

The complaint

Mr C complains that Legal and General Assurance Society Limited (L&G) haven't used a fair start date for his annuity.

What happened

Mr C had a pension policy with Aegon which had a guaranteed annuity rate attached to it. In 2017, Aegon decided to stop providing annuity contracts for new customers. It agreed with L&G to transfer its annuity business to it. This proposal required high court approval and Aegon set out this proposal to its customers. Within this letter it said a number of times that customers won't be adversely affected and there will be no change to contractual terms. Below is an extract from the summary included in the letter:

- The timing and amount of your annuity payments won't be affected by the transfer.
- Any contractual guarantees you have will continue, and the terms and conditions of your policy won't change as a result of the transfer.

There were some conditions on Mr C being able to take his pension benefits with the guaranteed annuity rate. He had to reach the age of 60, it would be a single-life policy, and would be payable yearly in arrears starting on the first anniversary of the commencement date. This means that Mr C's estate won't receive a proportionate payment if he were to die part-way through any given pension year.

The terms and conditions for Mr C's policy with Aegon said:

"The Pension Date of a Policy shall be a date selected by the Member of which written notice shall be given to the Society, and shall be a date not earlier than the sixtieth birthday of the Member [...]. Notice shall be given not less than one month and not more than three months before the date selected."

Mr C notified Aegon on 3 April 2019 of his intention for his pension date to be 12 May 2019 (his 65th birthday). This is within the notice period set out in the policy terms and conditions.

When Mr C told L&G of the proposed retirement date it then communicated with Aegon. And Aegon said it would use this date to disinvest the money. L&G then set up Mr C's annuity with a commencement date of 20 May as it took time to do the required administration. It said it told Mr C in a call that this is what they would do and he agreed.

Once Mr C realised his commencement date was 20 May 2020, he complained to L&G as he's said if he were to die between 12 May and the 20 May his estate would be financially disadvantaged – as that yearly payment wouldn't be received.

Our investigator looked into matters and felt the complaint should be upheld. He said L&G should rewrite the annuity so that the start date was 12 May and pay £150 for the trouble and upset it caused Mr C. The investigator said he'd reached this view because:

- *"Mr C notified both L&G and Aegon of his intention for his pension commencement date to be 12 May 2019, and L&G received his application form by 23 April 2019. I think this was enough time for L&G to request the funds from Aegon so his pension could have started in line with his requested pension date."*
- *"Because of this, I don't think it's fair that Mr C's pension commencement date was set later than he requested. I appreciate that there may not be any financial loss as it will depend on when Mr C passes away. However, I think L&G should mitigate against this."*

The investigator also recommended that L&G pay Mr C £150 as compensation for the trouble and upset this uncertainty over his annuity will have caused him.

L&G responded to say it disagreed with the investigator's view. It said it had contacted Aegon when it first received Mr C's application on 24 April and Mr C had given it a retirement date of 12 May 2019. And Aegon confirmed it wouldn't disinvest until this date. L&G says it made this clear in a call with Mr C, citing the fact it said: *"As you got a specified future retirement date (12/05/19) we would ask Aegon to disinvest your pension policy on this date. However the annuity with Legal & General won't start until we have received the funds and the policy is put into payment"*

L&G said it made him aware of the implications of using this date and Mr C agreed to this. And he didn't say this was unacceptable until after the funds had disinvested.

Our investigator responded and pointed out if Mr C had used a date earlier than 12 May 2019 – under the terms of his policy it would result in a reduction to the guaranteed annuity rate. He felt it was unfair that L&G was requiring him either to take a definite financial loss or a potential future loss. And he said whilst he appreciated there would be delays when moving money between firms and setting up annuities – the agreement between L&G and Aegon was supposed to provide the same benefits he was entitled to under his pension policy.

L&G didn't agree. It's also said it isn't possible to change the payment date to before it received the funds.

A complaint has also been raised against Aegon in relation to this issue and is being dealt with under a separate reference.

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 conclusion reached by the investigator. I'll explain why.

L&G say it contacted Aegon as soon as it received Mr C's application and gave it the retirement date Mr C had stated, 12 May, and Aegon had said that it wouldn't disinvest until that date. L&G says it couldn't use this date to pay the annuity one year later as it didn't receive the money in time. So it appears L&G is saying Aegon didn't allow it to meet this date. But as set out in Aegon's letter to its customers, there is a responsibility as part of the transfer of the business (between L&G and Aegon) to retain the guarantees and terms &

conditions of the original policy.

As Mr C has said, how Aegon and L&G organised this between themselves isn't really important to him as the customer. But from what L&G has explained there appears to have been no consideration to make sure that Mr C could have the pension commencement date he selected – as is allowed for under the terms and conditions of his policy. I don't think that is fair on Mr C.

L&G say that Mr C agreed to the fact he wouldn't receive the money on his commencement date of 12 May in a phone call with it. Having considered what was said in this call, I don't think that is a fair assessment of what happened. The key part of the conversation was:

L&G: *OK. That's fine. So when you receive your quotes, if you can review them to ensure that all your information is correct, if you are happy to proceed, you just need to complete the enclosed application form and return it to us. And as you've got a specified future retirement date, we would ask Aegon to disinvest your pension policy on this date.*

However, the annuity with Legal and General won't start until we've received the funds and the policy put into payment. If you do choose to proceed with this quote, you need to be aware that the fund value used in the quote is not guaranteed. The final rate of income could therefore be different as we will apply the rates of the day that we receive the funds. And we do issue a final quotation as well, once all the funds and the completed paperwork has been received. That does confirm your final figures there for you.

Did you have any questions there Mr C?

Mr C: *Yes. How long before the retirement date do you need the forms back?*

L&G: *So as long as we receive them back before, we'll be able to load it and request the funds. You know, provided everything in the application quote is completed. So as long as we have it before 12 May that's the first day that Aegon will be able to disinvest the policy. So as long as you've sent it in prior to that date, then that's ample time enough.*

Mr C: *And the tax-free lump sum will come on that date?*

L&G: *The tax-free lump sum will be sent by Aegon to you the same day that they send us the remainder of your fund. So you should get that a week following that 12 May. The remainder of the fund then comes to us to be calculated for a final quotation. We send that final quotation out to you, which you can then call us up to accept over the phone. So, your first annuity payment will come to you one year from the date that we receive your fund. But your tax-free cash you get pretty promptly at the start of the plan.*

Mr C was told the annuity wouldn't start until it received the money and the policy was put into payment. But later he is told "*your first annuity payment will come to you one year from the date we receive your fund.*" So this isn't clear at all and L&G had said it would request the money on 12 May. I don't think a lay person would understand that this would be a problem. Mr C most likely thought the money transfer would go through the same day.

Mr C had made it clear that he wanted a commencement date of 12 May. And he already knew the terms and conditions of his annuity allowed for this. Mr C also asks how long before the retirement date does he have to get the forms back? The answer he was given is reassuring - and doesn't make clear that actually 12 May couldn't realistically be his commencement date. Mr C wouldn't have knowledge of L&G's processing times or that of a bank transfer between the two parties. I also don't think Mr C would've understood that the need for a final quotation would mean the date would need to be pushed back beyond 12

May – given the annuity wouldn't actually be payable until a year's time in any event. So I don't think Mr C would've thought at this point there was anything wrong, hence him agreeing in the call to what he was told.

So unwittingly I think the member of staff gave Mr C misleading information here – it certainly wasn't clear. But Mr C had made his intentions clear that the date of 12 May was important to him in this call. And under the terms of his policy he had selected this as his pension commencement date, as he was entitled to do so. At no point did L&G make it clear that its arrangement with Aegon of disinvesting the money on this date – meant that there was no chance it would use the pension commencement date of 12 May.

As the investigator commented, the approach taken by Aegon and L&G here meant that if Mr C was aware of what his options actually were, it seems he would've been faced with a definite financial loss or a future potential loss. If Mr C chose a date before his 65th birthday on 12 May, the guaranteed annuity rate would've been reduced as a higher rate only kicked in on that date. In selecting the date of his 65th birthday, he couldn't receive the annuity on that date a year later due to the arrangements between Aegon and L&G. Meaning if he dies between those two dates, he will miss out on a whole year's annuity payment. This does not strike me as fair. And it appears the problem is the transfer arrangements between L&G and Aegon.

If there was a way Mr C could've received the full guaranteed annuity rate at 65 and have the pension commencement date he wished (as he was entitled to under the terms of the policy) L&G didn't explain this to him.

And I agree with the investigator that L&G received Mr C's forms in time to setup the annuity with the date Mr C had requested. It says it didn't receive the money in time – but that was down to its arrangements with Aegon and not anything Mr C was responsible for. Even then it's difficult to understand why L&G couldn't in these circumstances – when the payment is a year in arrears (and the terms of policy allow for a pre-selected date in the future) to have amended its usual process to give Mr C the date he had requested. So I think L&G haven't been fair to Mr C and haven't provided him an annuity in-line with the conditions he was entitled to.

Putting things right

To put things right, L&G should amend the annuity payment date to 12 May, so that all future payments are made on Mr C's birthday. It should also pay him £150 for the trouble and upset it has caused by its failure to do this initially.

I appreciate Aegon and L&G are both responsible for this process but I'm not aware of all the arrangements between them. Aegon cannot rewrite this annuity as it is not their annuity. So after L&G have put things right for Mr C, if L&G believe Aegon should meet any of the costs incurred in putting things right for Mr C – it can always approach Aegon to discuss this.

My final decision

I uphold Mr C's complaint against the Legal and General Assurance Society Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 March 2022.

Simon Hollingshead
Ombudsman