

The complaint

Mr N complains that he wasn't aware he needed to claim tax relief on his contributions to his pension with The Prudential Assurance Company Limited (The Prudential)

What happened

Mr N took out a pension with Prudential in mid-1987. He initially paid about £30 per month but over the years this increased to £200 per month. He said that nowhere in the policy information did it say that Prudential would not recover the tax relief nor that he should claim it himself and he would not have known how to do this. He had been advised by a Prudential salesman who said he would benefit from opting out but there was no mention of claiming back tax on contributions. He didn't think the evidence of notes from an application form issued 11 years after he took out his pension was helpful and doubted the form would not have changed over that time. He had no record of the issue of tax relief being mentioned each time he increased his contributions. He referred to a 2018 statement and a small note on how tax relief works, but Prudential had never told him he needed to claim the tax relief himself.

Had Prudential told him to reclaim the tax he felt he would now be in a better position to retire at age 60 rather than needing to work on. He provided copies of the original documents and premium schedule (which differed from Prudential's record). Over the years he had paid in nearly £60,000 but had not received any tax relief or growth on it. He felt the original policy was mis sold.

The Prudential did not support his complaint. It didn't have a copy of the documentation he was provided with in 1987 but said this would have explained how the policy worked. His policy was an older style personal pension where the rules stated the premiums were paid gross but tax relief can be claimed. This was suitable for both employed and self-employed individuals. When the policy was arranged it expected its representative would have explained this.

The member booklet did also explain that tax relief was available. It provided a copy of a booklet from March 1987 it said would be similar to the one he would have received at the time. It said on page 4 that

'This flexibility enables you to pay the maximum contribution permissible each year for the purpose of claiming tax relief'

His initial confirmation of premium would not have referred to tax relief as this was covered in the member booklet.

His annual statement issued each year made reference to him claiming tax relief. It referred to the notes from a 2016 statement that referred to the need to claim tax relief. This said

Are you missing out on money from the taxman?

One of the many benefits of saving into a pension is the tax savings you currently get. For

example, if you pay tax at the basic rate and pay £100 a month into your pension, the taxman will add £25 to your pot without you having to do anything. If you pay tax above the basic rate you can claim back even more tax savings through your self-assessment. You get tax relief on every penny you contribute, normally up to 100% of your annual earnings

This statement also appeared on the 2017 annual statement.

It said Mr N increased the amount of his premium in 1988, 94,96,97,98, 99 and 2001. It said each time this happened it issued a certificate which explained it could be sent to HMRC to claim. It supplied a copy of an application form from 1988 which he would have had to complete to increase his contributions and which referred to claiming tax relief.

It also referred to the application form notes and provided a sample form similar to the ones he would have completed at the time. The form it supplied was from 1998. This referred to the contributions being fully deductible for tax.

It felt the documentation and sales process would have provided all the information he needed at the time to understand the tax position. His contributions were made gross and the Prudential had no way of knowing whether or not he was claiming tax relief on these.

It said the documents which Mr N supplied (which he believed related to the establishment of the scheme) actually related to his other pension policy which was set up for the purposes of contracting out of the state earnings related pension scheme and in respect of which no tax relief could be claimed.

Mr N also complained that some contributions were missing but it supplied further information to show this was not the case.

The Investigator thought the Prudential had treated Mr N fairly. She said firstly that the policy was set up in 1987 so she needed to consider whether this service had jurisdiction to consider the complaint. However the Prudential had agreed to consideration of the complaint and said it would not impose a time bar on it.

She noted that the original documents were not available and the closest was a members booklet from 1987. There were no notes of what was said at the time of the sale. Mr N said he did not remember the representative discussing tax relief nor that he would need to make sure he claimed this. The representative was a family friend so it was not really a sales process nor financial advice and tax may not have been mentioned.

She referred to the documentation and in particular the member booklet. There were a lot of references to tax relief but nothing to say that Mr N should claim it himself. But equally there was no statement suggesting the Prudential would be doing this on his behalf. At that time premiums were paid gross and relief claimed by individuals and this was the case until 2001.

Certificates to support a tax reclaim were provided whenever he increased the amount paid. This would have been a clear indication there was something Mr N needed to do or check. Mr N said he didn't understand all the papers and often would not read them all. She could not be certain what was said at the time of the sale. While it might be likely it would be mentioned it was equally likely that it wasn't something that was made clear at the time or well enough for it to resonate with Mr N. So she looked at documents in the form of the booklet and certificates. Prudential were not giving financial or tax advice and it wasn't responsible for telling him to claim the relief and from the papers it did seem there were prompts to provide information to HMRC. Prudential were responsible for guidance on how their plan worked which she felt it did, but not to provide financial advice.

Mr N didn't agree. He said that he was the only one with original documentation and this lacked information or direction that he needed to be aware that tax was not being reclaimed or that he had to claim it. He didn't have a members booklet despite keeping all papers. The representative never mentioned tax relief. If he had he would have claimed it.

He could not see how the investigator could rely on a booklet that he was never given. Even if the rules at the time meant premiums were paid gross Prudential should have told him he needed to claim tax relief but it didn't. He didn't recall receiving any certificates when he increased his premiums. He also felt this was relying on small print and expecting him to be financially savvy to know what to do.

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.

I first need to decide if the Prudential did anything wrong.

I have considered this and for the reasons set out below, I don't think it did, so I am not upholding this complaint.

Missing contributions

Mr N complained about missing contributions as well as the issue of claiming tax relief. I have seen the letters that Prudential has sent regarding the missing contributions. These seem reasonable to me and explain that it doesn't think there are any. I asked Mr N to confirm he was content and invited him to ask his accountant to review the papers if he wasn't satisfied with the answers provided. Mr N said he was always concerned but this was never the problem, it was when he was to claim back tax relief either from the Prudential or HMRC. I think the explanation provided by the Prudential is reasonable and in the light of what Mr N has said, I have not therefore considered the issue of contributions further.

Tax relief

When the policy was set up it was on the basis that contributions were paid gross. That meant that any tax relief would be claimed by Mr N personally. He says he understands the policy was set up on a gross basis. But he felt that someone that advises on pension should have shared information with him. That would have meant he didn't miss out. He wasn't financially savvy and didn't understand about tax relief. He said he was freelance from 1987 to 2013. From 2013 he started to use an accountant when he started his own business. He said he didn't realise he needed to tell the accountant as the contributions were personal. He didn't need to file a tax return until 2014.

Whether or not he claimed tax relief didn't make any difference to the premiums received by the pension scheme and Prudential would not have been involved or responsible for his personal tax reclaim. Therefore the amounts Mr N contributed and invested remained unaffected and therefore the current value of the pension scheme is unaffected. So the Prudential has not done anything wrong in not claiming tax relief on the contributions either directly or on his behalf.

Provision of information and advice regarding tax relief

I have therefore considered what information or advice Prudential should have supplied regarding claiming tax relief on the contributions to enable Mr N to understand he needed to do this.

It is clear the Prudential were not providing financial advice (after the policy was sold) and I have not been supplied with any evidence to suggest that. Also financial advice does not include tax advice so Prudential were not responsible for ensuring Mr N made tax reclaims.

Prudential was required to provide Mr N with information about how the pension worked. I say that because the Financial Conduct Authority Principles of Business that would apply to this policy state that it

'must pay due regard to the information needs of its clients and communicate information to them in a way that is clear, fair and not misleading.'

The Prudential has not disputed the policy was sold by one of its representatives and that it is responsible for that sale. As part of that I would expect the adviser to provide information about how the scheme works and that premiums were paid gross with tax relief claimed through Mr N's personal tax return.

There is no way to know whether this was explained at the time and Mr N is clear he has no recollection of that. As neither party has been able to provide original documents that might assist, I have considered other information that has been supplied over the life of the policy.

Prudential said Mr N had two policies. It claimed tax relief for one but not the other. As I would expect it said it issued annual statements. It said these were issued at the same time with one cover letter. It said the covering letter made clear that different tax treatment could apply to each policy.

It said the following wording was included in the 2016 and 2017 covering letters. These specifically referred to his pension policy by the policy number so there should not have been any doubt.

Are you missing out on money from the taxman?

One of the main benefits of saving into a pension is the tax savings you currently get. For example, if you pay tax at the basic rate and pay £100 a month into your pension, the taxman will add £25 to your pot without you having to do anything. If you pay tax above the basic rate you can claim back even more tax savings through your self-assessment. You get tax relief on every penny you contribute, normally up to 100% of your annual earnings.

If you have more than one pension plan with us, different tax rules may apply to each plan. Please refer to each Key Features document for full details. You can get more information from your local tax office or by visiting www.hmrc.gov.uk. You can also speak to a financial adviser

The Prudential also provided an example of an annual benefit statement from 2007 for the type of policy Mr N held. This was the earliest it had available. While not his exact benefit statement I have no reason to doubt it would differ as it said this was wording that would appear on each such statement. I have asked Mr N for copy annual statements. He said that these were the one item he didn't keep as he didn't realise he needed to.

The 2007 statement included a section as follows:-

Payments to your plan

All payments into your personal plan are usually fully tax deductible at your highest marginal rate. Tax relief should be claimed through your yearly tax assessment.

It said this wording was included in the annual benefit statement until 2013 when it was replaced with new wording.

In 2014 the annual benefit statement had new wording which it updated in 2015 as it said it may have been incorrect. The 2015 statement included an addendum which read as follows

ADDENDUM

This is an addendum to the 2013-2014 yearly statement for your Personal Pension Plan (ending 300)

Unfortunately, some of the information we originally provided in the covering letter supplied with your statement may have been incorrect for this type of plan. The monetary amounts stated in the 2013-2014 statements were correct. However, the supplementary information in the letter regarding how you can claim back tax relief may have been incorrect. The correct information is detailed below- please be aware that you have four years to claim back any unused tax relief. Please accept our apologies for this error.

How to claim back tax relief on your Personal Pension Plan

One of the main benefits of saving into a pension is the tax savings you can claim. For this type of pension, you make payments into your plan before tax relief is deducted. You can then claim back the tax relief at the end of the tax year through your self-assessment.

If you have made payments to your plan in previous tax years and have not yet claimed tax relief for these payments, you may still be able to do this. The deadline for reclaiming tax is four years after the end of the tax year in which you made the payments to your plan. For example, the deadline for claiming tax relief for payments made in the 2010/11 tax year is 5 April 2015. To make a claim, you should write to your local tax office, providing details of the payments made and the tax year in which these were paid.

This is important information and you should read this along with the 'Understanding your pension plan' section at the back of your statement. You should keep this addendum with your 2013-2014 statement.

If you have any queries, please contact us on the number shown on your statement.

For 2015, 2016 and 2017 Prudential said the annual benefit statement for Mr Ns policy included a section about tax relief reminding Mr N he needed to claim it via his tax return.

It said the following

Tax relief

The Government encourages you to save for your retirement by giving you tax relief on your pension contributions, which you receive via your annual tax return.

In 2018 the wording for Mr Ns policy was changed again to read as follows:-

How tax relief works

One of the main benefits of saving into a pension is the tax savings you can claim.

For example, you make payments into your pension after tax is deducted. You can then claim back tax relief at the end of each tax year through your Self Assessment. This reduces the cost to you of making payments into your pension.

Based on these letters and statements I think Prudential did provide information to Mr N highlighting the need to claim tax relief and further that this needed to be done through his self-assessment tax return. That was clear from as early as the 2007 benefit statement and has appeared in various forms since then. This information is in addition to the information that was set out in the copy booklet the investigator considered and the certificates issued when he increased contributions.

Given this pattern of references across different documentation over many years, on balance, it seems likely that the original documents did contain information indicating Mr N needed to claim tax relief. But even if I am wrong at least as early as 2007 it did. Further in 2015 there was a very clear statement highlighting that claims could only be backdated by 4 tax years.

So it does seem that the Prudential did provide information Mr N needed. I note he says he didn't always read or understand the papers. But that isn't the Prudential's fault. He could have asked it to explain if he didn't understand.

I note that he didn't submit a tax return until 2014 and by then had an accountant to help him. Based on the information set out above I think it should have been enough for him to be aware that he needed to claim tax relief. Further tax returns contain questions about contributions to pension schemes so might reasonably have prompted him to ask the question from the date he started to complete a tax return.

Mr N says that if Prudential had explained he would have claimed relief but I don't agree. I say that because it is clear from the evidence that from at least 2007 it did explain but he didn't make a claim. So whether or not the original documents were clear it would not have made a difference to what Mr N would have done. I say that because he didn't make a claim when information was supplied.

But even if I am wrong in all of that, I cannot see that Mr N has suffered a financial loss within the pension scheme as the tax relief didn't affect the contributions or amount invested in the pension scheme. Therefore the value of his pension is no lower than it would have been had he claimed any tax relief at the time.

I do understand Mr N's frustration that he has missed the chance to claim tax relief and can only go back four years to recover past missed claims. I also accept that Mr N may have suffered a financial loss, in that he may have paid too much income tax, but that isn't something for which the Prudential is responsible, for all the reasons I have given.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 15 March 2023.

Colette Bewley
Ombudsman