

Ombudsman's Determination

Applicant	Mr M
Scheme	LH Group Holdings Limited Pension Scheme (the Scheme)
Respondent	Aviva

Outcome

1. I do not uphold Mr M's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr M complains that Aviva provided incorrect information in its retirement options pack (**ROP**) from 2014. The ROP indicated that Mr M would be able to take 100% of his current fund value at the time, being £31,330.27, as tax-free cash. On this basis, Mr M increased his pension contributions thinking that he would have a larger tax-free lump sum when he came to retire. Mr M would like Aviva to honour the illustration and to recognise the distress and inconvenience it caused.

Background information, including submissions from the parties

4. Mr M is a member of the Scheme, a Trust-based occupational scheme for LH Group Holdings Ltd (**the employer**), that was administered by Aviva. The Scheme's Trustee had appointed Clarkson Wayman Ball Limited as its independent financial adviser (**the IFA**), meaning that Aviva only communicated with the Scheme Trustee, the employer, or the IFA.
5. Mr M was a member of the Scheme before 6 April 2006, so his pension includes a protected tax-free cash entitlement in excess of the usual 25%. As at 6 April 2006, Mr M had a protected tax-free cash entitlement of £2,756.30.
6. On 15 February 2014, Aviva issued a ROP for Mr M. One of the options listed was to take the fund value of £31,330.27 as a tax-free lump sum.
7. On 28 August 2014, Aviva sent the employer an illustration, addressed to Mr M, showing his projected benefits. This demonstrated the benefit that Mr M might receive from the Scheme, at age 75, from the contributions being made. Each possibility

outlined that Mr M would have the opportunity to either buy an annual pension or receive a partial tax-free cash sum and a reduced annual pension.

8. On 3 May 2016, Aviva advised the IFA that Mr M would be able to take his full fund value as tax-free cash.
9. In a letter, dated 4 May 2016, Aviva followed up its advice to the IFA and stated the following:-
 - The fund value of Mr M's policy as at 6 April 2006 was £2,756.30 and the Transitional Tax-Free Cash (TTFC) was £2,756.30.
 - Mr M's current fund value was £63,637.07 and he could take £18,757.44 as tax-free cash.
10. On 25 January 2017, the Scheme was wound up and Mr M's benefits were transferred to an Individual Section 32 Buyout Plan with Aegon. Aegon wrote to Mr M on 16 February 2017, to confirm that the transfer had taken place with a value of £74,704.75.
11. On 21 March 2017, Mr M complained to the IFA as he was not sure that he would be able to take the large tax-free cash sum in light of the transfer value information he received from Aegon.
12. On 16 May 2017, the IFA responded and reconfirmed the transfer value of Mr M's policy. The IFA also said that, as of 20 March 2017, the value of Mr M's policy was £77,508.88 with a tax-free cash amount of £22,224.20 which was approximately 29% of the total value.
13. Mr M retired on 31 May 2017.
14. On 7 July 2017, Mr M responded to the IFA's correspondence of 16 May 2017, saying he was unhappy with its investigation. He included the ROP he had received from Aviva in 2014, and queried why he was being quoted different tax-free cash sums. In light of this, the IFA contacted Aviva in order to ascertain how the ROP, dated 15 February 2014, had been calculated.
15. On 18 September 2017, Aviva wrote to the IFA in response to its query with the following information:
 - The fund value of Mr M's policy as at 6 April 2006 was £2,756.30. As the TTFC was 100% of the funds as at A Day, Mr M's TTFC at that point was £2,756.30.
 - Protected TTFC is only applicable to pre-A Day contributions, so only 25% of the premiums made since A Day could be taken as tax-free cash, which is why Mr M's tax-free cash sum is no longer 100%.
16. On 26 September 2017, the IFA contacted Aviva to make it aware that Mr M was unhappy that Aviva had advised him, on 10 August 2017, that his fund value was

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£74,334.53 with a tax-free cash amount of £21,434.31. However, he had previously been advised that he would be able to withdraw 100% of the fund value as tax-free cash.

17. On 11 October 2017, Aviva responded to the IFA. It apologised for the incorrect information provided in 2014 and 2016, and confirmed that the letter, dated 4 May 2016, was correct in saying that the TFC value was £18,757.44.
18. On 20 November 2017, Mr M responded to say that Aviva's error had seriously affected his plans for a comfortable retirement. He noted the following:-
 - Despite having retired in May 2017, he had not drawn down his pension as he had been waiting to find out why his tax-free cash had reduced. As a result, he had been using his savings to support his standard of living during this period.
 - He increased his pension contributions after Aviva's ROP from February 2014, thinking he would have a large tax-free lump sum when he retired.
19. On 30 November 2017, Aviva issued its response to the complaint. It accepted that its quote of 15 February 2014, was incorrect, as it should have stated that the fund value was £32,875.22, with a TTFC of £11,066.98. It also noted the following:-
 - It had incorrectly informed the IFA that 100% of the fund could be taken tax-free on 3 May 2016. However, it followed this up on 4 May 2016, to say that the fund value was £63,637.07 but only £18,757.44 was the corresponding TTFC.
 - Mr M had not asked for clarification on how his post A-Day contributions would be treated, and in any case, Aviva's illustration dated August 2014, demonstrated that the tax-free cash sum was not going to be 100% of the fund value.
 - The quote dated 15 February 2014, would have given Mr M a false expectation as to the tax-free cash available at retirement. To recognise the disappointment Mr M had experienced, it offered £250.
20. On 13 April 2018, Mr M's complaint was brought to this Office. With regard to Aviva's response of 30 November 2017, Mr M made the following comments:-
 - He never received the illustration issued on 28 August 2014.
 - Aviva did not contact him when it realised it had made an error in 2014.

Adjudicator's Opinion

21. Mr M's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- There is no dispute that there was an error on the part of Aviva in the information it provided. However, Mr M and Aviva have not agreed on a resolution.
- Aviva incorrectly stated that Mr M would be able to take the entirety of his fund tax free on two occasions. As a result, Mr M expected to take a minimum of £31,330.27 tax free. However, as a scheme member is only ever entitled to the correct benefits under the scheme's governing provisions and the legislation, Mr M was not entitled to that amount.
- It was unreasonable for Mr M to increase his pension contributions thinking that this would significantly increase his tax-free cash sum. Aviva had not indicated that the fund accrued from additional contributions would be paid tax free and cannot therefore be held responsible for Mr M's decision.
- Although, Mr M did not receive all of the information that Aviva issued in relation to his benefits, it could be argued that Mr M's expectation should have been limited, as he could have known about his correct entitlement from 4 May 2016. As a result, Aviva could not be held responsible for the financial decisions Mr M made whilst he attempted to resolve his complaint.
- Mr M had not argued that he would have done anything differently had he been provided with the correct information, so only the loss of expectation and the distress and inconvenience caused was assessed. Based on this, the Adjudicator felt that the £250 offered was appropriate in this case.

22. Mr M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr M provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr M for completeness.

Ombudsman's decision

23. Aviva provided Mr M with incorrect information in 2014 that suggested that he would receive a minimum tax-free cash lump sum of £31,330.27. In light of this, Mr M decided to increase his pension contributions in the expectation of significantly increasing the tax-free cash lump sum available to him. However, he did not seek clarification before doing so. As the information from Aviva did not indicate or confirm what would happen to any additional contributions made after that point, I do not find that Aviva is responsible for Mr M's decision, as he had based this on an assumption.
24. Mr M has focused on the additional contributions but has not explained how this has inconvenienced him other than the loss in expectation that, in paying the additional contributions he would receive a higher tax-free cash sum. Nor has he argued that had he received the correct information he would have done anything differently. As a result, I will only consider the level of distress and inconvenience caused by Mr M's loss of expectation.

25. Mr M believes Aviva ought to have contacted him directly to make him aware of the error. However, Aviva did not contact members of the Scheme directly and nor was it required to do so. By sending the correct information to the IFA on 4 May 2016, I find Aviva that had satisfied its requirement. I say this as unless Mr M had contacted Aviva to make it aware of his intention to increase his contributions as a direct result of the ROP issued in 2014, Aviva would not have known that there had been a reliance on that information. Therefore, it would not have been aware of a specific need to ensure Mr M was informed of the error.
26. As previously identified, there could have been limitations to the extent of Mr M's loss of expectation. Based on Aviva's actions and information, Mr M should have known that additional contributions would have been subject to tax. In addition to this, as Aviva had corrected the previous misinformation, Mr M should have been aware that his actual tax-free cash lump sum entitlement was £18,757.44 from 4 May 2016, which would have given him time to mitigate any loss. As a result, it would have meant that he would not have been relying on other means whilst trying to resolve his complaint. It is regrettable that Mr M did not receive the information from the IFA that Aviva provided, and that Mr M did not have the opportunity to mitigate the situation. However, this was not due to Aviva's (in)actions. Whilst Aviva made the initial error, I cannot hold it entirely responsible for what has happened, so I do not find Aviva fully accountable for the distress and inconvenience caused by Mr M's loss of expectation.
27. I do not consider that Aviva's actions have caused significant distress and inconvenience. Whilst initially there was misinformation, Aviva's later actions should have altered Mr M's expectation. It is unfortunate that some of Aviva's information did not reach Mr M. However, as this was not Aviva's responsibility, I believe that the £250 award Aviva has offered is adequate, and if he has not already done so Mr M should contact Aviva if he wishes to take up its offer.
28. I do not uphold Mr M's complaint.

Anthony Arter

Pensions Ombudsman
24 April 2019