PO-11408

Ombudsman's Determination

Applicant	Mr R
Scheme	Hargreaves Lansdown Capped Drawdown SIPP (**the capped drawdown policy**)
Respondent	Hargreaves Lansdown Asset Management Limited (**HL**)

Outcome

1. Mr R's complaint against HL is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, HL should pay Mr R £500 for the significant distress and inconvenience that he has suffered.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R has complained that HL has used the incorrect maximum income, known as the GAD, when testing the benefits in the capped drawdown policy against the Lifetime Allowance (**LTA**). As a result Mr R has exceeded the LTA and received a tax charge of £28,208 from his Self-Invested Personal Pension (**the SIPP**), also held with HL.

4. Mr R says that his financial loss is £28,208, plus the loss of entitlement to tax free cash from the SIPP. As, if the figure he believes is correct had been used, he would not have exceeded the LTA.

Background information, including submissions from the parties

5. In 2001, Mr R began drawing benefits from a capped drawdown policy held with Halifax. Capped drawdown policies require a maximum income, the GAD, to be calculated for each reference period. The GAD is calculated using assumptions provided by the Government Actuary Department, which are based on the equivalent annuity, or a percentage of the equivalent annuity, that would be available to the member, at that member's present age.

6. The GAD would be calculated at the date of withdrawal of the first benefits, and this date is known as the reference date. Each year following the reference date is known as a pension year, and no more than the GAD can be drawn during each pension year. The period that the GAD is valid for is known as the reference period, which at

the time was a period of five pension years. At the end of the reference period the GAD would be reviewed and recalculated, then a new reference period would begin. The member is also able to request a review to be carried out within a reference period in which case a new reference period would begin at the end of that pension year with the updated GAD.

7. Halifax calculated the GAD to be £74,065.91 in November 2007 for the reference period beginning on 18 November 2007 (the reference date). The legislation at the time stated that the GAD should be 120% of the equivalent annuity.

8. In 2010, Mr R transferred his capped drawdown policy from Halifax to HL's capped drawdown policy. As the reference period had not yet ended, Halifax informed HL the GAD was £74,065.91, and that the start of the reference period was 18 November 2007.

9. Mr R also held the SIPP with HL, from which he had not drawn any funds.

10. Mr R turned 75 in September 2011. He had completed and returned a form titled "Lifetime Allowance Declaration" in respect of his 75th birthday and the SIPP. The form was signed and dated 4 July 2011 and contained details of all of Mr R's pension policies including the capped drawdown policy and the SIPP.

11. In May 2015, Mr R completed the required forms to transfer his benefits from the capped drawdown policy, to a flexible drawdown policy with HL.

12. On 4 June 2015, HL received Mr R's request. It then informed Mr R, in a letter dated 10 July 2015, that his benefits within the capped drawdown policy should have been tested against the LTA when he turned 75 in September 2011. The letter explained that now his benefits had been tested against the LTA, as they should have been in 2011, he had exceeded his LTA and, as a result, a tax charge of £28,208 was due from the SIPP. The letter also explained that Mr R would no longer be eligible to take tax free cash from the SIPP as a result of exceeding his LTA.

13. Mr R raised a complaint and HL responded explaining how his LTA usage had been calculated. HL outlined the HMRC test for a drawdown policy where the GAD for the reference period in which the 75th birthday falls, is multiplied by 25. A factor of 25 is used where benefits are put into payment prior to 6 April 2006 when the LTA was introduced. As Mr R began receiving benefits from his drawdown policy in 2001, the factor of 25 applies to him.

14. In September 2011, when Mr R turned 75 the reference period was the one that began in November 2007 with a GAD of £74,065.91. This resulted in an LTA calculation of £1,851,647 when multiplied by 25. The LTA in force in 2011 was £1.8 million, therefore the value of Mr R's drawdown policy exceeded his available LTA. As a result the whole value of the SIPP was in excess of his LTA and a tax charge was due. The applicable tax charge is 25% of the value of Mr R's benefits in the SIPP which, at his 75th birthday, was £112,834.95, resulting in the tax charge of £28,208.

15. Mr R believes that the GAD used in the LTA test should have been updated to the GAD in effect from November 2011 of £48,880, and that the GAD in effect from November 2007 has been used incorrectly and over inflated his LTA usage. Mr R says that if the GAD of £48,880 is used the total of his retirement benefits will be under the LTA of £1.8 million. Therefore, Mr R has suffered a financial loss i.e. the tax charge and the loss of entitlement to tax free cash from the SIPP.

16. HL says that an LTA calculation was carried out on Mr R's 75th birthday. However, the capped drawdown policy, and the fact that it was taken out prior to 6 April 2006, was missed and it was not taken into account when the calculation was originally performed. However, it was later performed to include the capped drawdown policy in the correct way as though it had been performed on his 75th birthday.

Legislation

17. The Finance Act 2004 details the applicable legislation in relation to drawdown polices. The Finance Act 2004 was amended by the Finance Act 2011 with effect from 6 April 2011. The amendments, among other things, reduced the reference period from 5 years to 3 years, removed the requirement for individuals to purchase an annuity at age 75, introduced a reference period of 1 pension year for those individuals in a drawdown policy after age 75 and reduced the GAD from 120% to 100% of the equivalent annuity.

18. The changes were effective from 6 April 2011 and do not apply retrospectively. The current reference period and corresponding GAD continued to apply until the fifth anniversary of an individual's most recent GAD review, unless the individual reached age 75 or transferred to another drawdown provider. Where one of these events happened the new reference period limit of 3 years, or 1 year where the individual reached age 75, would apply from the start of the pension year following the event. Subsequent reviews would then be carried out every three years or annually after age 75. In Mr R's case, he turned 75 in the fourth pension year of the reference period that began in November 2007. So he was transitioned to the new rules at the beginning of the new pension year after he turned 75, which was November 2011. Mr R's GAD has been recalculated annually since.

Adjudicator's Opinion

19. Mr R's complaint was considered by one of our Adjudicators who concluded that further action was required by HL. The Adjudicator's findings are summarised briefly below:-

- It is clear that HL made an error where it did not correctly test Mr R's benefits against the LTA when he turned 75 in September 2011, as the capped drawdown policy was missed, which amounts to maladministration. However, it is necessary to determine whether this maladministration has caused Mr R any financial or non-financial loss.

- It is the Adjudicator's view that, whatever date the LTA test was performed, Mr R would have been subject to the same tax charge. HL has used the fund value of the SIPP at Mr R's 75th birthday, so he has not been disadvantaged there. If anything, the delay has advantaged Mr R as he has benefited from a higher value in his SIPP from September 2011, which would increase the value of any positive returns from his investments. Also, if the calculation to test his benefits against the LTA had been performed in September 2011 instead of July 2015, it would not have made a difference to Mr R's entitlement to tax free cash from the SIPP. His benefits would still have exceeded his LTA, and he still would not have been entitled to tax free cash. Therefore, Mr R has not suffered a financial loss as a result of HL's delay in testing his benefits against the LTA.

- Mr R's comments that HL has not performed the LTA calculation correctly by using an incorrect GAD were noted but not agreed. While the GAD of £74,065.91 from November 2007 is high when compared to the previous GAD of £47,672, and the following GAD calculated in November 2011 of £48,880, there is no evidence to suggest that it is incorrect. The GAD of £74,065.91 was calculated by Halifax and provided to HL. The adjudicator requested that HL perform a calculation to determine if this GAD would have been reasonable based on Mr R's age, approximate fund value and the Government Actuary Department table available in November 2007. HL has calculated a similar figure.

- In addition to this, the GAD of £48,880 calculated in November 2011 was calculated on the Finance Act 2011 basis using 100% of the equivalent annuity, rather than 120% as in November 2007. Mr R's age and fund value will also have an impact on the GAD applicable. In the Adjudicator's view HL has carried out the LTA calculation correctly in line with the Finance Act 2004 as amended by the Finance Act 2011.

- Mr R's point that the legislation allows him to request a review before the end of the reference period was acknowledged, which could have had an impact on the LTA calculation. However, there is no evidence to suggest that Mr R did request a review before his 75th birthday. While it could be said that it would have been reasonable for HL to carry out a review prior to his 75th birthday for the purpose of testing Mr R's benefits against the LTA, there is no legislative requirement for it to do so. There is no reason to believe that, had Mr R requested a review prior to age 75, HL would not have acted upon such a request. Therefore, no maladministration on HL's part with regard to the LTA calculation performed in July 2015 can be found.

- The Adjudicator considered whether Mr R has suffered any non-financial loss, such as distress and inconvenience, as a result of HL's delay in correctly testing Mr R's benefits against the LTA when he turned 75 in September 2011, and whether that non-financial loss is significant. It would have come as a disappointment to Mr R in 2015 that an LTA tax charge was due at his 75th birthday. Mr R had provided HL with a form in respect of the SIPP titled "Lifetime Allowance Declaration" which has details of all of his pension policies including the capped drawdown policy and the SIPP clearly written on the form. This form is signed and dated 4 July 2011, well before Mr R's 75th birthday. Therefore, it should have been available when the original LTA calculation was performed in 2011.

- HL states that one of Mr R's policies was missed when it calculated his LTA usage in September 2011. However, the Adjudicator believes that Mr R had supplied it with enough evidence for a correct LTA calculation to be performed at that time, this error was therefore avoidable. Mr R has suffered significant distress and inconvenience as a result of HL's error.

- The Adjudicator concluded that this complaint should be partly upheld and, to put matters right, for the part that should be upheld, HL should pay Mr R £500 for the significant distress and inconvenience that he has suffered.

20. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which are summarised below:-

    - Mr R has said that HL did not inform him of the importance of GAD or that he was able to request a review until 2015 when it informed him of the tax charge. If it had the tax charge could have been avoided.

    - Mr R says that the legislation states the five year GAD continued to apply until the fifth anniversary unless the individual reached age 75 which he had, or transferred to another drawdown provider, which he had. Therefore his GAD should have been recalculated upon transfer and at age 75.

    - He says that he took out a pension with Aviva on 18 March 2011, which, when added to his state pension, increased his fixed pensions to an income over £20,000 per annum. This meant that he did not have to purchase an annuity with the remainder of his benefits and that this converted him to the flexible drawdown under the Finance Act 2011.

    - Mr R feels that HL has not looked after him properly as a client despite him paying approximately £70 per month to monitor his fund.

21. Mr R's comments do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr R for completeness.

Ombudsman's decision

22. The two pension plans Mr R holds with HL are Self-Invested Personal Pensions, one of them being the drawdown policy. Self-Invested Personal Pensions by their nature require the plan holder, or an appointed financial advisor, to monitor them in order to achieve the best investment returns. HL has no responsibility to monitor the investments or advise the plan holder.

23. However, HL has confirmed that Mr R was issued with a Drawdown Guide and Key Features document which details that a GAD review can be requested on any pension year anniversary. In addition to this Mr R had held a drawdown policy for a number of years prior to transferring to HL and I would expect him to have been aware of the options he held in relation to GAD valuations.

24. The applicable legislation is contained in paragraph 10 of schedule 28 to the Finance Act 2004 ("**Paragraph 10**"), as amended by the Finance Act 2011 with effect from 6 April 2011 and modified, by paragraph 90 of schedule 16 to the Finance Act 2011 ("Paragraph 90"), in respect of individuals who, immediately before 6 April 2011, were entitled to unsecured pension and had not reached the age of 75. A copy of paragraphs 9 and 10 of schedule 28 to the Finance Act 2004, marked up to show the effect of the modifications made by Paragraph 90, is included at Appendix 3 for reference.

25. As a consequence of the amendments and modifications made to paragraph 10 of schedule 28 to the Finance Act 2004 ("Paragraph 10") by the Finance Act 2011, the most recent reference period to have commenced before 6 April 2011 and its corresponding GAD continued to apply until the fifth anniversary of an individual's most recent GAD review, unless the individual reached age 75 or transferred to another drawdown provider on or after 6 April 2011. The end of that period is referred to in the legislation as the "relevant date". Where this happened the new reference period limit of 3 years, or 1 year where the individual reached age 75, would apply from the pension year immediately following the relevant date. Subsequent reviews would then be carried out every three years or annually after age 75.

26. Applying the above legislation to Mr R's case, by virtue of sub-paragraph (1ZA) of Paragraph 10, the relevant date was 17 November 2011 (being the end of the pension year in which he turned 75). So the reference period that had begun on 18 November 2007 did not end until 17 November 2011 and the GAD that was calculated as at 18 November 2007 continued to apply for the whole of that period.

27. Therefore, the GAD calculation as at 17 November 2007 applied for the purposes of testing MR R's benefits against the LTA on his 75th birthday.

28. Further, while Mr R had transferred to another drawdown provider, this was completed in 2010 so, as explained in paragraph 25 above, that transfer did not cause the reference period that had commenced on 18 November 2007 to end.

29. I acknowledge that Mr R believes that his actions in relation to his other pensions mean that this enabled the capped drawdown policy to be converted to flexible drawdown under the Finance Act 2011, where GAD no longer applied. However, under the legislation in order for the conversion to take place a declaration must be made to and accepted by administrator of the capped drawdown policy.

30. HL has confirmed that Mr R did contact it regarding Flexible Drawdown in January 2011, prior to its availability. However, there is no record of HL receiving an application form from Mr R to convert his account at this time, or after 6 April 2011, when it became available. Instead, the conversion took place in June 2015 following receipt of his valid application form. The fact that Mr R applied for Flexible Drawdown in 2015 confirms that he was aware that his policy was still the capped drawdown policy up until June 2015.

31. Mr R has said that HL has not looked after his pension benefits properly despite him paying £70 per annum to monitor his fund. As I have explained above, it is not HL's responsibility to monitor his fund or provide him with advice. The fees that Mr R has paid are annual management charges (**AMCs**). This is an annual charge levied for the management of an invested fund or funds. It is usually expressed as a percentage of the total fund and deducted on a monthly basis. AMCs do not include the cost of providing advice.

32. Therefore, I agree that this complaint should be partially upheld, to the extent that HL missed the capped drawdown policy when testing his benefits against the LTA in 2011. Discovering this omission has caused him disappointment and a loss of confidence in the subsequent recalculations, albeit after careful consideration I can see no indication that they were done on an incorrect basis. To put matters right, for the part that is upheld, HL should pay Mr R £500 for the significant distress and inconvenience that he has suffered.

Karen Johnston

Deputy Pensions Ombudsman
20 March 2018

Appendix 1

Finance Act 2004 - Schedule 36

[Calculating LTA where benefits were put into payment prior to 6 April 2006.]

Part 2 Pre-commencement pensions

20

(1) This paragraph makes provision about an individual who, on 5th April 2006, has an actual (rather than a prospective) right to the payment of one or more relevant existing pensions.

(2) Section 219 (availability of individual's lifetime allowance) applies as if, immediately before the first benefit crystallisation event occurring in relation to the individual-

(a) a benefit crystallisation event had occurred in relation to the individual, and

(b) the amount crystallised was the value of the individual's pre-commencement pension rights immediately before the benefit crystallisation event.

(3) The value of the individual's pre-commencement pension rights at any time is-

25 x ARP

where (subject to sub-paragraph (4)) ARP is an amount equal to-

(a) the annual rate at which the relevant existing pension is payable to the individual at that time, or

(b) if more than one relevant existing pension is payable to the individual at that time, the aggregate of the annual rates at which each of the relevant existing pensions is so payable.

(4) In the case of drawdown pension, ARP is-

(a) the maximum amount that may be paid in the drawdown pension year in which the time falls in accordance with pension rule 5 (see section 165), or

(b) in the case of an arrangement to which subsection (3A) of section 165 applies, the maximum amount that could have been paid in accordance with that rule in the drawdown pension year in which that subsection first applied to the arrangement if it had not so applied.

…

Appendix 2

Finance Act 2004 – As in effect on 18 November 2007

Schedule 28 - Registered Pension Schemes: Authorised Pensions – Supplementary

Part 1…Unsecured pension year and basis amount for unsecured pension year

9

(1) "Unsecured pension year" means-

(a) the period of 12 months beginning with the day on which the member first becomes entitled to unsecured pension in respect of the arrangement, and

(b) each succeeding period of 12 months.

(2) But when the member reaches the age of 75 or dies before reaching that age, the current unsecured pension year is the last unsecured pension year and ends immediately before the member's death or 75th birthday.

The provision (above) is subject to modification.

10

(1) Subject as follows, the period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a "reference period".

(1A) Sub-paragraph (1B) applies if, at any time during a reference period ("the current reference period"), the member notifies the scheme administrator that the member wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine-

(a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and

(b) that (subject to any further operation of this sub-paragraph) the period of five unsecured pension years beginning with that day, and each succeeding period of five unsecured pension years, is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, "the reference date".

(2) For the first unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's unsecured pension fund on the nominated date (but subject to sub-paragraph (5)).

(3) "The nominated date"-

(a) in relation to the first reference period, is the reference date, and

(b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the reference date).

(4) For each other unsecured pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's unsecured pension fund -

(a) if there has been no recent annuity purchase, recent additional fund designation or recent pension sharing event, on the nominated date, and

(b) otherwise, immediately after the last annuity purchase, additional fund designation or pension sharing event,

(but subject to sub-paragraph (5)).

(5) On the occasion of each additional fund designation during an unsecured pension year, the basis amount for that unsecured pension year is to be recalculated in accordance with sub-paragraph (6).

(6) The basis amount for the unsecured pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's unsecured pension fund immediately after the additional fund designation.

(7) "Annuity purchase" means the purchase of a scheme pension or a lifetime annuity by the application of sums or assets representing the whole or part of the member's unsecured pension fund.

(8) "Additional fund designation" means the designation under the arrangement of further sums or assets held for the purposes of the arrangement as available for the payment of unsecured pension.

(8A) "Pension sharing event" means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the member's unsecured pension fund.

(9) An annuity purchase, additional fund designation or pension sharing event is "recent" if it took place during the period-

(a) beginning with the reference date, and

(b) ending with the last day of the immediately preceding unsecured pension year.

Appendix 3

Finance Act 2004 – As amended by Finance Act 2011 and in effect from 6 April 2011, with modifications made by Paragraph 90 of Schedule 16 to the Finance Act 2011 shown as underlined, struck through or in footnotes.

Schedule 28 - Registered Pension Schemes: Authorised Pensions – Supplementary

Part 1…Drawdown pension year and basis amount for drawdown pension year

9

(1) "Drawdown pension year" means-

(a) the period of 12 months beginning with the day on which the member first becomes entitled to drawdown pension in respect of the arrangement, and

(b) each succeeding period of 12 months.

This is subject to paragraph 10B.

(2) The drawdown pension year in which the member dies is the last drawdown pension year and ends immediately before the member's death.

The provision (above) is subject to modification.

10

(A1) This paragraph applies in relation to drawdown pension years beginning on or before the member's 75th birthday.

(1) Subject as follows, the period of three drawdown pension years beginning with the first drawdown pension year <u>beginning after the relevant date</u>[1], and each succeeding period of three drawdown pension years, is a "reference period".

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[1] "relevant date" is defined by para 90(3) (before it was amended w.e.f. 25/03/2013) as:

"*the earlier of the following:*

(a) the day on which the current reference period ends, and

(b) if a transfer within sub-paragraph (5) occurs in relation to the person, the day on which the drawdown pension year in which the transfer takes place ends."

A transfer is within sub-paragraph (5) if –

"*(a) it takes place on or after 6 April 2011, and*

(c) *it is a recognised transfer for the purposes of Part 4 of FA 2004 (see section 169 of that Act).*"

(1ZA) But the reference period (including the current reference period[2]) in which the member reaches the age of 75 ends with the drawdown pension year in which the member reaches that age.

(1A) Sub-paragraph (1B) applies if, at any time during a reference period ("the current reference period"), the member notifies the scheme administrator that the member wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine-

(a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and

(b) that (subject to sub-paragraph (1ZA) and any further operation of this sub-paragraph) the period of three drawdown pension years beginning with that day, and each succeeding period of three drawdown pension years, is to be a reference period.

(1C) The first day of each reference period (including the current reference period) is, in relation to that period, "the reference date".

(2) For each ~~the first~~ drawdown pension year ending on or before the relevant date ~~falling within a reference period~~, the basis amount is the basis amount for the last unsecured pension year[3] ~~annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund on the nominated date~~ (but subject to sub-paragraph 4(b) and (5)).

(3) "The nominated date"-

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[2] "current reference period" is defined by Para 90(4), Schedule 16 FA 11:

"*Subject to the operation of paragraph 10(1ZA) and (1B) of Schedule 28 to the FA04, "the current reference period" is the period of 5 years beginning before 6 April 2011 and comprising –*

(a) the drawdown pension year in which that date falls,

(b) any unsecured pension years which –

(i) began after the end of the last reference period ending before that date, and

(ii) ended before that date,

and

(c) if the sum of the years falling within paragraphs (a) and (b) is less than five, one or more drawdown pension years beginning after that date."

So, for Mr R, the current reference period (subject to (1ZA) and (1B)) started on 17 November 2007

[3] "unsecured pension year" is defined, by paragraph 89(4) of Schedule 16 to the Finance Act 2011, as the unsecured pension year in which 5 April 2011 fell.

(a) in relation to the first reference period, is the reference date, and

(b) in relation to any subsequent reference period, is such day, within the period of 60 days ending with the reference date, as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the reference date).

(4) For each other drawdown pension year falling within a reference period, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund -

(a) <u>other than in respect of drawdown pension years beginning on or after 6 April 2011 and ending on or before the relevant date,</u> if there has been no recent annuity purchase, recent additional fund designation or recent pension sharing event, on the nominated date, and

(b) otherwise <u>(or, in respect of drawdown pension years beginning on or after 6 April 2011, if there has been a recent annuity, recent additional fund designation or recent pension sharing event)</u>, immediately after the last annuity purchase, additional fund designation or pension sharing event,

(but subject to sub-paragraph (5)).

(5) On the occasion of each additional fund designation during a drawdown pension year, the basis amount for that drawdown pension year is to be recalculated in accordance with sub-paragraph (6).

(6) The basis amount for the drawdown pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund immediately after the additional fund designation.

(6A) But sub-paragraph (5) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.

(7) "Annuity purchase" means the purchase of a scheme pension or a lifetime annuity by the application of sums or assets representing the whole or part of the member's drawdown pension fund <u>or, in relation to an annuity purchase occurring before 6 April 2011, the member's unsecured pension fund</u>.

(8) "Additional fund designation" means the designation under the arrangement of further sums or assets held for the purposes of the arrangement as available for the payment of drawdown pension <u>or, in relation to an additional fund designation occurring before 6 April 2011, unsecured pension</u>.

(8A) "Pension sharing event" means the coming into operation of a pension sharing order or provision relating to the sums and assets representing the member's drawdown pension fund or, in relation to a pension sharing event occurring before 6 April 2011, the member's unsecured pension fund.

(9) An annuity purchase, additional fund designation or pension sharing event is "recent" if it took place during the period-

(a) beginning with the reference date or, for drawdown pension years beginning on or after 6 April 2011 and ending on or after the relevant date, the day on which the last unsecured pension year began, and

(b) ending with the last day of the immediately preceding drawdown pension year (including, in the case of a drawdown pension year beginning on 6 April 2011, the last unsecured pension year).

(10) Paragraph 14 defines "relevant annuity".

(11) Nothing in this paragraph applies in respect of an arrangement to which section 165(3A) applies.

The provision (above) is subject to modification.

10A

(1) This paragraph applies in relation to drawdown pension years beginning after the member's 75th birthday.

(2) For the first drawdown pension year beginning after the member reached the age of 75, and each succeeding drawdown pension year, the basis amount is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund on the nominated date.

But this is subject to sub-paragraph (6).

(3) In a case where the member first becomes entitled to drawdown pension in respect of the arrangement after reaching the age of 75, "the nominated date", in relation to the first drawdown pension year in respect of the arrangement, is the first day of that year.

(4) In any other case, "the nominated date", in relation to the first drawdown pension year beginning after the member reached the age of 75, is-

(a) if the member and the scheme administrator so agree, the day immediately before the member's 75th birthday, or

(b) if they do not so agree, such day within the period of 60 days ending with the first day of the drawdown pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, the first day of that year).

(5) "The nominated date", in relation to each other drawdown pension year, is such day within the period of 60 days ending with the first day of the drawdown pension year as is nominated by the scheme administrator (or, if no day is nominated by the scheme administrator, is the first day of that year).

(6) On the occasion of each additional fund designation during a drawdown pension year, the basis amount of that drawdown pension year is to be recalculated in accordance with sub-paragraph (7).

(7) The basis amount for the drawdown pension year is the annual amount of the relevant annuity which could have been purchased by the application of the sums and assets representing the member's drawdown pension fund immediately after the additional fund designation.

(8) But sub-paragraph (6) does not apply where the operation of that sub-paragraph in relation to an additional fund designation during a drawdown pension year would reduce the basis amount for that drawdown pension year.

(9) "Additional fund designation" has the meaning given by paragraph 10(8).

(10) Paragraph 14 defines "relevant annuity".

(11) Nothing in this paragraph applies in respect of an arrangement to which section 165(3A) applies.

The provision (above) is subject to modification.

Appendix 4

Paragraph 90 of Schedule 16 to the Finance Act 2011 (version in force from 19 July 2011 to 25 March 2013).

90

(1) This paragraph applies in the case of a person who, immediately before 6 April 2011—

(a) was entitled to unsecured pension, and

(b) had not reached the age of 75.

(2) Where, immediately before 6 April 2011, the last reference period to begin before that date has not ended—

(a) pension rule 5 in section 165 of FA 2004 has effect in relation to every drawdown pension year ending on or before the relevant date as if for “100%” there were substituted “120%”, and

(b) paragraph 10 of Schedule 28 to FA 2004 has effect with the following modifications—

(i) the reference in sub-paragraph (1) to the first drawdown pension year is to be read as a reference to the first drawdown pension year beginning after the relevant date;

(ii) any reference in sub-paragraphs (1ZA) to (1C) to a reference period is to be read as including a reference to the current reference period.

(3) The *“relevant date”* is the earlier of the following—

(a) the day on which the current reference period ends, and

(b) if a transfer within sub-paragraph (5) occurs in relation to the person, the day on which the drawdown pension year in which the transfer takes place ends.

(4) Subject to the operation of paragraph 10(1ZA) and (1B) of Schedule 28 to FA 2004, *“the current reference period”* is the period of 5 years beginning before 6 April 2011 and comprising—

(a) the drawdown pension year in which that date falls,

(b) any unsecured pension years which—

(i) began after the end of the last reference period ending before that date, and

(ii) ended before that date,

and

(c) if the sum of the years falling within paragraphs (a) and (b) is less than five, one or more drawdown pension years beginning after that date.

(5) A transfer is within this sub-paragraph if—

(a) it takes place on or after 6 April 2011, and

(b) it is a recognised transfer for the purposes of Part 4 of FA 2004 (see section 169 of that Act).

(6) For the purposes of pension rule 5 in section 165 of FA 2004, the amount which, immediately before 6 April 2011, was by virtue of paragraph 10 of Schedule 28 to FA 2004 the basis amount for the last unsecured pension year continues, on and after that date, to be the basis amount for every drawdown pension year ending on or before the relevant date.

This is subject to sub-paragraphs (4)(b) and (5) of that paragraph.

(7) Paragraph 10(4) of Schedule 28 to FA 2004 has effect for drawdown pension years beginning on or after 6 April 2011 and ending on or before the relevant date as it has effect for drawdown pension years falling within any reference period beginning after the relevant date, but as if—

(a) paragraph (a) were omitted,

(b) in paragraph (b), for “otherwise” there were substituted “if there has been a recent annuity, recent additional fund designation or recent pension sharing event”, and

(c) in paragraph 10(9) of that Schedule—

(i) the reference to the reference date were a reference to the day on which the last unsecured pension year began, and

(ii) the reference to the immediately preceding drawdown pension year included, in the case of a drawdown pension year beginning on 6 April 2011, a reference to the last unsecured pension year.

(8) In paragraph 10(7) to (8A) of that Schedule any reference to drawdown pension or the member's drawdown pension fund is to be read as including, in relation to anything occurring before 6 April 2011, a reference to unsecured pension or the member's unsecured pension fund.