

## Ombudsman's Determination

Applicant	Ms R
Scheme	Dentons SIPP ( <b>the SIPP</b> )
Respondent	Dentons Pension Management Ltd ( <b>Dentons</b> )

## Outcome

1. I do not uphold Ms R's complaint and no further action is required by Dentons.

## Complaint summary

2. Ms R has complained that Dentons made incorrect income tax deductions from drawdown pension payments she received between November 2017 and February 2018. As a result, Ms R owes £18,900 in underpaid tax. Ms R would like Dentons to:
  - refund the administration fees charged to the SIPP, as she does not believe the administration was carried out correctly;
  - make a good will payment; and
  - provide reassurance that this error will not happen again to her or any other member.

## Background information, including submissions from the parties

3. Ms R had a drawdown arrangement in the SIPP, which was administered and operated by Dentons. Pension drawdown is a way of using a pension pot to provide regular retirement income. Withdrawals can be made at any time, after retirement age, and will be taxed at the member's normal tax rate.
4. In November 2017, Ms R emailed Dentons and requested a net payment of £50,000 (**the November Email**). She said that, her "next drawdown will cross two tax thresholds". Dentons responded and said that, "I've added you to November's payroll to receive a net pension payment of £50,000".
5. The gross pension payments made to Ms R during the tax year 2017 to 2018 were:-

- £19,000 in October 2017
  - £62,500 in November 2017 (**the November 2017 Payment**)
  - £10,000 in December 2017
  - £20,000 in January 2018
  - £5,000 in March 2018
6. In November 2018, Ms R's accountant informed her that she had underpaid her tax by £18,900. This was based on Ms R withdrawing £116,500 from the SIPP during the tax year 2017-18. Ms R subsequently contacted Dentons for an explanation.
  7. In response, Dentons said the tax codes applied to Ms R's pension payments were dictated by Her Majesty's Revenue and Customs (**HMRC**). It said that the pension payments made between October 2017 and January 2018 were all taxed at 20%; the basic rate tax code. HMRC issued a new tax code on 27 February 2018, which increased Ms R's tax rate to 40%. As the tax code was issued as "Week1/Month1", the PAYE system did not apply the code to Ms R's previous payments. The tax code was only applied to the March 2018 pension payment.
  8. On 6 November 2018, Ms R emailed Dentons questioning why the 40% tax rate had not been applied to the November 2017 Payment. In reply, Dentons said that, until HMRC issued a different tax code it was unable to apply anything else.
  9. On 12 November 2018, Ms R emailed Dentons and said that "the tax due is not simply determined by the code issued by HMRC, but by the band of income triggering higher rates". Ms R said this is where Dentons failed to act.
  10. Dentons replied on 13 November 2018. It said that:-
    - It did not advise Ms R of her tax position after the November Email was sent. It only confirmed a net payment of £50,000 was actioned.
    - Ms R requested additional payments in the same tax year without questioning her tax position. A payment slip was issued on each payment.
    - Dentons was unable to advise on Ms R's tax position as it did not have details of Ms R's taxable income.
    - This approach is adopted for all clients.
  11. On 19 November 2018, Ms R raised a complaint. She said that, she had "been charged for PAYE services and a mistake [had] been made repeatedly between November 2017 and February 2018"; despite indicating that she was aware she had reached a higher band of taxation. Ms R said that, "the level of income dictates the tax and not simply the tax code." So, when Ms R requested a net payment of £50,000 it was "clear the next level of tax should be taken". Ms R said Dentons showed a lack of care and did not have a review process in place to pick up on such errors.

12. Dentons responded to the complaint on 28 November 2018. It said that:-

- There was no mention of PAYE services in Dentons' fee schedule.
- When Ms R requested the £50,000 net payment, she assumed Dentons dealt with the tax threshold issue. Dentons only confirmed that the November 2017 Payment would be made.
- The PAYE system made tax deductions based on the HMRC tax code. Where Ms R feels the tax code is incorrect, this should be taken up with HMRC.
- There is no evidence that the unpaid tax was caused by Dentons.
- Dentons does not offer a tax calculation service. Even if it did, this would be limited, as it does not know the full income details of its members. So, it follows that a review process would not be possible.
- Following Ms R's request in the November Email, she requested payments in December 2017, January, and March 2018. The amount taxed was not questioned on any of these occasions, despite her receiving payslips.
- It rejected the complaint and the request for compensation.

### **Ms R's position**

13. As a result of Ms R not being taxed at the higher rate, she believes has been left with the following options:-

- "Withdraw £31,357.73 from [her] invested pension incurring 6% penalty and 40% taxation vs £18,814.64 if paid correctly through PAYE." She has noted that the additional £12,543.10 could not be replaced in the SIPP and has explained that this option required withdrawing funds from a separate pension fund that she holds. The 6% penalty is part of the separate pension fund's terms and conditions.
- "Pay HMRC interest on the outstanding tax at a rate of 3.5% plus a late payment fee of £150."
- "Commercially borrow the amount at an interest rate of 6%, plus set up fee of 1.5%."

### **Adjudicator's Opinion**

14. Ms R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Dentons. The Adjudicator's findings are summarised below:-

- When Ms R requested the November 2017 Payment, Ms R was aware that she was due to pay a higher rate of tax and informed Dentons of this. In the

Adjudicator's opinion, Ms R's request in the November Email did not make her intention clear to Dentons. As a result, it could not have known that Ms R was expecting it to change her tax code and, it did not provide anything to Ms R that indicated that it had done so. The Adjudicator did not believe that an error had occurred.

- As Ms R received payslips after each payment, it is reasonable to assume that she would have reviewed these as she was concerned about her tax situation. Following the November 2017 Payment, Ms R requested a further three withdrawals. Despite receiving payslips, Ms R did not raise any further concerns on the tax rate which had been applied.
  - Ms R argues that since November 2017, Dentons should have taxed her pension withdrawals at the higher tax rate. The Adjudicator disagreed. Dentons can only apply a tax code that is directed by HMRC. As HMRC did not issue a new tax code for Ms R until 27 February 2018, all pension payments made between October 2017 and January 2018, were taxed at the lower rate. By continuing to apply the tax code issued by HMRC, Dentons was doing what was required and so it cannot be considered to be an error. Further, Dentons cannot provide its members with tax services, as it does not have details of its members' total incomes and other financial information.
  - The Adjudicator appreciated that Ms R now had to pay £18,900 in underpaid tax and had raised the argument of being financially disadvantaged. However, it was not Dentons' acts and/or omissions that have put Ms R in the position that she finds herself in, and this is tax that Ms R is required to pay. Consequently, it was the Adjudicator's view that Dentons should not be held responsible and that this part of the complaint should not be upheld.
  - The Adjudicator also considered Ms R's complaint for non-financial injustice. Ms R argued that Dentons should make a good will payment for the distress and inconvenience caused. However, the Adjudicator did not consider that Dentons had made an error, so the Adjudicator did not recommend an award.
15. Ms R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
16. Ms R provided her further comments which do not change the outcome. She said that:-
- It was clear that 40% tax was payable on the amounts being drawn down and paid via the PAYE system. It should be common knowledge for an accounting department taking payment for providing a PAYE service.
17. I agree with the Adjudicator's Opinion and I will therefore only respond to the point made by Ms R for completeness.

## **Ombudsman's decision**

18. I can appreciate Ms R's frustration as she now has to pay £18,900 in underpaid tax. But ultimately, this is tax that Ms R would have been required to pay anyway.
19. HMRC provided Dentons with an updated tax code on 27 February 2018. So, clearly the tax codes used in its PAYE system come from HMRC. I do not find that Dentons caused a delay in HMRC issuing Ms R's new tax code, or that it applied an incorrect tax code after HMRC had issued a new one.
20. Following the drawdown payments Ms R received in November 2017, December 2017 and January 2018, a pay slip was issued each time. Ms R could have questioned her tax rate prior to HMRC issuing a new tax code in February 2018.
21. I do not uphold Ms R's complaint.

**Anthony Arter**

Pensions Ombudsman  
9 March 2020