complaint

Mr and Mrs R feel that The Prudential Assurance Company Limited wrongly failed to point out the likely implications of making withdrawals from their investment bonds given Mrs R's higher-rate tax status – and that this failure led to her facing an unnecessary and unexpected tax bill.

background

The background and circumstances of this complaint are set out within my provisional decision of 11 October 2018. A copy of this is attached and forms part of this decision.

The Pru disagreed with my provisional decision, and said:

- It is not responsible for the tax liability incurred due to Mr and Mrs R's later decisions to make withdrawals. Its 2016 and 2017 advice concerned adding extra funds and not explicitly about making withdrawals
- There is nothing wrong with a higher rate taxpayer investing in this type of product; it is more about the position at the time of claim/withdrawal
- All relevant and appropriate information was provided to Mr and Mrs R, both at the point of sale but also during the subsequent meetings in 2016 and 2017
- The top-ups in 2016 and 2017 were recommended for a minimum term of five years. There's no evidence that Mr and Mrs R made it aware they intended to take any withdrawals within this period. Mrs R's tax status may have subsequently changed to that of a basic rate taxpayer, with the plan being in joint names not of concern
- A genuine mistake was made by its representative regarding the Chargeable Event letter, and this was redressed correctly. It does not follow that it gave incorrect information to Mr and Mrs R at other meetings. All literature and information provided makes clear that higher rate taxpayers would be subject to tax at the difference between basic and higher rates of income on any chargeable gains

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. For the reasons outlined in my provisional decision I'm satisfied this complaint should be upheld with compensation as detailed.

I did not say there was anything intrinsically wrong with a higher rate taxpayer being recommended this product as long as the potential tax implications were fully explained.

I also did not believe there was sufficient evidence to conclude that Mr and Mrs R had told the advisor in either 2016 or 2017 of their intention to make withdrawals within five years. In fact, I indicated that I thought it was unlikely they had made this clear.

But I think it was fairly clear that Mrs R was higher rate taxpayer while Mr R did not pay any tax, and that this was situation was likely to continue. There was certainly no evidence that it was likely to change, and the advisor did not explore this crucial issue.

As a result I still believe the advisor failed to make clear to Mr and Mrs R that their existing arrangement, holding the bond in joint names, rendered them liable to a potentially unnecessary tax liability assuming they made any withdrawals, let alone fully surrendered the bond, while Mrs R was still working.

Given what they told the advisor, I think she ought to have pointed out that they could avoid any chargeable gains if the bond was moved into Mr R's sole name. For the reasons outlined in my provisional decision, I think – in this case – it's more likely than not that if she had explained this Mr and Mrs R would've moved the bond into Mr R's sole name.

I accept the information contained references to the taxable status of gains but I do not think these were sufficient to make Mr and Mrs R aware that their existing set-up was unlikely to prove tax efficient. I also do believe the advisor's mistake in 2017 was highly significant and indicated she had probably been unaware of the tax position of this bond in 2016 as well.

The Pru appears to argue that it was only offering advice about new cash injections rather than the suitability of the original advice. Yet the advisor's 2016 report clearly states that Mr and Mrs R were, 'concerned that you have had no face to face advice on your existing investments and feel that the poor performance has been a result of this .You now want the ongoing face to face advice that the Prudential can offer as you approach the years until retirement at least.' Therefore Mr and Mrs R reasonably expected the Pru advisor to assess the suitability of their existing bond not merely any new cash injections.

For these reasons, I am satisfied the Pru should share responsibility (with the original advisor) for the unnecessary tax bill faced by Mr and Mrs R when they chose to make withdrawals.

my final decision

I uphold this complaint and instruct the Prudential Assurance Company Limited to pay Mr and Mrs R £725. It should also pay the £300 previously offered in lieu of the trouble and inconvenience caused, assuming this has not been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 1 December 2018.

Tony Moss
ombudsman

Provisional decision

complaint

Mr and Mrs R feel that The Prudential Assurance Company Limited wrongly failed to point out the likely implications of making withdrawals from their investment bonds given Mrs R's higher-rate tax status – and that this failure led to her facing an unnecessary and unexpected tax bill.

background

Mr and Mrs R also complained about the advice initially offered by an independent financial advisor (IFA). These two complaints have been considered together, initially by the same adjudicator and now by me, the same ombudsman. This is because there is an interlinked issue of who is responsible for the advice during various periods of time. My decision concerning the other business is being dealt with under a separate complaint reference.

In 2014 Mr and Mrs R were recommended to invest in a bond set up in joint names by an independent financial advisor. In the summer of 2015 they parted company with the advisor, eventually asking the Prudential to take over their portfolio of pensions and investments and to offer new advice about these. In January 2016 the Prudential was recorded as advisor on this existing bond. One of its advisors met Mr and Mrs R and provided new advice in February 2016.

As a result of this advice they put more money into this bond and made other investment changes. They also made fresh cash injection in 2017 into the same product.

They began making withdrawals in late 2016 and incurred a tax liability on these.

After receiving a tax bill Mr and Mrs R complained to both businesses that they had not forewarned them about the potential tax liability which arose from any returns and/or withdrawals.

An adjudicator at this service felt their complaint against both businesses should be upheld as, in his view, neither had explained the consequences of both bonds being set up in joint names rather than Mr R's sole name – and both should have realised that Mr and Mrs R could've avoided any liability if the bonds had been in Mr R's sole name. Given they had recently (as a result of further advice) put the remaining bond into Mr R's sole name, by deed of variation, he was satisfied they would have done this in the first place if properly advised. Considering the relative roles of the Prudential and the original advisor he felt they should share responsibility for this unnecessary charge.

He therefore proposed that the Prudential pay Mr and Mrs R £725, half the tax bill. Given the inadequacy of the advice he also thought it should return the £1,200 advice/set-up fee plus pay an additional £100 for the trouble and upset caused by this poor advice.

The Prudential did not agree, and said:

- The adjudicator claimed that "during the review they disclosed their intention to withdraw large sums ….for the children's university support, home/garden work and possibly a new car… but neither the Fact Find or the Suitability Report makes any reference to these planned withdrawals
- The new PIP was recommended for a five year term. Mr and Mrs R claimed that they were just looking to park some savings till the following tax year is not in line with its report which recommends the PIP for a minimum five year term
- It should not be held responsible for 50% of the tax liability from a sale it did not recommend, offer new advice about or withdrawals it was not made aware of

- Its Suitability letter (concerning a new cash injection) explained (on page 9) that withdrawals (and surrenders) would be subject to tax at an investor's marginal rate, fully setting out the correct tax position
- It accepts that its advisor made a mistake in March 2017 and paid £50 in lieu of the resultant £42 tax liability. Mr and Mrs R have therefore been compensated for any loss and should not entitled to a refund of fees/charges
- The withdrawal forms completed and signed make clear that a tax liability would arise for a higher-rate taxpayer

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having read all the documentation I agree with the adjudicator about the main issues arising from this case – and for the same reasons. I do not think that the Prudential made sufficiently clear that any withdrawals would likely give rise to a tax liability given Mrs R's situation.

Mr and Mrs R transferred advisory status on their various investments to Prudential in January 2016. From this point it was registered as the relevant advisor for the original bond in question.

Based on earlier conversations, the Prudential's advisor provided Mr and Mrs R with a recommendations report in February 2016 which she said encompassed a 'full review' of their financial situation. While she did not refer to the existing bond beyond noting there were no issues concerning the level of risk of the investment, she did record that Mrs R was a higher-rate taxpayer while Mrs R had no income i.e. was not a taxpayer.

Despite this she made no comment about the potential tax consequences of continuing to hold the existing bond in joint names. In recommending a new cash injection into the same product she also did not spell out the likely tax implications of this bond being set up in joint names compared to Mr R's sole name. I recognise there is a standard paragraph referring to the taxable status of withdrawals. But I don't believe that this was sufficient to make Mr and Mrs R fully aware of this key consideration.

When advising a further investment in the same product in 2017 the advisor explicitly, and wrongly, stated that there would be no tax liability arising from any withdrawals. As the adjudicator said, I think this suggests the advisor did not fully understand how this product worked either in 2016 or 2017 – and that the 2016 paragraph was simply a standard phrase dropped into the recommendations letter rather than persuasive evidence that she had fully set out the tax situation in any conversations with Mr and Mrs R.

I think it's more likely than not that Mr and Mrs R were misled into thinking that any withdrawals would be tax-free. Had they been correctly advised in February 2016 I suspect they would have acted differently when planning the later withdrawals.

I accept that some couples might still choose for personal reasons to put an investment in joint names. But as Mr and Mrs R have recently done this by deed of variation I think it's more likely than not that that they would have done this in February 2016, if properly advised. Mrs R's tax bill of £1,450, therefore, directly flows from this inadequate advice.

The adjudicator recommended that each business should share equal responsibility for the allegedly poor advice. Given Mr and Mrs R retained the original advisor for far longer than Prudential I have considered whether this solution is fair and reasonable. But for various reasons I think it is broadly right. The original advisor was given no opportunity to advise on the method of withdrawals, which could have been undertaken in a far more tax-efficient way – through surrendering whole segments. This would have roughly halved the tax liability.

Also, while the original advisor failed to spell out the tax situation, the Prudential's advisor actually provided incorrect information in 2017. So I think it's right for each business to share an equal liability for the unnecessary tax liability, paying half of the £1,450 tax bill each.

I am satisfied this fairly compensates Mr and Mrs R for the poor advice they received. If the Prudential had advised Mr and Mrs R appropriately they would have still paid the same fees. I therefore don't think it would be appropriate to refund these which would, in effect, put them in a better financial position than they would have been if given good advice in the first place.

Finally, I acknowledge that there's no persuasive evidence to support Mr and Mrs R's claim that they made clear that they intended to make large, ad hoc withdrawals from both bonds. If they had done so I think it's more likely than not the advisor would've made reference to it and considered the suitability of the new bond. However, this does not alter my view about the failure to advise on the joint ownership issue – or the proposed compensation.

my provisional decision

I currently plan to uphold this complaint and instruct the Prudential Assurance Company Limited to pay Mr and Mrs R £725. It should also pay the £300 previously offered in lieu of the trouble and inconvenience caused, assuming this has not been paid.

Tony Moss
ombudsman