

The complaint

Mrs M, represented by her adviser, complains that The Prudential Assurance Company Limited didn't provide the required warnings that she would exceed her lifetime allowance (LTA) when withdrawing money from her pension arrangements held with it.

What happened

The investigator set out the background to the complaint in his initial recommendation, I've included an amended copy of this below for context:

In September 2016 Mrs M transferred a final salary scheme benefit of £1,078,875 to a Prudential Flexible Retirement Plan (FRP) - an income drawdown arrangement.

She immediately crystallised £600,000 to release £150,000 tax-free cash. There were then further crystallisation events in 2017, 2018 and 2019, These were all within her available LTA and no income was drawn until she retired at the end of the 2018/2019 tax year. Below are details of the benefit crystallisation events (BCEs) on the FRP that Prudential have provided.

Crystallisation Date	Crystallisation Amount (Including TFC)	Lifetime Allowance used	Tax Free Cash (TFC) Taken
08/09/2016	£600,000.00	60.00%	£150,000.00
27/12/2017	£120,031.09	12.00%	£30,007.77
10/04/2018	£100,035.31	9.71 %	£25,008.82
01/02/2019	£80,039.10	7.77%	£20,009.77
07/03/2019	£100,050.71	9.71%	£25,012.67

Mrs M paid a single contribution of £40,000 gross in September 2018 into a new Prudential Retirement Account (RA), this was also an income drawdown arrangement.

The adviser said that in consultation with a Prudential broker consultant, who has since left, it was suggested that in the new 2019/2020 tax year all withdrawals could come from the new RA rather than Mrs M's existing FRP.

The adviser said he was advised by the broker consultant that the full crystallisation history on the FRP would be recorded on the RA and this would be the case even with a partial transfer. This he was told would also reduce the administrative burden for Prudential in having to track both contracts. In June 2019 an uncrystallised plan in the FRP was transferred to the RA. The transfer value was £123,150.35.

Withdrawals of £1,000 a month started from the RA in May 2019 which the adviser said were overseen by the broker consultant. I understand that the following withdrawals were taken as UFPLSs (uncrystallised funds pension lump sums) with the payments being taken as tax-free cash.

	Lump Sum Withdrawal	Transfer to Pension Income Account	Total Crystallised
13/05/2019 -	£1,000	£3,000	£4,000
13/06/2019 -	£1,000	£3,000	£4,000
26/06/2019 -	£20,000	£60,000	£80,000
13/07/2019 -	£1,000	£3,000	£4,000
13/08/2019 -	£1,000	£3,000	£4,000
13/09/2019 -	£1,000	£3,000	£4,000
02/10/2019 -	£10,000	£30,000	£40,000
13/10/2019 -	£1,000	£3,000	£4,000
13/11/2019 -	£1,000	£3,000	£4,000
13/12/2019 -	£1,000	£3,000	£4,000
13/01/2020 -	£1,000	£3,000	£4,000
13/02/2020 -	£1,000	£3,000	£4,000
13/03/2020 -	£1,000	£3,000	£4,000
	<u>£41,000</u>	<u>£123,000</u>	<u>£164,000</u>

The LTA was exceeded after Mrs M started to draw the above payments from her RA. The adviser said he was told one of the benefits of the RA was that if payments exceeded the LTA there would be a 'warning/red flag'. The client would also receive the net figure after the administrator had deducted any tax due.

Mrs M fully transferred the remaining plans that were held in her Prudential FRP to her Prudential RA in December 2021. Plans were transferred with a total value of £772,288.91. I understand that from January 2022 Mrs M started to take a monthly taxable gross income from the RA of £3,490.

The adviser said Prudential had a number of opportunities to rectify the situation and to alert them to the problem. Had this been done he said funds would have been withdrawn from the crystallised plans which would have avoided the LTA charge.

Prudential didn't uphold the complaint and in its final response said it was ultimately Mrs M's responsibility to provide Prudential with all the information about the BCEs on her other schemes. This would have allowed it to establish if and when a chargeable amount would arise. This wasn't something a pension provider could be expected to monitor without up to date information and the declaration on the RA application explained this at outset.

Subsequent to the setup of the RA plan, £1,064,512 of the LTA had already been used which meant only £8,588 was available before an LTA excess tax charge would apply (the LTA was £1,073,100). The remaining tax-free cash available was £2,147. But 'tax-free' cash of £41,000 was paid in 2019 and 2020 without any tax deduction and £164,000 of her funds were crystallised to allow this lump sum to be paid.

Prudential said they weren't at fault for these payments being made tax-free because it hadn't been made aware of the previous BCEs on her other (Prudential) arrangement when the RA was taken out.

Prudential also noted that taxable income payments of £31,606.24 had been made from the crystallised funds, these were also above the available LTA. These should also have been liable to the excess LTA tax charge. Prudential said that these payments wouldn't have been paid in this way had it received all the information regarding Mrs M's LTA position.

Prudential therefore didn't uphold the complaint because it said it was the policyholder's responsibility to provide it with accurate LTA information before taking the first withdrawal from her RA plan. It said it relied on her or her financial adviser to provide this information.

Prudential set out three options available to allow it to correct this. The first option avoided the payment of the LTA excess charge, which is what Mrs M's adviser was looking to achieve. To do this it said she needed to return the overpaid tax-free cash sum of £38,853.06 and all the net income received for the period from January to October 2022.

This would enable Prudential to put the account back into the position it would have been had these payments not been taken. This meant that no LTA excess tax charge or unauthorised payment charge would be payable.

Mrs M's adviser has said that her only available source of funds is her pension. So, to be in a position to make the payment she would need to draw the funds from the pension. But in doing so he stated she would suffer an unnecessary income tax charge on the withdrawal of £64,018 of approximately £29,747.72, as he said Mrs M's total pension income is at the limit before additional rate tax is due. The cost to her would be the unnecessary income tax charge, as he said the situation was avoidable, and therefore Prudential should cover the amount. He later also said Mrs M may be able to get help from family to pay back the amounts to avoid the tax charge.

The investigator then issued a view upholding the complaint on the basis that he hadn't seen that Prudential had requested information about the previous BCEs. And in the absence of this evidence he felt that had Prudential requested the information from Mrs M or the adviser they would have supplied it. And therefore the exceeding of the LTA would likely not have occurred.

But following this, Prudential provided more information and evidence which changed the investigator's view, he summarised this in his second recommendation, where he said he didn't recommend the complaint be upheld:

- Prudential said that the first two £4,000 crystallisations from the Retirement Account (RA) were within the customer's LTA and it wasn't until the £80,000 drawdown request that the LTA was breached. During the online new business application they said the adviser would have been asked for Benefit Crystallisation Event (BCE) information for benefits taken previously and this wasn't provided. They said this was also the case for the additional £40,000 drawdown request in October 2019.
- Prudential sent a screen shot of the online information that would have been requested. This asked the question *"Has your client taken any pension benefits after 6 April 2006, including other schemes with Prudential"* and *"Does this transaction take your client equal to or over the standard LTA?"*
- Prudential said it wasn't until December 2021 when the crystallised arrangements were transferred from the Flexible Retirement Plan (FRP) that the FRP no longer had the responsibility to provide LTA information to the customer. It was only at this stage they said that they determined the client had exceeded their LTA and subsequently provided the options available. By this time, they said no further regular crystallisations were taking place within the RA as these had stopped in March 2020.
- Prudential also pointed to the RA declaration that Mrs M signed when the plan was set up in 2018. This acknowledged that at the time of applying (and on an ongoing basis) she had an obligation to provide correct and complete information about the LTA position. This they said was also set out in the Terms and Conditions document.

- In addition, they referred to the LTA Statements which were sent to Mrs M on her RA. These set out the importance of keeping them informed if she took benefits from other schemes including Prudential schemes.
- Prudential therefore said that they had fulfilled their duties. They said the adviser and client had received multiple requests and Prudential had confirmed multiple times that they had no information from other schemes.
- They also said ultimately it was a customer's responsibility to ensure all providers have information on anything that may reduce their LTA available. Their systems they said would flag when a customer had insufficient LTA for the crystallisation they were looking to take, but only where they'd been provided with the necessary information.

The investigator concluded that in light of this evidence he did not consider it would be reasonable to hold Prudential responsible for the fact that the LTA was exceeded.

Mrs M's adviser responded to say that he believes Prudential should have records of the actual screens used and the phone calls with its IFA broker support during the withdrawals process (Prudential have maintained they have no records as it was input online and the calls are no longer available and won't all have been recorded in any event).

In relation to the merits, I've summarised the adviser's response in relation to points that I see as key to the outcome. He said he was misadvised by Prudential at the outset and this affected his ongoing advice. And he also said that the withdrawals were made with the broker support through screen sharing when they were carried out. He produced a written statement from a former Prudential broker involved. This said in summary that the adviser's recollections were correct (although not much specific detail as to what these were). I've included the key excerpts below:

I can confirm that [REDACTED] version of events surrounding the complaint are correct.

I would also highlight that it was my understanding when processing any withdrawals from a client's Retirement Account, if this was done on-line with the assistance and guidance of Prudential's IFA Support team, then Prudential would in most circumstances be able to rectify any mistakes or errors with specific focus on any unnecessary tax charges to the client.

In my time as a Regional Account Manager I can confirm [REDACTED] always involved myself & Prudential's Broker support team along with on many instances our technical team for client withdrawals in this way, this was always to ensure the correct outcome for the clients.

The adviser said his position has always been that Prudential as the sole provider of all of Mrs M's pensions knew of all of the BCE's. And that he was told that despite there being two schemes, (the Flexible Retirement Plan & Retirement Account) when the partial transfer was carried out the link between both schemes was created and although the BCE's were recorded within each scheme, Prudential was aware of both.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

A lot of information has been provided by both parties. I won't comment on all of this here, instead I have focussed my findings on the key issues that get to the heart of the complaint – and whether Prudential should be held responsible for Mrs M exceeding her LTA.

There is conflicting and, in some places, incomplete evidence in this case and I appreciate how strongly the adviser feels about what occurred. I don't doubt his evidence and testimony has been given in good faith, but I am required to remain impartial and consider the balance of evidence and consider all parties actions to decide whether Prudential should be held responsible for Mrs M exceeding her LTA.

Prudential has provided compelling evidence that Mrs M and her adviser ought to have been aware that they needed to inform it of her BCE's and LTA position. But Mrs M's adviser has also produced testimony that he made withdrawals with the support of Prudential's broker consultants and that he was told Prudential's systems held all the BCE's and would produce warnings once a request exceeded the limits relevant to Mrs M. Prudential's position is this was reliant on the customer or adviser telling it about the other schemes BCEs even if they were other Prudential schemes.

Looking at the evidence that supports Prudential's position, the terms and conditions of the RA, signed by Mrs M say:

Information we require you to give us on lifetime allowance and other tax matters

1. I undertake to advise Prudential if information provided in respect of my Retirement Account (number above), in relation to Lifetime Allowance, changes at any time after my application is submitted until such time as my Retirement Account closes.
2. Whether or not I have supplied any information on lifetime allowance used in other schemes, I undertake to inform Prudential immediately:
 - a) if I take any benefits from any other pension schemes, and/or;
 - b) if any other scheme notifies me that I have used lifetime allowance in relation to their scheme.
3. Where I have notified Prudential of my reliance on a lifetime allowance protection I will notify them immediately if this protection is lost or the level of that protection reduced. I also undertake to inform Prudential if I apply for and receive any form of lifetime allowance protection or lifetime allowance enhancement factor.
4. I declare that I have no intention of "recycling" any tax-free cash lump sum paid from the Retirement Account numbered above (i.e. investing the tax free cash in another pension contract in a way that would breach HMRC rules).

13. Lifetime allowance

- 13.1. When you open a Retirement Account you must tell us how much **lifetime allowance** you have already used. You must also tell us how much **lifetime allowance** you use each time you take benefits in any other pension scheme, including any other scheme operated by us.
- 13.2. This will allow us to calculate the **lifetime allowance** if you have used up and work out if any tax charges should apply when you take benefits from your Retirement Account. We may stop paying your benefits if we believe you don't have enough **lifetime allowance** left. If we have to do this then we will contact you to discuss your available options.
- 13.3. You must also tell us if;
 - 13.3.1. you have any form of protection against the **lifetime allowance**, if you lose this protection or the value of the protection is reduced at any point; or
 - 13.3.2. you have an enhanced **lifetime allowance**.

Prudential have also said that during the online set up of the RA, it would have asked for any BCE information for benefits taken previously from other schemes including its own, and this was not provided. And as no transfer had been received from the FRP at this point, its system relating to the RA wasn't aware when withdrawals were made by the customer that she had used LTA already from the FRP.

After this point when making withdrawals from the RA, Mrs M received statements that included a running total of her BCE amounts and the LTA used. It also included the information below, which clearly states her LTA should include other schemes operated by it:

Lifetime Allowance Statement

The Lifetime Allowance (LTA) is a limit on the amount of pension benefit that you can take from pension schemes without triggering a tax charge. HMRC regulations require us to notify you about specific events, known as benefit crystallisation events (BCEs). This will help you assess how much LTA you have available. If you have triggered a tax charge, it will help you to complete your tax return.

If you are unsure how the LTA affects you, we recommend you speak to your financial adviser.

You can get more information on the LTA from the HMRC website at [hmrc.gov.uk](https://www.hmrc.gov.uk).

Important Information

According to our records, you have not used any LTA in other pension schemes. It is important that you tell us if you take benefits from other pension schemes, including any other schemes operated by us. It is possible that you will have unexpected tax charges if you do not.

You are within your LTA and there is no tax charge due at this stage.

But at this point Mrs M had already made withdrawals from the FRP, but seemingly neither her or her adviser contacted Prudential to correct this. Furthermore, these statements showed the amount of LTA used up by each BCE and of course only had a percentage relating to the RA withdrawals and so not including all the previous BCEs within the FRP, this included one for £600,000. I think this was a clear missed opportunity to tell Prudential that its information was incorrect. I don't know whether copies of these statements were also sent to the adviser.

Prudential has also shared the screens that it says Mrs M's adviser would've seen when keying in withdrawals. They've told us, as this was done online, the actual screens aren't saved or available. Mrs M's adviser disputes that these wouldn't be available but I don't have any evidence of the actual screens and I am satisfied that the examples sent (these have been shared with the adviser) are likely consistent with what he would've seen. These example screens show that there are clear prompts to provide the relevant BCE information and this also needs to include other schemes held with Prudential.

So all of this evidence shows that Prudential had told the adviser and Mrs M that they had to provide information regarding her BCEs from other schemes, including their own. And the evidence shows that she and the adviser did not do this. There was also evidence that the LTA information it was providing from the RA was incomplete and missing her full BCE history but neither Mrs M or the adviser in conjunction with her picked up on this and informed Prudential.

The counter argument is the testimony from the adviser that Prudential's broker consultants oversaw the keying in of the withdrawals. And he'd been told that its systems would pick up the previous BCEs. The testimony of the adviser is that he was under the influence of misguided and inaccurate advice that although recorded separately within the FRP and RA – Prudential's internal systems would account for both. He says he had always been acting on the basis that Prudential had all the BCE's as they were the sole provider of the client's total pension pots. And that when he carried out a partial transfer in June 2019 the link between both schemes was created and although the BCE's were recorded with each scheme – Prudential as the overall pension provider were aware of both. He says Prudential's

argument is that the FRP did not send "All" the BCE information relating to the full FRP in June 2019 as the partial transfer was from uncrystallised funds. However, he says this was completely at odds as to what he was told, and he says this is confirmed by the ex-broker consultant.

It is clear from the start of the complaint process that the adviser was of the view that Prudential's systems were sophisticated enough that he didn't need to include previous BCEs. It appears this may well have been influenced by misunderstandings passed on by the broker's consultants at Prudential. But I've not seen any testimony that Mrs M's adviser was told not to include previous BCE information. More that he could rely on Prudential's systems and the broker support to make sure nothing went wrong. And that a link would be created between the two schemes. The adviser in not inputting the previous BCEs had to ignore information contrary to what he'd been told. The question on the BCE when keying in withdrawals is clear:

Has your client taken any additional pension benefits, other than those above, between 6 April 2006 and 5 April 2024? (including other schemes with Prudential)

Its Prudential's position that Mrs M's adviser did not put in the information about the previous BCEs, otherwise its systems would have picked up the point at which Mrs M would exceed her LTA. Mrs M's adviser has also not contested that he didn't include this information. There is also the evidence of the statements sent to Mrs M saying she had not taken benefits from any other schemes – when she in fact had. This supports that the information was not keyed in nor were Prudential informed by other means of the benefits taken from other schemes. Admittedly this other scheme was a Prudential scheme and it might not be unreasonable to think it should know of these BCEs, but it had made clear nonetheless that this information was required about its other schemes as well. I think not including that information when requesting withdrawals was a risk given the conflicting information Mrs M's adviser was presented with at this stage. And as I'll comment more below, all of this occurred at a time when I think it should've been apparent Mrs M's LTA would be an issue.

Looking at the BCE history within the FRP before the move over to the RA for withdrawals (which is the point the alleged mis-information was given that went on to cause the LTA being exceeded) it should have been apparent that Mrs M was very close to her lifetime allowance limit. She had used up approximately 99% of her allowance at that point. I think the adviser ought to have been aware, regardless of Prudential's input or lack of that the lifetime allowance limit was something that had to be considered carefully going forward. The implication here has to be that even before the move to the RA, the adviser wasn't aware of Mrs M's LTA position. If he had been, he would've known that any further BCE's would likely cause an LTA charge.

Yet after this point another 13 BCEs occurred totalling £164,000 including one alone of £80,000. I think the adviser ought to have been concerned that the limit might be close or have been breached – and questioning Prudential about this when no warnings were flagged. I think there was an over-reliance placed on Prudential and its systems and what the adviser had been told or thought he'd been told, when the adviser ought to have been aware of his client's position regarding her LTA regardless of the information provided by Prudential.

I cannot be sure exactly what happened with regards to the withdrawals and the involvement of Prudential's consultants working with the adviser, it does appear he was given some at best conflicting information. But I don't think this ought to have led to him effectively delegating all the responsibility to Prudential and its systems. The adviser ought to have

been aware of Mrs M's LTA position and the real risk of breaching LTA even before the partial transfer to the RA. I don't think it was reasonable to expect that Prudential would take care of all of this. Especially given there was information that ought to have caused him to question any assurances he had received about the link between the two schemes and the need, or lack of need, to provide BCE information from the previous scheme.

My final decision

For the reasons explained I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 January 2025.

Simon Hollingshead
Ombudsman