DRN-2904109

The complaint

Mr C complains that Utmost Life and Pension Limited (Utmost) delayed the transfer of his personal pension plan (PPP) to another provider from who he wished to draw his retirement benefits in the form of an annuity. He says this delay meant that his guaranteed annuity quotation expired and the revised one that was used provided him with less annual income than the original one.

What happened

Mr C held a PPP with Utmost which, in June 2020, he wanted to transfer to a new provider under an "open market option" so that he could purchase an annuity. On 24 June 2020 Mr C's broker wrote to Utmost enclosing a letter of authority (LOA) to act for him, with an instruction to transfer the policy to another provider. Mr C also wrote to Utmost at the same time confirming that he wished to "*exercise the open market option to purchase an annuity from this policy.*"

Utmost received confirmation of this proposed action from the new annuity provider on 8 July 2020. But because Utmost said the required transfer request forms were missing from the confirmation pack, it had to send the forms itself to Mr C for completion. These were returned by 30 July 2020. Utmost then completed the rest of the process so that the funds were sent to the annuity providers' account by 28 August 2020.

But the annuity quotation Mr C had received from the provider on 2 July 2020 was only guaranteed until 7 August 2020. So when the funds weren't received from Utmost by that time the annuity provider issued a new illustration. Unfortunately, it was based on the annuity rate at that time – which was lower than the one Mr C had expected from the initial quotation.

So in August 2020 Mr C complained about what he thought was a delay to the issuing of the transfer request forms, which he said led to the payment of a lower annuity. He said that, despite Utmost being aware of his intentions on 2 July, he didn't receive the required forms until 27 July 2020 – which he thought was an unnecessary delay.

Utmost didn't uphold the complaint. It said that, although Mr C's broker had contacted it on 24 June 2020, it didn't receive confirmation of the transfer request from the annuity provider until 8 July 2020. It said it then provided Mr C with the required forms on 27 July – which were received 30 July 2020 and it said payment was eventually made on 14 August 2020. So it thought it had followed the required process in a timely manner and wasn't responsible for any unnecessary delay.
Mr C wasn't happy with that response, so he brought his complaint to us where one of our investigators looked into the matter. She said that the complaint should be upheld because Utmost ought to have sent the transfer request form to Mr C earlier – as it was aware on 24 June 2020 that he wanted to exercise his open market option (OMO). She said it made no mention of its requirements regarding the OMO during its communication with Mr C about his separate request for his funds to remain in a cash fund. She thought that if it had provided the necessary transfer forms required by the annuity provider at the time, it was likely that the process would have completed during the 30 day period for which the annuity

quotation remained valid – and Mr C would have received that annuity payment rather than the lower one that was eventually paid.

Utmost didn't agree. It said that, following the letter from Mr C and the request from his broker, it assumed the annuity provider would contact it with all the relevant forms. But it only received an acceptance letter from the provider on 8 July – not a transfer request form, so it sent Mr C the form on 27 July 2020 to complete. Utmost also said that in its email to Mr C's adviser on 8 July 2020 it included a link which gave access to all the forms on its website – including the transfer request form. So it didn't think it was responsible for any loss that Mr C had incurred and didn't think it should have to pay the recommended redress.

The investigator considered the email that Utmost had sent but didn't think it gave sufficient direction towards the need for the transfer request form in relation to an OMO. She also thought that if Utmost hadn't received the forms from the new provider on 8 July 2020 then it should have contacted the provider sooner than 27 July 2020 – which she thought caused an unnecessary delay.

But Utmost still didn't agree and asked for the complaint to be referred to an ombudsman. So it's been passed to me to review.

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.

And having done so I agree with the investigator. I'll now explain my reasons.

In order to determine whether any delay was caused, and to what extent Utmost might be responsible, I've set out a timeline of events below from the evidence provided.

- Mr C sent a letter dated 24 June which was received by Utmost on 25 June 2020 which said, "*I am exercising the open market option to purchase an annuity from this policy. My broker, (named) or the insurer (also named), will be contacting you shortly regarding this. In the meantime please do not transfer my cash holding into any other fund".*
- On the same date Mr C's broker also contacted Utmost with a letter of authority for it to act on his behalf. The letter said "*the above client wishes to transfer policy xxx. This is a full fund transfer and (the new provider) are to pay any tax free cash."*
- On 1 July 2020 Mr C received an illustration from the new annuity provider which was guaranteed until 7 August 2020. It noted a fund value of £83,229.12 which would, after the payment of the tax free lump sum, provide a yearly income of £1,189.08.
- On 2 July 2020 Utmost informed Mr C that it couldn't retain his benefits in the secure cash fund but could switch them to a "money market fund" which was the closest fund match.
- On 7 July the new provider confirmed that it had received a request to set up an annuity for Mr C and enclosed its first set of transfer and open market forms. The letter was marked as received by Utmost on 8 July 2020.
- On 17 and 27 July 2020 Utmost received further chase letters from the new annuity provider asking for the return of the transfer form.
- A transfer form sent by Utmost to Mr C on 27 July 2020 was completed, returned, and marked as received by Utmost 30 July 2020.
- Mr C's broker requested an update of events on 30 July 2020. On 4 August 2020 he requested an answer to his previous email and said Mr C was considering making a formal complaint.

- On 29 July, 12 and 20 August 2020 the new annuity provider chased up Utmost for receipt of the completed transfer forms and funds. It provided further transfer forms on 7 August 2020, although this seemed to be because it had to issue a new annuity quotation.
- The provider issued Mr C a new annuity quotation, dated 10 August 2020, which had a guarantee expiry date of 7 September 2020. The quotation said the annuity would pay an annual income of £1,177.80.
- On 26 August 2020 the annuity provider said that it hadn't received the required forms or payment of the funds. Two days later Utmost said the payment had been sent to the provider.

So, returning to the beginning of the process, I think Mr C's initial instruction was clear in that it put Utmost on notice that an OMO and transfer request was imminent and that his cash fund wasn't to be switched. Unfortunately, Utmost wasn't able to accommodate the request not to switch the cash holding, but this was conveyed to Mr C on 2 July 2020 when he was given alternative ways of switching his funds if he wished to do so. But I don't think this was material to the transfer request as it didn't ultimately affect it.

By this time Mr C's broker had also contacted Utmost with a letter of authority for it to act on his behalf. The letter said "*the above client wishes to transfer policy xxx. This is a full fund transfer and (the new provider) are to pay any tax free cash*." It also set out what it required Utmost to do which included, "*ensure additional correspondence or requirements are sent to broker not direct to client…..Please contact us on the number below if the case is out of the scope on Origo options – please send us transfer forms immediately.*"

At this point I don't Utmost had been formally instructed to commence the transfer process, I think it was a reasonable approach for it to wait until it had been contacted by the annuity provider. So I don't think it should have provided any additional transfer forms at this time – but I do think it should have been aware of Mr C's intention to exercise the OMO.

So when Utmost received a communication from the annuity provider, enclosing its requirements and the transfer request forms, Utmost should have begun the process in earnest. The annuity provider sent the "*transfer and open market form",* along with other required documents, to Utmost on 7 July 2020. It asked for the form to be completed and returned along with the payment of the pension funds. So I think by 8 July 2020 Utmost should have had everything it required to progress Mr C's transfer to a conclusion.

However, Utmost has said that, while it did receive confirmation that the provider had been instructed to set up an annuity for Mr C, it didn't receive the transfer request forms. And it also said that it sent an email to Mr C's adviser on 8 July 2020, in reply to a previous request for information on 3 June 2020, which contained links to the general forms and information it held on its website.

But apart from the fact that this information was provided over a month after it was first requested and had been superseded by the commencement of the transfer process, I don't think it directed the adviser or even Mr C to the specific forms that might be required for an OMO. Indeed, it made no reference to the OMO or transfer request and, in my view, would have been seen simply as an answer to the information request from 3 June 2020. I haven't been provided with any reason to support the claim that Mr C would have needed to look at the forms within the links – as Utmost didn't suggest that he would require any additional forms at that point.

I've also looked carefully at the letter that the annuity provider sent to Utmost, which it received on 8 July 2020. The first page of the letter was stamped as being received, so even if the transfer forms weren't enclosed – which I can't confirm wasn't the case, the opening page of the letter stated that, "*I've enclosed the following items that you may require……our transfer and open market form. Please complete this form and return along with the payment to….*"

So, even if the form wasn't enclosed, Utmost was made aware that it should have been, and I would have expected it to at least have contacted the annuity provider to explain the position and ask for a replacement form to be sent. But, considering Utmost said all the required forms were on its website and that it eventually sent the form to Mr C itself on 27 July 2020, then I would have expected to Utmost to simply have sent the form itself to Mr C on 8 July 2020.

Either way I don't think it was reasonable for Utmost to ignore the situation and not send the form until 27 July 2020. I note that the annuity provider chased for a response (received and date stamped by Utmost) on 17 and 27 July 2020 having not received the forms , and I haven't seen any evidence to suggest that Utmost responded to the first request at least – either to ask for the forms if they hadn't been received or to send them to Mr C themselves.

So, on balance, I think Utmost could have done more to get the forms to Mr C when it received the initial transfer confirmation from the annuity provider. If I say Utmost should have sent the forms to Mr C on 8 July 2020, I think they would have been received within three working days – which is what happened when it eventually sent the form on 27 July 2020. This meant Utmost would have received a completed form by 13 July 2020 at the latest.

Utmost then had four working weeks to send the completed forms and funds to the annuity provider before the expiry date of its annuity quotation. The actual situation, which is the best guide to what might have happened here, is that after it received Mr C's completed forms, Utmost was able to send the forms to the annuity provider and deposit the funds in its bank account within around three and a half weeks.

Utmost hasn't provided any commentary for why the final part of the process took three and a half weeks although it's told us in its submissions that the funds were paid by 14 August 2020. And I've also taken into account that Utmost accepted that its response times had been affected by the higher volumes of enquiries arising from the global pandemic – which isn't an unreasonable position given the difficult situation at the time.

But, in any case, I think that if Utmost had acted in a timely manner to ensure Mr C was furnished with the necessary transfer request form – which I understand was the only outstanding form he was required to complete, then I think it would have been able to provide the annuity provider with both the form and the pension funds before the expiry of the first annuity quotation.

So I think it follows that the provider would have been able to pay Mr C's annuity using the original terms as set out in the first illustration – which means he would have received a higher annuity than he ultimately received.

Putting things right

So, I think Utmost needs to put Mr C as close to the position he would now be in if it hadn't delayed obtaining the transfer request forms and submitting them to the annuity provider in order that Mr C could have received the annuity terms set out in the first illustration he was provided with. To do that Utmost must carry out the calculation as set out below:

I'm satisfied that the transfer value noted in the original annuity illustration should be used. There's very little difference between any of the transfer values used in the three quotations issued by the annuity provider, and I'm satisfied that the amount of compensation would be broadly the same. It would seem fair and reasonable to use the information from the illustration that that Mr C was expecting to be used if all the requirements were met and the annuity provider received the forms and payment before 7 August 2020.

So, Utmost needs to:

- Work out Mr C's past losses –the difference between the net annuity payments he has received and what he would have received since the annuity was set up to date, if paid on the basis of the original illustration. Utmost should pay Mr C the difference. Utmost should also pay simple interest at 8% per annum on the difference between each payment from the date it was due to the date it was paid.

- Work out Mr C's future losses- calculate the cost of setting up an annuity (on the same basis of Mr C's current annuity) for the difference in annuity which he's lost out on. The purchase price of the annuity being Mr C's gross future loss. This should be paid directly to Mr C as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid– presumed to be 20%.

- Utmost should also pay Mr C £150 compensation for the distress and inconvenience caused to his retirement planning during this time.

If payment of compensation is not made within 28 days of Utmost receiving Mr C's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Utmost deducts income tax from the interest, it should tell Mr C how much has been taken off. Utmost should give Mr C a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate

My final decision

For the reasons that I've given, I uphold Mr C's complaint against Utmost Life and Pensions Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 June 2022.

Keith Lawrence
Ombudsman