PENSION SCHEMES ACT 1993, PART X

DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Dr Timothy Langdell
Scheme	Abbey Life Directors and Executive Retirement Plan
Respondent(s)	Abbey Life

Subject

Dr Langdell complains that Abbey Life repeatedly verbally assured him that his tax free cash was in the region of £13,845.6. However, he was subsequently paid around £7,800. He also says that they failed to follow his instructions regarding the set up of his pension benefits, given that he had stated that if he was to receive less than £13,845.61 of tax free cash, he did not wish to receive his pension benefits at that time.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against Abbey Life because they:

- gave Dr Langdell incorrect information about his Tax Free Cash Allowance;
- failed to adequately explain that Dr Langdell's Tax Free Cash Allowance had been reduced because a loan to his employer had been repaid from his policy;
- set up his pension benefit when they knew or should have known that Dr Langell had instructed them not to set up his benefits if his tax free cash was less than £13,845.61; and
- failed to adequately respond to Dr Langdell's letters of complaint;

As a result, they should pay Dr Langdell £500 for distress and inconvenience caused in pursuing this complaint.

DETAILED DETERMINATION

Material Facts

1. Dr Langdell resides in Oakland, California. Dr Langdell had an Abbey Life policy (No 273127001E **(the policy)** under the Abbey Life Directors and Executive Retirement Plan **(the Plan)** related to his employment with Sofitex International Limited, **(Sofitex)** of which both he and his wife were Directors.

2. On 1 March 1989 Sofitex took a loan of £13,000 from the plan. The loan agreement states:

> "The Loan Agreement between the Company and the Trustee will provide that loans must be repaid:
>
> I. At least one year before your Normal Retiring Age.
>
> II. Within one year of your death.
>
> III. Within one year of your early retirement.
>
> IV. Within one year of your leaving service.
>
> V. Immediately if premiums to the Plan cease but you remain in service.
>
> VI. Immediately if the Company cease to operation eg on liquidation.
>
> The Trustees will take legal action to recover, if necessary the amount of any loan not repaid. In the event of the loan not being repaid for any reason then the fund available to secure your benefits or those payable to your dependants will be reduced by the amount of the loan outstanding.
>
> On retirement, the amount of any loan will the deducted from the Tax Free Cash Sum and any further amount still outstanding will be deducted from the Fund available to secure Pensions Benefits for you or your Dependants."

3. Sofitek subsequently defaulted on the loan interest repayment and as result Abbey Life began to make demands for repayment of the loan in full. Abbey Life wrote to Sofitex on at least two occasions demanding repayment of the loan in full and warned Sofitex that if the loan was not repaid they would recover the outstanding amount from the Plan's sterling account. No response was received from Sofitex and on 17 January 1991, there is a note that Abbey Life's correspondence to Sofitex had begun to be returned.

4. On 4 February 1991, Abbey Life settled the loan was by reducing the units in the policy by the value of the outstanding loan amount, ie the loan was repaid by a cash deduction of £8863 against Dr Langdell's policy and £4137 against his wife's policy (No 273127002E).

5. In May 2012, Dr Langdell began to make enquiries about his pension benefits in respect of the policy. Abbey Life say that they spoke to Dr Langdell and explained that the amount available to take as tax free cash, **(tax free cash allowance)** may be affected due to the repayment of the loan from the policy. Dr Langdell disputes that this conversation took place. The entry on Abbey Life's system states that "[An Abbey Life employee] *will* ring client and explain outstanding on both his and her policies will affect pension payments and options.".

6. On 7 December 2012, Dr Langdell made enquiries as to whether he would be able to take any more of the fund as cash and was told that it was likely that he would be able to do that but that he should complete the "Occupational Pension Scheme Questionnaire" **(the Questionnaire)** and returned it to Abbey Life. Dr Langdell completed and returned the Questionnaire on 8 December 2012 which was received by Abbey Life on 13 December 2012.

7. According to Abbey Life records on 14 December 2012, their systems were updated to show that Dr Langdell's protected tax free cash allowance was £13,845.61 as at April 2006. On the same day, Dr Langdell was sent a retirement pack which showed a total retirement fund value of the £17, 317.97 and that the maximum Protected Tax Free Cash **(PTFC)** he could actually receive was £7,832.25.

8. On 18 December 2012, Dr Langdell says he rang Abbey Life as he had not yet received any further information. Dr Langdell says that at this time Abbey Life staff confirmed for the first time that his tax free cash was over £13,000 and that an updated retirement pack would be issued. Abbey Life has no record of this call.

9. On 19 December 2012, Dr Langdell wrote to Abbey Life confirming the details of the 18 December phone call and said that he wished to retract his previous instruction that he was willing to accept 25% as tax free cash and that he wanted to take the maximum amount as possible. The letter stated that if his tax free

cash was less than £13,000 he did not wish to receive his benefits but would prefer to wait until his tax free cash equalled at least that amount. Abbey Life have no record of receiving this letter.

10. On 27 December Dr Langdell says that he rang Abbey Life again and that he was told that his PTFC had increased to £13,845.61 and that an updated pack had been issued on 18 December 2012. Abbey Life's phone record for this date suggests that there was a conversation about Dr Langdell receiving 100% of his benefits as cash and that he asked what further information he could put on the Questionnaire to increase his tax free cash.

11. On 2 January 2013, Abbey Life wrote to Dr Langdell to say that they had not received all of the required documentation to set up his benefits and if they did not hear from him shortly his benefits would be deferred up until age 75.

12. On 7 January 2013 Dr Langdell says that he rang Abbey Life and that the PTFC amount was again confirmed as £13,845.61. Dr Langdell explained that the retirement pack showing the revised figures had not arrived. During this phone call Dr Langdell claims that he was told that he did not need to wait for a revised pack and could simply submit his form quoting the PTFC figure he had been given. However, Dr Langdell said that he would prefer to receive confirmation of the amount in writing and asked that an updated pack be issued as he had not received the previous one that was issued. Dr Langdell says there was a further conversation about the fact that he wished to receive his tax free cash by telegraphic transfer and that this would require him to confirm in writing that he would accept the fee of £21.00 for the transfer.

13. Abbey Life's two separate records of the 7 January 2013 phone call say "please can we reissue retirement pack with updated PTFCS and forms as client has not received updated pack" and "Client confirmed he would like payment by TT, went through requirements.".

14. On 11 January 2013, Dr Langdell wrote to Abbey Life, in response to their letter dated 2 January 2013, saying that he did not wish to defer his benefits to 75. He reiterated the amount of tax free cash that had been confirmed by phone, as £13,845.61 and explained that he was awaiting an updated retirement pack before returning his benefit option forms. This letter was received by Abbey Life on 17 January 2013.

15. On 21 January 2013, Abbey Life issued another retirement pack showing a retirement fund value of the £17, 362.24 and the maximum PTFC Dr Langdell could receive was £7,843.32.

16. Dr Langdell later received a new retirement pack which quoted similar figures to the one he had received in December 2012, i.e a PTFC sum of around £7,800. Dr Langdell immediately queried this amount with Abbey Life by phone on 23 January 2013 and says that the he was told to ignore the figures provided in the pack as they were sent in error and that his correct tax free cash amount was £13,845.61. He says he then spoke to a manager who reiterated this information.

17. Abbey Life's record of this conversation indicates that Dr Langdell was passed over to a manager because he was not listening to the information being provided by Abbey Life and that the manager then assisted him in completing his retirement benefit option forms. However, their record does not explain what information Abbey Life was attempting to explain to Dr Langdell.

18. Later that day Dr Langdell completed his retirement benefit option forms requesting the maximum amount of tax free cash quoting the figure of £13,845.61 with a covering letter explaining that he had been awaiting a revised retirement pack but that he had been told it was unnecessary. He requested that Abbey Life contact him by email because post could take up to two weeks to arrive at his home in California. He also gave agreement to the telegraphic transfer fee of £21. Abbey Life received this letter and these forms on 30 January 2013.

19. Dr Langdell sent a second letter dated 23 January 2013 (by express mail) stating that if his actual tax free cash amount was less than £13, 845.61 then Abbey Life should *not* process his forms. However, Abbey Life say that they did not receive this letter.

20. Records from Abbey Life show that on 23 January 2013, an internal query was raised regarding Dr Langdell's policy to confirm that the amount of PTFC listed on the system, (£13,845.61) was correct and explain the discrepancy between that figure and the amount shown in the retirement packs. Abbey Life's technical department responded on 25 January stating:

> "It was and HM Revenue and Customs requirement that where an unsecured loan was "recovered" from the pension to which it

is related i.e unit reduction, then the tax free cash sum (TFCS) limit at retirement for the employment should be reduced by the value of the loan.

This requirement was not removed by the Pension Simplification legislation. Consequently, regardless of the TFCS calculation method used, the result must be restricted.

This means that maximum TFCS limit for this plan must be reduced by the value of the unsecured loan that was recovered from the pension fund in 1991, (i.e The loan of £8,863 was not repaid so the units were reduced and such as reduction means that the TFCS limit must be reduced accordingly in line with the terms of the loan),".

21. On 29 January 2013, Abbey Life issued their response to Dr Langdell's letter of 11 January 2013. It explained that their letter of 2 January 2013 was a standard letter sent in cases where they were awaiting confirmation of the benefits options chosen. They explained that Abbey Life would defer his benefits up to age 75 if they did not hear from him but that it would not prevent Dr Langdell's taking his benefits earlier if he wished to do. It went on to say:

> "As you have stated, we calculated the Protected Tax Free Cash sum available from this policy as £13,845.61 as at 5th April 2006. This is then revalued in line with the increase in the Lifetime Allowance from 5th April 2006 making the figure for the tax year ending 5th April 2013, £16,614.73. In addition, it is further enhanced by 25% of the any increase in the transfer value between 5th April 2006 and the retirement benefit payment date. This portion will therefore vary from day to day depending on the unit selling prices.
>
> However, it an H M Revenue and Custom requirement that that maximum Tax Free Cash sum must be reduced by the value of any unsecured loan recovered by way of unit reduction. This mean the Tax Free Cash Sum reduces by the amount of the loan and residual fund increases by this amount. The loan amount on this policy is £8,863. Our retirement quotes have taken into account the revaluation and the recovered loan reduction."

22. Abbey Life received Dr Langdell's benefit option forms on 30 January 2013.

23. Dr Langdell received Abbey Life's letter of 29 January 2013 on 5 February 2013 and immediately contacted them by phone. Dr Langdell says that he explained all the assurances he had been given by Abbey Life staff that the value of his PTFC was £13,845.61. He told them that he was not aware of any loan taken from the policy and asked them to verify if they had received his forms and the amount to be paid. He says that Abbey Life confirmed that they had received his paperwork

but that it had not been processed. Dr Langdell says that Abbey Life again confirmed that he would receive the higher PTFC amount and said that he was misinterpreting their letter of 29 January 2013. Dr Langdell says that he told Abbey Life to stop the payment if he was going to receive a PTFC sum of less than £13,845.61. Dr Langdell then confirmed this conversation in a letter to Abbey Life dated the same day. Abbey Life say that they did not receive Dr Langdell's letter of 5 February 2013.

24. Abbey Life's record of 5 February 2013 phone call says they repeatedly confirmed that their letter of 29 January 2013 was correct and that they tried to explain the contents of it to Dr Langdell, but he would not listen to them. When Abbey Life confirmed the existence of the loan on the policy they say that Dr Langdell hung up.

25. On 11 February 2013, an internal document was sent referring to a letter from Dr Langdell, (although the date of the letter is not mentioned) and confirming that the benefit figures provided in the retirement pack were correct, i.e that Dr Langdell should receive tax free cash I the region of £7,800.

26. On 13 February 2013, Abbey Life set up Dr Langdell's benefits in accordance with the figures in the retirement packs that were issued. As a result Dr Langdell received £7,849 as his tax free cash lump sum and a pension of around £900 a year on 25 February 2013.

27. Dr Langdell rang Abbey Life on 25 February 2013 to complain about the benefits he had received and the matter was referred to a manager. He was told to ring the following day.

28. On 26 February 2013 when Dr Langdell rang back he was told that a letter would be issued the following day. Abbey Life say that Dr Langdell became angry at this point and this culminated in the call being terminated. When Dr Langdell rang back he was told that Abbey Life staff were no longer allowed to accept his calls.

29. Dr Langdell sent a letter to Abbey Life by courier on 27 February 2013 rehearsing the entire chronology of events and enclosing a copy of his letter of 5 February 2013. This letter stated that Dr Langdell knew nothing of any loan on his policy and that the figures provided showed that the total value of his fund remained around £17,300 with "no sign of any loan being deducted". His letter

went to say that he had been informed that tax rules had changed in 2006 which meant that any loan could not be deducted from his tax free cash in any event. He asked for clarification as to why the loan had not been raised with him until after he had returned his option forms to Abbey Life and that he had made financial commitments on the basis of receiving £13,845.61.

30. On the same day, 27 February 2013 Abbey Life wrote to Dr Langdell. This letter stated that Dr Langdell has been verbally informed about the implications of the loan on the policy in May 2012 and rehearsed the chronology of events from Abbey Life's records, in particular it stated:

> "Our records show that on 23 January 2013 you had lengthy conversations with two of our Consultants who tried to explain the situation to you. One of them talked you through the retirement application forms so it would appear that you did receive at least one the illustrations showing the maximum tax free cash at around £7,840.
>
> On 29 January 2013, we issued our final response letter to your original complaint and tried to explain to you that would not be able receive a tax free cash sum of as much as £13,845.61. You telephoned on the 5th February 2013 about this letter but it appears you did not ask to speak to Mrs Rothwell. The notes taken at the time seem to indicate that the letter was explained to you in the way in which Mrs Rothwell intended it to be understood but as I was not party to the conversation it is difficult to comment further. However, there is no record on our system that you told the Consultant not to process the application if the amount of tax free cash was smaller than you anticipated.
>
> We did not hear anything further from you so your application was processed on 13 February 2013. Although, you quoted a figure of £13,845.61 the form states that you can only receive up to the allowable limit. In this case, because of the loan, it was considerably less which was allowed… The tax free cash limit was £16,712.30 which was reduced by £8,863 giving an allowable tax free cash sum of £7,849.30 and the balance of £9,536 being used to purchase an annuity."

The letter went on to say that Abbey Life had found no evidence that their staff had ever told Dr Langdell that his PTFC was £13,845.61 and all the quotations had showed tax free cash figures which were reduced by the value of the loan. Abbey Life explained that they had said everything that they could on the matter and given that nature of his phone call on 26 February 2013 Abbey Life staff had been instructed not to accept any further calls from him. Dr Langdell was told that any further communication to Abbey Life should be made in writing. They also pointed out that it was not possible to rectify the matter in the two ways suggested by Dr Langdell during his last phone call. Dr Langdell had suggested that he should receive an additional amount of tax free cash to bring the amount to £13,845.61 or that he would return all the monies paid to him and reinstate his pension policy as if no benefits had been claimed. Abbey Life explained that they could not agree to his first suggestion as they must abide by HM Revenue and Customs legislation on tax free cash and that they it was not viable to reinstate his policy because he had indicated "in various conversations" that he no longer had "access to all of the money" which Abbey Life had paid to him.

31. On 6 March 2013 Abbey Life received Dr Langdell's letter of 27 February 2013.

32. On the 18 March 2013, Abbey Life wrote to Dr Langdell to say that they hoped he had received their letter of 27 February 2013 and reiterated that their staff had been instructed not to speak to him. It explained that they had read his letter of 27 February 2013 but their decision remained the same because neither of the options he had suggested were viable. There is no evidence that Dr Langdell received this letter.

33. Dr Langdell did not receive Abbey Life's letter of 27 February 2013 until 9 May 201. He wrote to them on 10 May 2013, rehearsing the history of the matter and enclosing copies of the all the previous correspondence he had issued to Abbey Life, asking them to rectify the position. Dr Langdell asked Abbey Life to preserve all recordings and telephone notes between himself and their staff and complained that:

- Abbey Life had failed to communicate by facsimile or email despite his repeated requests. He asked that future correspondence be sent to him by either method or alternatively by courier to ensure he received any letters and to prevent any excessive delay in receiving their correspondence.
- No final decision letter of 29 January 2013 should have been issued as he had never complained to Abbey Life about his tax free cash.
- They had failed to properly respond to his letter of 27 February 2013.
- Abbey Life had not mentioned the "alleged" loan of £8,863 either verbally or in writing until after he had selected his benefit options. Dr Langdell

specifically stated that he had no knowledge of a loan and disputed their version of events surrounding the May 2012 phone call.

- All the correspondence he had received indicated that his fund value was £17,359.59 and not £26,2259 (£17,359.59 plus the loan amount of £8,863) and queried how he could have been paid £7,842.66 as tax free cash if the loan had been deducted from a fund of £17,359.59 and £9,485.72 used to buy an annuity.
- He had instructed staff on the phone and in writing that they should not process his paperwork if his tax free cash was less than £13,000 and Abbey Life should pay him the balance of his tax free cash calculated at £16,695.25

34. On 14 June 2013, Abbey Life wrote to Dr Langdell to say that they did not know why it had taken so long for their letter to arrive but that their letter of 27 February 2013 would stand and they did not have any further comment to make. It also confirmed that they had written to Dr Langdell on 18 March 2013 in response to his letter of 27 February 2013 confirming him that their decision remained unchanged.

35. Dr Langdell then referred the matter to this office, reiterating the majority of the points raised in the his letter of 10 May 2013 and pointing out that he could not have known the figure of £13,845.61 unless it had been given to him by staff at Abbey Life.

36. This office later requested formal responses from Abbey Life. Abbey Life simply relied on their letter of 27 February 2013 and did not add any further comment. They also forwarded a copy of their file on the matter, including a copy of the loan agreement and letters written to Sofitex demanding repayment of the loan in full.

37. Dr Langdell pointed out that the information provided about the loan indicated that it had been repaid and that it did not make sense that the Abbey Life would have left the loan outstanding for over 20 years. He also pointed out that Abbey Life had said that there was an outstanding loan on his wife's policy when she took her benefits in May 2012, but once he had challenged this Abbey Life had accepted that there was no outstanding loan on her policy and had not made any deduction from her benefits.

38. On 21 May 2014 Abbey Life confirmed that when the loan was taken out the HM Revenue and Customs **(HMRC)** Occupational Pensions Schemes Practice Notes (IR12) required that where an employer defaults on a loan and it deducted from the policy, the amount of the repaid loan should be deducted from the amount the member is able to take as tax free cash on retirement. They argue that the Loan Agreement reflects HMRC's view of the position and sets out what should happen on a loan default. The IR12 Practice Note in question says:

> "16.75 - Any reduction of benefits as a result of foreclosure will be first effected against any lump sum retirement benefits payable. The restriction on the director's lump sum retirement benefits will be lifted to the extent of the amounts recovered by the scheme trustee(s) under the rights acquired as a result of foreclosure."

Summary of Dr Langdell's position

39. Dr Langdell originally disputed that there was any loan on his policy but now says that the loan details provided by Abbey Life indicate that the loan was repaid and that it is his recollection was that it was repaid in late 1990.

40. Dr Langdell's disputes that loan was mentioned to him by phone in May 2012 and says that first mention of it was Abbey Life's letter to him of 29 January 2013 after he had submitted his benefit option forms.

41. That he was assured by Abbey Life staff on a number of occasions that he would receive tax free cash of £13,845.61 and that he told Abbey Life not to process his benefits if he was going to receive tax free cash of less than this amount.

42. Dr Langdell argues that Abbey Life did not follow the terms of IR12 because IR12 states that any reduction in benefits must first be effected against any lump sum. As a result, he argues that Abbey Life had no right to reclaim the loan by the reduction of units on his policy. He further argues that the reduction of units was essentially a cash deduction from his fund.

43. He argues that since the overall value of his fund did not change. (He as paid [insert figure] as tax free cash and [insert figure] was used to purchase an annuity which amounts to [insert figure] the total the full value of this fund). No money was actually deducted from the fund in any event.

44. He argues that had he received the additional amount of tax free cash he would have be able to repay debts that are accruing interest at the rate of 20%.

45. However, he also states that had Abbey Life followed his instructions and not processed his benefits , he would have left the his pension intact until he could transfer the full amount to an American pension which would have allowed to received his full fund in cash.

Summary of Abbey Life's position

46. Abbey Life say that a loan £13,000 was taken out against the Plan in 1989. Following, default on repayment of the loan, the outstanding amount was settled by deducting units of to the value of £8,863 from the policy.

47. Under HMRC rules, the repayment of loan in this way must be treated as cash going out pension and therefore is treated as part of the tax free cash allowance. As a result when Dr Langdell came to take his benefits, the loan amount was deducted from his tax free cash allowance. This did not reduce his total fund value, only the proportion of it that was available to be taken as tax free cash.

48. Abbey Life do not have any records of telephone conversations where Dr Langdell instructed them not to proceed to set up his benefits if the PTFC was less than £13,000 nor did they receive Dr Langdell's letters of 19 December 2012 or 23 January and 5 February 2013 giving these instructions in writing.

49. They argue that there is no evidence that Dr Langdell was ever told that his PTFC would be £13,845.61 and all written retirement quotes had cited the lower figure in region of £7,800, taking into account the reduction in his tax free cash allowance.

Conclusions

50. There are four aspects to Dr Langdell's complaint, which are that:

- Abbey Life assured him that he would receive at least £13,845.61of tax free cash on a number of occasions;
- they then reduced this amount by incorrectly deducting an outstanding loan amount on his policy which he says was previously repaid, reducing his tax free cash to £7,849.30 which they later paid to him;
- in doing so, Abbey Life failed to follow Dr Langdell's clear instructions that if the tax free cash available was the below £13,000 that they should not put his in pension benefits into payment; and,

- they subsequently failed to respond adequately to his letters of complaint

Assurance of Tax Free Cash amount

51. I note that Dr Langdell spoke to Abbey Life on the phone a number of times and on each occasion he followed up his conversations in writing. As a result, his letters were written when the memory of the conversations were fresh in his mind and are specific as to the content of the conversation.

52. However, much of the evidence about what was said in phone calls between Dr Langdell and Abbey Life is disputed. By contrast the records provided by Abbey Life are generally brief. In particular Abbey Life's records of telephone conversations prior to 23 January 2013 do not indicate that any information about the tax free cash amount was given to him. I note for example, Abbey Life refer to suggestions given by Dr Langdell in his call to them 26 February 2013 about how his complaint could be rectified in their letter to him of 27 February 2013. However, despite having receiving three separate records relating to calls on that date, this information does not appear in any of them. As a result, I am not confident that Abbey Life's records represent a full record of the discussion in each phone call.

53. Nevertheless, the parties generally agree on the dates of these conversations and who was spoken to on each occasion and at least some aspect of the conversation held and what we do know is that:

- Both parties agree that Dr Langdell was never given the figure of £13,845.61 in writing.
- This figure first appeared on Abbey Life's systems on 14 December 2012.
- Abbey Life call records of the 7 January 2014 refer to re-issuing a retirement pack with an "updated PTFC" and that they discussed what Dr Langdell should do to be paid by telegraphic transfer.
- Dr Langdell first referred to this figure as it appeared on Abbey Life systems, (i.e accurate to the penny) in his letter dated 11 January 2013 stating that he was awaiting an updated retirement pack showing this figure before he returned his benefit option forms and this letter was received by Abbey Life on 17 January 2013.

- Both parties agree that Dr Langdell completed his benefit options form on 23 January 2013, having spoken to a manager at Abbey Life and that Dr Langdell included the figure of £13,845.61 as his maximum tax free cash on those forms; and
- Staff at Abbey Life asked their internal actuarial team to confirm that the figure of £13,845.61 was correct on 23 January 2013 and that a response to this query was not received until 25 January 2013.

54. Given that:

    - Dr Langdell quoted the exact figure shown on Abbey Life systems and there is no other likely source of that information;
    - Abbey Life's recorded actions accord with Dr Langdell's understanding as at 11 January, i.e that retirement pack with an updated PTFC would be issued; and,
    - Up until 25 January 2013 Abbey Life staff appeared to believe the higher figure was correct,

    I accept that Dr Langdell's assertion that at some point after 14 December 2012, he was told by Abbey Life staff that his PTFC would be £13,845.61.

Deduction of the Loan amount

55. Dr Langdell's second issue is that Abbey Life have reduced his tax free cash by £8,863 when they were not entitled to do so.

56. It is clear that a loan of £13,000 was made to Sofitex against the Plan. The terms of the loan agreement stated that if it was not repaid, the fund would be reduced by the amount of the loan outstanding and that on retirement the amount any outstanding loan would be deducted from tax free cash in the first instance.

57. Abbey Life records show that the loan was repaid from the policy in February 1991. As this money essentially left the policy in cash, HMRC rules require that this be deducted from the amount of fund available to take as tax free cash on retirement.

58. Dr Langdell argues that Abbey Life were not entitled to reduce his plan by the reduction of units because IR 12 required that this should be taken from his lump sum first. However, he has misunderstood the terms of the IR12. The

foreclosure on the loan took place in 1991 and as pointed out by Dr Langdell this was essentially a cash deduction from his plan. However, Dr Langdell has argued that IR12 dictates that the foreclosure or repayment should be taken first from the lump sum payment. This is incorrect. IR12 says that any reduction of benefits *as a result* of foreclosure/repayment, should first be taken from the lump sum payment.

59. Under the terms to the loan agreement, Abbey Life had the authority to the reduce the fund by the value of the outstanding loan, (See paragraph 2) which they did. IR12 then requires them to reduce the benefits related to that loan repayment through the lump sum payment. Abbey Life calculated his tax free cash, based on his full service history with Sofitex and then reduced his tax free allowance by amount of the repaid loan in accordance with IR12.

60. This is not a second deduction of money from the total fund, but a deduction in the amount of the fund that HMRC allows to be taken as tax free cash. That is why the amount of the repaid loan was deducted from the amount he was allowed to take as tax free cash and then added back onto the amount available to be taken as an annuity.

61. As a result, I am of the view that Abbey Life acted in accordance with the loan agreement and HMRC rules in reducing the amount available to take as cash by the loan amount. Therefore, there is no maladministration in Abbey Life's actions on this point and Dr Langdell has received his correct benefits from his fund in the correct proportions between tax free cash and pension payments.

62. However, I am of the view that there was maladministration by Abbey Life in the way that they communicated these facts to Dr Langdell because:

- Dr Langdell was incorrectly informed that he could receive £13,845.61 as his PTFC sum.
- Even on Abbey Life's account of events, Dr Langdell was only informed that the loan would affect the tax free cash available to him by phone on one occasion in May 2012 prior to him selecting his benefit options. However, this call is disputed by Dr Langdell and the information provided by Abbey Life indicates that there was an intention to call Dr Langdell and does not confirm that this was actually done. (See paragraph 5). Whichever scenario actually occurred, I am of the view that the

implications of the loan recovery should have been clearly explained to Dr Langdell in writing with his retirement options.

- In addition, the explanation of the position in their letter of 29 January 2013 was inadequate because it failed to set out the context of the original loan or how it was repaid. This would have been particularly important given that the loan had been repaid over 20 years ago.
- Their letter was confusing and does not set out the facts in coherent way for a non pension professional to understand what had been done.

Instructions not to process benefits

63. Dr Langdell had said that he told Abbey Life staff not to process his forms if his tax free cash was less than £13,000. He also sent three letters all of which instructed Abbey Life not to pay his benefits if his tax free cash was less than the amount promised. Abbey Life say that they did not receive any of these letters.

64. However, Dr Langdell sent one of these letters (23 January 2013), by express mail. Whilst this does not prove that Abbey Life received this letter, I note that all other letters sent in this way reached them.

65. In addition, there is internal Abbey Life correspondence dated 11 February 2013 that specifically refers to a letter from Dr Langdell. Whilst this note does not mention the date of the relevant letter, it is clear that by this point Abbey Life had already issued their letter of 29 January 2013 in response to the last letter received from Dr Langdell dated 11 January 2013. Abbey Life did not issue another letter to Dr Langdell until 27 February 2013 which was clearly in response to his phone calls on 25 and 26 February 2013.

66. Therefore, in my view on the balance of probabilities that Abbey Life did receive Dr Langdell's of 5 February 2013, given that no other letter from Dr Langdell was outstanding as at 11 February 2013 and it was the first letter which mentioned a member of staff by name, which would have allowed Abbey Life to establish that the "call centre" had quoted the tax free cash figure.

67. If Abbey Life received this letter it means that they knew or should have known not to process Dr Langdell's benefits if his tax free cash was less than £13,845.61. Therefore, I find that Abbey Life received this instruction from Dr Langdell but did not follow it and that this amounts to maladministration.

68. Dr Langdell has argued that if Abbey Life had followed his instructions and not processed his benefits if the lower tax free cash amount applied, he would have kept his pension intact until he was able to transfer it to a US pension plan and could receive the total amount in cash. However, having received the lower amount, Dr Langdell has spent both the tax free cash and the pension payments payments made to him from his annuity. Therefore is receiving the full value of the pension benefits.

69. Whilst it may have been financially beneficial for him to receive a higher tax free cash amount, given his debts, Abbey Life's maladministration is not the direct cause of the debts or the accruing interest. This money would have been due in any event and the interest would have continued to accrue for an indefinite period had Dr Langdell delayed taking his pension from Abbey Life as he suggests.

70. As such, there is no financial loss to Dr Langdell as a direct result of the fact that he did not receive a higher amount of tax free cash. In any event, he was not entitled to receive a higher tax free amount.

71. In addition, there is no financial loss caused by the fact that Dr Langdell could not leave his pension intact for an indefinite period, because in those cirumstances his current debts would still be outstanding and any interest would have continued to accrued. These debts were not taken on as result of any promise or expectation of the pension he would receive from Abbey Life but are liabilities that Dr Langdell would have been expected to pay in any event. Therefore, Abbey Life cannot be held responsible for the fact that they have to be repaid or have only been repaid in part.

Failure to respond adequately to complaint letters

72. Abbey Life responded to Dr Langdell's letters of complaint dated 27 February and 10 May 2013 by relying on their response of 27 February 2013.

73. In my view these responses were inadequate. It was clear from Dr Langdell's letter of 27 February 2013, that he disputed the existence of a loan against his policy and that HMRC rules required Abbey Life to deduct any loan from his tax free cash. Neither of these issues were addressed in their letter of 27 February 2013. Dr Langdell was entitled to be satisfied about the existence of a loan and its repayment on his policy and that Abbey Life were legally required to reduce

his tax free cash allowance. Therefore, Abbey Life should have responded specifically on these points in their letter of 18 March 2013.

74. In addition, Abbey Life failed to deal with the additional points raised in Dr Langdell's letter of 10 May 2013. In particular, it was clear that despite the clearer explanation of position in relation to the loan recovery in Abbey Life's letter of 27 February 2013, that Dr Langdell still:

- Disputed the existence of the loan on his policy
- Did not understand what had been happened to his benefits as a result of the loan recovery.

It was also Abbey Life's position was that they had not received Dr Langdell's instructions not to process his benefits and this should have been explained to him.

75. In summary, I find maladministration against Abbey Life because they:

- failed to inform Dr Langdell in writing that the previous recovery of the loan from his policy would affect that amount to tax free cash he was entitled to take;
- told Dr Langdell that he would receive at least £13,845.61in PTFC, when he was only entitled to receive around £7,800;
- processed Dr Langdell's benefits when they knew or should have known that he had instructed them not set up his benefits if his tax free cash was less then £13,845.61;
- only explained the position in relation to the loan recovery once Dr Langdell had submitted his benefits options and then did not explain it clearly; and
- Failed to provide adequate responses to his letter of complaint dated 27 February and 10 May 2013.

Redress

76. Where there has been maladministration, my role is to put the member back in the position they would have been in, had the maladministration not occurred. However, Dr Langdell has not suffered any loss of pension benefits because he

has received the full value of his fund in the correct proportion between tax free cash and his pension benefits.

77. Dr Langdell has indicated that he made financial commitments on the basis of receiving at least £13, 845.61 but has not provided any specific information on this point. However, I am of the view that Dr Langdell would not have been entitled to rely on receiving this amount, given that it was never confirmed in writing and that that the benefits option forms indicated that he was only entitled to receive the tax free cash amount up to the allowed under HMRC rules.

78. If Abbey Life had not provided Dr Langdell with the incorrect information about the value of his PTFC I am satisfied that he would have postponed taking his benefits. Whilst I appreciate that Dr Langdell had expected to be able to settle some pre-existing debts with the higher tax free amount, these debts were not taken on result due to the amount of pension promised and would have to be repaid whether or not he received his pension from Abbey Life. Had he deferred his pension as he has suggested, Dr Langdell would have had to service these debts and the interest payments without any additional income at all. Given that Dr Langdell is in receipt of his correct entitlement and has apparently spent both the tax free cash and his monthly income, I can see no financial injustice in respect of this error. In addition, he has at least been able to reduce his debts to the extent of the pension payments he has received, if he wished to do so.

79. What Dr Langdell has suffered is a loss of expectation, i.e. he expected to receive a higher amount of tax free cash. He has also suffered the distress and inconvenience of pursuing complaint which could have been avoided if Abbey Life had taken the time to explain the situation in detail when they received his letter of 27 February 2013 and acknowledged that he could only have received the information about the amount of his tax free cash from Abbey Life. This was compounded by failing to deal with Dr Langdell's legitimate enquiries in later correspondence.

80. As a result, I am of the view that Abbey Life should pay Dr Langdell £500 for distress and inconvenience.

Directions

81. Within 28 days of the date of this Determination, Abbey Life should pay Dr Langdell £500 for distress and inconvenience.

Jane Irvine
Deputy Pensions Ombudsman

10 September 2014