

Ombudsman's Determination

Applicant	Mr E
Scheme	XPS Self Invested Personal Pension Plan (the SIPP)
Respondents	Xafinity Pension Trustees Ltd (Xafinity) Equiniti Paymaster (Equiniti)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Xafinity and Equiniti.

Complaint summary

2. Mr E complained that Xafinity and its former payroll provider, Equiniti, did not consider his "adjusted net income". As a result, they miscalculated the tax due on the income he drew from the SIPP.
3. Mr E also said that he underpaid income tax during the 2016/2017, 2017/2018, and 2018/2019 tax years, which he subsequently had to pay using his savings and "trading losses" on his business.

Background information, including submissions from the parties

4. In November 2018, Mr E contacted Xafinity to find out if Equiniti had been deducting the correct amount of income tax from his drawdown payments. He subsequently contacted Equiniti directly about this issue.
5. Xafinity asked Mr E to provide a copy of his accountant's tax calculations so that Equiniti could check the figures. Xafinity queried whether Mr E had asked HM Revenue & Customs (**HMRC**) to send an amended tax code to Equiniti because it was still using an emergency tax code for him, in accordance with HMRC's rules for "new income sources".
6. Mr E was unable to provide Xafinity with his accountant's tax calculations. Equiniti checked its tax calculations for Mr E and confirmed to Xafinity that they were correct.
7. Xafinity informed Mr E that:-

- Equiniti was obliged to apply the emergency tax code when Mr E commenced income drawdown from the SIPP.
- Equiniti had not received an updated tax code from HMRC for him.
- HMRC would not speak with Xafinity or Equiniti regarding his tax code.
- The only way to move matters forward was for him to ask HMRC to provide Equiniti with his correct tax code.

8. Mr E was unhappy with this response. In its letter dated 25 July 2019, Xafinity explained that:-

- It contacted Equiniti and XPS Payroll, its current payroll provider, to check whether the reduction to his personal allowance, for income above £100,000, should be taken into account when calculating the income tax on his drawdown payments.
- Equiniti and XPS Payroll confirmed that they were not required to do this. They could only use the tax code provided for Mr E by HMRC. HMRC confirmed the position during a telephone call with Xafinity on 23 July 2019.
- Mr E should contact HMRC for further details in connection with this matter.

Mr E's position

9. Xafinity and Equiniti had all the information necessary to apply the correct tax code supplied by HMRC. The tax code considered the reduction to his personal allowance for every £2 that his adjusted net income¹ was above £100,000.
10. It was the responsibility of Xafinity and Equiniti to make this adjustment so that he did not pay too little income tax on his income withdrawals from the SIPP. They knowingly allowed "a debt to HMRC to build up."
11. The failure to comply with this "simple rule," which is contained in "tax law", amounts to negligence on the part of Xafinity and Equiniti.
12. He could not "influence" how Xafinity and Equiniti taxed the income he drew from the SIPP using the tax code HMRC provided for him.

¹ HMRC's guidance notes say that: "adjusted net income is total taxable income before any personal allowances and less certain tax reliefs" such as trading losses and pension contributions paid gross (before tax relief). Tax liability can be affected by adjusted net income if it is over £100,000. The annual tax free personal allowance goes down by £1 for every £2 that the adjusted net income is above £100,000. The personal allowance for the 2022/23 tax year is £12,570 and drops to zero for income of £125,140 or more.

13. He accepts that Xafinity and Equiniti could not change the tax code. However, in his view, they did not apply it correctly. They failed to make the necessary reduction to his personal allowance.
14. His former employer's payroll team applied the appropriate reduction to his personal allowance and deducted the correct amount of tax via Pay As You Earn (**PAYE**). He can see no reason why Xafinity and Equiniti could not have done the same.
15. The amount of income tax which he underpaid on his withdrawals from the SIPP is as follows:

Tax Year	Underpaid Tax
2016/2017	£1,655.20
2017/2018	£5,179.50
2018/2019	£5,113.10

16. HMRC informed him, during a telephone conversation² in September 2022, that it was having difficulty tracing Xafinity's telephone call to HMRC on 23 July 2019. HMRC also informed him that the "PAYE company" would be responsible for adjusting the tax due on his income over £100,000 at the point of the "PAYE tax calculation".

Xafinity's position

17. According to HMRC's guidance notes:

"The personal allowance is reduced by half of the amount - £1 for every £2 – over the £100,000 limit. If income is large enough, the personal allowance will be reduced to nil. In practice, an individual's tax code will take account of the reduction based on an estimate of income. HMRC will work out the actual entitlement to personal allowance (if any) when the tax return is sent in."

18. On 21 September 2022, Xafinity telephoned HMRC to ask who should adjust the tax code to consider the reduction to a member's personal allowance for income above £100,000. HMRC confirmed that it was not Xafinity's responsibility to "automatically reduce the member's [tax] code." HMRC also confirmed that the onus would be on the member to notify HMRC that his/her income was above £100,000 per annum so that it could then amend his/her tax code accordingly.
19. HMRC would not provide written confirmation of what it had informed Xafinity. Mr E could obtain a transcript of the telephone call from HMRC.

² Mr E has not been able to obtain written confirmation from HMRC of what he says it told him during this telephone conversation.

20. Equiniti applied an emergency tax code the first time Mr E withdrew income from the SIPP. According to HMRC's guidance notes:

“Emergency tax codes are temporary. HMRC will usually update your tax code when you or your employer give them your correct details. If your change in circumstances means you have not paid the right amount of tax, you'll stay on the emergency tax code until you've paid the correct tax for the year.”

21. HMRC's guidance notes also state that the payroll provider should continue using the emergency tax code until it has received a new code from HMRC. Xafinity cannot use a different tax code unless instructed by HMRC. The tax codes³ Xafinity has applied to date for Mr E are as follows:

Tax Year	Tax Code
2016/2017	BR
2017/2018	1150L
2018/2019	1185L
2019/2020	S0T
2020/2021	S1250L
2021/2022	S1257L
2022/2023	S303L

22. It is Mr E's responsibility to check that the details shown on his coding notice are correct and reflect his circumstances. If his tax code is wrong, he could pay too much or too little tax through PAYE. If Mr E thinks that his tax code is wrong, or needs help understanding his tax code, he should contact HMRC.

Adjudicator's Opinion

23. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Xafinity and Equiniti. The Adjudicator's findings are summarised in paragraphs 24 to 38 below.
24. HMRC's guidance notes state that if an individual has income over £100,000, the individual must complete a “self-assessment tax return”.
25. One of the reasons this requirement is in place is so that HMRC can ensure that individuals with incomes more than £100,000 are repaying their personal allowance.

³According to HMRC's guidance notes: L means that Mr E is entitled to the standard tax free personal allowance. BR means that all his income from the SIPP is taxed at the basic rate. OT means that Mr E's personal allowance has been used up. S means that Mr E's income is taxed using the rates in Scotland.

26. The personal allowance allows an individual to earn the first portion of income tax-free. The personal allowance in respect of the 2022/2023 tax year amounts to £12,570.
27. Where an individual's income exceeds the £100,000 threshold, the personal allowance is reduced on a sliding scale. For every £2 that Mr E earns over £100,000, he loses £1 of his personal allowance. This means that his personal allowance would be zero if his income is £125,140 or above.
28. Mr E submitted a tax return to HMRC. HMRC would have checked Mr E's adjusted net income to work out whether he owed any income tax or was due a refund based on his income.
29. In practice, an individual's tax code is calculated by HMRC on a provisional basis using the information held on its records. Once the individual has submitted their tax return, HMRC will work out the individual's entitlement to a personal allowance (if any).
30. Xafinity and Equiniti had to apply the tax code provided by HMRC to Mr E's income drawdown payments. They were not obliged to adjust it to allow for the reduction to his personal allowance. HMRC was responsible for doing this and informing them accordingly by providing a new tax code for Mr E.
31. The onus was on Mr E to notify HMRC about any changes which could affect his tax code. It was Mr E's responsibility (and not Xafinity's or Equiniti's) to ensure that he was on the right tax code.
32. It was open to Mr E to check his tax code at the start of each tax year and to contact HMRC for confirmation on whether his tax code was correct.
33. Equiniti applied an emergency tax code the first time Mr E withdrew income from the SIPP because HMRC did not have details of his income at the time.
34. HMRC would have updated the tax code after it received notification from Mr E of his correct details. If his change in circumstances meant that he had not paid the right amount of income tax, he would have remained on the emergency tax code until he had paid the correct tax for the year.
35. According to HMRC's guidance notes, until such time as Xafinity and Equiniti had received a new tax code from HMRC they would have been required to continue using the emergency tax code.
36. After submitting a self-assessment tax return, Mr E belatedly discovered that he had underpaid tax on his drawdown income for several years. In the Adjudicator's view, if Mr E had notified HMRC at an earlier date that he had income over £100,000 then he would not be in the unfortunate situation he now found himself in.
37. Mr E said that HMRC informed him, during a telephone call in September 2022, that it was the "PAYE company" which would be responsible for adjusting the tax payable

on his income over £100,000. However, Mr E had not been able to obtain written confirmation of this from HMRC. Notwithstanding, this was contrary to the information HMRC provided to Xafinity on 23 July 2019 and on 21 September 2022.

38. On reviewing the evidence, it was the Adjudicator's view that there had been no maladministration on the part of Xafinity and Equiniti in Mr E's case.
39. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome.

40. Mr E said that:-

- He telephoned HMRC again in November 2022. HMRC told him that: (a) it agreed with Xafiinty's position to a degree, and (b) he should inform HMRC if his salary changed.
- In his view, this statement contradicts what is shown on the HMRC website which states that an employer or pension provider should notify HMRC when there is a change in the money an individual earns from his/her job or gets from his/her pension.
- Xafinity is responsible for updating HMRC by reporting his income payments taken from the SIPP.
- He received a letter from HMRC in January 2023 which said that:

“The estimated pay on our system reduces allowances accordingly once it goes over £100,000...This can be generated from the RT1 data received from employers or pension providers, but the onus falls on the taxpayer to ensure we hold the correct estimated pay on the system.”
- Xafinity did not exercise “duty of care” when calculating the tax due on the income he drew from the SIPP.

41. Xafinity replied and said that:

“We do inform HMRC of changes to member's pension payments and this is done through real time reporting...This will allow HMRC to make any changes to Mr E's tax code if they believe the member is paying too much/little tax...

As previously confirmed our role in taxation matters on payments made is limited to applying the tax code as supplied by HMRC, we do not perform any tax calculations.”

42. I note the additional points raised by Mr E, but I agree with the Adjudicator's Opinion

Ombudsman's decision

43. HMRC guidance notes state that if an individual has income over £100,000, he/she must complete a self-assessment tax return even if his/her only income has already been taxed under PAYE. Penalties are applied by HMRC to individuals who fail to submit their tax returns on time even if no extra tax is due.
44. Adjusted net income is the amount that is relevant to most of the additional tax charges and restrictions in tax relief. An individual's adjusted net income is his/her total taxable income from all sources such as employment and pensions less certain tax reliefs but before any personal allowance.
45. One of the reasons why HMRC require individuals with incomes more than £100,000 to complete a tax return is so that it can ensure that they are repaying their personal allowance.
46. The personal allowance an individual is entitled to is reduced by £1 for every £2 of taxable income over £100,000. For the 2022/23 tax year, once income reaches £125,140, the whole personal allowance of £12,570 is lost.
47. Calculating an individual's adjusted net income can get complicated which is why HMRC require a tax return showing details of all income sources and allowable expenses to do so.
48. Mr E contended that Xafinity and Equiniti was responsible for: (a) calculating his adjusted net income and the reduction to his personal allowance for income above £100,000, and (b) considering this reduction when calculating the income tax payable on his drawdown income from the SIPP.
49. The onus, however, falls on Mr E to provide clear evidence to demonstrate that what he has said is correct. I have seen no such evidence which supports his position.
50. Mr E said that HMRC informed him during several telephone conversations that the PAYE company was responsible for adjusting the tax payable on his income over £100,000. However, he has not been able to obtain written confirmation of this from HMRC. Furthermore, his statement conflicts with the information which Xafinity said HMRC provided it in July 2019 and September 2022.
51. Every time Xafinity pays income to Mr E from the SIPP, it is reported to HMRC. This would have allowed HMRC to make any changes to Mr E's tax code if it considered that it had sufficient information to do so and notify Xafinity and Equiniti accordingly.
52. However, in accordance with HMRC's guidance notes, until such time as Xafinity and Equiniti had received a new tax code from HMRC for Mr E, they would have been required to continue using the emergency tax code. They could not change this tax code unless HMRC told them to do so.
53. Ultimately it was Mr E's responsibility to let HMRC know that he had untaxed income to declare by registering for self-assessment and filling in a tax return. HMRC could

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then calculate Mr E's actual entitlement to personal allowance when the tax return was sent in and update his tax code.

54. I find that there has been no maladministration on the part of Xafinity and Equiniti.

55. I do not uphold Mr E's complaint.

Dominic Harris

Pensions Ombudsman

24 April 2023