PO-25052

Ombudsman's Determination

Applicant	Mr Y
Scheme	Nortel Networks UK Pension Plan (**the Plan**)
Respondents	Nortel Networks UK Pension Trust Limited (**the Trustee**) Willis Towers Watson (**the Administrator**)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Trustee or the Administrator.

Complaint summary

2. Mr Y says that the Trustee and the Administrator did not inform him of legislative changes in 2006, which meant that his pension entitlement exceeded the lifetime allowance (**LTA**).

3. Mr Y also complains that P60s relating to his pension from the Plan did not quote the LTA percentage of his benefits and that he has consequently suffered financial detriment.

Background information, including submissions from the parties

4. Mr Y retired on 31 December 1998 and took his benefits from the Plan.

5. Mt Y also had another pension arrangement that was held with Standard Life. In July 2017, when he was approaching his 75th birthday, and due to take benefits from that arrangement, Standard Life asked Mr Y to confirm how much of his LTA had been used in relation to his benefits from the Plan. The LTA places a limit on the total benefits a person can accrue before additional tax becomes payable to HMRC.

6. In August 2018, Mr Y telephoned the Administrator to request his LTA percentage.

7. During the call the Administrator prompted Mr Y to check his P60 to obtain the LTA figure, but he noted that the relevant box was empty. When Mr Y queried this, the Administrator informed him that this meant his benefits under the Plan had not exceeded the LTA.

8. Mr Y says that he communicated this information to Standard Life, which responded by saying that he could take up to 25% of his benefits under its arrangement as a tax free lump sum and the remainder as an annuity.

9. In 2018, Mr Y requested advice from the Pensions Advisory Service, and was told that he could calculate his LTA percentage under the Plan by multiplying his annual gross pension by 25.

10. Mr Y calculated that his benefits under the Plan had exceeded the LTA since 2013. He says that none of his P60s received since 2006 provided the LTA percentage, and that, had the P60s included this information, he could have avoided a tax liability of £24,982.77 (**the tax deduction**).

11. Consequently, Mr Y raised his grievances under the Plan's internal dispute resolution procedure (**IDRP**).

12. Mr Y also wrote to HMRC complaining that he had a pension fund of £106,000 with Standard Life from which he intended to take a portion as a tax-free lump sum and the balance as an annuity. Mr Y said he had incurred the tax deduction only because he had passed his 75th birthday when claiming the relevant benefits.

13. HMRC responded to Mr Y explaining that it taxes pension income according to legislation and its own guidance. HMRC said that if Mr Y felt that poor advice had contributed to him incurring the tax deduction, he was right to complain.

14. In response to Mr Y's complaint under the IDRP, the Trustee said:-

    - A member's individual LTA depends on their other pension arrangements. It was not possible for the Trustee or the Administrator to assess the member's other pension arrangements or the actions taken by that member.

    - Consequently, the member's LTA must remain their responsibility. The Trustee and the Administrator could only confirm the member's LTA percentage upon reaching retirement.

    - Mr Y retired in December 1998, when the LTA regime did not exist. So, the Administrator would not have provided an LTA percentage at that time.

    - The Trustee and the Administrator did forward information on changes to pensions legislation on certain occasions. But they could not be aware of how such changes would affect every member. This was particularly the case regarding the tax regime, which was subject to a member's wider financial and tax position.

    - Consequently, the Trustee and the Administrator would not have alerted Mr Y to his LTA position from 2006 onwards.

15. Mr Y was unhappy with this response and complained under stage 2 of the IDRP. In summary he said:-

- His P60 for the 2017/2018 tax year did not include his LTA percentage in the relevant box which stated:

  "If you retired before 6 April 2006 please ignore this message.
  If you retired on or after 6 April 2006 the figure on the right shows the percentage of the standard lifetime allowance used in respect of the Plan."

- If the Administrator or the Trustee were not in a position to advise a member of their actual LTA percentage, why have this box on the P60?

- He was wary of accepting that the LTA did not apply to him, so he had sought further information from the Administrator, following advice provided by Standard Life.

- The Administrator then proceeded to state that his benefits had not exceeded the LTA.

- If the Administrator had informed him in 2006 that his benefits had exceeded the LTA, that would have been an error. His benefits did not exceed the LTA until the 2012/2013 tax year and have exceeded it every year since. But not one P60 has shown that.

- The Trustee's comment that it cannot know his personal tax and pension arrangements was irrelevant. The level of his gross pension from the Plan alone has exceeded the LTA since the 2012/2013 tax year.

16. In response the Trustee said:-

- Mr Y retired before the LTA regime came into force in 2006. Consequently, LTAs and benefit crystallisation events (**BCEs**) did not exist at that time.

- A BCE includes events that occur in the post 2006 tax regime such as retiring, increases over prescribed limits after reaching age 75, or taking certain lump sums that trigger an LTA assessment. Where a member has more than one pension arrangement, a BCE can be triggered in relation to each of them.

- If benefits are taken from another pension arrangement after 6 April 2006, this would trigger a BCE for that scheme, necessitating it to ask the member to confirm the LTA percentages with other pension providers.

- This is why in August 2018, the Administrator referred Mr Y to the relevant box in his P60. It showed that there was no LTA usage because there had been no BCE under the Plan to give rise to an LTA assessment.

- As Mr Y had passed his 75th birthday and was required to take his benefits with Standard Life, this triggered a BCE, causing Standard Life to assess Mr Y's LTA usage under all his pensions.

- The Administrator could not have taken any action, even if it had known of Mr Y's LTA percentage under his pension arrangement with Standard Life. So even if it had notified Mr Y in 2013 this would not have altered Mr Y's tax position or help him to avoid the tax deduction.

Mr Y's position

17. As a result of the Administrator not correctly informing him of his LTA percentage under the Plan, he incurred the tax deduction.

18. His annual P60 should be an accurate summary of his tax position under the Plan.

19. As part of his retirement planning included taking a 25% lump sum and an annuity from his pension arrangement with Standard Life, he was asked to provide his LTA percentage under the Plan.

20. The Administrator informed him that the figure was included in his annual P60. But when he pointed out that no LTA was quoted in his 2017/2018 P60, the Administrator stated that this meant his benefits had not exceeded the LTA.

21. Despite the fact that his P60s included a box for the provision of an LTA percentage, this information had not been provided since 2006.

Adjudicator's Opinion

22. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator. The Adjudicator's findings are summarised below:-

    - Mr Y's benefits under the Plan were already in payment before the pensions legislation changed in 2006 and the LTA introduced. A pension that commenced payment before 6 April 2006, is only taken into account for LTA purposes the first time a BCE occurs in respect of the member. Consequently, there was no requirement for the Trustee or the Administrator to have informed Mr Y of the changes, unless they could have been aware that a BCE might later occur, which was unlikely.

    - HMRC guidelines do not require LTA percentages to be provided in P60s for pensions that went into payment before 6 April 2006. Mr Y was required to take his benefits from his Standard Life arrangement in 2017. That triggered a BCE, which then caused the LTA to be exceeded. Until that point Mr Y had not used any of his LTA under the Plan, because it did not apply, so there was nothing to be shown on his P60s. Consequently, the fact that Mr Y's P60s in relation to his benefits from the Plan did not include an LTA percentage, was not an error on the part of the Administrator.

    - It ought to have been clear to the Administrator from the reasons why Mr Y was enquiring about his LTA percentage that a BCE was going to occur, albeit not in relation to the Plan. It would have been helpful, had the Administrator carried out a straightforward calculation, which would have answered Mr Y's query.

- Standard Life had asked Mr Y to obtain his LTA percentage from the Administrator in 2017. But Mr Y did not contact the Administrator until August 2018, by which time he had already passed his 75th birthday. This meaning that the related BCE had occurred, and the tax implications of breaching the LTA were unavoidable. Consequently, the Administrator's error in informing Mr Y that his benefits had not exceeded the LTA was not sufficient to reach a conclusion of maladministration.

23. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 main points made by Mr Y for completeness.

Summary of Mr Y's further comments

24. The LTA box in his P60s did not allow comprehensive information to be included that was sufficient to cover all his tax liabilities.

25. Had the LTA box on his P60 in 2013 and subsequent tax years shown the percentage of LTA used, and not stated, "If you retired before 6 April 2006 please ignore this message…", he would already have been aware of his tax liabilities when Standard Life contacted him in July 2017. He could then have made appropriate financial arrangements.

26. The information incorrectly provided by the Administrator, in August 2018, that his benefits under the Plan had not exceeded the LTA increased the confusion already caused by the note included in the LTA box of his P60s.

Ombudsman's decision

27. Mr Y's complaint is in relation to the LTA. Specifically, that the P60s relating to his pension from the Plan did not quote the LTA percentage of his benefits and, as a consequence, he has suffered financial detriment.

28. Mr Y says the LTA box in his P60s did not allow comprehensive information to be included that was sufficient to cover all of his tax liabilities. The extent of the information that must be included on a P60 is set out under HMRC guidelines. HMRC and its guidelines do not fall under my jurisdiction and so the required amount of information shown on a P60 is not a matter I can consider.

29. Mr Y says that, had the LTA box on his P60 for 2013, and subsequent tax years, shown the percentage of LTA used he would have been aware of his tax liabilities when Standard Life contacted him in July 2017, and made appropriate financial arrangements. Until Mr Y took his benefits from his Standard Life arrangement in 2017, which triggered a BCE, he had not used any of his LTA under the Plan, so,

there was no requirement for the LTA percentages to be shown in Mr Y's P60s from 2013.

30. Mr Y contends that the information provided by the Administrator, in August 2018, that his benefits under the Plan had not exceeded the LTA, increased the confusion already caused by the note in the LTA box on his P60s. The Administrator and the Trustee could not have been expected to be aware of Mr Y's other pension arrangements or how his LTA might be affected by those arrangements. At the time the Administrator provided the information in 2018 the available evidence did not indicate that the LTA might be exceeded. Mr Y had taken his benefits from the Plan before April 2006 and the LTA regime did not apply.

31. But even had the Administrator provided the LTA percentage to Mr Y at that time, the tax implications of breaching the LTA could not have been mitigated, because Mr Y had already passed the BCE event under his pension arrangement with Standard Life in 2017.

32. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
10 June 2020