

## The complaint

Mr F complained that Scottish Widows Limited trading as Clerical Medical (Clerical Medical) did not administer his annuity policy correctly and failed in its fiduciary duty to him when it began to deduct income tax from his policy.

He believes this has caused him a financial loss, for which he would like to be compensated.

## What happened

Mr F is resident outside the UK. He held a Jersey Pension Plan with Clerical Medical which was administered in the Isle of Man. At some point in the past, the benefits from this policy were used to establish an annuity. The annuity was administered in the UK, although the scheme payments to Mr F were made from Jersey with no income tax deducted.

On 2 May 2023, Clerical Medical contacted the Income Tax Office in Jersey to query whether tax at the basic rate of 20% should be deducted from Mr F's annuity payments.

It said:

*Please note that our records are currently set for the income payable under this plan to be paid exempt from tax. However, we understand from our finance department, who deal with the annual tax return, that this may be incorrect.*

The Jersey tax office replied on 22 May 2023 to inform Clerical Medical that the payments should only be tax free if there was a reciprocal agreement with the country Mr F resides in, otherwise basic rate income tax at 20% should be deducted.

Clerical Medical subsequently contacted Mr F on 25 May 2023 to say it had been instructed by the Tax Office to deduct tax at a basic rate going forward.

Mr F replied on 4 July 2023 to express his unhappiness at this change. He said that he had entrusted his pension to Clerical Medical on the understanding that the payments would be made tax free.

Clerical Medical wrote again to the Jersey Tax Office on July 13 to check its records to see if Mr F was indeed subject to the income tax deductions. It also wrote to Mr F on the same day to inform him that it had queried the deduction once more with the Jersey Tax Office. It explained:

*we have recently been advised by the tax office that where a client resides in Jersey, their income may be paid exempt from tax. However if they reside outside of Jersey, tax should be deducted at basic rate (20%) This is why the amendment to your taxation basis has occurred*

It wrote again to Mr F on 17 July 2023 to say that the Jersey tax office had confirmed that basic rate income tax at 20% should be deducted from his annuity payments.

Mr F wrote to Clerical Medical on August 11 2023 to complain about it deducting tax from his annuity payments. He said Clerical Medical had a fiduciary responsibility to protect policy holders' interests but had taken no action to advise its clients on how to re-arrange their policies to avoid this tax.

Clerical medical responded to Mr F's complaint on 31 August 2023. It did not uphold his complaint, saying:

*all pensions held in Jersey where the policy holder does not reside in Jersey are subject to 20% tax on their pensions. We wrote to you explaining that as your proceeds arose from a Jersey fund, they are subject to Jersey taxation laws, we also explained that we do not decide how much tax to deduct, and we act solely on the instruction of the Tax Authorities*

It went on to say that it was not authorised to provide financial advice, explaining:

*we would not offer advice on customers funds Pensions need to be maintained by the policy holders and any advice would have to be given to you personally or via an IFA/Wealth Management Company so you 'will have to forgive the fact that we would not have advised you to move your pension to a different location.*

Mr F replied on 29 September 2023 to make a further complaint. He said:

*It is up to Clerical Medical to fulfill their fiduciary responsibility to protect their policy holders, who are affected by this outrageous ruling.*

*Thank you for informing me of the rules and regulations, but this is a contractual matter between me (the policy holder) and Clerical Medical, where I expect it to be resolved to my satisfaction at 100% of policy limits, not 80% of policy limits.*

Clerical Medical responded to on 24 October 2023, again not upholding Mr F's complaint. It said:

*You are correct in your statement that Clerical Medical have a fiduciary responsibility to fulfil agreements and contractual obligations with our clients. That does not cover changes made by any relevant tax agency, in this instance the Jersey Tax Authority. We are obligated to deduct tax as directed by said Tax Authority, I appreciate your frustration however we cannot alter this nor challenge any decisions made at a legal and regulatory level*

*While I am sorry you feel that the Jersey Tax Authority are moving the goal posts and this is a decision that should not affect you it is not something we as your policy provider are able to influence You have an agreement with Clerical Medical to manage your policy, you do not have an agreement with Clerical Medical that indicated a set tax rate. This is solely set at a legislative and regulatory level.*

Unhappy with this response, Mr F brought his complaint to this service. An Ombudsman examined the available evidence and decided that this was a complaint we could investigate.

Our investigator reviewed all the evidence available and formed the view that Clerical Medical had not treated Mr F unfairly and his complaint should not be upheld.

Mr F remained unhappy and so the complaint has now been then passed to me to make a final decision.

## **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.

Having done so, I have reached the same conclusion as our Investigator and do not uphold Mr F's complaint.

I realise that this will be disappointing to Mr F and so I will explain now how I have reached my conclusions.

Firstly, I think it's important to reflect upon the role of this Service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Where it has, we expect a business to compensate a customer for any financial loss and distress and inconvenience they have suffered as a result. Consequently, I would need to find it fair and reasonable that any financial loss Mr F has suffered results from errors made by Clerical Medical.

In summary, I consider I need to look at two separate elements of his complaint:

- Was Clerical Medical correct to deduct income tax at the rate of 20% from Mr F's annuity payments from mid 2023?
- Should Clerical Medical have done more to mitigate the effect of the introduction of income tax on Mr F's policy?

When making my decision, I have to consider the law, relevant regulatory rules and good industry practice when reviewing the evidence.

Looking first at whether Clerical Medical was correct to begin deducting income tax from Mr F's annuity payments, I have carefully reviewed all the correspondence it had with the Jersey Tax Office. I can see that the Tax Office explained that all pensions held in Jersey, where the policyholder does not reside in Jersey, are subject to a 20% tax. I can also see that Clerical Medical enquired to double check that the country Mr F resides in does not have a reciprocal tax agreement allowing the payments to be made to him without deducting tax. The responses from the Jersey Tax Office indicate clearly that it believes that Mr F should be subject to income tax deductions.

Clerical Medical is correct in saying that it has no discretion when it comes to obeying such a direction from a lawful regulatory or government department. Consequently, I can't see that Clerical Medical has done anything wrong in applying the tax deductions it has been instructed to.

I will turn now to examine Mr F's view that Clerical Medical should have done more to try and help him to mitigate the effects of this tax change to his annuity payments. I have considered the evidence and find that Clerical Medical made a business decision a number of years ago to provide a non-advisory service to its customers. In order to provide financial advice, it would need to be authorised by the Financial Conduct Authority to provide such advice, which it is not. Consequently, Clerical Medical could not provide any financial advice to Mr F, but can only act upon his explicit instructions.

Given this, I can't see that it has done anything wrong in this regard either.

Overall, and disappointing as it will be for Mr F to hear, I can't see that Clerical Medical has done anything wrong or treated him unfairly.

**My final decision**

For the reasons given above, I do not uphold Mr F's complaint.

Scottish Widows Limited trading as Clerical Medical need take no more action to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 December 2024.

Bill Catchpole  
**Ombudsman**