

## Ombudsman's Determination

Applicant	Mr K
Scheme	Prudential Staff Pension Scheme ( <b>the Scheme</b> )
Respondent	Prudential Limited ( <b>Prudential</b> )

## Outcome

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

## Complaint summary

2. Mr K has complained that Prudential did not advise him of the impact the State Spreading Option (**SSO**) would have on his Lifetime Allowance (**LTA**). Mr K says when he started receiving pension benefits from another provider it caused him to exceed his LTA, incurring a higher tax charge.

## Background information, including submissions from the parties

3. The LTA is the amount a person can claim as a pension benefit without incurring additional tax charges. Mr K has a protected LTA of £1.8 million and by exceeding his LTA he has become subject to a higher rate tax charge of 55%, as opposed to the standard tax rate charged on pensionable income.
4. Mr K joined the Scheme on 7 December 1987. When he left the Scheme his pension benefits became deferred.
5. On 16 November 2012, Prudential sent Mr K his 'Approaching Retirement Date Information Pack'.
6. On 29 January 2013, Mr K wrote to Prudential and provided his completed retirement forms. He had selected to take the maximum tax-free lump sum and a pension income. He also took a lump sum and income based on his Additional Voluntary Contributions (**AVCs**). He indicated that he wanted to take the SSO, which he believed would smooth out the impact of not receiving his state pension until age 65. The SSO was offered by Prudential if a member wanted to retire before their state pension age (**SPA**) and provided a 'bridging' pension until reaching SPA. Mr K said he thought the option would have no impact on his LTA, as there was no indication of this in the retirement forms.

7. Shortly afterwards Prudential wrote to Mr K confirming his benefits and explained that he had used 65.17% of his protected £1.8 million LTA.
8. Mr K's benefits were put into payment in line with his instructions.
9. In 2018, Mr K received a letter from Total UK about his benefits that were due to come into payment from the Total UK Pension Plan (**the Plan**). It was at this stage that he was informed that when his benefits from the Plan came into payment, he would exceed his LTA. The letter provided details of the tax implications. It also explained that the remaining LTA for his pension benefits was £11,880. Incorporating this into its calculations, Total UK informed Mr K that his annual income from the Plan, after tax, would be £4,946.70. The letter explained that tax would be deducted before payment.
10. Mr K wrote a letter of complaint to Prudential saying he believed he had reached 57.27% of the LTA. He said he was told this during a telephone conversation with Prudential when he took his benefits from the Scheme. He said he would not have elected to take the SSO had he been given the correct information regarding the impact on the LTA.
11. On 4 September 2018, Prudential wrote to Mr K and said that it could not uphold his complaint. This was because Mr K had been advised in writing shortly after taking his benefits that he had reached 65.17% of the LTA. It explained that it did not have a responsibility for an individual's tax planning or in relation to other pension benefits which were not already in payment.
12. Mr K's position is as follows:-
  - He was given written estimates for the two main pension options before choosing, but nothing for the addition of the SSO.
  - The only record he had about the LTA was the telephone conversation where he said he was told he was at 57.27% of the £1.8 million LTA.
  - He believes his assertion is supported by him completing a form saying 56.98% of his LTA was used up by the Scheme benefits.
13. Prudential provided its response to the complaint as follows:-
  - The figures presented in the statement in relation to the SSO said: "If you select the [SSO] your initial pension figure (as quoted earlier) would be adjusted as follows...". The numbers provided, presented as additions or reductions to the pension figure.
  - The letter written to Mr K shortly after he sent his completed forms explained he was at 65.17% of his LTA.
  - It is Prudential's view that, even though Mr K incorrectly quoted the LTA used by his benefits from the Scheme, it in no way proved any wrongdoing on its part.

Further to this Mr K quoted 57.27% over the telephone and then wrote 56.98% on the form, which was inconsistent.

## **Adjudicator's Opinion**

14. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Prudential. The Adjudicator's findings are summarised below:-
- Following Mr K's completion of the forms on 23 January 2013, Prudential sent a letter which confirmed his benefits and his LTA of 65.17%, which is all it was required to do.
  - Mr K's personal tax planning is his own responsibility. If he had a question about any tax implications, he could have sought financial advice to ensure he did not exceed his LTA. It was not Prudential's responsibility to provide financial or tax advice.
  - Mr K said he received information over the telephone from Prudential which said his LTA was at 57.27%. Prudential have no evidence of the telephone conversation.
  - Although Mr K became liable for a higher rate tax charge this was not a result of any maladministration by Prudential.
  - When Mr K decided to take out the SSO, he believed it would not impact his LTA. Prudential informed Mr K that selecting the SSO would impact his initial pension figures. This provided Mr K with sufficient warning that the SSO would affect his LTA. Prudential was not responsible for him misunderstanding how the SSO could impact his LTA.
15. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. Mr K said the following:-
- He did not accept that the evidence showed that Prudential had provided confirmation of him reaching 65.17% of his LTA.
  - He did not receive any letters which confirmed he had reached 65.17% of his LTA.
  - He said the 57.27% figure can be verified by the fact this would have been the percentage of the LTA had he not taken the SSO.
  - He believed that Prudential should have made clear how taking the SSO would affect the LTA.
  - He acknowledges that he could have taken advice from his financial adviser at the time.

16. Prudential accepted the Adjudicator's opinion and made no further comments.
17. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr K for completeness.

### **Ombudsman's decision**

18. Mr K has complained that he has exceeded his protected LTA, which means he is subject to a significant tax charge in relation to his benefits from the Plan.
19. Prudential said that it wrote to Mr K and explained that he had used up 65.17% of his protected £1.8 million LTA. Mr K said that he never received any information in 2013, which confirmed he had reached 65.17% of his LTA. He said that he did not receive the letter. Although, this is unfortunate, I consider it is likely that the information was sent by Prudential. This is because it is its standard process to confirm in writing the benefits that have been put into payment. I do not believe that Prudential can be held responsible for the failure of the letter to arrive.
20. Mr K says that he had a telephone conversation with a representative from Prudential who confirmed he had reached 57.27% of the LTA.
21. As 57.27% would have been the amount of LTA, had Mr K not taken out the SSO, he believes this is proof that he received this information. Prudential said that it has no evidence of the telephone conversation. I do not doubt Mr K's recollection that he was given information over the telephone, but without evidence to support precisely what he was told I cannot make a finding on whether, or not, Mr K was misinformed.
22. Further, even had there been proof that Mr K was informed during a telephone call with Prudential that he had reached 57.27% of the LTA it would not, in my view, have been reasonable for him to have relied on that information without first receiving confirmation in writing.
23. Mr K believes that Prudential should have provided information laying out the percentage of LTA used both with and without the SSO. It is my view that Prudential would have done this had Mr K requested this information. But instead he completed all the forms applying the SSO, and it appears he did so without being entirely clear how this would impact his LTA. Prudential acted on the instructions provided by Mr K. It cannot be held responsible for Mr K's actions or his decision to proceed without taking financial or tax planning advice.
24. I do not uphold Mr K's complaint.

### **Anthony Arter**

Pensions Ombudsman  
26 November 2019