

The complaint

Mrs H complains about the misleading information ReAssure Limited gave her about a family income benefit plan her late husband took out. She also complains about the very poor customer service she received when the payments stopped in mid-2018.

Mrs H has explained that not only has this matter caused her considerable distress and worry, but she is also in financial difficulty as a result of the payments stopping without any warning.

What happened

Very sadly, Mrs H was widowed in late 2007. Mrs H's late husband had arranged an income benefit plan for his family and from early 2008 onwards Mrs H received a gross monthly payment of £1,949 from ReAssure. (The policy has been administered by several different providers since 2008 but, for simplicity, I have referred to ReAssure as the product provider throughout this decision.)

The payments were described to Mrs H as a 'lifetime annuity' in the letters and statements she received from ReAssure and the previous product providers responsible for the policy.

Mrs H has explained that as she understood that the payments would continue for the rest of her life, she made financial decisions based on, what she understood to be, a secure and on-going income. This included taking out additional borrowing secured against her home and enrolling one of her children, who has a special educational need, in a private school.

Mrs H also paid tax on the payments as she understood that, as annuity payments, the income was taxable.

In July 2018 the monthly payments stopped without warning. The information available shows that Mrs H immediately contacted ReAssure as she thought there must be an administrative error. Despite having been made aware of Mrs H's personal circumstances ReAssure was very slow to respond to Mrs H and it appears it simply ignored follow-up emails she sent.

In the meantime, Mrs H sought advice from a financial adviser who suggested that the policy might have been set up incorrectly by ReAssure and might be a family income benefit plan, rather than an annuity. It appears the adviser also explained to Mrs H that if the payments were from a family income benefit plan (a form of term assurance) the payments were not taxable.

Mrs H sent ReAssure details of the information she had received from her financial adviser and again asked it for a prompt response given the very difficult financial situation she was in. She also set out that she had made tax payments to HMRC as ReAssure had told her the payments were annuity payments and were therefore taxable. She asked for urgent clarification on the policy. She explained that this was particularly important as a self-

assessment tax return was due at the end of January 2019 and she wanted to be sure that the income she declared was correct.

ReAssure replied in January 2019, over six months after the payments had stopped. In its response it ignored the points Mrs H had raised and simply referred to a 'Form of Discharge' Mrs H had completed in early 2008. This form set out that Mrs H would receive an income of £23,389 per year until 1 July 2018.

When Mrs H asked ReAssure to address the points she had raised it said there was '*nothing more that we can send you*' and said Mrs H should let it know if she wanted to make a complaint.

As ReAssure had failed to treat Mrs H's earlier expressions of dissatisfaction as a complaint Mrs H had to again set out her concerns to ReAssure before it treated the issues she had raised as a complaint. In March 2019, Mrs H sent a letter reiterating all the issues she had already raised.

It appears ReAssure responded to Mrs H in April 2019 but only addressed the tax it had incorrectly deducted from the payments Mrs H received from May 2015 to August 2017. It said it didn't feel it was responsible for the tax Mrs H had overpaid prior to this as she had declared the income on her tax return. It did not explain why Mrs H had been told, in writing, on numerous occasions by ReAssure that the income was annuity income, paid from a 'pension annuity plan' and was therefore taxable.

Mrs H then had to contact ReAssure again to try to find out why her complaint hadn't been investigated and, having discussed the matter with it by phone, sent a follow-up letter in July 2019.

In mid-December 2019 (eighteen months after the payments had stopped) ReAssure responded to the issues Mrs H had raised. It said:

Although the copy documents you've provided don't confirm your income was due to stop on 1 July 2018 and didn't confirm your policy was a Family Income Protection Plan, our position is that the Form of Discharge would have ensured you were aware payments would stop.

Therefore, we won't be looking to restart income payments after 1 July 2018.

But it acknowledged that the '...correspondence sent to you from January 2008 has given you the impression that income payments would continue throughout your lifetime. I'd like to apologise for the false impression this correspondence has given you, and for not identifying this correspondence when we sent our response to your complaint on 10 April 2019.

In order to put matters right it refunded the £21,055.22 in tax that Guardian Financial Services and subsequently ReAssure had wrongly deducted from the income payments Mrs H had received from May 2015 through to August 2017 and said it would correct the position with HM Revenue and Customs (HMRC) on Mrs H's behalf. I understand that it also needed to correct the position with HMRC for Mrs H to reclaim the tax she had overpaid from August 2017 to mid-2018.

But with regard to the taxation period before May 2015, it said:

'... the correspondence you provided copies of show that the provider company at the time were responsible for reporting the tax to HMRC rather than you...

It then went on to say:

I realise the correspondence sent by Scottish Provident, Phoenix Life, Guardian Financial Services and ourselves has been misleading with respect to the type of income payments you're receiving. So to say sorry, I'd like to send you an apology payment of £1,000. Please let me know whether I can go ahead and send this to you.

With regards [to] the accountancy costs you're incurring when correcting your tax records for the period before May 2015, although the correspondence sent confirmed the provider company at the time were responsible for reporting the tax to HMRC rather than you, referring to a tax rate of PAYE would be confusing. I'd like to take the opportunity to apologise for any confusion caused.

With respect to your accountancy fees regarding the period before May 2015, we would like to offer an amount of £750 towards the fees. This would be subject to receiving confirmation from your accountant as to the amount they've charged you, and from HMRC confirming they've had to complete a correction to your records for the period before May 2015 regarding the monthly income of £1,949.10 you'd previously declared.

Mrs H was not satisfied with ReAssure's response and referred the matter to this service.

When she referred her complaint to us, she provided the following summary:

I made financial decisions on this basis as well as assuming that, as a pension, the payments were taxable and hence they were presented to HMRC as such by both me and by ReAssure. In July 2018 the payments stopped without warning. It took almost 8 months and constant follow ups and investigations, mostly undertaken by me to discover that the policy was wrongly set up at outset.

It was in fact, a Family Income Benefit (Life assurance) policy with a defined end date. I was, therefore, misled for over 10 years. The company have sought to rely upon the "Form of Discharge" sent to me in early 2008 which gave an end date. They did not issue any other documents and the policy number under which I received payments was different. ReAssure have sought to disregard all of the other documents they sent me which contradicted this position... [the documents are marked] "monthly" and "annual" as this is the frequency with which they were sent and received. The policy was also taxed when it should not have been.

Even though ReAssure have admitted that they made a mistake, the compensation of £1,000 they have offered is wholly inadequate in the circumstances. To date, the company have still not updated their records returns to HMRC so that my taxation position can be confirmed and tax due repaid to me. Again. I have chased them on various occasions...

An investigator considered Mrs H's complaint. Having done so, she said she didn't think she could reasonably require ReAssure to re-instate the monthly payments. She said she was mindful of the letters Mrs H had received setting out that the payments were in respect of a lifetime annuity but she also noted that the discharge form Mrs H had signed in 2008 set out that the payments would stop in mid-2018.

But she said she thought ReAssure should pay Mrs H a total of £2,500 for the distress and inconvenience this matter had caused her.

And she said that she felt ReAssure's offer to pay Mrs H £750 to cover her accountancy fees for liaising with HMRC for the period prior to May 2015 (subject to receiving confirmation from HMRC that it needed to complete a correction to her records for this period) was fair. She also felt it was fair for ReAssure to say that Mrs H and her accountant would have to deal directly with HMRC to resolve any issues relating to pre-May 2015.

For the period from May 2015 to August 2017 she noted that ReAssure accepted that it had incorrectly reported the income Mrs H received from the policy to HMRC and deducted the tax that it claimed was payable. In order to put matters right it had paid Mrs H the £21,055.22 of overpaid tax for this period and said it would sort out the problems its error had caused with HMRC.

However, ReAssure then said HMRC had told it that Mrs H would need to contact HMRC directly to resolve this issue and that if she didn't repay the £21,055.22 to ReAssure (and then reclaim this amount directly from HMRC) she might suffer a Reg 80 penalty from HMRC on the payment she had received from ReAssure to cover the overpaid tax for this period.

Our investigator said she had to assume the information ReAssure said it had received from HMRC was correct. So, she said Mrs H needed to decide which option she wanted to take in relation to the overpaid tax for the period May 2015 to August 2017.

However, she said ReAssure should have clarified the situation with HMRC before offering to rectify Mrs H's tax records and making the payment of £21,055.22. And she said she had taken this poor service and the distress and inconvenience this had caused Mrs H into account in the £2,500 she recommended ReAssure should pay Mrs H.

She said that if Mrs H was not willing or able to return the amount of £21,055.22 to ReAssure it should cover any penalties applied by HMRC, such as a Reg 80 penalty as any penalties would have been avoided if ReAssure had clarified the situation with HMRC in the first instance and given Mrs H the correct information.

ReAssure didn't accept the investigator's view. It said it felt the £1,000 it had offered to pay Mrs H for the *'loss of expectation for how long the income payments would last for'* was *'more than fair'* in the circumstances of this complaint and it didn't think it should be required to pay any more.

It also changed its position and said it was liaising with HMRC (but had still not managed to resolve matters) on Mrs H's behalf. And it said it had paid Mrs H £693 interest on the tax it had incorrectly deducted. It noted it had not paid Mrs H the £750 it had offered towards her accountancy fees for the period prior to May 2015 (when Mrs H had declared the income from the policy to HMRC) as it said Mrs H hadn't provided it with evidence of the costs incurred.

Mrs H did not accept our investigator's view either. She said, in summary, that she didn't feel the investigator had fully taken into account that ReAssure had repeatedly told her, in writing that the policy was a 'pension annuity'. She said she felt it was unfair and unreasonable for the investigator to say she should have known that the policy would only pay an income until July 2018, based on the 'Form of Discharge' from 2008. And she said she felt the redress the investigator had recommended didn't reflect the very difficult financial situation she was facing due to the repeated failings by ReAssure.

Mrs H reiterated that she had made significant financial decisions, based on the information she had been provided with, on a regular basis, from ReAssure stating that the policy was a 'pension annuity' and therefore payable for life. Had she known the income would only be payable until mid-2018, Mrs H said she would not have taken on long term financial commitments based on this income.

Mrs H also said she couldn't re-claim the tax she had paid on the income from the policy prior to May 2015 (when ReAssure started deducting the tax at source). She said:

I paid tax at source from 2013 (from my earned income), which was sometimes at the higher rate, that I should not have paid. Due to HMRC rules, I cannot reclaim this money. It is lost to me forever. At basic rate, this was £6,000 per year - therefore, I have lost £18,000 prior to 2015 in addition to the sum you mention after 2015. What about the interest on this money? During that time, I did not have the use of this money. Surely, to put me back into the position I would have been in, the money + the interest should be returned (at the very least)? The wide-ranging nature of my losses do not appear to have been considered by you at all.

The investigator responded to say that although she was sympathetic to Mrs H's position, she felt the compensation she had proposed was fair.

As both Mrs H and ReAssure were unhappy with the investigator's view the complaint was passed to me to determine.

I issued my provisional decision on this complaint on 10 March 2022. In it I explained that I was of the view that the redress recommended by our investigator was too low given the significant, long term, detrimental impact Mrs H had suffered as a result of the incorrect information she received on numerous occasions from ReAssure and the additional distress it caused her when it failed to respond to her concerns promptly.

I said I was also mindful that Mrs H had said she cannot reclaim the tax she paid on the income she received from this policy prior to May 2015. And that, as her tax position with HMRC had still not been resolved, despite ReAssure having said it would get her records corrected, she had not received a refund of tax she had overpaid for the tax years 2017/8 and 2018/9.

I set out my provisional decision on how I thought this complaint should be fairly resolved as follows:

Communication with Mrs H

I explained that, as ReAssure will know, it is required to treat its customers fairly, act with due skill care and diligence and ensure that **all** communication with customers is clear, fair, and not misleading.

Having carefully reviewed all the letters Mrs H had provided to this service from ReAssure I noted that she had received at least 10 letters (and I understand this was only a sample of the letters Mrs H received) each describing her policy as a 'lifetime annuity' (2009 onwards) or a 'pension annuity plan' (2017 letters) and it clearly stated, '*The income you receive from your pension is taxable as earned income.*'

I said it was not in dispute that the discharge form Mrs H completed in 2008 said that the payments would be made until July 2018. But I said I hadn't seen anything apart from this form that said the payments would stop and Mrs H would not receive an income for the rest of her life from the policy.

I noted that at the time Mrs H completed the discharge form in 2008 she had only very recently lost her husband and would have had a significant amount of administration to deal with, as well as supporting her children and trying to come to terms with her loss.

When this was taken into account I said I didn't think it was fair or reasonable for ReAssure to say that Mrs H should have 'known' that the payments would stop in mid-2018 and should have disregarded the incorrect information it sent her on numerous occasions about the plan from 2009 onwards. I noted that it had failed to provide any explanation as to why it

repeatedly told Mrs H that the plan was a 'lifetime annuity' or a 'pension annuity plan' or why it told Mrs H that the payments were taxable.

I said I was of the view that the problems Mrs H had experienced were, to a very large extent, caused by ReAssure's failure to ensure that the information it sent to Mrs H about the plan was clear, fair and not misleading.

Where a business makes an error, or errors, as ReAssure has done here, I explained that this service usually looks to put the customer back in the position they would have been in, but for the errors.

In Mrs H's case, I said that if ReAssure had met the regulatory requirement to ensure that all the communications it sent to her were 'clear, fair and not misleading' Mrs H would not have reported the income she received to HMRC as she would have known that income from a family income benefit plan wasn't taxable. She would also have been able to manage her finances differently as she would have known that the income she was receiving from the plan would stop in mid-2018.

I said it was not possible for me to say with any certainty what Mrs H would have done differently. But I was mindful that Mrs H had said she would not have taken on additional borrowing to fund private schooling or extend her mortgage if she had known that the payments would only be made until mid-2018.

Having very carefully considered this matter I said I didn't think I could reasonably require ReAssure to re-instate the payments Mrs H was receiving from it. I said I had reached this view as I thought a fair resolution to this complaint would be to put Mrs H back in the position she would have been in, but for the errors made by ReAssure. In Mrs H's case, as she had rightly noted, if ReAssure had provided her with correct information she would have known that the family income benefit payments she was receiving would end in July 2018 and were not taxable.

The redress I set out in my provisional decision aimed to put Mrs H back in the position she would have been in, but for the errors made by ReAssure.

However, I explained that I was also mindful of the very significant worry and distress this matter had caused Mrs H and I said I didn't think the £2,500 our investigator had recommended fully reflected the distress the incorrect information Mrs H received from ReAssure from 2009 onwards had caused her.

When considering the redress ReAssure should pay Mrs H, I took into account that it failed to act with due skill care and diligence in its administration of this policy. It repeatedly sent Mrs H letters saying the policy was a 'pension annuity'. When it became aware that it had wrongly told Mrs H that the policy was a 'pension annuity' it appears that it didn't make any effort to contact her to let her know that it had repeatedly given her incorrect information.

I said I thought that the loss of expectation Mrs H had suffered was significant and in view of this I thought ReAssure should pay Mrs H a further £3,500 (in addition to the £1,000 it had already offered to pay) for the distress its failure to administer her policy with adequate skill, care and diligence had caused.

I said I did understand that Mrs H would feel this amount was too low to adequately compensate her for the very significant distress she has suffered as a result of discovering that the benefit she understood she would receive for life was only payable to mid-2018. But I said I thought my proposed award was in-line with the level of award this service makes where a customer has suffered significant severe distress as a result of errors by a business.

Complaints made by Mrs H

I said I was of the view that the email Mrs H sent to ReAssure dated 23 October 2018 met the FCA definition of a complaint and I said I felt it was very unsatisfactory that ReAssure failed to treat this letter of dissatisfaction as a complaint under the FCA rules.

I said I thought that ReAssure's failure to promptly acknowledge and investigate Mrs H's complaint had added significantly to the distress and worry this matter had caused her.

I said that ReAssure knew, from the information Mrs H had provided to it, that she was struggling financially and that this matter was causing her a great deal of distress. It also knew that Mrs H had asked it to respond 'urgently' to the issues she had raised, particularly with regard to the tax implications. Despite this it appeared that ReAssure had simply ignored Mrs H's letter.

I explained that, as ReAssure will be aware, it is required to treat its customers fairly. I said I thought that its failure to acknowledge or investigate the issues Mrs H had raised was both unfair and unreasonable.

Its failure to treat Mrs H's 'expression of dissatisfaction' in October 2018 as a complaint meant that Mrs H suffered additional worry and distress for several months longer than she should have done.

I noted that ReAssure said it felt the offer it had made to pay Mrs H £1,000 for the '*loss of expectation for how long the income payments would last for*' was '*more than fair*' and it didn't think it should be required to pay any more.

But I said I was mindful that it had not offered Mrs H any compensation for the significant distress she suffered when it simply ignored her concerns when the income payments stopped without warning in mid-2018.

I said I was of the view that ReAssure should pay Mrs H a further £1,000 (in addition to the award set out above) for the additional worry and distress it caused her by failing to respond promptly to the concerns she had raised. Having read the emails and letters Mrs H had sent to ReAssure at that time I said it was clear Mrs H was, understandably, very distressed and facing very difficult financial circumstances as a result of the sudden withdrawal of the income she had expected to receive for the rest of her life. Despite this, it appeared ReAssure had simply ignored Mrs H.

Having carefully considered this aspect of Mrs H's complaint I said I thought the very poor service Mrs H had received was unfair and unreasonable, particularly in light of the information she had provided to ReAssure about her personal and financial circumstances.

Tax paid by Mrs H as a result of incorrect information provided by ReAssure

In its responses to this service I said it appeared that ReAssure had sought to 'blame' Mrs H for reporting the income she had received from the policy to HMRC. It said:

I understand the problem with tax before May 2015 is that Mrs H reported it as taxable income when she shouldn't have done. We (or rather previous product providers) didn't deduct tax before May 2015. Our letter of 28 Jan 2008 confirmed payments are exempt of tax and further letters dated 1 Nov 2009, 1 Jan 2009, 3 Jan 2014 and 3 Jan 2017 all confirm that tax reporting will be completed by that current provider (Scottish Provident /Phoenix/Guardian/ReAssure).

Therefore, Mrs H shouldn't have reported it as taxable income based on what she was told. However, the letters of 1 Nov 2009, 1 Jan 2009, 3 Jan 2014 and 3 Jan 2017 also referred to a tax rate of PAYE, which is confusing. Therefore, we agreed to pay £750 towards accountancy costs ...

I carefully considered the points ReAssure had made. Having done so I said I didn't think a reasonable person could find that the correspondence Mrs H had received from ReAssure (and previous product providers) was 'clear fair and not misleading' in relation to whether this income was taxable.

In reaching this view I said I had taken into account that ReAssure deducted the tax it thought was due to HMRC from the payments it made to Mrs H between May 2015 and August 2017. I said that as ReAssure, a regulated financial business, was satisfied that the payments should have been taxed I thought it was unfair and unreasonable for it to claim that Mrs H, a consumer with no tax or financial expertise, was at fault for not knowing that the payments weren't taxable.

As a regulated financial business, I said my view was that ReAssure should have clearly stated the tax position of the income Mrs H was receiving from it. I said I didn't think it had acted fairly by seeking to hold Mrs H even partly responsible for its misleading communication and I was satisfied that Mrs H would have thought the income was taxable based on the communications she received from it about this policy.

In particular, I noted that the letters I had seen (that ReAssure had referred to above) clearly set out that the '*taxable portion*' of the monthly payment was £1,949.10 – the full amount Mrs H received each month from the plan and that the 'tax rate' was PAYE.

I said I was also mindful that Mrs H would have faced significant fines and penalties from HMRC if she had failed to report all her taxable income.

I noted that in an email to ReAssure dated 23 October 2018 Mrs H set out how she felt ReAssure should put matters right if the policy was, in fact, a family income benefit plan, not a 'pension annuity' as ReAssure had previously stated. Mrs H said:

c) [if] This policy was a benefit payable under a "Family Income Benefit" and not a pension plan

In this event, I will need to apply to HMRC for all taxation paid over the years to be returned to me. I will expect to be compensated for the disadvantages caused to me which this "withholding" of income caused since I had to borrow money elsewhere in order to meet monthly commitments I could have afforded had "tax" not been deducted. I will also need my accountancy costs to be met in full...

Had ReAssure treated Mrs H fairly when it considered her complaint, I said I thought it would have sought to resolve matters along these lines. With this in mind I set out what I thought ReAssure needed to do to put Mrs H in the position she would have been in had she been provided with correct information about the tax position of the payments she received from this policy.

Tax Mrs H has paid on income from this policy to May 2015

As our investigator had noted, from 2009 to 2018, Mrs H received numerous letters from ReAssure (and the previous product providers involved) setting out that the policy was a

'lifetime annuity' and that the income was taxable. As a result, Mrs H reported the income to HMRC as she had been told, in writing, that the income was taxable.

I noted that ReAssure had refunded the tax it deducted at source from Mrs H's annuity payments from May 2015 to August 2017. However, it only offered to pay £750 towards Mrs H's accountancy costs for sorting out her position with HMRC for the period prior to May 2015 (subject to receiving confirmation from HMRC that it needed to complete a correction to her records for this period).

However, I said I understood that, in line with HMRC rules, Mrs H could only reclaim the tax she had overpaid to HMRC for the ***last four tax years***.

In view of this, I noted that the offer ReAssure had made to pay a sum towards Mrs H's accountancy costs was not going to put her back in the position she would now be in, but for its errors.

I noted that Mrs H had, very helpfully, provided this service with a breakdown of the tax she had overpaid up to May 2015. She also said that as her accountant had not yet received copies of her tax records prior to 2012 from HMRC. Mrs H said she was willing to consider disregarding tax she may have overpaid prior to April 2013 in the interests of resolving this complaint.

I said that if Mrs H wished to reconsider her position on the tax she may have overpaid prior to April 2013, due to ReAssure's errors, she should let me know in her response to my provisional decision.

Mrs H said her accountant had confirmed the following:

2013-2014 - In this tax year, taxation of £6,236 was taken from my earned income in respect of taxation for the Guardian policy, this cannot now be reclaimed.

2014 – 15 - In this tax year taxation of £9,355 was taken from my earned income in respect of taxation for the Guardian policy, this cannot now be reclaimed.

In order to put matters right for this period, my provisional decision was that ReAssure should refund the tax Mrs H had overpaid for the tax years 2013/4 and 2014/5.

In addition, I said it should pay 8% simple interest per year on these amounts to compensate Mrs H for the loss of the use of this money.

In reaching this provisional decision I said I had taken into account that in the documentation Mrs H had provided to this service it showed that from 2009 onwards Mrs H had received confirmation that payments from this plan were taxable. In good faith Mrs H had therefore reported the income to HMRC as taxable income.

I said that if ReAssure wanted to verify the amounts Mrs H's accountant had calculated she had overpaid to HMRC, as a result of the incorrect information it had provided, it could require appropriate confirmation from Mrs H's accountant as a condition of paying this part of the redress due to Mrs H.

I said it should pay Mrs H's accountant directly for any costs involved in providing the documentation it required.

In addition, I said that if it subsequently came to light that HMRC intended to impose a Reg 80 penalty (or any other penalty) on Mrs H in respect of the tax ReAssure refunded to her for this period, ReAssure should meet the full amount of any such penalty.

Tax Mrs H paid on income from this policy from May 2015 to August 2017

I noted that ReAssure had already refunded the tax it deducted at source for the period from May 2015 to August 2017.

I said I understood that ReAssure had also paid Mrs H £693 in interest to compensate her for the loss of the use of this money.

In view of this I said I did not intend to make any further award in relation to the tax Mrs H had overpaid during this period as a result of ReAssure's errors.

However I said that if it subsequently came to light that HMRC intended to impose a Reg 80 penalty (or any other penalty) on Mrs H in respect of the tax ReAssure had refunded to her for this period, ReAssure should meet the full amount of any such penalty.

Tax Mrs H paid on income from this policy from August 2017 to June 2018

Mrs H said her accountant had confirmed the following information:

2017-18 - £27,400 was added to my earned income to be taxed (at 40%) in respect of ReAssure income. I have not yet received the refund of this tax (£10,960) as ReAssure have not, to date, updated their records to HMRC, despite many, many requests.

2018-19 - £12,680 was added to my earned income to be taxed (at 40%) in respect of ReAssure income. I have not yet received this refund of tax - £5,072 due to reasons stated above.

(I said it was not clear to me how these figures had been arrived at as I understood that the maximum Mrs H could have received from this policy was £23,389 per year.)

I explained that, at my request, this service had asked ReAssure, on five separate occasions (25/5/21, 9/6/21, 22/6/21, 14/7/21 and 9/8/21), to confirm that it had corrected Mrs H's tax position with HMRC. I said I was disappointed to hear that ReAssure had apparently still not updated its records with HMRC as it had told this service in July 2021 that *'the tax has now been corrected with HMRC'*.

Based on the information that Mrs H had provided to this service I said it appeared that, due to failures on ReAssure's part, Mrs H was still not able to reclaim the tax she had overpaid to HMRC for 2017/8 and 2018/9.

I explained that this service is not in a position to liaise with HMRC on Mrs H's behalf, so I said that unless ReAssure could provide clear, unambiguous evidence to show that it did correct Mrs H's tax position with HMRC in July 2021 and that Mrs H was free to reclaim this money directly from HMRC, my provisional view was that it should reimburse Mrs H for the tax she had over paid as a result of its errors for the 2017/8 and 2018/9 tax years. I said it should also pay Mrs H 8% simple interest per year on these amounts to compensate her for the loss of the use of this money.

I said that if ReAssure wished to verify the amounts Mrs H's accountant had calculated that Mrs H had overpaid to HMRC as a result of the incorrect information it had provided, it could

require appropriate confirmation from Mrs H's accountant as a condition of paying this part of the redress due to Mrs H.

I said it should pay Mrs H's accountant directly for any costs involved in providing the documentation it required.

I said ReAssure could then seek repayment of the overpaid tax for this period from HMRC. If it required a letter from Mrs H to provide to HMRC confirming that the overpaid tax for this period should be paid directly to ReAssure, I said Mrs H should provide this as a condition of receiving the redress for this period.

In addition, I said that should it subsequently come to light that HMRC intended to impose a Reg 80 penalty (or any other penalty) on Mrs H in respect of the tax ReAssure had refunded to her for this period, ReAssure should meet the full amount of any such penalty.

However, I said that if ReAssure was able to provide clear, unambiguous evidence that it had corrected Mrs H's tax records for this period with HMRC and that Mrs H was free to reclaim this money directly from HMRC my provisional view was that it should pay 8% simple interest per year on the tax Mrs H overpaid for 2017/8 and 2018/9, as a result of its errors to compensate Mrs H for the loss of the use of this money. I said this interest should be paid to the date of my final decision.

I also said that if Mrs H was able to reclaim the tax for this period directly from HMRC, ReAssure should meet any accountancy costs Mrs H incurred as a result of claiming a refund of the overpaid tax for this period from HMRC.

Upon receipt of an invoice for the accountancy services for this work I said ReAssure should refund the full cost incurred within 28 days of receipt of the invoice.

Both Mrs H and ReAssure responded to my provisional decision.

ReAssure did not accept my provisional decision. It said it still felt that '*the original outcome of the complaint is fair and reasonable*'.

And it said:

When the family income policies were paid out and income payments set up at the time these were automatically set up as Lifetime Annuity plans. Whilst I appreciate that this may have caused confusion for Mrs H she did sign and complete the discharge form sent previously which confirms the term of the payments.

It reiterated that the discharge form Mrs H signed in 2008 said '*...that the policy had an end date*'. It also said it had written to Mrs H in 2017 and provided a benefit schedule. This schedule showed that the last payment was due on 1 July 2018. It said Mrs H hadn't raised 'concerns' about this at the time.

Somewhat bafflingly it also claimed it was '*...unable to locate any evidence that we have confirmed to Mrs H specifically that the policy would be paid throughout her lifetime*' and said that if Mrs H had '*any documents that confirm this*' she should forward them to ReAssure for '*consideration*'.

With regard to its liaison with HMRC ReAssure said:

Please note that we have been unable to deal with HMRC directly as they will not provide us with details regardless of the authority provided by Mrs H. With regards to any tax adjustments Mrs H would need to contact HMRC, if there is anything further we can do to assist with resolving the tax issues then we are more than willing to assist.

Mrs H provided a detailed response to my provisional decision. In summary she said she was pleased that the complaint had been upheld but she felt the redress I had proposed did not adequately take account of the loss she had suffered.

In particular she said, she accepted that, *'...one way in which to place me into a position that I would have been in, had the errors not occurred, is to ask ReAssure to rectify my tax position - both in repayment of lump sums that I cannot reclaim from HMRC and by imposing an interest payment, both on those payments and those that I might be able to reclaim from HMRC directly.'*

But Mrs H said she felt the redress I had proposed did not take into account that *'...these errors have had a significant effect on my finances - a position that I would not be in, had the errors not been made'*.

In particular Mrs H said she would not have been able to take on additional borrowing (the further advance secured against her home and borrowing to fund her son's education) if the lender had known that the 'lifetime annuity' income she was receiving was not, in fact a lifetime annuity.

Mrs H explained that she is unable to afford the repayments, or refinance the borrowing at a lower cost as she no longer has sufficient income to support the level of borrowing. As a result Mrs H says she is selling her home as she feels she has no other option.

In order to reflect the very difficult financial position she is in Mrs H says she feels ReAssure should pay her a further lump sum. In addition to the redress I set out in the provisional decision, Mrs H says she thinks ReAssure should pay her an amount equivalent to the income she expected to receive from the date the payments stopped in July 2018, to the date she is able to sell her home. Mrs H says this lump sum will help her service the loan payments.

Mrs H also said she felt the redress did not reflect that if she had known that the income she was receiving from ReAssure was not payable for life she would have contributed more to a pension plan. She provided a 'cost of delay' calculation showing the possible financial impact of delaying pension contributions.

She said she did not feel that ReAssure was being held accountable for the considerable distress and upheaval she was facing due to its errors. She said that in addition to the redress I had set out she felt that, *'...the very least that I should expect is for the income to be paid to me until I am in a position to reorganise my life, to account for the fact that I will not have that income - that is selling my house to repay the borrowings I made. In addition, I feel that ReAssure should be asked to fund a lump sum payment to my pension.'*

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.

Having carefully considered the points that both Mrs H and ReAssure have made in response to my provisional decision, I remain of the view that the redress I set out in my provisional decision is fair and reasonable in the circumstances of this complaint. I'll explain why.

Points raised by ReAssure

ReAssure says that it feels *'the original outcome of the complaint is fair and reasonable'*.

And it says:

When the family income policies were paid out and income payments set up at the time these were automatically set up as Lifetime Annuity plans. Whilst I appreciate that this may have caused confusion for Mrs H she did sign and complete the discharge form sent previously which confirms the term of the payments.

I would remind ReAssure that it is required to act with due skill, care and diligence. By its own admission it wrongly set up the policy as a 'lifetime annuity' plan. I don't see how its admission that it failed to set up the policy correctly in 2008 supports its claim that the offer it made to resolve this complaint is either fair or reasonable.

I am disappointed by ReAssure's claim that it is *'...unable to locate any evidence that we have confirmed to Mrs H specifically that the policy would be paid throughout her lifetime'*. As I clearly set out in my provisional decision it sent Mrs H numerous statements referring to the policy as a 'lifetime annuity' (2009 onwards) and a 'pension annuity plan' (2017 letters). It is unclear to me how ReAssure can claim that any reasonable person would think a policy repeatedly described as a 'lifetime annuity' would not be payable for life.

In addition I note that in the final response letter it sent to Mrs H in December 2019 it acknowledged that *'...correspondence sent to you from January 2008 has given you the impression that income payments would continue throughout your lifetime. I'd like to apologise for the false impression this correspondence has given you....'*

In view of this I am satisfied that ReAssure has already accepted that the correspondence it sent on numerous occasions incorrectly set out that Mrs H would receive a 'lifetime annuity'.

I note that ReAssure has reiterated that the original discharge forms Mrs H signed in 2008 said *'...that the policy had an end date'*. It also says it wrote to Mrs H in 2017 and provided a benefit schedule. This schedule showed that the last payment was due on 1 July 2018. It said Mrs H hadn't raised 'concerns' about this at the time.

As I set out in my provisional decision, at the time Mrs H completed the discharge form in 2008 she had only very recently lost her husband and would have had a significant amount of administration to deal with, as well as supporting her children and trying to come to terms with her loss.

When this is taken into account I remain of the view that it is not fair or reasonable for ReAssure to say that Mrs H should have 'known' that the payments would stop in mid-2018 and should have disregarded the incorrect information it sent her on numerous occasions about the plan from 2009 onwards.

In its response to my provisional decision ReAssure also provided a copy of a letter and schedule it sent to Mrs H in 2017. The schedule showed that the last payment was due on 1 July 2018. ReAssure says that Mrs H didn't raise 'concerns' about this at the time.

Having reviewed this letter and schedule, I note that the policy is referred to as a 'Pension Annuity' and a 'Level Lifetime Annuity'. There is nothing in the covering letter that would have alerted Mrs H to the fact that both these descriptions were misleading. Unless Mrs H had reviewed the schedule in detail, I don't think she would have been aware that the policy had an end date.

When I take into consideration the numerous statements and letters Mrs H had previously received describing the policy as a 'lifetime annuity' I don't think it is reasonable to say that

she should have realised from the schedule that there might be a problem and that the policy would not provide her with a 'lifetime' income. I think this is particularly the case as ReAssure continued to describe it as a 'pension annuity'.

With regard to liaising with HMRC I note that ReAssure has again changed its position and says: *'...we have been unable to deal with HMRC directly as they will not provide us with details regardless of the authority provided by Mrs H.'*

I am mindful that, as I explained in my provisional decision, at my request this service asked ReAssure, on five separate occasions (25/5/21, 9/6/21, 22/6/21, 14/7/21 and 9/8/21), to confirm that it had corrected Mrs H's tax position with HMRC. ReAssure told this service that a 'Senior Tax Manager' was 'dealing directly' with HMRC to 'resolve this matter' for Mrs H. In July 2021 ReAssure then confirmed to this service that *'the tax has now been corrected with HMRC'*.

So, despite having provided written confirmation to this service in July 2021 that *'the tax has now been corrected with HMRC'* ReAssure now claims it is not able to correct the position.

As ReAssure told this service over nine months ago that it had corrected Mrs H's tax position I find it very unsatisfactory that it now claims it has not been able to do so. I don't think it would be fair or reasonable for Mrs H to continue to be disadvantaged by ReAssure's failure to correct her tax records. It told this service that the records had been corrected and only changed its position when I asked it to provide clear, unambiguous evidence to show that it did correct Mrs H's tax position with HMRC in July 2021.

As this is the case, I am not persuaded to change my provisional decision. I think ReAssure should refund the tax Mrs H overpaid to HMRC as a result of the misleading information she received from ReAssure.

Points raised by Mrs H

As I set out in my provisional decision, I am sympathetic to Mrs H's position and I am of the view that the failings by ReAssure to respond promptly and fully to her complaint in 2018 only added to the worry and distress this matter has caused her.

I have very carefully considered the points Mrs H has made about the amount of redress she feels ReAssure should pay her and in particular whether, in addition to the redress I set out in my provisional decision, it should pay her a lump sum equivalent to the payments she expected to receive from July 2018 (when the payments stopped) to either the date of my final decision, or the sale of her home.

Mrs H says, *'...the very least that I should expect is for the income to be paid to me until I am in a position to reorganise my life, to account for the fact that I will not have that income - that is selling my house to repay the borrowings I made. In addition, I feel that ReAssure should be asked to fund a lump sum payment to my pension.'*

As I set out in my provisional decision I think the redress should, as far as possible, aim to put Mrs H back in the position she would now be in, but for the misleading information she received from ReAssure throughout the term of the policy.

I appreciate that Mrs H feels the redress is insufficient to compensate her for the errors ReAssure made and the loss she has suffered.

As I set out above, I think ReAssure should refund the tax Mrs H overpaid to HMRC as a result of its unclear and misleading information and pay interest, at 8% simple per year, on these overpayments.

The interest I have awarded on the tax Mrs H overpaid is intended to compensate her for the loss of the use of this money. As I explained in my provisional decision, I cannot say with certainty what Mrs H would have done if she had understood, from the outset that the payments would stop in July 2018.

Mrs H says she would not have needed to take on additional borrowing if she hadn't paid tax on the income she received from the plan and would have contributed more to a pension if she had known she would not receive an income for life.

The interest ReAssure must pay on the overpaid tax is intended, as far as possible to put Mrs H in the position she would have been in, had she been provided with correct information about the tax position of the payments she received from this policy. Mrs H has previously said she *'... will expect to be compensated for the disadvantages caused to me which this "withholding" of income caused since I had to borrow money elsewhere in order to meet monthly commitments I could have afforded had "tax" not been deducted.'* By awarding interest, at 8% simple per year, on the tax Mrs H overpaid due to ReAssure's misleading communication I have, as far as possible, tried to compensate Mrs H for the disadvantage she has suffered.

I appreciate Mrs H feels ReAssure should also pay a lump sum equivalent to the income payments she expected to receive, until she is able to sell her home. I am sympathetic to the very difficult situation Mrs H is in, but I can't reasonably require ReAssure to make payments that Mrs H was not entitled to under the terms of the policy.

I note that Mrs H has said that the provisional decision was the first time she knew that the payments would not be reinstated. I apologise if there has been any confusion on this point, but the investigator explained in the view she sent to Mrs H in May 2021 that she did not think ReAssure could be required to reinstate the payments. Likewise ReAssure had also told Mrs H that it did not intend to reinstate the payments.

I do understand that Mrs H feels the £4,500 award (in addition to the £1,000 already offered by ReAssure) I proposed for the very significant distress and inconvenience she has suffered as a result of discovering that the benefit she understood she would receive for life was only payable to mid-2018 is insufficient. But, as I explained in my provisional decision, my proposed award is in-line with the level of award this service makes where a customer has suffered significant severe distress as a result of errors by a business. I can't reasonably find that ReAssure should pay more.

(In my provisional decision I asked Mrs H to let me know if she wished to reconsider her position that she was willing to disregard tax she may have overpaid prior to April 2013 in the interests of resolving this complaint. As Mrs H has not responded on this point I have not made any award in relation to tax she may have overpaid prior to April 2013, due to ReAssure's errors.)

summary

Where a business makes a mistake, or in this case a number of mistakes over a long period, this service would expect the business to be mindful of the impact its mistakes have had on its customer when considering how to put things right.

Mrs H was in a very vulnerable position when she lost her husband. I don't think it was reasonable for ReAssure to maintain its position that as Mrs H signed a discharge form in 2008, shortly after her husband had died, she should have 'known' that the numerous letters it sent to her over the next ten years, telling her the income from the plan was taxable and that the plan was a 'lifetime annuity', were incorrect.

When the payments stopped in mid-2018, without any warning, it is clear from Mrs H's letters and emails to ReAssure at that time that she was in a difficult position financially and was finding the situation very distressing. Despite this for several months ReAssure simply ignored Mrs H's concerns. I think this was both unfair and unreasonable.

Likewise, despite the payments having stopped in mid-2018 ReAssure now says it has not corrected Mrs H's tax position with HMRC and as a result Mrs H is still not able to re-claim the tax she has overpaid for the 2017/18 and 2018/19 tax years. This is despite Mrs H first having raised this issue with ReAssure in late 2018 and ReAssure having told this service in July 2021 that it had corrected Mrs H's tax position with HMRC. I think it is unfair and unreasonable for ReAssure to now say it has not corrected Mrs H's tax position and that she will have to sort this out herself.

Having very carefully considered this complaint, my decision is that it should be upheld.

Putting things right

What ReAssure needs to do to put matters right

As I set out above, ReAssure should pay Mrs H £3,500 for the very significant distress and worry she has experienced as a result of the incorrect information she received on numerous occasions that led her to understand that the plan was a 'pension annuity' and that the payments were taxable.

It should also pay Mrs H a further £1,000 (making a total of £4,500) for the distress it caused Mrs H when it ignored her complaints, despite having been made aware of her very difficult financial situation and the worry and stress the situation was causing her. This award of £4,500 is in addition to the £1,000 compensation offer that ReAssure has already made under this heading.

It should also pay Mrs H a lump sum to cover the tax she wrongly paid to HMRC on the payments she received from April 2013 to May 2015.

It should pay 8% simple interest per year on these amounts, to the date of my final decision.

It should also pay Mrs H a lump sum to cover the tax she wrongly paid for the tax years 2017/18 and 2018/19 on the payments she received from this plan.

And it should pay 8% simple interest per year on these amounts, to the date of my final decision.

As I set out above, ReAssure may then choose to seek repayment of the overpaid tax for this period from HMRC if it so wishes. If it requires a letter from Mrs H that it can provide to HMRC confirming that the overpaid tax for this period should be paid directly to ReAssure, Mrs H should provide this as a condition of receiving the redress for this period.

If ReAssure wishes to verify the amounts Mrs H's accountant has calculated she overpaid to HMRC as a result of the incorrect information it provided, it may require appropriate confirmation from Mrs H's accountant as a condition of paying this part of the redress due to

Mrs H. It should pay Mrs H's accountant directly for any costs involved in providing the documentation it requires.

In addition should it subsequently come to light that HMRC intends to impose a Reg 80 penalty (or any other penalty) on Mrs H in respect of the tax ReAssure has refunded to her for any or all of the above periods, ReAssure should meet the full amount of any such penalty.

The compensation amount must where possible be paid to Mrs H within 28 days of the date ReAssure receives notification of Mrs H's acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 28 days, that it takes ReAssure to pay Mrs H.

If gathering the information ReAssure requires (if any is required) from Mrs H's accountant to verify the tax Mrs H overpaid, takes longer than 28 days, any period of time where the delay is not caused by ReAssure may be added to the 28 day period in which interest won't apply.

Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest it should tell Mrs H how much it has taken off. ReAssure should give Mrs H a tax deduction certificate if she asks for one so that she can reclaim the tax from HMRC if appropriate.

My final decision

Having very carefully considered this complaint, my decision is that it should be upheld.

I have set out above how I think this complaint should be fairly resolved.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 26 May 2022.

Suzannah Stuart
Ombudsman