complaint

Mr S complains that The Prudential Assurance Company Limited (Prudential) are responsible for an error that's occurred when money was withdrawn from his pension fund. He is represented by his IFA, Mr H.

background

In September 2017 Mr S called Prudential to find out about making a withdrawal from his pension fund. He was turning 55 and his intention was to use any tax free lump sum for a property purchase. The remaining funds would then be used to pay the monthly mortgage payments. During the call Prudential suggested that Mr S contact his financial advisor and ask them to put any request in motion for him. Mr S did this and on 29 September 2017, his IFA, Mr H, requested what he says he understood to be the withdrawal of £72,500 only. Mr S would have been entitled to withdraw up to 25% of his pension fund, tax free. The £72,500 would have represented a portion of this tax free amount. The request was made via Prudential's online system.

On 10 October 2017 a representative from Prudential contacted Mr H's office to query the request they'd received online. The representative noted that Mr S had indicated on the phone to them in September that he wanted access to the tax free amount, yet the instruction received online was for payment of a much larger Uncrystallised Fund Pension Lump Sum (UFPLS), from which the 25% tax-free component would come to about £72,500 but the rest would incur a tax liability. Mr H wasn't in the office so Prudential's rep spoke to Mr B, his colleague. Mr B indicated that it was OK for Prudential to proceed with the payment.

Following the call, on the same day, a gross payment of £290,000 was made to Mr S by Prudential. Mr S incurred an £86, 570.36 tax liability on the amount and was left with a net payment of £203, 429.64. Additionally, the payment of the lump sum pushed him into the 45% tax income bracket for the remainder of the year.

Mr S was extremely upset about what had happened. He believed that a request had been made for the withdrawal of part of his 25% tax free entitlement only. He hadn't wanted to incur a tax liability or withdraw such a large amount of money.

Mr H contacted Prudential on Mr S' behalf. In order to establish what had happened he asked for information about what he'd inputted into the online system. He pointed out that an illustration screen which would have set out what he had asked for prior to final submission hadn't been working. Additionally, he had concerns about why Prudential had taken information from his colleague (Mr B), when Mr S wasn't his client. Ultimately Mr H thought the error had been a result of flaws in Prudential's systems. He requested that Prudential request HMRC reinstate the funds as UK tax provisions allow for the reinstatement of funds if "*genuine errors"* have occurred which were caused by the pension scheme administrator.

Prudential looked into what had happened and concluded that they hadn't made a mistake. They stated that the request received online from Mr H was for a UFPLS payment of £72,500 tax free cash *with the corresponding amount of taxable income also being paid*. They explained that UFPLS payments have a set structure that provide 25% tax free cash and 75% taxable income, which they thought Mr H should have known about. In relation to the telephone conversation with Mr B – Prudential identified that relevant data protection checks hadn't been undertaken to verify who was being spoken to. For that, Prudential offered Mr S £300 in compensation. However prudential didn't think the issues with data protection made any difference to what had happened regarding Mr S' payment. They felt they hadn't needed to call and that they could have proceeded with the withdrawal on the basis of the online instruction alone. Prudential acknowledged the illustration page hadn't been working but felt that its absence wouldn't have impacted the withdrawal request, especially as a summary review page appeared prior to submission of the request confirming that an UFPLS was being taken.

The matter came to our service and was considered by an investigator. He didn't think Prudential were at fault for processing the transaction and so didn't ask them to do anything more. He also considered the £300 that they'd offered for the data protection issue was fair.

Mr H disagreed. He feels strongly that the absence of the illustration has led to the current situation. He reiterated that Prudential should not have sought confirmation from Mr B and commented generally that there was a lack of "checks and balances" within Prudential's systems.

In May 2018 I issued a provisional decision in respect of the complaint. The following are excerpts from my provisional decision which form part of this final decision:

*"**my provisional findings***

It's not in dispute that something went wrong with the withdrawal from Mr S' pension fund. It appears to be accepted by Prudential that what Mr S had actually wanted to withdraw was some of the tax free amount available from his pension fund – so a drawdown of £72,500 – not the £290,000 (of which £86,570.36 was taxable) that was actually withdrawn. Therefore the issue that I have to decide is whether Prudential is responsible for the error.

I'm mindful that Prudential haven't been able to provide all the information requested, in particular evidence of the data that Mr H inputted unto the online system. Where evidence isn't available, as is the case here, I have to base my decision on what I think is most likely to have happened in the circumstances.

The withdrawal request was put through by Mr H online via Prudential's online system. Prudential have provided screenshots of what they say the system would have shown. A number of clear options regarding the types of benefit requests available are displayed in a drop down list. These include (amongst others) the option to request a drawdown, a phased drawdown and a regular UFPLS. The system interface doesn't seem confusing or problematic and the drop down options are clear. Had the drawdown option been selected it seems likely that this would have led the user to the selection of the 25% tax free option sought. It does seem that in order to use the system effectively, an understanding of the implications associated with the different options is required. But, I don't think the need for a user to have some product knowledge prior to operation of the system represents a flaw with it. Particularly as in this case, the system was being operated by a regulated financial adviser.

I have taken into account the impact the lack of an illustration might have had on the online withdrawal request, noting that Mr H considers that this is a central point. But while the illustration appears to serve a helpful purpose, I have considered that before the system allows for the submission of a request, a summary page appears which sets out how much money is in the pension account before and after the instruction is put through. The summary page also sets out how much money is being withdrawn and the tax free amount.

Taking everything together, I find it unlikely there was an error in Prudential's online system that caused the incorrect selection of the UFPLS.

I've turned next to Prudential's call to Mr H's office.

Following submission of the online withdrawal request, a representative from Prudential contacted Mr H's office to speak to him. In their final response to the complaint dated October 2017, Prudential state that the purpose of the call was to establish whether the information they'd received online was accurate. They had noted the disparity between what had been requested online (withdrawal from the UFPLS) and what Mr S had indicated he wanted when he contacted Prudential in September.

Prudential have highlighted that Mr B confirmed at the conclusion of the call that the UFPLS payment should be made. However, the conversation needs to be considered in its entirety. My concern having listened to the call is that there were too many instances where Mr B indicated uncertainty about the details of the transaction. It's apparent Mr B was attempting to be helpful but I consider that Prudential's representative should have detected that they were talking to someone who could not provide the confirmation that was being sought. For example, it was unclear whether Mr B understood what Mr S actually wanted which in turn would have enabled him to evaluate whether any difference existed between that and what he had been requested online. Additionally, at other times Mr B said he didn't really want to make a decision on the matter. In the end it seems he could only conclude that if his colleague had put the request through then it must have been right. Overall, I don't consider the call provided the clarity Prudential had correctly identified they needed.

In response to the complaint Prudential have said that they didn't need to make the call. I don't agree with this. They owe a duty of care to Mr S and on identifying there was discrepancy between what he had indicated he wanted in an earlier call and what had been requested on his behalf, I think it was right of them to take steps to clarify the situation as they did. But in doing so, they needed to seek adequate clarification. I don't consider the telephone call represented this.

Given the issues identified, I think Prudential should bear some responsibility for what happened with the withdrawal. As outlined, I think clarification of the positon after the submission of the online request was needed, but the call with Mr B did not provide this sufficiently. There doesn't appear to have been any attempt to contact Mr S directly in Mr H's absence. I think this would have enabled Prudential to find out if Mr S himself was unsure of his requirements and would rather wait until Mr H was back from his holiday. I think if Prudential had made contact with Mr S that would have been the most likely outcome. And it would then have transpired that the request would need to be amended.

And, while I don't think the absence of the illustration facility online caused the wrong information to be inputted I have taken into account that it wasn't working and should have been. All in all I think this is evidence of maladministration by the scheme administrator, which should have formed a basis for Prudential to attempt to reverse the UFPLS transaction so that Mr S could then withdraw the intended amount.

Bearing in mind the points outlined, I've gone on to consider what Prudential needs to do to put things right.

putting things right

Mr H's initial position in respect of putting things right was to request that Prudential request that HMRC reinstate the money into the pension fund on the basis that Prudential made a genuine error. However, matters have now moved on and the money has been spent. Mr S had always intended to use funds that he deducted from his pension fund toward buying a house. My understanding is that although he didn't want the large amount that was withdrawn in October, in order to manage the extra money he'd unexpectedly received he decided to put £135,000 towards the deposit for his home rather than the £72,500 initially intended. The rest of the money was given to family members. It follows that in these circumstances it wouldn't be appropriate for Prudential to seek for the funds to be reinstated.

The tax implications of the error still exist and they can be addressed, in part, by Prudential. The UFPLS payment of £290,000 that was provided to Mr S in October was 75% taxable. This resulted in Mr S incurring an £86,570.36 tax liability and being pushed into the additional (45%) rate tax bracket. If nothing had gone wrong Mr S wouldn't have been pushed into this tax bracket. His monthly salary was around £1597 before tax and the £72,500 that he intended to withdraw wasn't taxable. He therefore would not have needed to pay as much income tax as he has done in this financial year.

My understanding is that UFPLS payments are sometimes taxed on a 'month 1' basis meaning there is the potential for them to be overtaxed and the correct amount of tax due on the payment won't be known until the result of Mr S's self-assessment; or a claim he makes for any overpayment to be refunded now that we're at the end of the 2017-18 tax year.

In order to calculate the correct amount of compensation Prudential will need to calculate the overall amount of tax Mr S will actually have paid on the UFPLS, based on how much would fall into the 20%, 40% and 45% income tax bands – after his personal allowance and other sources of taxable income have firstly been accounted for, and after any under- or overpayment has been corrected by HMRC at the end of the tax year.

To do this Mr S will need to provide Prudential with details of his tax return, or any correspondence he's had with HMRC about any under- or overpayment and his personal allowance.

It wouldn't be appropriate to base compensation on a refund of all of the tax calculated as above, because it's likely that even if Mr S had drawn the income out of his pension over successive years, he'd have paid 20% tax on it. Therefore compensation should be based on any tax Mr S will have paid in excess of the 20% amount.

Given that Prudential wasn't solely responsible for this error having occurred, I think it's right that Prudential contribute 50% towards the amount that he has had to pay in extra tax, as calculated above.

It's a matter for Mr S to decide if he wants to pursue any other parties he might think are responsible for the extra tax. Alternatively, if he is in a position to unwind the gifts he's made to family members and increase the borrowing on his property, it's open to Mr S to explore whether he can return the excess UFPLS amount he received (after tax) to Prudential, and have it treated as a 'genuine error' by HMRC.

If Mr S chooses to go down this route I will require Prudential, as scheme administrator, to make the request to HMRC, with my final decision as evidence of its error. However as HMRC is not connected with the ombudsman service it will make its own decision about whether Mr S can reverse the transaction. It follows that if Mr S is successful in reversing the transaction then Prudential will not need to pay him the 50% compensation I'm awarding in my decision.

As a final point, I have considered what Prudential needs to do about the alleged data protection breaches that occurred during the call of 10 October 2017. While our services' remit doesn't extend to consideration of whether data protection laws have been breached (that would be a matter for the Information Commissioner's Office) I have thought about whether the £300 in compensation offered by Prudential is enough. I think it is. Prudential accept that checks should have been undertaken and have apologised. £300 is a proportionate amount in recognition of what occurred. The amount is in line with what this service would have recommended had Prudential not agreed to make the payment voluntarily."

response to my provisional decision

No further information in relation to the complaint was provided by Mr S or Prudential.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the fair and reasonable outcome of this complaint remains as set out in my provisional decision.

summary of what Prudential needs to do

No mention was made in response to my provisional decision about unwinding the gifts in order to pursue reinstatement of the funds. Therefore redress should be on the basis of compensating Mr S for the extra tax he has had to pay. In order to do this, Prudential should take the steps I've outlined. Further, Prudential should provide Mr S with a separate £300 for the alleged data protection breaches which they accept occurred on 10 October 2017.

my final decision

My final decision is that I uphold Mr S' complaint and direct Prudential Assurance Company Limited to put things right as outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 July 2018.

Tope Adeyemi
ombudsman