

complaint

Mrs C has complained that a representative of The Prudential Assurance Company Limited mis-sold her pension policy, as she understood that she was arranging a savings plan to provide an income which was not taxable – rather than a taxable pension income.

background

One of our adjudicators considered that this complaint should not be upheld. In summary she concluded that:

- The illustration given to Mrs C at the time of the sale only specifically confirmed that the proportion of her policy proceeds payable as a cash sum was tax-free. The supporting documentation (such as the policy brochure) explained that *'your pension...will be taxed as earned income'*.
- Prudential was required to deduct tax from annuities in accordance with the tax code provided by Her Majesty's Revenue and Customs (HMRC).
- Whilst HMRC had provided a tax code of 'NT' (no tax) to Prudential for Mrs C's annuity for several years, it had recently supplied a 'BR' (basic rate) tax code and Prudential was therefore obliged to deduct 20% tax from her annuity payments.

Mrs C disagreed with the adjudicator's view for the following reasons:

- The policy was sold to her in an inappropriate environment (her place of work) and she felt she was rushed. The representative agreed to take some of the documents back to complete in her own home.
- Prudential's representative was a regular client at her workplace and so the documents were signed in good faith.
- The representative encouraged her to take out the policy. She was told it was a savings plan and not a pension that would be taxed.

As Mrs C remained dissatisfied she asked an ombudsman to review her complaint. Prudential has confirmed that it has nothing further to add.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not found compelling evidence that Prudential misled Mrs C.

I accept that I cannot be sure of what the adviser said to Mrs C, and that in some respects her account does sound typical of what is likely to have been discussed. For instance, Mrs C says that she was told that the government would also contribute (in the way of tax relief). In other words if she paid in £100, because she was self-employed she could count her contribution as a deduction from her overall tax assessment at the end of the year – and save the income tax she would otherwise have paid on that contribution.

For that very reason the income paid out of a pension plan is still taxed, as it represents deferred income. However 25% of the policy proceeds can be paid out as a lump sum *free of tax*. So in respect of this element the policyholder has never paid any tax, either on the way into the plan or on the way out. As the policyholder's total income is likely to reduce at retirement, and the personal allowance (the starting amount of income they can receive free of tax) increases with age, not all of the pension income may be taxed at as high a rate as when they were working. So this is regarded as a tax-efficient way of saving for retirement.

Mrs C was self-employed without access to an employer's pension scheme. So I consider it likely that the adviser explained these tax savings in starting a pension – and her recollections suggest she agreed to do so on that basis. This does not strongly suggest to me that Mrs C was not able to understand or appreciate what was being discussed, despite her comments about the sales environment. And I consider it likely that she would have referred back to the documentation at a later point, if she was uncomfortable with the pace of the sale.

I cannot rule out entirely the possibility that the adviser misled Mrs C about the benefits. However this is at odds with the written documentation – and might reasonably have prompted a query from Mrs C at the time, if she understood that her income would not be taxed. On the balance of probabilities I consider it more likely she was given enough information to understand that only the lump sum payable from her policy was tax-free, even if she can no longer recall this.

I appreciate that Mrs C's misunderstanding of the position has been compounded by HMRC only recently instructing Prudential to deduct basic rate tax from her annuity. This might mean that HMRC did not have the right information in the earlier years to correctly tax the annuity – but could also mean that Mrs C might be able to claim back some of the tax she is now paying, if it is too high an amount. Whilst I accept the situation has caused Mrs C some concern, it is not the fault of Prudential. It is open to Mrs C to check with HMRC whether she is now paying the correct amount of tax and if any adjustments are due.

my final decision

I do not uphold Mrs C's complaint and make no award.

Gideon Moore
ombudsman