

The complaint

Mr H complains, on his late wife's behalf, about Prudential Assurance Company Limited's (Prudential) failure to correctly apply tax relief to her past pension contributions.

What happened

The late Mrs H took out a personal pension plan (PPP) with Prudential in October 1990. She agreed to make monthly contributions of £75 but after April 1992 these weren't collected – along with the contributions Mr H had agreed to make to his own PPP.

A complaint was made about the missed premiums in 1999 which was eventually considered by an ombudsman at the time and upheld. Prudential was told to ensure Mr and Mrs H's PPPs were returned to the position they would have been in had the premiums been paid on the appropriate dates. I understand that these premiums were allocated on the appropriate dates, but no tax relief was added to the premiums.

In January 2020, following Mrs H's death in October 2019, Mr H received the benefits payable from her pension – which amounted to £84,345.35. He had received a statement of the pension account and when reading through it, he became aware that the arrears had been credited net – and so therefore the tax relief that was due on the missed premiums hadn't been applied to the policy.

So Mr H complained to Prudential that as it had paid the settlement contributions as a lump sum into the plan – instead of through monthly contributions, Mrs H may have missed out on the available tax relief. Prudential demonstrated that all available tax relief had been added to the plan after October 2001, but confirmed that before 2001 all payments to the late Mrs H's policy had been made without the deduction of tax relief (on a gross basis). It apologised for its overall level of service and offered £200 for any distress and inconvenience it had caused.

Mr H didn't accept the outcome so he brought his complaint to us, where one of our investigators looked into the matter – but didn't think the complaint should be upheld. He said he was satisfied that the late Mrs H's plan had been returned to the position it should have been in including the provision of tax relief that Prudential was able to include after 2001 when tax relief regulation was updated. But he said that the responsibility to claim tax relief that would have been due on premiums between April 1992 and January 1999 lay with the late Mrs H, as she had been self-employed. He explained that during this period the self-employed were required to claim their own tax relief through their annual tax returns – which wasn't something Prudential would have been able to do.

So he didn't think Prudential had done anything wrong and he thought the £200 it offered the late Mrs H's estate – for the poor service it said it had provided by not responding to her queries, was fair and reasonable for the distress and inconvenience this had caused.

Mr H didn't agree. He said tax relief was due on the contributions when they were made – not when they were due to be paid. So he thought it would have been wrong for the late Mrs H to claim tax relief when she hadn't made contributions. He said that it wasn't now possible for her to claim the lost tax relief so Prudential ought to make good her financial loss.

The investigator made the following points in response:

- He agreed that it would be unreasonable to expect the late Mrs H to have claimed tax reliefs on premiums which hadn't been paid.
- But when the premiums were restored in 1999 following the upheld complaint, they should have been included in any tax assessment for that year.
- And even though premiums hadn't been collected previously, the late Mrs H wasn't aware of that and so ought to have been trying to reclaim tax relief as was explained and set out in the original member's scheme booklet.
- This would have meant the non-collection of premiums would have come to light and the matter would have been resolved soon after.
- He provided the relevant extract from the scheme members booklet highlighting the difference in how tax relief is claimed for both employees and the self-employed.
- He said he would only ask Prudential to make up the lost tax relief if he had seen evidence that the late Mrs H had previously been claiming it but had stopped due to an error from Prudential – which wasn't the case here.

But after further communications Mr H didn't accept the outcome, although he said we'd misunderstood the different forms of tax relief. He said that basic tax relief was automatically received by the pension scheme provider, so a claim with HMRC was only necessary if higher rate tax relief applied and the extra 20% needed to be claimed – which wasn't the case here. He also explained that during this time he had been unemployed and claiming sickness benefit while Mrs H received only a small income from her business – which meant she wouldn't have incurred a tax liability.

So, in addition to the fact that the PPP premiums had been paid by his late mother in law, there was no additional tax relief that needed to be claimed. He asked for his complaint to be referred to an ombudsman – so it's been passed to me to review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so I agree with the investigator. I've seen how strongly Mr H feels about this matter and I've some sympathy for the position he now finds himself in following the death of his wife. But I don't think Prudential should have to make up the lost pension premium tax relief – so I'll explain my reasons.

There's no dispute here that Mr and Mrs H were disadvantaged up to 1999 when previous premiums weren't allocated to their pension plans. And I've seen how Prudential was told to put Mr and Mrs H back into the position they would have been had the premiums been paid and allocated on the appropriate dates.

So the only matter which now remains from Mr H's complaint, following Mrs H's unfortunate death, is that tax relief wasn't added to those "missed" premiums.

Mr H believes that the value of his late wife's plan has been understated by around £20,000 which he thinks Prudential should make up. This decision is solely about the "missing" tax relief that hasn't been applied to the late Mrs H's pension plan and who was responsible for claiming that relief.

The late Mrs H was self-employed – Mr H has confirmed that she ran her own small business. This was her status when she began to make contributions to a PPP with

Prudential in 1990. Prior to the subsequent change in legislation during 2001, the self-employed made gross pension contributions from their normal earned income. These contributions then needed to be included in a tax return as an expense, which meant HMRC would then calculate any relief due, at whatever the marginal rate was, to reduce the overall tax bill.

So it wouldn't have been appropriate for Prudential to claim the relief on the late Mrs H's behalf as she hadn't paid tax on the premiums at the point she made them. Indeed, Prudential wasn't in a position to claim back anything on Mrs H's behalf. But I think it did have a responsibility to make her aware of that situation – which I think it did through two pieces of documentation.

The original PPP scheme members booklet, which was available to Mrs H when she took out the plan, stated that, *“if you are self-employed you pay premiums gross. These premiums are an allowable charge giving tax relief on earned income at the highest rate(s) of tax you pay”*.

And I've also seen a copy of an “SEPC form” which was issued to scheme members and which gave them the information contained within to send to HMRC for claiming tax relief purposes. So I'm satisfied that Prudential did make Mrs H aware at the time of the requirement for her to claim tax relief on her pension contributions herself. But there's no evidence to suggest that she did attempt to claim the tax relief during the first year or so when her contributions were made, or that she tried to claim tax relief during the period that the contributions were unallocated. The late Mrs H was unaware during that time that contributions weren't being allocated, so I would still have expected her to take the necessary course of action to ensure tax relief was claimed – as confirmed in the member booklet.

And in 2001 Prudential sent the late Mrs H a letter which explained the change to the way contributions were paid and applied for the self-employed. The letter said that, *“at the moment, being self-employed, you pay the gross payment each month and claim the tax relief when you send in your annual tax return to the inland revenue. After 6 April 2001, this will change. After 6 April 2001 as a self-employed person, you will pay the net amount each month and Prudential will claim basic tax relief on your behalf, adding it to your net payment to produce your gross payment”*.

So, while this changed things as the late Mrs H no longer had to claim the tax relief on her contributions, it ought to have alerted to the fact that she hadn't previously made a claim for tax relief. And because Prudential had applied all the missing premiums in 1999, the late Mrs H could have inserted all that information into the tax assessment she would have received after April 2001 and could have reclaimed all of the available relief. This would also have ensured that all the premiums which hadn't been applied and the requisite tax relief were claimed and added to the policy at that time – some 19 years before Mr H had to bring the complaint in 2020.

Mr H says that he and the late Mrs H's financial position, alongside the fact that his late mother in law had funded the pensions herself, meant that no claim for tax relief was ever required. He believed that Prudential automatically reclaimed basic tax relief from HMRC, and a further request from the late Mrs H would have only been required to claim higher rate tax relief for example.

But as I've explained that wasn't the position. The self-employed were required to claim back *all* tax relief, not just any additional relief. Prudential wasn't able to make a claim for the late

Mrs H, it was for her to do through her tax return, and it wouldn't be fair to ask Prudential to make up for that unclaimed tax relief now.

I have also considered whether Prudential could have done more to encourage the late Mrs H to ensure she claimed the tax relief. I've taken into account that for a number of years no contributions were applied to her plan and were subsequently applied as a compensatory lump sum, although they were applied according to the date each contribution should have been made. But Mr H's evidence would suggest that the late Mrs H had no reason to claim tax relief and wouldn't have done so in any case. And there's no evidence that she ever made any application to claim the basic rate tax relief, so it's difficult for me to conclude that she would have applied for the tax relief in 2001 or even at a later date.

But even if I am wrong in my assumption here, I'm satisfied that Prudential did make the late Mrs H aware of her responsibility to make a claim as a self-employed person. While Mr H thinks it should have done more to either make the late Mrs H aware of her responsibility or even to make a claim for the basic rate tax relief from HMRC itself, I think Prudential acted reasonably here and I don't think it's responsible for the loss of the tax relief.

I can understand Mr H had to bring this complaint, which was first begun by his late wife, at a very difficult time for him. And I don't underestimate how important this is to him. But I at least hope my investigation and explanation of things might bring him some closure on the matter.

But ultimately, I think it was the late Mrs H's responsibility, being self-employed, to claim the basic rate tax relief available on her gross pension contributions even when they were applied to the PPP in 1999 having been missed previously by Prudential. And I think Prudential was responsible for making her aware of that fact, which I think it did both at the point of sale through its scheme booklet and subsequently in 2001 through a letter it sent to all policyholders when regulations changed.

There's no evidence that the late Mrs H ever tried to claim back her tax relief, which I would need to see in order to support the claim that she would have done so at a later date if made aware. So I'm not going to tell Prudential to make up the shortfall in the plan's value as a result of the "missing" tax relief.

I note that Prudential has offered the late Mrs H's estate £200 for any distress and inconvenience caused by its response to the initial complaint. In the circumstances I think that's a fair and reasonable offer and I don't think it needs to go any further.

My final decision

For the reasons that I've given I don't uphold this complaint brought by Mr H on behalf of the estate of the late Mrs H.

I will leave it up to Mr H to decide if he wishes to accept Prudential's offer of £200, if it hasn't already been paid, regarding its response to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 4 July 2022.

Keith Lawrence
Ombudsman