

The complaint

Mr S complains that Ascot Lloyd failed to make him aware that a Lifetime Allowance (LTA) test would be carried out on his unused pension savings at age 75. He says this prevented him from taking action to understand the tax implications and reduce his tax liability.

What happened

Before I summarise the events that led to this complaint, I think it's necessary to provide a brief explanation about the LTA. For simplicity, figures in this decision are given in pounds with the pence omitted.

The LTA

Before it was abolished in April 2024, the LTA was the maximum amount an individual could accumulate in pension savings without facing an extra tax charge. The LTA changed over time. There was a standard LTA set by the government but individuals could have a higher personal LTA if they had a protection in place. The protection was designed to safeguard pension savings from an extra tax charge when the LTA was reduced.

There were 13 LTA tests. The purpose of the tests was to determine whether an extra tax charge applied each time pension benefits were accessed in 13 specific scenarios. If the cumulative value of pension benefits accessed exceeded the LTA, the extra tax charge on the excess was either:

1. 55% if the excess was taken as a lump sum; or
2. 25% if the excess was taken as income from the pension scheme, although any withdrawals would also be taxed at the individual's marginal rate of income tax. The combined effect resulted in different tax outcomes depending on the level of income withdrawn and the individual's marginal rate of income tax in a given tax year: the effective combined rate was 40% for a basic rate taxpayer, 55% for a higher rate taxpayer and 58.75% for an additional rate taxpayer.

If applicable, the extra tax charge was applied as an immediate deduction to the individual's pension savings and remitted to HMRC. The balance of the excess would either be paid as a lump sum to the individual (option 1 above) or remain invested in the pension scheme until such time as it was withdrawn as taxable income (option 2 above).

Before age 75, individuals could choose either option 1 or 2 to pay the extra tax charge. However, for LTA tests carried out at age 75, option 1 wasn't available. Instead, individuals were compelled to pay the extra tax charge under option 2.

Mr S's LTA test

Mr S had Fixed Protection 2014 which provided an LTA of £1.5m before an extra tax charge applied. He had unused pension savings in his Small-Self Administered Scheme (SSAS) administered by Ascot Lloyd Trustees Ltd.

In October 2022, on Mr S's 75th birthday, an LTA test was carried out on the value of his unused pension savings of £1,317,430 in his SSAS. He had previously used 45.23% of his LTA of £1.5m, leaving 54.77% remaining (or £821,550) before the extra tax charge applied. The outcome of the LTA test was as follows:

- £1,317,430 (unused pension savings) - £821,550 (remaining LTA) = £495,880

Therefore, Mr S's unused pension savings exceeded his LTA by around £495,880. Since he was then aged 75, he was compelled to take the excess as income and pay the 25% tax charge. This resulted in an immediate tax charge of £123,970 applied to Mr S's unused pension savings and remitted to HMRC. The balance of £1,193,460 remained invested in his SSAS for him to utilise how he saw fit. He retained the option to take £205,387 of this amount as tax-free cash (representing 25% of his unused LTA of £821,550). Any withdrawals on the balance would be taxed at his marginal rate of income tax.

Mr S's complaint

In March 2023, Mr S contacted Ascot Lloyd to ask questions about the level of tax-free cash available in his SSAS and the extra tax charge he paid as part of the LTA test carried out at age 75.

In April 2023, Ascot Lloyd provided a response. It apologised to Mr S for not making him aware that an LTA test would be carried out on his unused pension savings at age 75. However, it didn't think failing to tell him made a difference and that the same tax charge would have applied regardless of whether he opted to take the excess as a lump sum or income.

In October 2023, Mr S complained to Ascot Lloyd. In summary, he disagreed with its conclusion that the same tax charge would have applied if he opted to take the excess as a lump sum. He said that by being compelled to take the excess above his LTA as income he would be pushed into the additional rate tax bracket, meaning the overall tax charge was higher than 55% under the lump sum option. He set out his calculations to support his position that Ascot Lloyd's error would lead to him incurring an extra tax charge of around £15,000. He believed this could have been avoided had Ascot Lloyd made him aware of the LTA test and given him sufficient time to act and fully crystallise his unused pension savings before age 75 – he said this would have enabled him to opt to pay the 55% tax charge and take the excess as a lump sum, leading to a lower overall tax charge.

Financial Ombudsman Service

Mr S referred this complaint to FOS. To put things right, he requested Ascot Lloyd pay him compensation of around £21,650 to cover the extra tax charge, advice costs and trouble and upset suffered.

Ascot Lloyd upheld this complaint. It accepted that it should have made Mr S aware an LTA test would be carried out on his unused pension savings at age 75. It apologised for this error. It also accepted that had it made Mr S aware, his tax position would have been different if he had fully crystallised his unused pension savings before age 75 and opted to pay the 55% extra tax charge and take the excess as a lump sum. However, it said this could be managed by staggering withdrawals from his SSAS over the next three to four years such that, overall, he wouldn't be disadvantaged. But it acknowledged it had caused Mr S to suffer trouble and upset for which it offered to pay him £250 compensation.

Our investigator thought Ascot Lloyd's conclusion and compensation offer was a fair and reasonable outcome. So he didn't ask it to do anything further.

Mr S disagreed and provided additional comments. He disputed Ascot Lloyd's calculation and said it would instead take around five years to achieve the equivalent tax saving that would have been available to him had he fully crystallised before age 75. He said it was unreasonable to expect him to manage his income over five years. Our investigator considered those comments but wasn't persuaded to change his opinion. Since agreement couldn't be reached, this complaint has been allocated to me.

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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words, I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Scope of this final decision

Mr S initially complained about Ascot Lloyd failing to make him aware that an LTA test would be carried out on his unused pension savings at age 75 and the impact this had on his tax position. He's since raised additional complaint points including the suitability of the advice to secure a lifetime annuity and the costs associated with this. If Mr S wishes to complain about any other acts and/or omissions, he'll need to submit a fresh complaint to Ascot Lloyd to give it the opportunity to respond in the first instance.

Under this final decision I'm only deciding whether Ascot Lloyd made an error or treated Mr S in connection with the LTA test carried out on his unused pension savings at age 75 and what impact this had, which was the basis of his original complaint.

My findings

Ascot Lloyd has accepted that it made an error when it failed to tell Mr S about the LTA test at age 75. I don't consider it necessary to dwell further on this. Therefore, I've thought about what action, if any, Mr S would have taken had Ascot Lloyd told him about the LTA test and given him sufficient time to consider his options and act.

I've considered all the evidence afresh. Having done so, I've reached the same conclusion as our investigator for these reasons:

- Mr S's unused pension savings in his SSAS were around £1.3m just before his 75th birthday. His remaining unused LTA was £821,550. So it was clear he was going to incur an extra tax charge in respect of the excess funds of around £495,000 above his LTA, regardless of when the test happened. There was no option for Mr S to avoid the extra tax charge. But he was able to reduce his overall tax liability depending on which of the two options he selected and his wider tax position.
- Assuming the same excess value of around £495,000 and given sufficient time to act, Mr S could have chosen to fully crystallise his unused pension savings before

age 75 and pay a 55% tax charge and take the excess as a lump sum. Or he could have waited for the test at age 75 and pay the 25% tax charge and leave the excess in his SSAS (which is what happened). But any withdrawals from the SSAS would also be taxed at his marginal rate of income tax. Receipt of taxable withdrawals from the SSAS could push Mr S into a different income rate tax bracket depending on how much he withdrew and other income he received. As noted above, the combined effect resulted in different tax outcomes depending on S's marginal rate of income tax in a given tax year: the effective combined rate would be 40% if he was a basic rate taxpayer, 55% for a higher rate taxpayer and 58.75% for an additional rate taxpayer.

- Mr S says that given the choice, he would have fully crystallised his unused pension savings before age 75 and opted to pay the 55% tax charge and take the excess as a lump sum. He believes this was the better option because if he paid the 25% tax charge and withdrew all the excess from the SSAS in the same tax year it would, when combined with his other income, push him into the additional rate tax band, meaning the overall tax charge would be higher than 55%.
- But I don't think this is a reasonable basis upon which to compare and assess the situation. I'll explain why. A fact find document was completed by Ascot Lloyd during a meeting with Mr S in December 2022, around two months after his 75th birthday. This confirmed he was retired and in receipt of total annual pension income of around £23,500. It also confirmed he didn't plan to utilise his pension savings in his SSAS at that time and would likely leave it invested until he needed it in the future, possibly for care home fees. I also note that, excluding pensions, his joint assets with his wife were valued at around £1.3m and that he wanted to manage his IHT liability as efficiently as possible to maximise the legacy for their two adult children – as part of this objective, wills and discretionary trusts had been set up to help mitigate the IHT liability.
- I think it's reasonable to use this information as a basis of what action Mr S would likely have taken if warned about the LTA test before his 75th birthday. He was a basic rate income taxpayer. Furthermore, he confirmed he had no plans to utilise his pension savings in his SSAS for the foreseeable future. Therefore, I cannot see any reason why Mr S would need to take all the excess funds above his LTA in the same tax year and, in doing so, unnecessarily push himself into the additional rate tax bracket. That doesn't make sense and is inconsistent with his documented plans at the time.
- I agree with Ascot Lloyd's position that Mr S can manage his income tax position by staggering withdrawals from his SSAS over a number of tax years such that he would not be disadvantaged compared to the alternative 55% tax charge and lump sum option. In fact, if Mr S chooses to stagger withdrawals from the SSAS such that he remains a basic rate taxpayer, the overall tax rate would be 40%. This means he would be better off over the longer term compared to the alternative option he's suggested that would have led to an immediate tax charge of 55%.
- Another important point is that by leaving the excess funds in his SSAS, Mr S's pension savings have continued to benefit from tax-efficient growth. If the excess had been paid to him as a lump sum, as he's suggested, it's unlikely this money would have continued to benefit from a similar tax-efficient environment. And if it was re-invested into an alternative arrangement outside the SSAS it would have been based on a significantly lower starting amount after the deduction of 55% tax compared to 25%.
- By leaving the excess in his SSAS, Mr S can benefit from tax-efficient growth and

manage withdrawals efficiently considering his wider tax position. I think this flexibility is important bearing in mind what was recorded about Mr S's circumstances in December 2022.

- In addition, I think it's important to highlight the IHT position. The evidence shows it was important to Mr S that he reduce his IHT liability. If he had selected the 55% tax charge and lump sum option, as he's suggested, the excess would have been brought into his estate for IHT purposes and, if unspent, potentially subject to a further 40% tax charge in the future on his death. On this point, it's important to note that based on the legislation in 2022, assets left in the SSAS were unlikely to form part of Mr S's estate for IHT purposes. Given his objective was to reduce his IHT liability and that he had already taken positive action to mitigate this using wills and discretionary trusts, I think this would have been an important factor in Mr S's considerations on whether to take the excess above his LTA as a lump sum or income.
- Based on the above, I don't agree with Mr S's position. On balance, I'm not persuaded that if was placed into a fully informed position he would have decided to fully crystallise his unused pension savings before age 75 and opted to pay the 55% tax charge and bring the excess of around £223,146 into his estate. Instead, given sufficient time to understand the tax implications and consider his options, I think it's more likely he would have opted for the LTA test at age 75 because it resulted in a lower immediate tax charge and enabled him to manage withdrawals from the SSAS efficiently to reduce his overall income tax and IHT liability. Therefore, I'm satisfied that Mr S is in the correct financial position.
- Like our investigator, and for the reasons he's previously explained to Mr S, I consider Ascot Lloyd's compensation offer of £250 for the trouble and upset it caused by failing to tell him about the LTA test to be a fair and reasonable outcome.

My final decision

My final decision is that I don't uphold this complaint. If it hasn't done so already, Ascot Lloyd Limited should pay Mr S £250 compensation it previously offered him to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 May 2025.

Clint Penfold

Ombudsman