

complaint

Mr D's complaint against The Prudential Assurance Company Limited concerns the advice about the contributions that he could have paid to his personal pension plan via the carry forward option to utilise unused relief. He considers the adviser who, was his brother in law, misled him.

background

The adjudicator issued her assessment rejecting the complaint on 12 April 2013. She considered that whilst it may have been Mr D's intention to pay more into his pension plan using carry forward/back relief there was no evidence that advice was given to him about further single contributions after 1993 and prior to 1997. The adjudicator considered that as she was unable to determine conclusively whether advice was given or not about the additional contribution and in her view there was not enough evidence for her to uphold the complaint.

Mr D replied on 13 May 2013 and said in summary –

- On the balance of probabilities every piece of evidence available in regards to the wider circumstances supports his complaint and he asked for the papers to be reviewed by an ombudsman.
- He understands that he is complaining about Prudential not his brother in law personally but his actions and Prudential's actions must be considered as one and the same.
- The photocopy of the fact find completed in 1993 had comments attaching to it that the fact find was not completed fully as "client is consultant's brother in law" and this aspect of the relationship was accepted by Prudential and explains why the fact find was not completed fully. Prudential cannot then now reject based on an incomplete form when it was the adviser's responsibility to fully complete the form.
- The fact find also refers to a further single pension contribution of £5,000 and refers to TSO5 single premium. This was an estimate of his future single contribution and could not possibly be the £16,384 single premium he was finalising that day.
- It would be perverse if he had not made his brother in law aware of his academic studies at the time but this would not have made a difference to his extremely healthy financial position. He provided incontrovertible documentary evidence from his distance learning provider that he planned to go to university when the fact find was completed in November 1993. This indicates that Prudential failed in its regulatory duty to ensure full completion of documentation.
- The information in 1997 indicates that the adviser did plan for him to make a single contribution using carry forward. He wrote and made a request to Prudential and as he could not make a contribution as he did not have net relevant earnings, this indicates he was badly advised. If there had been any doubt over carry forward after the end of the 1994/95 tax year he would simply have done it there and then.

- He had behaved as a model citizen for his retirement planning and it is inconceivable for Prudential to say he was aware he could not make contributions to the plan through a lump sum as he was aware he could not continue regular contributions.
- He did meet the adviser between 1993 and 1997. In 1995 he did discuss pension matters and he provided a copy of his diary pages to show a meeting was held in March 1995. This was because he had ceased his employment and then stopped his regular contributions.
- The Financial Ombudsman Service should ask if the adviser was qualified to provide pensions advice in 1993.
- Mr D raised the issue of his credibility and that he had provided his best recollection of the events. His account of events is 100% consistent and the compelling pattern of events and circumstantial evidence corroborates his claims.

Mr D provided additional calculations in regards to the carry forward forms, and said Prudential's calculations were wrong and misleading.

Prudential replied and said that on revisiting the fact find that was completed in 1993. This shows that on the page headed 'Plans you already have' a £5,000 single premium Prudence Bond Mr D had invested in and this was called a "T505" as per the fact find. Also that the fact find did not have to be fully completed as some consumers do not wish to disclose full details and there is no evidence that the adviser was insufficiently trained or supervised.

Mr D was given the opportunity to comment on the additional evidence and confirmed he had no additional comments.

my findings

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

In November 1993 a gross single premium of £16,384 (net amount paid was £12,288) was paid into Mr D's pension plan using the carryback facility that was available.

Whilst it is not recorded that Mr D was going to leave work and start studying in my opinion as the adviser was the brother in law of Mr D, I do consider that he would have been aware that Mr D was returning to education.

Whilst it is possible that when Mr D left employment in 1995 he could have paid an additional single premium up until the end of January 1997 there is no evidence from the fact find that this was planned.

I have reviewed the poor copy of the Personal Financial Review document that was completed in 1994 (now some 19 years ago) and note that it appears to note that Mr D wanted to maximise his carryback. However the copy of the document that has been provided is poor quality and some cannot be read. There is however no evidence by way of letters or correspondence from Mr D confirming that he wishes to pay in a further £17,000 into his pension plan.

Whilst Mr D states that he remembers well what was discussed at the time I have to bear in mind that the events referred to took place some 19 years ago. With the passage of time it is clear that recollection of events fade and in my opinion there is insufficient evidence from the time to confirm that Mr D wanted to pay a further sum into his pension plan. The Prudential have confirmed that the representative contacted them in June 1997 to see whether it was possible to use the carry forward facility again. However the Prudential confirmed that this was not possible after January 1997 following Mr D stopping work in 1995.

If as Mr D now argues he had wanted to use the carry back facility to pay further contributions into his pension plan and this was not possible as a result of the failure of his brother in law to give him appropriate advice then I consider that there would have been some correspondence at the time to indicate that Mr D was very unhappy that he had been unable to pay the additional sum into his pension plan and to get the appropriate tax relief. There is no evidence that Mr D raised the issue about being unable to pay the additional contribution he now states that he wished to pay until he complained to the Prudential in 2012 some 17 years later. In my opinion this would tend to indicate that whilst there may have been plans to make further contributions using the carry back facility these were dropped once it was discovered that the regulations would not permit it.

I have considered whether it would be possible to argue that the reason that Mr D did not complain sooner was that the adviser was his brother in law. However in my opinion this would not have stopped Mr D complaining about poor advice that he states that he received from the Prudential in 1997 at the time that the issue was discovered as Mr D would have lost tax relief worth several thousand pounds.

Finally the Prudential has argued now that in its view the reference to £5,000 single premium refers to an existing single premium investment bond that was made in 1992. The Bond is referred to as a T50 plan. Mr D has argued that this refers to an additional contribution to his pension plan that he wished to make. As the details on the fact find are in the page headed 'Plans you already have' I have to conclude that the Prudential's explanation of this note is more plausible.

my final decision

I do not uphold this complaint and I make no award.

Adrian Hudson
ombudsman