DRN-3228103

The complaint

Ms R has complained that the delays incurred by ReAssure Limited in making a payment from her pension plan – in the 2021/22 tax year instead of the 2020/21 tax year - has resulted in her paying more tax (£1,390) than she otherwise would have.

What happened

The investigator who considered this complaint issued her assessment of it on 27 October 2021, in which she set out the background, including a timeline, as to what had happened here. As neither party appears to have disagreed with that background, I'm broadly setting out the same overview of events below.

Ms R decided to fully encash her personal pension policy in March 2021 as she wasn't working at the time. She therefore wanted to utilise her tax free allowance by taking a payment in the 2020/21 tax year.

Ms R first contacted ReAssure about this, via her financial adviser, on 8 March 2021 and the following occurred after this date:

- 8 March 2021 – ReAssure emailed Ms R's adviser with the forms that needed to be completed to make the withdrawal.
- 9 March 2021 – Ms R had a phone call with ReAssure, in which she mentioned she'd like the payment by the end of the tax year.
- 11 March 2021 – ReAssure received all completed forms from Ms R.
- 18 March 2021 – Ms R's adviser called ReAssure to chase the withdrawal.
- 19 March 2021 – ReAssure told Ms R's adviser that it would take 15 working days to process the payment.
- 25 March 2021 – Ms R's adviser called to chase ReAssure again. It confirmed it would make the payment on 26 March 2021 and this would then take three to five working days to clear.
- 30 March 2021 – Ms R called ReAssure to confirm whether the policy would be paid out before the end of the tax year. ReAssure recorded a call note following this saying "can we please ensure payment made within this tax year". Ms R's adviser also called on the same day and was told it would be chased up. ReAssure said that it should have quoted 20 working days previously, instead of 15.
- 7 April 2021 – Ms R called ReAssure to confirm whether the payment had been processed within the previous tax year. ReAssure confirmed it hadn't.
- 9 April 2021 – ReAssure made the payment into Ms R's bank account.

- 14 April 2021 – ReAssure wrote to Ms R to confirm that the payment of £9,271 had now been processed.

So, in total, it took just over four weeks for Ms R to receive her payment once ReAssure had received all the required information.

Ms R complained to ReAssure, and in response it apologised for the delays and offered her £200 in respect of this, which included £25 for late payment interest. Dissatisfied with the response, however, Ms R referred the matter to this service.

Our investigator thought that the complaint should be upheld, saying the following in summary:

- In accordance with guidance issued by the Association of British Insurers (ABI), she would expect that "next steps" would be taken by ReAssure within ten working days of it receiving the required information.

- But she also took into account its internal service standard and whether this had been adhered to.

- ReAssure had said that its internal service level agreement for processing payments was 15 working days. After this, it could take three to five working days for the payment to clear.

- But she considered an overall timescale of 20 working days to process the payment to be unreasonable – rather, the timescale of 15 working days quoted by ReAssure would be a reasonable timescale.

- ReAssure had accepted that the payment was delayed, and the timeline indicated that it had taken 20 working days to make payment to Ms R. This meant that the payment fell into the next tax year. Had it been made within 15 working days, this would have been by 31 March 2021, and so would have fallen within the previous tax year, as she'd requested.

- Both Ms R and her adviser had contacted ReAssure on several occasions to emphasise the importance of the payment being made in the correct tax year, and so the requirement for Ms R to pay additional tax as a result of the late payment was a reasonably foreseeable consequence.

The investigator recommended that, in addition to the £200 payment, ReAssure should contact HMRC to determine whether the payment could instead be reported within the 2020/21 tax year, but if this wasn't possible, it should compensate her for the additional tax liability she'd incurred as a result of the delay in payment.

In response, ReAssure said that, although it considered that, if it was important to Ms R that the payment be made in the 2020/21 tax year, she could have requested it sooner than she did, it would be willing to consider the matter of the additional tax liability if Ms R was able to provide evidence of this.

The investigator enquired of ReAssure as to whether the letter it had itself sent to Ms R in April 2021 confirming that the amount of £1,390 had been deducted for tax was sufficient. The investigator said that, if it wasn't, ReAssure should confirm what else it would need.

Ms R also confirmed that she had no income for the 2020/21 tax year, but that she began to receive an annual pension from a previous employment in June 2021, amounting to just under £6,000 pa. When this was added to the ReAssure pension payment, it took her over the personal allowance threshold.

ReAssure said that it needed to be careful that it wouldn't be making a payment to Ms R which might in any case be made by HMRC as a tax rebate, and so it requested evidence of Ms R's total income for the two tax years in question. It said that a P60 for the 2020/21 tax year would be suitable, but that, as Ms R had said that she received no income in that year, it would require evidence of this, for example confirmation from HMRC.

It also requested confirmation of the pension income Ms R had been receiving since June 2021.

The investigator put the request to Ms R, but Ms R said that she'd like the matter referred to an ombudsman for review, as she considered ReAssure's requests for evidence to be delaying tactics in the hope that she would drop her claim.

Ms R further said that she hadn't had use of the £1,390 taken as tax for nine months and if ReAssure needed to wait until the end of the 2021/22 tax year to verify her income, this would be a further four to six months before she received the amount. But she also provided her self-assessment tax calculation for 2020/21, which indicated that she had no income and paid no tax. She also provided a receipt for artwork she'd sold in the 2021/22 tax year, which was dated 1 September 2021.

ReAssure then said that, although the payment was "applied to the policy" in the 2021/22 tax year, the form of discharge date used to calculate it was 1 April 2021, and therefore within the 2020/21 tax year. It said that, if it had been recorded in the correct tax year, then Ms R would need to apply to HMRC for a refund. But if it had been recorded as being paid in the wrong tax year – 2021/22 – then ReAssure said that it would reimburse Ms R the excess tax which had been deducted.

In response to a further enquiry from the investigator as to the evidence it would need to reimburse Ms R, ReAssure said that the self-assessment calculation provided by Ms R wasn't sufficient as it was her version of the tax return she submitted to HMRC and was only 95% complete. The receipt for the artwork also didn't evidence her employment status for the 2021/22 tax year, ReAssure added.

ReAssure said that it would need evidence such as Ms R's P60 for the 2020/21 tax year showing her income and tax liability for the year, or confirmation from HMRC of her earned income for that year.

The matter was referred for review by an ombudsman, as requested by Ms R, but more recently (December 2022) she said that she'd spoken to HMRC about both tax years and that it had decided to check her self-assessment for 2020/21 due to her having virtually no income.

Ms R said that she would find a way to provide the information from HMRC, but I can't see that this has been submitted yet.

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've reached the same conclusions as the investigator, and for broadly the same reasons. I don't think I need to reiterate the rationale for upholding the complaint, as ReAssure has said that, should it be determined that Ms R has been disadvantaged by paying tax on the pension withdrawal in the 2021/22 tax year rather than paying no tax on it had it been made in the 2020/21 tax year, it will reimburse this to her. But suffice to say, I do agree with the investigator that the delays encountered here would warrant this course of action.

And so the outstanding matter here is one of ReAssure being satisfied that, had the payment been made in 2020/21, Ms R wouldn't have paid tax on it. And I don't think its requests for confirmation of this are unreasonable. I appreciate Ms R's frustrations and her own firm conviction that, had the payment been made in the correct tax year she would have paid no tax on it. And I have no reason to doubt this. But I do think ReAssure isn't acting unreasonably in requesting confirmation of this.

And similarly, I think it has a point when it says that the evidence submitted to date doesn't quite tick the necessary boxes. As with Re-Assure, I also note that the self-assessment submission says that it was only 95% complete, and I agree that, whilst the receipt for sold artwork in 2021/22 evidences some income, it doesn't provide the confirmation required by ReAssure that the income for that year took Ms R over the personal allowance threshold and that she therefore paid tax on the pension withdrawal which she otherwise wouldn't, had it been made in 2020/21.

Putting things right

I agree that ReAssure should reimburse Ms R the amount of tax she wouldn't have paid, had the pension withdrawal been made and recorded in the 2020/21 tax year. But I think it's fair and reasonable that this is dependent upon Ms R providing the evidence that ReAssure has requested.

I also agree with Ms R that she's been deprived of the use of that money since the tax was deducted, and so I might ordinarily conclude that simple interest at the rate of 8% pa should be added from the point at which it was taken (my understanding is that this was the date of the pension payment), to the date of settlement.

But I also think that, had Ms R responded to ReAssure's request for a P60 or other confirmation from HMRC as to her employment/income status in 2020/21 after it was requested in September 2022, the matter might have already been resolved. This isn't a criticism of Ms R, as I appreciate that she's been frustrated by the need for evidence of what she clearly believes to be self evident from the information she's already provided. But I do need to be fair to both parties, and as I've said above, I don't think Re-Assure's requests for the additional evidence are unreasonable. I also think that the £200 payment made in April 2021 would satisfactorily address the matter of Ms R having been without the use of the money from then until September 2022.

But if ReAssure takes longer than 28 days from the date of Ms R providing the requested evidence to make payment to her, then 8% pa simple interest should be added to the amount from the date of Ms R providing the evidence up to the date of settlement.

My final decision

My final decision is that I uphold the complaint and, subject to it receiving the requested evidence, direct ReAssure Limited to make payment to Ms R of any excess tax she's paid as a result of the pension payment being made in the 2021/22 tax year, as opposed to the one before.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms R to accept or reject my decision before 20 March 2023.

Philip Miller
Ombudsman