said on the first call, the mention of Mr P's intention of taking benefits in the new tax year, was not part of the risk warning call; *'it was*

*conversational rather than an instruction.*' It explained no instructions would be taken at this point because it would be sending out information for him to read before a quote could be requested.

Prudential also stated no indication was given on the second call that he intended to take his benefits in the 'new tax year'. It said had Mr P informed it of this, on the second call, it would have discussed this with him. It would've also explained that he would need to make his intentions clear on the forms and it would've made a note of his intentions on its system. Prudential said Mr P told the case handler he wanted the funds for 4 April 2016, not the 6 April. As such the case handler would not have known that he wanted his benefits in the new tax year.

The adjudicator did not agree. She said Mr P explained on several occasions during the first call that his plans were to take his benefits in the new tax year (i.e. after 6 April 2016). The adjudicator said that the case handler should've instructed Mr P to either call back nearer the new tax year or ask him to hold the forms until then. She pointed out that the call handler did explain that the fund value quoted expired in 30 days, so that if Mr P wanted to take his benefits in April he would need another quote. But the case handler did say he would put a note on the system explaining this.

The adjudicator said the call handler on the second call did ask Mr P if he'd '*considered the impact on any dates that you [he had] have?*' To which Mr P explained that he wanted to take his benefits in the new tax year, 4 April. The adjudicator agreed Mr P did get the date for the new tax year wrong but said he did mention taking his benefits in the new tax year. The adjudicator said she would have expected the call handler to ask Mr P to clarify when he wanted his benefits as he had contradicted himself. She believed that had the case handler done this, she would've discovered what Mr P's intentions were.

The adjudicator told Prudential that it had an opportunity on both calls to explain to Mr P what he needed to do to make sure his benefits were paid to him in the new tax year. Prudential did not agree and requested the complaint to be referred to me for a final decision.

### **my provisional findings**

In my provisional decision I stated that, having considered all the available evidence and arguments to decide what was fair and reasonable in the circumstances of this complaint, I was minded to reach a different conclusion to that of the adjudicator.

I listened to both telephone calls that Mr P had with Prudential when he discussed taking the benefits from one of his plans as a lump sum.

Mr P stated that he had enquired about taking the lump sum a year ago but his circumstances had changed. He was interested to know how much would be payable and when it would be paid. He then stated that '*I don't want to take it until probably the beginning of April. start of the financial year... April 4 or something. That's when I want to put it in my bank account...*'.

Prudential sent Mr P the forms to complete to cash in his pension plan on 12 March 2016 and Mr P signed the forms on 21 March 2016. Mr P returned the forms to Prudential who processed them much faster than Mr P had expected and the funds were paid out before the new tax year started.

Prudential have a very large number of pension policies in force and receives high volumes of correspondence from its policyholders every day. This post is processed as quickly and efficiently as it can. In this case it processed the claim very quickly and this is why the policy was cashed-in in March and not after 6 April 2016.

The processing team at Prudential would read all the correspondence that comes in with the new forms and instructions that it receives. If Mr P had written a letter requesting payment after 6 April 2016 then I am sure that this would have been dealt with appropriately and the payment would have been made in the new tax year. However Mr P sent the forms back to Prudential in March 2016 and made no comments about when the cashing in of the plan was to take place. There were also no notes on the forms referring to earlier telephone calls and Mr P's desire to cash-in his plan after the start of the next tax year.

Whilst I agree that Prudential could have stated in the earlier telephone calls that if Mr P wanted his plan to be cashed in the next tax year he should have noted this on the forms or in a covering letter. I do not consider that this was necessary as the form that Mr P had received completed and returned made it clear that this represented a new instruction. I note that Mr P had enquired a year earlier about taking his pension benefits but said during the conversation that his circumstances had changed and that he didn't need the funds at that time.

It would of course have been possible that after the two phone calls Mr P had changed his mind and now wanted the payment to be made to him as quickly as possible. There was nothing in the instruction that it received that would have led Prudential to believe that the payment should be delayed until after 6 April 2016. There would be no reason for Prudential to query or delay a valid instruction that it had received. Indeed if Mr P had changed his mind and wanted the payment paid before the end of the tax year but Prudential delayed the matter because of the earlier telephone calls then Mr P would now be complaining about the delays that had arisen.

Whilst I can appreciate that Mr P is not in the position that he wanted to be in I do not consider that Prudential has done anything wrong given the new instruction that it had received to cash in his pension policy. Prudential did deduct the tax that the Inland Revenue required it to and noted that Mr P might be able reclaim some of the deduction back through his annual tax returns.

Prudential made no further points in response to my provisional decision.

Mr P did not agree with my provisional decision. He said that in the two calls to Prudential he thought he had given his instructions to Prudential. He was not told by Prudential that he would need to do anything further, in terms of providing a covering letter with his withdrawal forms. He was also not told at the time that they could not take his instructions.

### **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 is clear that in the earlier telephone calls that Mr P had with prudential that the issue of taking the benefits from his plan was discussed. Mr P clearly mentioned that he was interested in taking his benefits in the next tax year ie after 6 April 2016.

I am afraid that whilst I can see that Mr P sent the form requesting the full encashment of his plan to Prudential in March 2016 there was no indication that Mr P wanted this to be paid out in the next tax year. There was nothing on Mr P's file to show that he had definitely decided to cash his benefits under one policy in the next tax year.

Even if there had been an instruction given earlier it would, as I have stated in my provisional decision, have been possible for Mr P to have changed his mind and to have wanted the funds paid out in the earlier tax year.

Given the receipt of a correctly completed form with no covering letter or attached instruction Prudential would have assumed, in my opinion correctly, that the transaction should take place as quickly as possible.

Whilst I note that Mr P has said that he was not told to send in an additional letter to ensure the payment was in the following tax year in my opinion the duty was on Mr P to convey his desired instruction to Prudential at the time that he sent the form in to arrange the encashment of his policy.

#### **my final decision**

I do not uphold this complaint against The Prudential Assurance Company Limited and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 March 2017.

Adrian Hudson  
**ombudsman**