

complaint

Mr P complains that The Prudential Assurance Company Limited failed to provide his financial advisor with sufficient information when he was instructing the crystallisation of some pension benefits. As a result he has needed to pay additional income tax on his benefits.

background

The background to this complaint was set out in the provisional decision I issued last month. An extract from this is attached and forms part of this final decision, so I will not repeat that information here.

In my provisional decision I set out why I was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. Prudential has confirmed that it accepts my provisional decision. Mr P's representative ("Mr L") has provided some further comments. Although I am only summarising here what Mr L has said, I have considered his entire response carefully before writing this decision.

Mr L thinks that Prudential has failed to fully appreciate the financial impact these problems had on Mr P. He has provided us with details of Mr P's financial position to show the additional income tax that Mr P needed to pay in tax year 2018/2019. And he has reminded us that Mr P took out a personal loan in 2018 when he was unable to take any further tax free income from his pension.

my findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I have reached the same conclusions that I reached in my provisional decision.

I have looked at the information Mr L has sent us about Mr P's tax position following this problem. That information supports my original conclusions about the impact of this problem on Mr P. But I think that the redress I have proposed here, and that Prudential has agreed to pay, will ensure that the additional tax Mr P has needed to pay will be refunded to him. And when Mr P receives the additional tax free cash he will be able to repay the personal loan that he needed to take in 2018 – and the interest that I am directing Prudential to pay to Mr P will far exceed the interest he has needed to pay on that personal loan.

I uphold this complaint and Prudential needs to put things right.

putting things right

I direct Prudential to;

- Reverse part of the original crystallisation event, only crystallising sufficient funds to generate the PCLS paid to Mr P in May 2017.
- Reverse the taxable withdrawal made by Mr P in April 2018. Crystallise sufficient further funds to enable a PCLS to be paid equivalent to the net amount paid to Mr P that month.
- Crystallise any remaining funds and pay a final PCLS to Mr P with effect from 1 August 2018. (A)

- Add simple interest at a rate of 8% per annum to the amount due at (A) from the date it should have been paid to the date of settlement*.
- Pay an additional £500 to Mr P in respect of the trouble and upset this matter has caused to him.

*HM Revenue & Customs requires Prudential to take off tax from this interest. Prudential must give Mr P a certificate showing how much tax it's taken off if he asks for one.

my final decision

My final decision is that I uphold Mr P's complaint and direct The Prudential Assurance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 July 2019.

Paul Reilly
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr P complains that The Prudential Assurance Company Limited failed to provide his financial advisor with sufficient information when he was instructing the crystallisation of some pension benefits. As a result he has needed to pay additional income tax on his benefits.

background

Mr P has been helped in making his complaint by his financial advisor. But for simplicity I will generally refer to all communication as having been with Mr P himself.

In early 2017 Mr P held around £470,000 of pension funds with Prudential. He instructed his financial advisor to crystallise some of those funds in order that he could take a Pension Commencement Lump Sum (PCLS). Under the tax regulations at that time Mr P was able to take up to 25% of his total pension savings as a PCLS which would be paid free of income tax.

Rather than the 25% he was allowed, Mr P only wanted to take 17.5% of his fund at that time. He says he intended to take the remaining 7.5% the following year. So in May 2017 Prudential paid a PCLS to Mr P of £82,561.45.

The system that Mr P's advisor used to instruct the transaction to Prudential was relatively new. So Mr P's advisor says it took advice from Prudential before completing the instruction – though Prudential hasn't been able to trace the call that Mr P's advisor says was made. But the instruction that was ultimately given to Prudential asked for the whole of Mr P's pension funds to be moved into drawdown. That resulted in Mr P losing his entitlement to the additional PCLS of approximately £35,000.

Mr P didn't become aware of this problem until he asked to take a further PCLS in February 2018. At that time Prudential explained what had happened the previous year. But Prudential told him that since this wasn't an error by Prudential it wasn't able, under HMRC regulations, to reverse the transaction. As a result Mr P, who needed the cash to complete a house purchase, took a further taxable withdrawal from his pension. I understand that there were some issues with the timing of that payment, but these have been addressed as part of a separate complaint, and so I won't deal with them in this decision.

Mr P says that later that year, in August 2018, he had been planning to take the remainder of his available tax free cash to buy new furnishings for his recently purchased property. Given the ongoing issues with Prudential, and the lack of ability to take additional tax free cash Mr P took a personal loan for £15,000.

One of our adjudicators has looked at Mr P's complaint. He thought that Prudential should have given better support and information to Mr P's advisor when it was completing the transaction request. So he asked Prudential to pay Mr P some compensation equivalent to the additional tax he would need to pay. Prudential didn't accept that assessment so the complaint was referred to me, an ombudsman, to decide.

When I first started considering the complaint I thought that our adjudicator had underestimated the additional tax that Mr P might need to pay. So I informally wrote to Prudential, and Mr P, with some early suggestions on putting things right. In response to that email Prudential revisited what had happened in 2017 and advised that it now considered it would be acceptable, under HMRC regulations, for the transaction to be reversed. And Mr P also provided some additional information on what he thought might be appropriate redress here.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

In deciding this complaint I have taken account of the submissions that have been made by Mr P and by Prudential. 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 have happened.

At the outset I think it is useful to reflect 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.

It is agreed by all parties that the transaction that was input by Mr P's advisor in January 2017 was incorrect. But what I need to decide here is whether that transaction followed advice from Prudential, or whether Prudential should have asked more questions when the instruction had been submitted.

Taking a tax free PCLS is a significant benefit for pension savings. It generally allows consumers to make a large saving on the income tax they would need to pay when taking some of their pension benefits. So I think it would be unusual if consumers didn't take advantage of that benefit either by taking the entire 25% allowed at the outset, or leaving funds uncrystallised so the benefit could be taken later.

I have no doubts that Mr P intended to take the remaining 7.5% PCLS at a later date. And given the recent introduction of the Prudential processing system, and the relatively uncommon nature of what Mr P was asking to do, I think it likely that Mr P's advisor sought advice from Prudential before instructing the transaction. So given the transaction was input incorrectly it would seem reasonable to conclude that advice didn't give the advisor all the information that was needed.

I've also considered whether Prudential should have done more to make Mr P aware of the fact that his instruction would result in the loss of his ability to take the maximum PCLS. In doing so I have taken into account that Prudential now says it has added a warning to its systems so that this sort of situation would be highlighted in the future. So that would lead me to conclude that Prudential has also considered that this situation, although admittedly rare, might be an unexpected consequence of the design of its systems.

So on balance I don't think Mr P or his advisor should be held responsible for the loss of the additional PCLS entitlement. I think that responsibility sits with Prudential either as a result of the advice and guidance it gave to Mr P's advisor before the transaction was input, or as a result of the design of its new processing system and the lack of appropriate warning messages. So I intend to uphold the complaint.

When the mistake was first discovered Mr P asked Prudential to reverse the transaction. Prudential declined to do so, saying it was prevented from taking that action due to HMRC regulations. But more recently Prudential has considered it would be allowed to reverse the transaction. It is very disappointing that Prudential didn't make that assessment earlier – either when Mr P first complained, or throughout the time that we have been considering the complaint.

It seems to me that reversing the transaction, and allowing Mr P to take the additional PCLS's that he intended to take in 2018, would be the most appropriate way of correcting this issue. But I am mindful that doing so will have a number of knock on consequences that Prudential will need to satisfy itself can be managed appropriately;

- Mr P took a further lump sum withdrawal in 2018. That should have formed part of the remaining PCLS allowance, so that transaction will also need to be reversed and paid to Mr P free of income tax.
- The remainder of the PCLS allowance should be paid to Mr P with effect from August 2018. That was the date at which he took a personal loan for £15,000 instead of a further withdrawal from his pension benefits.
- The investment returns on the residual funds will need to be recalculated to reflect the reduced withdrawal in April 2018 and the reduction in the capital balance in August 2018.

I have considered the impact of the personal loan that Mr P took in August 2018. I can see from the documentation he provided to us that the APR on that loan is 2.9%. In my redress I will be directing Prudential to add 8% simple interest to the additional PCLS payments it is making. I consider that will be more than sufficient to compensate Mr P for the interest he has needed to pay in respect of the personal loan and any knock on effects such as changes to his credit rating from needing to take the loan.

I have no doubts that this matter has caused Mr P a significant amount of trouble and upset. And I think that upset was increased by Prudential's initial refusal to reverse the transaction – something that it now says would have been appropriate. So I intend to direct Prudential to pay an additional sum of £500 to Mr P.