

Ombudsman's Determination

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| Applicant | Mr N |
| Scheme | UBS (UK) Pension and Life Assurance Scheme (the Scheme) |
| Respondents | Trustee of the UBS (UK) Pension and Life Assurance Scheme (the Trustee) Willis Towers Watson (WTW) |

Outcome

1. Mr N's complaint against the Trustee and WTW is partly upheld. To put matters right, the Trustee shall pay Mr N £500 in respect of the significant distress and inconvenience caused by WTW's maladministration.

Complaint summary

2. Mr N complained that he was given incorrect information by WTW, the Scheme administrator, about the percentage of his lifetime allowance (**LTA**) that would be used if he claimed his benefits from the Scheme. This led him to a decision to take his benefits in a way that he may not have chosen, had he been given correct information. It also meant he will be liable for a higher LTA tax charge than he had anticipated.

Background information, including submissions from the parties

3. Mr N joined the Scheme on 1 February 1986 and became a deferred member on 30 November 2009. He held Individual Protection, so his LTA was £1.25 million.
4. On 10 August 2018, Mr N was sent a pension quotation (**the August 2018 Quotation**), which outlined two options if he were to take his benefits from the Scheme on 10 February 2019. He could receive a full pension of £53,191.52 per year (**Option 1**), or a reduced pension of £40,911.98 per year, with a lump sum of £378,700.92 (**Option 2**). This was a protected lump sum, as it was greater than 25% of the value of Mr N's benefits on 5 April 2006.

5. The August 2018 Quotation set out that Mr N should confirm that the total value of his benefits, in all pensions held, did not exceed his unused LTA, otherwise there would be a tax charge on the excess amount. The value of his full pension from the Scheme, for testing against his LTA, was £1,063,830.40, which represented 85.10% of his LTA for that tax year.
6. On 4 December 2018, Mr N's independent financial advisor (**the IFA**) telephoned WTW. The IFA said that Mr N had a protected tax-free lump sum, so it was overwhelmingly in his financial interest to take Option 2. The IFA asked whether Mr N's LTA usage would differ if he chose this option, rather than Option 1. WTW said its calculations had accounted for the protected lump sum and Mr N's LTA used would be the same for either option.
7. On 17 December 2018, Mr N submitted the retirement forms, which indicated his decision to receive his benefits under Option 2, as set out in the August 2018 Quotation.
8. On 28 January 2019, WTW wrote to Mr N to acknowledge receipt of his request to receive his benefits from the Scheme. It advised that he would be paid a lump sum of £386,652.72 upon retirement and his annual pension of £42,104.75 would be paid in monthly instalments, with the first payment due on 1 March 2019. The benefit value for testing against his LTA was £1,228,747.72, which represented 98.29% of his allowance. WTW acknowledged that this figure was higher than had been given in the August 2018 Quotation. Mr N was told he would need to notify HRMC, if this meant the total value of all his pension benefits exceeded his LTA.
9. On 4 February 2019, the IFA telephoned WTW to discuss the LTA figure of 98.29%, stated in the letter of 28 January 2019. He said it was significantly higher than had been confirmed by WTW in the telephone call of 4 December 2018. Mr N held other pensions and the combined value of all benefits was in excess of his LTA. The IFA explained that it was necessary to crystallise these benefits in an appropriate order.
10. WTW said the reason for the difference in the LTA percentage was that the factors applied to the calculation of members' benefits change regularly. In Mr N's case, they were likely to have changed between the August 2018 Quotation and his decision to retire. The IFA requested that further explanation of the discrepancy be provided as soon as possible and asked whether it would be possible for a future LTA tax charge to be deducted from Mr N's pension income from the Scheme. WTW advised that it would respond within two working days.
11. On 6 February 2019, the IFA telephoned WTW to request that payment of Mr N's pension be put on hold while his LTA concerns were being investigated.
12. On 10 February 2019, Mr N retired and left the Scheme.
13. On 11 February 2019, the lump sum of £386,652.72 was paid into Mr N's bank account.

14. On 20 February 2019, the IFA telephoned WTW to ask what was being done about the outstanding queries in relation to Mr N's LTA. He had expected to receive a response letter and it was fast approaching the point at which payments to Mr N would commence. WTW said that a response would be issued in the next few working days.
15. Later that day, the IFA telephoned WTW again to explain that Mr N had notified him of a payment received from the Scheme into his bank account. WTW believed this was the pension lump sum but was unable to confirm during the telephone call. The IFA was disappointed that the request to suspend Mr N's payments had not been actioned. WTW said it would look into this matter and contact the IFA the following day to discuss further.
16. On 21 February 2019, WTW telephoned the IFA to explain that a response to Mr N's concerns was to be issued imminently and any further updates would be provided as soon as possible.
17. On 27 February 2019, WTW wrote to Mr N. It said that during the telephone call of 4 December 2018, it had advised that his LTA used would be the same for both Option 1 and Option 2. Its letter of 28 January 2019 stated the correct LTA figure of 98.29%, which the IFA then queried on 4 February 2019. WTW apologised that it had provided incorrect information on 4 December 2018, but considered it was the duty of the IFA to understand how the LTA usage for Mr N's benefits would be calculated.
18. On 11 March 2019, Mr N wrote to WTW in response to its letter of 27 February 2019. He was concerned about the time it had taken to respond to his complaint; the IFA had chased this and been told on at least three occasions that a response would be forthcoming. The IFA had also requested that payment of Mr N's pension from the Scheme be put on hold, while the matter was investigated, but it was not actioned.
19. Mr N was unclear how the figure of 98.29% had been calculated, given he was previously quoted a figure of 85.10%. This meant that in combination with his other pensions, the total benefit value would exceed his LTA by a significant margin. If the correct information had been provided to the IFA during the telephone call of 4 December 2018, he could have mitigated the tax charge he faced. The opportunity had been lost because he was unable to crystallise his benefits in the most tax-efficient order. One of his other pensions was a defined benefit guaranteed minimum pension (**GMP**), which cannot pay an LTA charge, so he will face a personal tax liability. He requested redress for this tax liability, as well as the costs he incurred from the IFA attending to the issue.

20. On 12 April 2019, WTW issued a response to Mr N's complaint. It accepted that the LTA information provided during the telephone call of 4 December 2018 was incorrect. It confirmed that the figure of 98.29% was correct and explained how it had been calculated. It considered that it would have been possible for the IFA to have calculated this figure and therefore identify the discrepancy at an earlier stage of the process. The August 2018 Quotation had highlighted that the LTA usage of 85.10% was for the full pension.
21. WTW said that payment of Mr N's pension was processed approximately 10 days before his retirement date, in line with its standard procedure. It issued confirmation of his upcoming pension payments on 28 January 2019. It acknowledged that the IFA had requested that payment of Mr N's pension be suspended, but this was not possible, because the payments had already been authorised by that point. It apologised that this was not made clear at the time. It explained that it may be possible to return the payments made and rewind Mr N's retirement settlement. He was invited to contact WTW if he wished to pursue this option.
22. WTW said it did not accept responsibility for any additional tax liability arising from the issue with Mr N's LTA, nor would it cover any costs he incurred through the IFA remediating the matter. It accepted that its communication could have been clearer and offered Mr N £200 in recognition of this shortcoming.
23. On 29 July 2019, the IFA emailed the Trustee to provide details of the pensions held by Mr N, in addition to his pension with the Scheme. The other pensions had not been crystallised at that time. One of these pensions contained a GMP which could only be taken, or transferred out once Mr N reached age 65; it could not be used to pay an LTA tax charge. The IFA said Mr N's intention was to crystallise his benefits in the most tax-efficient order and avoid paying an LTA charge personally.
24. On 30 August 2019, the Trustee issued its stage one response under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It set out its understanding that, at that point, Mr N had only crystallised his benefits from the Scheme. The benefits held in his other pensions remained uncrystallised, so he had yet to incur an LTA tax charge. It considered that even had he chosen the full pension from the Scheme, with a lower LTA usage, the total value of all his pension benefits would still have exceeded his LTA. It concluded that Mr N had not suffered a financial loss.
25. Mr N did not accept the outcome, so requested the complaint be moved to stage two of the IDRP.
26. On 3 February 2020, the Trustee issued its stage two IDRP response. It reiterated its assessment that Mr N had not incurred an LTA tax charge and would only do so when crystallising benefits from his other pensions. It considered that he would have to pay the LTA charge irrespective of which of the two options he chose for his benefits from the Scheme, so there was no financial loss.

Mr N's position

27. He has a number of pension schemes, both defined benefit and defined contribution. It was crucial to crystallise these pensions in a certain order to minimise the tax liability. WTW made a negligent misstatement that the LTA used by his benefits in the Scheme would be 85.10%, regardless of the pension option he chose. This information was relied upon and has caused him a financial loss.
28. His correct LTA position was only confirmed in the letter of 28 January 2019, received in early February. He retired on 10 February 2019, and payments were made shortly thereafter, which left little time to address the situation. This was despite the IFA requesting that payments be put on hold to allow consideration of the LTA implications.
29. The order in which he would have chosen to crystallise his pension benefits would have been different if correct information had been provided by WTW from the outset. He was always aware that the total value of his benefits would exceed his LTA, but this could have been kept to an excess of around 6.2%. The provision of incorrect information meant the excess will be far greater, so his tax liability will be higher and the opportunity to plan effectively was lost.
30. His GMP benefits are unable to pay an LTA tax charge. The original figures indicated that after taking his pension from the Scheme, there would be sufficient LTA remaining to crystallise the GMP without penalty. Due to the error admitted by WTW, there is not sufficient LTA to do this. He was not given the option to look at crystallising the GMP first or receive advice on how to mitigate the tax charge.
31. WTW's proposal, in its response of 12 April 2019, to rewind his pension after commencement was not a credible option. In this letter, WTW admitted it failed to carry out the IFA's request that no payments be made until a solution could be considered. Since WTW and the Trustee exhibited no awareness of their fiduciary responsibilities, nor a willingness to engage constructively, accepting the proposed rewind would have meant the cancellation of the contractual agreement, and enabled the error to be covered up. There would have been no time to rectify the error, nor would it have been practical to re-engage with his other pension providers to produce a viable holistic solution.
32. He can provide details of the work undertaken by the IFA in relation to this complaint, in order to support his claim for the costs to be redressed. The complaint has also placed significant stress on his emotional and financial health.

The Trustee's position

33. The August 2018 Quotation set out that the value of Mr N's full pension from the Scheme, for testing against his LTA, was £1,063,830.40. This represented 85.10% of his protected LTA. During a telephone call of 4 December 2018, WTW informed the IFA that Mr N's LTA usage would be the same for either pension option. The correct figure for Option 2 of 98.29% was communicated in WTW's letter of 28 January 2019.
34. It considered that Mr N had not suffered a financial loss as a result of being given the incorrect information. This is because the value of his other pension benefits outside the Scheme would always have taken him above his LTA and led to a tax charge. It noted that at the time, Mr N had not crystallised any other benefits, so had yet to incur a tax charge.
35. The option for Mr N to rewind his retirement settlement was proposed in WTW's letter of 12 April 2019, but this option was not taken up.
36. It has offered an increased amount of £500, in recognition of the distress and inconvenience Mr N has been caused. This offer was confirmed following The Pensions Ombudsman's initial investigations. It does not consider that Mr N is due any further redress. There was no basis on which to determine redress for costs incurred by Mr N, due to the work undertaken by the IFA to remediate the situation.

WTW's position

37. Its standard procedure is to include the relevant LTA figures for all options provided in a pension quotation. However, in Mr N's case, it accepts that this was not completed. This meant that in the subsequent telephone calls, the IFA was incorrectly informed that Mr N's LTA usage would be the same for Option 1 and Option 2.
38. Mr N's lump sum and pension payments were authorised on 30 December 2018. His first payment would then have been processed on the next available payroll run. The IFA made the request to suspend Mr N's pension payments on 6 February 2019, but this was too late, as they had already been processed.

Adjudicator's Opinion

39. Mr N's complaint was considered by one of our Adjudicators, who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Although incorrect information was provided by WTW in the August 2018 Quotation, and during the telephone call of 4 December 2018, it would have been possible to have identified the error.

- The IFA requested, on 6 February 2019, that payment of Mr N's pension be put on hold. WTW did not action this request, but did subsequently offer, in its response to the complaint of 12 April 2019, to investigate the possibility of rewinding Mr N's pension. Mr N said he did not take up this offer, because it was not practical at that time and would have meant re-engaging with the providers of his other pensions.
- Mr N could have explored the possibility of rewinding his pension with WTW, if he wished to crystallise his pensions in a different order. In choosing not to do so, he negated the possibility of achieving his preferred order of crystallisation.
- The Adjudicator's opinion was that Mr N should not receive redress for any tax liability arising from exceeding his LTA. The Adjudicator acknowledged that Mr N would have experienced distress and inconvenience because of the errors by WTW. In the view of the Adjudicator, an award of £500 was appropriate recognition of the distress and inconvenience Mr N has suffered.

40. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N set out below:-

- If WTW had provided correct information from the outset, he could have deferred the crystallisation of his Scheme benefits to avoid paying any LTA charge personally. The IFA has estimated that this could cost him an additional £5,583. Alternatively, he might have been able to pay the LTA charge using his benefits in the Scheme. The desirability of this option would depend on the Scheme's LTA commutation rates and his life expectancy.
- It was reasonable for him to have relied on the accuracy, professionalism, and duty of care expected from WTW, as administrator of the Scheme. The issue was not maladministration, but negligent misstatement, which was repeated, despite the IFA questioning the calculation. This should have highlighted to WTW that it needed to check the accuracy of the information it provided.
- The fact that no LTA charge had been incurred at the time of his complaint was because he had been unable to crystallise other pensions until the full implications of WTW's negligent misstatement were addressed. This inability to effect immediate further drawdowns had a material impact on his income and denied him the opportunity to mitigate unexpected tax consequences.
- WTW's offer to rewind his pension was an attempt to cover up its errors and escape a complaint. He should not be coerced to act in such a way that extinguishes a right of action. If he had agreed to WTW's proposal, then its negligence and failure of care would have gone unheard.

- It was unrealistic for him to have returned the payments already made, as he would have incurred a larger loss. He had neither the time nor resources to revisit his financial advice or forgo his payments from the Scheme. It would have meant the potential inability to live without an income and the issue may have taken months to resolve. WTW cannot expect a member to return funds when it has already made errors and failed to show due care in resolving the issue.
- His distress and inconvenience caused by this matter warrants a higher award than £500.

Ombudsman's decision

41. WTW's provision of incorrect information about Mr N's LTA usage in the August 2018 Quotation, and during the telephone call of 4 December 2018, amounted to maladministration. The basic principle for negligent misstatement is that a scheme is not bound to follow incorrect information. This means that Mr N's correct LTA usage for his choice of Option 2 was 98.29% and he could only have achieved the lower LTA usage of 85.10% by receiving his Scheme benefits under Option 1.
42. Where incorrect information has been provided, it must be considered whether it was reasonable to have relied upon this information. The formula for the estimation of the LTA used by benefits held in a defined benefit scheme was accessible and in Mr N's case, the information required to carry out a calculation was included in the August 2018 Quotation. I find that it would have been possible for Mr N and the IFA to have identified that his LTA used by Option 2 was much greater than the 85.10% advised by WTW. So, I find that it was not reasonable for Mr N to have relied on the incorrect information when making a decision about his retirement.
43. Mr N said he was not in a position to take up WTW's offer to consider the rewind of his pension. If this offer had been pursued, and then agreed, Mr N could have achieved the alternative benefit crystallisation order, which he has stated as being his preference. Although it would have involved returning payments already made, there has been no evidence submitted to indicate that Mr N was unable to explore this course of action with WTW. His choice not to take up the offer meant he continued to receive pension payments from the Scheme. It was then his decision as to how best to crystallise his remaining pensions.
44. I find that WTW's offer to put Mr N back to his prior position, and rewind his Scheme pension, was reasonable. WTW and/or the Trustee cannot be held responsible for a tax charge which Mr N may now incur, as a result of his decision to decline WTW's offer.
45. Mr N believes that if he had pursued WTW's offer to rewind his pension, it would have enabled a cover up of the issue. I do not agree with this assertion. The relevant events would have been a matter of documented record and it would still have been possible for Mr N to have registered a complaint about the actions of WTW.

46. I find that WTW's maladministration, in its provision of incorrect information and failure to respond to the original request to stop Mr N's pension payments, has caused distress and inconvenience to Mr N. I consider that as WTW made reasonable attempts to put matters right thereafter, an award of £500 is appropriate recognition of the significant distress and inconvenience Mr N has suffered.
47. I partially uphold Mr N's complaint.

Directions

48. Within 28 days of the date of this Determination, the Trustee shall pay £500 to Mr N in respect of WTW's maladministration, which has caused Mr N significant distress and inconvenience.

Anthony Arter CBE

Deputy Pensions Ombudsman
13 March 2023