

Ombudsman's Determination

Applicant	Mrs T
Scheme	Brett Packman Pension Scheme (the Scheme)
Respondent	Rowanmoor (part of the Embark Group)

Outcome

1. Mrs T's complaint is partly upheld but no further action is required by Rowanmoor.

Complaint summary

2. Mrs T has complained that Rowanmoor, the administrator of the Scheme, incorrectly informed her husband on 20 September 2019 by telephone that an income drawdown payment of £669,725.15 available to her from the Scheme would be subject to income tax at 20% instead of her marginal rate of tax.
3. Mrs T has said that:-
 - If Rowanmoor had told her husband, Mr T, that tax would be deducted from the payment in accordance with her tax code supplied by HM Revenue & Customs (**HMRC**), she would have decided not to take it.
 - She has paid unexpected additional income tax of around £150,000, which she cannot reclaim from HMRC.

Background information, including submissions from the parties

4. Mr and Mrs T are members and also trustees of the Scheme which is a small self-administered pension scheme (**SSAS**).
5. Mr T informed Rowanmoor on 13 August 2019 that they wished to change the basis on which they could withdraw income from capped to flexi-access drawdown.
6. Income withdrawal from a flexi-access drawdown fund allows a member to gain access to the whole of that fund in one or more instalments. The benefit is taxed as pension income even when taken as one lump sum.

7. On 13 August 2019, Rowanmoor sent Mr T its Member Benefits Declaration Form (**the Declaration Form**) and Risk Awareness Questionnaire (**the Questionnaire**) for him and Mrs T to complete.
8. Rowanmoor asked Mr and Mrs T to return the completed forms and informed them that:-
 - On receipt of their completed Declaration Forms and any additional requested information, it would provide them with Benefit Options Forms setting out the benefits available to them in the Scheme via flexi-access drawdown.
 - It was important that they sought advice from an independent financial adviser (**IFA**) and/or guidance from Pension Wise before deciding to take their benefits.
 - Pension Wise could provide guidance on their benefit options, any tax implications and how to get the best from their pension savings.
9. Mrs T completed both the Declaration Form and the Questionnaire on 14 August 2019. Section two of the Declaration Form included two questions asking whether she had received financial advice from an IFA and/or guidance from Pension Wise. The importance of seeking advice and/or guidance was emphasised in both this section and in section four, entitled "Member's Declaration". Mrs T answered "No" to both questions.
10. By signing the Declaration Form, Mrs T declared to Rowanmoor that:-
 - The information which she had provided was, to the best of her knowledge, true and complete.
 - She wished to receive income from the Scheme as flexi-access drawdown.
 - She agreed to indemnify Rowanmoor against any liability to pay any tax or other charge which arose from the provision of false or misleading information.
 - She agreed to Rowanmoor's fees for the calculation of her benefit options.
 - She understood that she would have to complete and return the Benefit Options Form before any payment could be made.
11. In response to question three on the Questionnaire enquiring whether she was aware of the tax implications of taking money from her pension savings, Mrs T replied "Yes". She answered "No" to question four which asked if she was intending to invest all or part of the income which she was withdrawing from the Scheme.
12. In its letter dated 16 August 2019 to Mrs T, Rowanmoor reminded her that she should obtain financial advice from an IFA and/or seek guidance from Pension Wise before taking her benefits. It also asked Mrs T to confirm that she had read and understood

the contents of the letter by returning a signed copy. Mrs T did this on 19 August 2019.

13. Mr T notified Rowanmoor on 5 September 2019 that he and Mrs T needed to urgently withdraw income from the Scheme. Rowanmoor replied on the next day that it had asked the Scheme actuaries to calculate the benefits available to them as quickly as possible.
14. On 11 September 2019, Rowanmoor sent its Benefit Options Forms to Mr and Mrs T. In its covering letter to Mrs T, Rowanmoor informed her that she had to complete and return the Benefit Options Form before payment of her benefits could be made. It also said that she should discuss the options available with an IFA.
15. Mrs T's Benefit Options Form showed that the value of her uncrystallised and crystallised funds in the Scheme were £369,838 and £695,533 respectively on 14 August 2019.
16. In the "Risk Warnings" section of the Benefit Options Form, it said that:

"In order to proceed, we will assume:

That you have taken advice from a suitably qualified professional regarding the exercise of any retirement options, be that from the Government sponsored Pension Wise service, and/or a suitably qualified professional...

You are aware of the tax implications of taking money from your pension savings, and any impact on benefits you may receive, particularly those that are means-tested..."

17. Furthermore, under the "Additional Notes" section it said that:

"Flexi-Access Drawdown ("FAD")

Please indicate on the form the level of gross income you wish to receive from the fund. Although there are no restrictions or limits on the level of FAD which can be paid, **all income is subject to taxation at your marginal rate**. All pension payments must be made via the PAYE payroll.

Before deciding on the level of FAD to take from your Scheme, you should take appropriate financial advice..."

18. Rowanmoor telephoned Mr T on 12 September 2019 to inform him that it had sent the Benefit Options Forms by post. During this call, Rowanmoor says it notified Mr T that he should speak to an IFA and he replied that it was unnecessary.
19. On 16 September 2019, Mr T telephoned Rowanmoor to reiterate that he urgently required income from the Scheme. Rowanmoor replied that it had not yet received the completed Benefit Options Forms. It sent Mr T an e-mail to summarise what was discussed during the call and suggested again that he should speak to an IFA because it was "unable to provide advice or recommendations".

20. On 17 September 2019, Rowanmoor received the completed Benefit Options Forms together with a covering letter from Mr T which said that Mrs T wished to receive an income payment of £669,725.75 from the Scheme.
21. Rowanmoor sent Mr T an e-mail on 17 September 2019 which said that:

“...whilst I appreciate that you do not wish to take financial advice, we would strongly recommend that you do speak with a financial adviser as we are unable to provide advice.”
22. In his e-mail dated 19 September 2019, Mr T asked Rowanmoor when the income payment to Mrs T would be made and said that the proposed payment date of 1st November was unacceptable to him.
23. Rowanmoor responded on the same day that it could process the payment on an ad-hoc basis, but it would cost £60 plus VAT to do so. It also said that:-
 - It would set up a new pension payroll record for Mrs T.
 - As the income would be paid through its payroll system, it would be taxed accordingly, and Mr T should contact an IFA if he had any queries.
24. Mr T telephoned Rowanmoor on 20 September 2019 to enquire when the payment would be made and why it would be subject to tax. Rowanmoor replied that all income payments from the Scheme were liable to income tax which would be collected via the PAYE system.
25. When Mr T asked if the tax rate applicable to the payment was 20%, Rowanmoor replied that his assumption was correct, and it might also be possible to reclaim any overpaid tax directly from HMRC.
26. On receipt of the income drawdown payment, Mrs T has said that she was “shocked” to discover that tax at 45% has been deducted from it.
27. When Mrs T tried to reclaim all the income tax deducted, HMRC notified her that this was not possible. HMRC also said that if she believed she had paid too much tax she should complete a self-assessment tax return form so that it could determine whether a tax refund was due to her.
28. Mrs T’s position:-
 - To put matters right, Rowanmoor should reclaim the additional income tax of around £150,000 from HMRC for her and waive its fee for this income payment.
 - Despite conceding that it has made a mistake, Rowanmoor has not offered her any compensation in recognition of this which is unfair.

- The additional income tax payment amounts to actual financial loss because she would have made “a different encashment decision” if Rowanmoor had told her that tax at her marginal rate would be deducted from her income payment.

29. Rowanmoor’s position:-

- It should not have agreed with Mr T that the tax rate applicable to the income payment would be 20% during the telephone call on 20 September 2019. It should have told him that income tax would be deducted in accordance with the tax code supplied by HMRC for Mrs T. It has apologised to Mr and Mrs T for this mistake.
- It disagrees that Mrs T detrimentally relied on the incorrect tax information. Prior to its mistake, both she and Mr T had been made aware on numerous occasions that there would be tax implications by taking income from the Scheme and encouraged them to seek financial advice and/or guidance before taking a decision.
- By signing the Questionnaire, Mrs T confirmed she was aware that the income payment would be subject to tax and understood the implications.
- The process of making the income payment to Mrs T was also near completion when Mr T telephoned on 20 September 2019.
- Mrs T had therefore already made an informed decision to receive the income payment of £669,725.75 from the Scheme prior to the telephone call on 20 September 2019. Mrs T would have proceeded with the transaction regardless of “the contents” of this call.
- It cannot therefore agree to a refund of fees for making the payment to Mrs T.

Adjudicator’s Opinion

30. Mrs T’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Rowanmoor. The Adjudicator’s findings are summarised below:-

- A complaint of negligent misstatement must be based upon an inaccurate statement, usually called a ‘representation’. That statement is usually made by spoken or written words, but it can also be made by conduct. The representation must be a statement of past or present fact or, in some circumstances, of the law. It must be clear and unequivocal.
- Mrs T has complained that she relied on the incorrect tax information given on 20 September 2019 by Rowanmoor to her financial detriment by taking an income payment of £669,725.75 from the Scheme. She has asserted that if Rowanmoor had told Mr T during the telephone call that tax would be deducted from the

payment in accordance with her tax code and not at 20%, she would not have taken it.

- In the Adjudicator's opinion, the incorrect statement made by Rowanmoor during the telephone conversation was not a clear and unequivocal representation. Prior to making that mistake, Rowanmoor had already made it sufficiently clear to both Mr and Mrs T in the "Additional Notes" section of the Benefit Options Form that all income payable under flexi-access drawdown would be subject to taxation at their marginal rate of tax and made via the PAYE payroll.
- By signing the Benefit Options Form and answering "Yes" to question three on the Questionnaire, Mrs T had declared to Rowanmoor that she was aware of the tax implications and impact of taking money from her pension savings.
- In the Adjudicator's view, Mr and Mrs T should reasonably have known that the income payment would be subject to taxation at Mrs T's marginal rate before the mistake was made by Rowanmoor.
- As there had been no relevant representation, in the Adjudicator's opinion, there was no negligent misstatement by Rowanmoor and no estoppel.
- The Adjudicator also considered whether the incorrect information constitutes maladministration which has resulted in any non-financial injustice such as distress and inconvenience. The Adjudicator stated that even where it is recognised that maladministration has occurred this does not always result in a payment for non-financial injustice.
- The tax information provided by Rowanmoor during the telephone call on 20 September 2019 was clearly inaccurate. Mr T should have been given the correct information and the failure to provide this, amounts to maladministration on the part of Rowanmoor.
- The Adjudicator did not consider that Mrs T had suffered any actual financial loss. In the Adjudicator's view, what she had suffered was a loss of expectation. She expected to receive a higher net income payment from the Scheme but was not entitled to it. Rowanmoor could only pay her the correct pension calculated in accordance with current HMRC rules.
- However, it was clear that she had experienced some distress and inconvenience because of the maladministration identified above. My awards for non-financial injustice are modest and not intended to punish a respondent. In the Adjudicator's view, the degree of non-financial injustice which Mrs T had suffered was not significant enough to justify the minimum payment of £500 which I would award.

- It was also the Adjudicator's view that a refund of the fee charged by Rowanmoor for processing this income payment was unwarranted in the circumstances.

31. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs T.

Ombudsman's decision

32. Mrs T is a trustee of the Scheme. As a trustee, she has an obligation to act as a prudent person would, in the conduct of her own financial affairs and to take advice on technical matters and any other matters which she did not understand.
33. Mrs T asserts that she would have made "a different encashment decision" if Rowanmoor had told Mr T that tax at her marginal rate would be deducted from her income payment during the telephone call. I have seen no evidence which substantiates her assertion.
34. It is clear that Rowanmoor had informed both Mrs T and her husband in the "Additional Notes" section of the Benefit Options Form that all income payable under flexi-access drawdown would be subject to taxation at their marginal rate of tax and made using the PAYE system.
35. Furthermore, by signing the Benefit Options Form and answering "Yes" to question three on the Questionnaire, Mrs T had declared to Rowanmoor that she was aware of the tax implications and impact of taking money from her pension savings.
36. I therefore agree with the Adjudicator that Mrs T and Mr T should have been aware at the time that the income payment would be subject to taxation at Mrs T's marginal rate before the telephone call on 20 September 2019, during which Rowanmoor provided incorrect information.
37. I concur with the Adjudicator's view that Mrs T has not suffered any actual financial loss. The extent of the non-financial injustice which she has suffered is insufficient to warrant the minimum payment of £500 which I would award.
38. I partly uphold Mrs T's complaint, but no further action is required by Rowanmoor.

Anthony Arter

Pensions Ombudsman
16 February 2021