

The complaint

Mr P complains about misleading information provided by The Prudential Assurance Company Limited ("Prudential") regarding protected tax-free cash ("PTFC") available under his Section 32 policy.

What happened

Mr P built up benefits in his former employer's workplace pension scheme. In October 2004, the value of these benefits were transferred to a Section 32 policy provided by Prudential. This is a type of individual pension policy designed to hold benefits previously built up in a workplace pension scheme. The transfer value paid into the policy was £18,748.77. Mr P was aged 45 at the time of the transfer.

Annual statements

Prudential sent annual statements to Mr P in connection with his policy. These showed the projected fund value of the policy and estimated level of income and tax-free cash available at retirement. Statements issued between 2006 and 2018 stated that Mr P was entitled to "Protected Tax Free Cash: £34,563". From 2019 onwards, annual statements no longer referred to PTFC and instead referred to the option to take 25% tax-free cash.

This complaint

In early 2023, when he was aged 63, Mr P contacted Prudential to discuss taking tax-free cash from his policy. Based on the annual statements received, he believed he was entitled to PTFC of £34,563 (which was substantially higher than 25% of the value of his policy). There followed an exchange of correspondence over the next few months. Mr P was unhappy about the level of service and delays in Prudential responding. It also provided an incorrect FCA reference number and documents in an incorrect format. Prudential confirmed it had made an error and that Mr P was entitled to 25% tax-free cash and not PTFC from his policy. He was unhappy about this and complained. Prudential issued three final response letters dealing with the various issues Mr P was unhappy about, all linked to his initial query about PTFC. In summary, it apologised for the poor level of service provided, delays and the provision of incorrect information. In total, Prudential offered Mr P compensation of £650. Of this, £300 was in respect of providing misleading information about PTFC.

Mr P was unhappy with Prudential's response and referred the matter to the Financial Ombudsman Service. The main issue he remained unhappy about was Prudential's assertion he was entitled to 25% tax-free cash and not PTFC from his policy, as communicated in annual statements. He believed he was entitled to PTFC. He said if he wasn't entitled to PTFC and had been told this from the outset, he would have transferred the value of his policy to another provider to obtain better investment returns. So, either way, he believed he had suffered a financial loss.

One of our investigator's upheld this complaint. He explained to Mr P why he wasn't entitled to PTFC and that Prudential had made a mistake in its annual statements regarding this. He noted Mr P's comments that he would have transferred the value of his policy to another

provider to obtain better investment returns had he been given the correct information sooner. But the investigator wasn't persuaded Mr P would have acted differently given the annual statements issued since 2019 correctly referred to 25% tax-free cash and he hadn't since transferred away from Prudential. However, he thought that Prudential's apology and offer of £300 for providing misleading information about PTFC was inadequate given the length of time the error persisted between 2006 and 2018. He recommended that Prudential offer Mr P an additional £450 compensation on top of the £300 it had already offered.

Prudential accepted our investigator's recommendation. However, Mr P didn't agree and provided additional comments. Our investigator considered these but wasn't persuaded to change his view. Since agreement couldn't be reached, this complaint has been allocated to me to review and decide. This is the last stage of our process.

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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Is Mr P entitled to PTFC?

In deciding this complaint, I think it's important to express my view on whether Mr P is entitled to PTFC under his policy.

The transfer value of £18,748.77 paid into the policy in October 2004 comprised protected rights only. These were built up when he was contracted-out of the State Earnings Related Pension Scheme ("SERPS") while a member of his former employer's workplace pension scheme. Special rules applied to protected rights at that time. Firstly, they were non-commutable meaning they couldn't be converted into tax-free cash. Secondly, at retirement, protected rights had to be used to secure lifetime annuity income which increased each year by a prescribed amount and included a 50% spouse's pension. In summary, Mr P wasn't entitled to any tax-free cash from his policy when it was set up. There's no dispute about this.

It's important to note here that the concept of PTFC didn't exist when Mr P's policy started in October 2004. So entitlement to PTFC wouldn't have been communicated to Mr P when the policy was set up. I'll explain why.

On 6 April 2006, the rules to calculate members' entitlement to tax-free cash under workplace pension schemes were simplified. Instead of being based on a member's service and salary, it became a maximum of 25% of their commutable rights under the pension scheme. However, for some members, the new rules would result in lower tax-free cash than would have been available under the old rules. To address this, HMRC allowed individuals with pension funds built up before 6 April 2006 to protect their existing tax-free cash entitlement if it was greater than 25%. This enhanced tax-free cash entitlement is commonly known as PTFC. Individuals didn't have to take any action to secure this. Rather, pension schemes and providers like Prudential were required to calculate if PTFC applied to benefits built up before 6 April 2006 and update members' records accordingly so that it could be paid when benefits were withdrawn.

From 2006 onwards, Prudential communicated in annual statements to Mr P that he was entitled to PTFC of £34,563. I suspect what happened here is that, as part of the changes introduced on 6 April 2006, Prudential (or the former scheme administrator of the workplace pension scheme) carried out an arbitrary tax-free cash calculation based on Mr P's service and salary in his former employer's pension scheme. And then attached the resultant figure of £34,563 to his policy. This would have been okay had Mr P's policy contained sufficient commutable rights as at 6 April 2006 equal to the value of the PTFC such that he could withdraw this at retirement. But it didn't. It only contained non-commutable rights. I'm satisfied that Mr P was never entitled to PTFC under his policy. Prudential has already accepted that it made an error when it told Mr P he was entitled to PTFC.

Things changed again on 6 April 2012. On this date contracting out of SERPS was abolished. As a result, the special rules for protected rights were removed and they effectively became ordinary rights. This meant that at retirement, individuals could opt to take a reduced pension and a 25% tax-free lump sum. I note that between 2006 and 2012, the annual statements described Mr P as having a "*Protected Rights Fund*". From 2012 onwards, this wording was modified to "*Pension Fund*", presumably because protected rights no longer existed from 6 April 2012.

In summary, the history of tax-free cash rights available under Mr P's policy is as follows:

- October 2004 to April 2012 – no tax-free cash
- April 2012 to date – 25% of the policy value

Would Mr P have acted differently?

Mr P says he incorporated into his future financial planning the expectation that he would receive PTFC. He says he would have acted differently had he known he wasn't entitled to PTFC. He's explained how he would have transferred the value of his policy to another provider to obtain better investment returns. He's also commented on how his tax position would now be different had he known. He says that these factors mean his financial loss is greater than the compensation recommended by our investigator.

As explained above, Mr P wasn't entitled to *any* tax-free cash when his policy was set up in October 2004. He only became entitled to 25% tax-free cash because of the legislative changes introduced from 6 April 2012. Furthermore, from 2019 onwards, annual statements issued to Mr P no longer referred to PTFC and instead clearly referred to the option to take 25% tax-free cash. These are important factors to bear in mind.

It's unclear to know exactly what would have happened had Prudential provided correct tax-free cash information to Mr P. I've thought about this carefully. On balance, I'm not persuaded he would have acted differently. If Mr P was relying on the PTFC as much as suggested, I think it's fair to say that he would have spotted the lack of reference to PTFC in the annual statements sent to him from 2019 onwards. But he apparently didn't notice until 2023. Notwithstanding this point, there was no guarantee that taking benefits sooner or transferring and investing differently would have resulted in Mr P being better off compared to his current situation. Overall, there's not enough evidence that persuades me Mr P would have acted differently had he known the correct tax-free cash position or that he's suffered a financial loss because of Prudential's errors.

Unfortunately, mistakes can and do happen. The fact that Prudential provided incorrect information about PTFC doesn't mean it's compelled to pay this to Mr P. As explained above, he was never entitled to PTFC from his policy. Paying more than 25% tax-free cash to Mr P would place him into a position he's not entitled to be in and, more importantly, would be regarded as an unauthorised payment by HMRC and lead to punitive tax charges.

It's my view that Mr P has suffered a loss of expectation, trouble and upset because of Prudential's errors – and it's for this he should be compensated.

Putting things right

Prudential has already apologised and offered Mr P compensation of £300 for providing misleading information about PTFC. I agree with our investigator that Prudential should pay Mr P additional compensation of £450 given this wasn't a one-off error and it provided misleading information about PTFC between 2006 and 2018. This would result in Prudential paying total compensation of £750 to Mr P for this error. This is a fair and reasonable outcome in the circumstances.

My final decision

I uphold this complaint. If it hasn't done so already, Prudential should pay total compensation of £750 to Mr P. If it has already paid part of this, it should pay whatever amount is required so that Mr P receives total compensation of £750 for providing misleading information about PTFC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 November 2024.

Clint Penfold

Ombudsman