complaint

Mrs C's complaint is about the advice she received from Clydesdale Bank Plc to make a single contribution to a new personal pension in 2011.

Mrs C says she only commenced the pension on the adviser's assurance that she would receive higher rate tax relief in full.

background

Mrs C's circumstances at the time of the advice are summarised as follows:

- She was aged 45, recently widowed with dependent children.
- For nine years she had been in her employer's final salary pension scheme, in which the normal retirement age was 60. She had no other pension provision.
- Although family members lived in two other properties she jointly owned, a third was privately let and provided her with rental income.
- Mrs C expected to be a higher rate tax payer owing to a combination of this, her earned income, and the widow's pension she was receiving.
- Mrs C had some limited experience of investing in shares previously, and held one stocks and shares ISA and a similar amount in cash ISAs, all totalling about £17,000.
- The previous year she had also invested £40,000 in a 3-year fixed term deposit, and some other deposits were earmarked for home improvements.
- She had a further £140,000 to invest in a combination of investments and pension contributions to provide for her retirement.
- Her attitude to risk was 'Moderate'.

Clydesdale's adviser completed a 'fact find' document, which initially recorded that Mrs C was reluctant to address the shortfall in her pension provision. She thought property investments would provide rental income for her retirement, as well as being able to pass them on to her children in the event of her death. However the adviser then noted that in view of the higher rate tax relief available, Mrs C was agreeable to making pension provision as part of the proposed investments. The adviser explained the following in her report:

'Tax relief is available on the contributions you pay into the plan. This means that for every £800 you pay, £1,000 is paid into your plan. The balance is paid by the government. As a higher rate taxpayer, you can claim the additional tax relief via your yearly tax return… The value of tax relief depends on your financial circumstances.'

Mrs C was advised to invest approximately £120,000 into a new ISA, unit trust and investment bond together with £20,000 (net) into a new personal pension, as well as make future regular pension contributions. The single pension contribution was to be split evenly between two broadly 'balanced managed' funds. A file note indicated that Mrs C was going on holiday in April 2011 and so initially agreed only to make the single premium pension and ISA investment before the end of the tax year due to their 'time critical nature'.

Mrs C's accountant subsequently explained that she would not receive an additional 20% of higher rate tax relief on *all* of her £20,000 net contribution in the 2010/11 tax year. Mrs C considered that she had been misled and asked if she could cancel the contribution. According to Mrs C, Clydesdale's adviser was apologetic and attempted to get the personal pension provider to re-date the contribution to the 2011/12 tax year, when more higher rate relief was available. The provider was unable to do this as it was in breach of the tax rules.

Subsequently Mrs C complained to Clydesdale (and as a result did not proceed to make the other investments or regular pension contributions). Her complaint included the following:

'When you calculated that I would fall into the 40% tax band, it was at a very close margin. Through the estimated figures I provided, you calculated that I would be approximately £100 - £1,200 over the threshold, depending on some expenses. When I expressed concern that I might be a little close you reminded me that I would be missing out on a considerable annual financial advantage if I didn't proceed. You stated that even if I was £1 over the 40% threshold, if I invested £20,000 I would receive £5,000 on submission of my tax return on top of the automatic relief any basic rate tax payer would receive.'

Clydesdale rejected Mrs C's complaint. It said the adviser did not recall having admitted to making an error – and it considered it likely that she *had* explained the tax relief available to Mrs C at the time. Unhappy with Clydesdale's response Mrs C contacted this service.

I have now issued a provisional decision on this complaint, summarised as follows:

- It was clear that Mrs C's and the adviser's recollections were in conflict – but what I could establish was that the adviser's report to Mrs C did not overtly state that all of the £20,000 contribution would attract higher rate relief. It had gone on to add '*The value of tax relief depends on your financial circumstances.'* It was possible that when the matter was discussed verbally, Mrs C gained a contrary impression – but that could have arisen from a genuine misunderstanding as much a negligent statement the adviser had made.

- I also considered what was the *suitable* advice Mrs C should have been given. Mrs C had a shortfall in her pension provision, and as her husband had passed away she was now more reliant on her own pension and other assets in her later retirement. Her employer's provision was likely to produce a lump sum and a pension of less than one third of her retiring salary. So I did not consider it would have been unsuitable advice to make additional pension provision as part of retirement planning.

- Based on the income details collected in the fact find, the adviser could reasonably have concluded Mrs C was, or was shortly to be, a higher rate taxpayer. Mrs C's actual tax return was completed later that year. This showed she was not ultimately a higher rate taxpayer for 2010/11 due to the length of time she had been receiving a spouse's pension and a salary at the levels recorded on the fact find, and the impact of some expenses that had been offset against her rental income.

- Notwithstanding this it had already been noted on the fact find that Mrs C was shortly going to use some of her other assets to pay off the mortgage on her rental property. So the mortgage interest, which up to then was being treated as a deduction from her taxable income, would then cease. For reference this interest figure on her 2010/11 tax return was nearly £2,400. Mrs C would also reasonably expect future increases to her salary, the widow's pension and interest on maturing investments.

- Taking all of these factors into account I considered on balance that the adviser was right to recognise that Mrs C could mitigate future higher rate tax charges by contributing to a pension. But Mrs C could only obtain higher rate relief on that part of her total income (from earnings or otherwise) that fell into the higher rate band, after any existing pension contributions were taken into account. So a calculation of the available tax relief was easier towards the end of each tax year.

- It was therefore reasonable for the adviser to recommend annual contributions that were likely (over a number of years) to obtain Mrs C higher rate relief on the overall amount she has shown to be willing to commit to pension planning. On the basis that Mrs C did agree to contribute to the pension in 2011 to obtain higher rate relief, I consider it more likely than not that she would have followed this alternate advice.

- Mrs C was not attracted to 'added years' in her employer's pension scheme because of the inflexibility of the death benefits. Mrs C's employer did offer a money purchase Additional Voluntary Contribution scheme, but I considered a stakeholder or personal pension was potentially more useful as it would allow Mrs C to make single premium contributions at the end of each tax year. But whilst the personal pension had similar annual charges to a stakeholder, it attracted a £1,000 initial commission deduction.

- Nevertheless, Mrs C's pension funds would have increased by around 20% from April 2011 up to my provisional decision. Had Mrs C not contributed the whole sum into her pension at once, it was likely that higher rate tax would have been suffered on income or interest from investing elsewhere. So it seemed improbable to me that Mrs C had been disadvantaged overall by prematurely paying in all the £20,000, despite suffering a £1,000 initial commission charge she would not have had to pay.

As a result of all the above I reached the conclusion that, essentially, Mrs C's only tangible loss was the lack of ability to claim higher rate tax relief on her £25,000 *gross* contribution. I considered she could have contributed (and still been contributing) a similar overall amount as a series of smaller payments. Higher rate relief equal to another 20% of each gross contribution could have been obtained through her tax return around six months after the end of the tax year to which it related.

Most of this higher rate relief would have been obtained by now – and much of it relatively recently, due to an increase in Mrs C's income. A small amount would have needed to be claimed in the future. Because of this, I considered it would provide approximately the right amount of redress to Mrs C if no adjustment was made for interest on past tax relief that could have been claimed (or discounting of future relief).

Mrs C's loss is therefore 20% of gross contributions totalling £25,000 – that is, £5,000. The aim of redress is to place Mrs C in approximately the same position as if her pension fund was £5,000 larger. But any payment into Mrs C's pension fund is treated as a tax relievable contribution. My provisional decision was therefore that Clydesdale should make a payment of £3,000 to Mrs C. She could then contribute this into a pension arrangement, giving it a gross value of £4,000 – and claim the additional £1,000 in her next tax return.

Clydesdale responded to my provisional decision confirming that it had no further comments.

Mrs C reiterated that she had not been interested in making pension provision until she was persuaded to so do by the adviser – and that had happened as a result of a misrepresentation that she would receive full higher rate relief. She emphasized that the adviser had reassured her repeatedly on the telephone that the misrepresentation was true, and had to apologise subsequently for saying so.

Mrs C was also concerned that she had been pressured into making a pension contribution at the end of a tax year, when she had recently been bereaved. She suggested that the commission payable to the adviser provided an indication that the advice was not in her best interests.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Although I have reviewed in particular the further points Mrs C has made, I have not found grounds to depart from the reasoning in my provisional decision. I made that decision being mindful that Mrs C's and the adviser's submissions differed about the verbal advice given. Due to this conflict I accept it is possible Mrs C was misled by the adviser – and in that event she would have felt very let down on discovering the true situation.

However the basis of my provisional decision was that it would have been possible for Mrs C to obtain the higher rate relief she evidently found attractive, if she had been advised to make a different pattern of contributions. Mrs C was advised inappropriately to pay £20,000 net as one single premium – and it seems to have been part and parcel of that advice that the adviser thought higher rate relief was available during the 2010-11 tax year. So this in my view explains the (mistaken) urgency about Mrs C making her contribution. I appreciate that this came at a distressing time for Mrs C but it appears that the adviser attempted to address her financial planning needs – albeit in the wrong way.

On the matter of the commission payable to the adviser, I have explained why (fortuitously) Mrs C is likely to be better off having paid all of the £20,000 net contribution prematurely. It is wrong to suggest that contributing to a pension – in the right format – was not likely to be to Mrs C's financial advantage. The redress I have proposed recognises that it would have been possible for Mrs C to obtain an additional 20% tax relief on her contributions that she may not have to pay on the income she draws out of the pension in retirement.

my final decision

I uphold Mrs C's complaint and require Clydesdale Bank Plc to pay her compensation of £3,000.

Gideon Moore
ombudsman