

## Ombudsman's Determination

Applicant	Mr R
Scheme	Aviva Staff Pension Scheme ( <b>the Scheme</b> )
Respondent	Aviva Staff Pension Trustee Limited ( <b>Aviva</b> )

## Outcome

1. I do not uphold Mr R's complaint and no further action is required by Aviva.

## Complaint summary

2. Mr R complained that he was given incorrect information by Aviva in relation to his lifetime allowance (**LTA**). This led him to make further pension contributions that he would not otherwise have made.
3. Mr R said his pension benefits have since accrued in a tax inefficient manner. He is facing a tax charge, because once crystallised, his total benefits will exceed the LTA.

## Background information, including submissions from the parties and timeline of events

4. On 20 April 2016, Mr R's independent financial advisor, Castlegate Capital (**Castlegate**), emailed Aviva to request confirmation of the percentage of Mr R's LTA that had been used when he took his benefits from the Scheme.
5. On 24 May 2016, Aviva wrote a letter in response to Castlegate. It set out the following information for Mr R's pension with the Scheme:
  - the pension start date was 1 February 2006;
  - he received a defined benefit pension of £21,054.72 per annum;
  - this had used 28.07% of his LTA; and
  - he did not take any tax-free cash.
6. On 17 June 2016, Castlegate emailed Aviva to ask whether pension benefits put in place before 6 April 2006, commonly known as 'A-day', were subject to an LTA test.

7. On 27 June 2016, Aviva said that the LTA figure of 28.07% was calculated as at Mr R's date of retirement of 1 February 2006. It then set out that Mr R's LTA currently stood at 70.84%. Aviva had not been made aware of any further benefit crystallisation event after 6 April 2006.
8. On the same day, Castlegate confirmed there had not been any other crystallisation events, but Mr R was likely to take further benefits in the near future. It asked whether Aviva would need to recalculate Mr R's LTA used when the next crystallisation event occurred.
9. On 29 June 2016, Aviva advised that it would be up to the other pension provider(s) to make this request, if the information was required.
10. On the same day, Castlegate responded to seek clarification as to whether any of Mr R's LTA had been used at that point. This was because pension benefits taken before 6 April 2006 were not subject to an LTA test, until further benefits were taken after 6 April 2006. Castlegate reiterated that Mr R had not taken any other pension benefits, since taking his pension from the Scheme in February 2006.
11. On 30 June 2016, Aviva explained that if Mr R was going to take another pension, the provider would ask for Mr R's current LTA, which would be 70.84%.
12. On 6 September 2018, Mr R wrote to Aviva to query the information that it had previously issued. He was concerned about the implications for his tax planning.
13. Mr R set out his understanding that the 28.07% figure, originally provided in May 2016, was his LTA used. He believed that the subsequent 70.84% figure, given in June 2016, was his LTA remaining. He repeated that his pension from the Scheme was the only one he had drawn up to that point.
14. Mr R asked Aviva to confirm whether he had used any of his LTA with the pension benefits he took in February 2006. He then asked why, if he had used 28.07% of his LTA, he only had 70.84% remaining, when it would suggest he should have 71.93%.
15. On 18 September 2018, Castlegate forwarded Mr R's letter of 6 September 2018 to Aviva.
16. On 26 September 2018, Aviva responded to Castlegate, stating the position at the time for Mr R was that he was in receipt of an annual pension of £31,138.32. This would equate to £778,458.00 in terms of the amount of the LTA it represented.
17. On 26 September 2018, Castlegate contacted Aviva to request a full response to the points raised in Mr R's correspondence of 6 September 2018.
18. On 4 October 2018, Aviva explained it would not be able to provide a definitive figure for Mr R's LTA usage, until there had been a further benefit crystallisation event. Castlegate responded on the same day to ask whether the 28.07% figure, provided in May 2016, was correct. It also asked whether Mr R had used any of his LTA when he took his benefits from the Scheme.

19. Later that day, Aviva replied to explain that the 28.07% figure was the LTA used, based on the benefit at Mr R's date of retirement. It had advised this value as a guide to the amount used. It went on to say that the LTA used by his benefits from the Scheme cannot be calculated until a further crystallisation occurs.
20. Castlegate was still uncertain about the information provided, so responded to Aviva, again on 4 October 2018. It asked how Mr R could have used 28.07% when the only benefit he had taken was before 6 April 2006. Aviva replied on the same day to clarify that Mr R would not have used any of his LTA until he takes a further benefit. Castlegate indicated it would recommend that Mr R disregard the information provided by Aviva in its letter of 24 May 2016.
21. On 18 March 2019, Mr R wrote to Aviva to register a complaint.
22. On 25 March 2019, Aviva sent an acknowledgment of Mr R's complaint and said it would reply within five working days. On 27 March 2019, Aviva sent a further acknowledgment of the complaint and said it would respond within eight weeks.
23. On 2 September 2019, Mr R wrote to Aviva to request an update on his complaint.
24. On 16 September 2019, Aviva issued its complaint response.

### **Mr R's position**

25. He was in receipt of an annual pension of £31,138.32, which had commenced on 1 February 2006. His understanding was that no LTA test had been applied to this benefit, as it was taken prior to 6 April 2006.
26. On the basis of Castlegate's correspondence with Aviva in 2016, at that time he calculated his pension would have used somewhere between 28.07% and 29.16% of his LTA.
27. He continued to accumulate further benefits, outside this pension, up to October 2018.
28. He intended to crystallise his other pension benefits between 6 April 2019, when the LTA was due to increase to £1.055m, and 1 July 2019. At this point, he anticipated his Aviva pension would have used 73.79% of his LTA. The remaining pensions, worth approximately £445,000, represented a further 42.18%. He expected to exceed his total LTA by 15.97%.
29. His preference was to move his defined contribution pensions into a drawdown. In doing so, he believed he would lose £42,121 of the fund, due to an LTA tax charge.
30. He has since estimated that he is £5,358 worse-off, as a result of the additional pension contributions. He would like Aviva to redress this amount.

31. He was surprised by the ambiguity and brevity of some of Aviva's correspondence. He feels more could have been done to assist with his queries. He does not think it was made clear in Aviva's June 2016 correspondence that the 70.84% figure was for LTA used, rather than LTA remaining.
32. Had accurate information been given in 2016, he could have better planned his pension contributions to avoid the tax penalty. This would have involved receiving it as salary, rather than his employer paying into his pension(s).

### **Aviva's position**

33. It accepted that incorrect information had been given in the letter of 24 May 2016 but asserted that a correct estimate of Mr R's LTA used was provided on 27 June 2016. It said its correspondence should have been clearer.
34. It has since confirmed that, given Mr R retired before the LTA came into force, the appropriate figure for his LTA used, when first discussed in 2016, was 0%. This should have been the figure quoted in response to the original query. Mr R's benefits in the Scheme would only have been taken into account for LTA purposes once he crystallised further benefits after 6 April 2006.
35. However, it considered that from 27 June 2016, Mr R and Castlegate had sufficient information to understand Mr R's LTA position and make an informed decision about his pension contributions. The 70.84% figure for LTA used was correctly calculated, but it was an estimate.
36. It was unreasonable for Mr R to have relied on the 28.07% figure, quoted in the letter of 24 May 2016. Had it given the true figure of 0% at the time, Aviva considers it is uncertain that Mr R would have acted differently in choosing not to make further pension contributions.
37. It did not believe that a financial loss had been incurred because of the additional pension contributions being made over the LTA.
38. It offered £750 to recognise its provision of incorrect information in May 2016, as well as the lack of detail in subsequent correspondence.

### **Adjudicator's Opinion**

39. Mr R's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Aviva. A summary of the Adjudicator's findings is given below.
40. Aviva has acknowledged the provision of incorrect information on 24 May 2016. The Adjudicator's view was that although Aviva's subsequent correspondence could have been clearer, it was not reasonable for Mr R and Castlegate to have relied on the 28.07% figure.

41. Aviva then quoted a figure of 70.84% and the Adjudicator considered it was not implicit in the correspondence that this figure was for Mr R's LTA remaining, rather than LTA used. The Adjudicator also noted that further clarification was not sought on this point.
42. The Adjudicator's view was that the lack of distinction between the figures being an estimate of LTA used at that point, as opposed to actually used, was not a material factor in Mr R's decision about his pension contributions.
43. The Adjudicator highlighted that the formula for calculating the LTA used is publicly available and Castlegate would have been in possession of sufficient information to estimate the figure for itself. The Adjudicator acknowledged that Mr R had experienced distress and inconvenience, but took the view that Aviva's existing offer of £750 was sufficient recognition of the issue.
44. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. He provided some additional comments, which are summarised below:-
  - He believed that an LTA certificate on Aviva's letterhead should have been reliable, until the point where Aviva corrected it.
  - Aviva's comment in June 2016, that quoted a figure of 70.84%, did not say whether it related to the LTA used or the LTA remaining. It is unreasonable to consider this as being in the same format as the 28.07% figure. The email reply from Aviva was short, lacked explanation and made no reference to the LTA certificate, which was previously issued. There is just as much chance of the email referring to LTA remaining as there is to LTA used. At that point, the LTA used should in fact have read 0%.
  - He agreed that the formula for calculating the LTA used by a defined benefit pension is publicly available. This provided sufficient grounds to question why Aviva had informed him of any LTA being used up.
  - Benefits payable from defined benefit schemes can be difficult to calculate manually. He believed that for Aviva to have confidently issued an LTA certificate with an 'LTA used' figure, there could have been a benefit crystallisation event from the Aviva scheme itself after 6 April 2006. For example, Aviva could have settled the majority of the benefits in February 2006, but then recalculated to find it needed to make an additional payment after 6 April 2006.
  - Aviva ignored his and Castlegate's questions. Aviva had informed them that some LTA was used up but did not correct this error. It was unable to explain how the percentages were calculated and failed to set out that 70.84% was the LTA used.
45. I have considered these points, but they do not change the outcome. I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

46. It is not in dispute that Aviva provided incorrect information in May 2016. The decision, in relation to financial injustice, rests on whether it was reasonable for Mr R and Castlegate to have relied on this information, when making decisions about the level of Mr R's pension contributions.
47. Mr R has raised the possibility that there could have been a benefit crystallisation event after 6 April 2006, which created a discrepancy in the figures. I note that on 27 June 2016, Aviva said it had not been made aware of any crystallisation events after 6 April 2006. Castlegate's response of the same day concurred that there had not been any other crystallisation events; this was reiterated in correspondence of 29 June 2016. Based on this evidence, I find that both parties were working on the basis that Mr R's only benefit crystallisation event had been in February 2006.
48. When the query in relation to Mr R's LTA used was originally raised, the true figure was 0%. Aviva should have advised that the figures it provided in 2016 were estimates. However, Mr R and Castlegate were trying to establish Mr R's LTA position, in order to optimise his pension contributions, so I find the lack of a distinction between estimated and actual figures did not lead Mr R to a decision he would not otherwise have made. Further, Castlegate raised this point in its emails of 17 June 2016 and 29 June 2016, and although Aviva's response could have been more detailed, it indicates that Castlegate was aware of the distinction.
49. It was possible for Castlegate to have estimated the LTA Mr R had used with the details of the benefits he crystallised in February 2006, which was the only crystallisation event known to Aviva and Castlegate in 2016. This would have cast doubt on the assumption that Mr R had notionally used 28.07% of his LTA.
50. Mr R contended that Aviva's correspondence in 2016 lacked explanation. The figure of 28.07% for the LTA Mr R had used, provided in May 2016, was inaccurate. Aviva then gave a figure of 70.84% in June 2016 but did not state whether this was for LTA used or remaining. Castlegate chose to interpret this figure as LTA remaining, without seeking further clarification from Aviva. Given the uncertainty, it was not reasonable for Mr R and Castlegate to have relied on the 28.07% figure.
51. I acknowledge that Mr R will have suffered distress and inconvenience as a consequence of being provided incorrect information by Aviva. I find that the £750 already paid to Mr R adequately recognises the level of distress and inconvenience he has experienced.
52. In conclusion, I do not uphold Mr R's complaint.

**Anthony Arter**

Pensions Ombudsman  
31 October 2022