

DRN-3491561



## The complaint

Mrs C complains that delays caused by ReAssure Limited led to her pension fund being encashed in the following tax year to the one she intended. She says this ultimately led to her paying tax that could otherwise have been reclaimed had the encashment been processed in a more timely manner.

### **What happened**

In December 2020 following a letter from ReAssure which explained her pension options Mrs C called ReAssure. This call was on 22 December 2020 with the call note confirming that Mrs C did not want to take an annuity and that "LS forms sent via email".

The recording of this call has been provided and is on file. During this call Mrs C confirmed that the reason for the encashment was that she was currently a non-taxpayer but following the commencement of her state pension in the 2021-22 tax year she expected to be a taxpayer in that year and as such encashing the funds now would allow any tax deducted from the policy value to be reclaimed. During the call Mrs C also provided her correct email address although this information was not recorded within the call note completed at that time.

On 22 January 2021 Mrs C emailed ReAssure reconfirming her options and stating that no documentation had been received via email or through the post. This email was followed up with a phone call on 29 January 2021. This call note confirmed Mrs C's email address and stated that the lump sum forms should be emailed "*if possible*".

ReAssure wrote to Mrs C on 8 and 9 February 2021 firstly with a retirement options pack and secondly with a retirement benefits pack which needed to be completed in order to access the funds.

Following this Mrs C called ReAssure on 12 February 2021 to confirm she was aware guarantees would be lost given her chosen course of action. Some of the forms required in order to access the funds were signed by Mrs C on 17 February 2021 and subsequently received by ReAssure 2 days later. These returned documents had not been completed fully with Form D not being completed as it should have been.

Mrs C called ReAssure on 3 March 2021, with a letter subsequently being sent by ReAssure on 7 March 2021 asking for Form D to be completed and returned. This was signed by Mrs C on 22 March 2021 and received by ReAssure 2 days later.

Mrs C raised a complaint with ReAssure on 21 April 2021 regarding the length of time taken to process her withdrawal request. It was also noted that it was only after Mrs C chased ReAssure on 3 March 2021 that the missing Form D had been identified. Further calls between Mrs C and ReAssure took place on 23 April 2021 where it was reconfirmed Mrs C wanted to take the entire pension fund as a withdrawal and where her complaint was restated.

ReAssure's response to the complaint was issued on 30 April 2021. This accepted there had been a delay in processing the withdrawal and offered Mrs C £200 by way of compensation.

Following this offer, Mrs C received her pension funds on 1 May 2021. As Mrs C did not agree with the compensation offer made, this service commenced its investigation.

Two investigators looked at the case with both upholding the complaint.

Both investigators noted that there were two periods of delay which needed to be considered. Firstly, between Mrs C's call on 22 December 2020 and the appropriate forms being provided on 9 February 2021 and, secondly, the time between these forms being provided in February and their full completion, and receipt by ReAssure, on 24 March 2021.

Both investigators felt there was no evidence that the appropriate forms were sent to Mrs C via email following her 22 December 2020 call, and as such ReAssure should be held accountable for this delay.

Both investigators also concluded that ReAssure should not be held accountable for the additional delay between 9 February 2021 and 24 March 2021 as Mrs C herself was responsible for ensuring the forms were completed fully.

Given ReAssure were considered responsible for the first delay, both investigators concluded that without this delay the withdrawal should have been completed earlier - and within the 2020/21 tax year - which would have allowed Mrs C to reclaim the tax deducted at source.

Redress recommendations were made that were designed to compensate Mrs C for the delay in receiving the net proceeds of the encashment, and for the tax paid which could no longer be reclaimed.

ReAssure did not agree and referred to the call note from 22 December 2020 which stated that the forms had been sent via email. The investigator asked for a copy of the email sent to Mrs C containing the documents, however, ReAssure confirmed that due to their data retention policy this was no longer available. Despite this, ReAssure remained of the opinion that the call note confirmed the appropriate documents were sent. As such ReAssure considered Mrs C responsible for both delay periods.

ReAssure did accept that they took too long to pay monies to Mrs C after fully completed forms were received on 24 March 2021, however they stated that even if they had processed the payment more quickly - in line with their usual timeframes - this would still have fallen into the following tax year and as such Mrs C could still not have reclaimed any of the tax deducted at source. ReAssure remained of the opinion that their original £200 offer was fair.

As no agreement could be reached the case has been passed to me.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The overall chain of events above is well evidenced within the documentation provided by both ReAssure and Mrs C with there only being one point of contention. ReAssure for their part have stated that the call note of 22 December 2020 states that an email with the appropriate documents was sent to Mrs C at that time and as such have stated that they are not responsible for the fact that the encashment eventually took place in the new tax year. Mrs C for her part states that no email was sent and as such ReAssure are responsible for the delay and appropriate redress needs to be awarded.

As above, the remainder of the chain of events is well evidenced and as such I have focussed on this key point.

ReAssure have stated that the fact the staff member who dealt with the 22 December 2020 call from Mrs C noted an email was sent points to the fact one was indeed sent at that time. However, ReAssure cannot provide this email as their data retention policy meant this was deleted after 12 months. As such, as well as not being able to prove an email was sent, I also cannot be certain that even if an email was sent that it was correctly addressed nor that it contained the documentation required by Mrs C.

Mrs C has stated that no email was sent and pointed to the fact that the documentation promised had to be chased by her in January 2021.

Given ReAssure cannot provide the actual email sent, and given Mrs C cannot prove it wasn't received, I have had to base my decision on the balance of probability using all of the evidence available taking into consideration both ReAssure's and Mrs C's actions throughout the process above.

Whilst I can appreciate ReAssure's standpoint, having considered all of the information available I have come to the same conclusion as the second investigator in this case.

The chain of events in this case clearly show that it was Mrs C who was driving this encashment with a clear goal to complete the transaction before the new tax year in order to make the most of her unused personal allowance in the 2020/21 tax year.

It was Mrs C who chased the documentation in January 2021. The email sent by Mrs C stated that nothing had been received. Had ReAssure's email been deleted in error or the documentation misplaced somehow, I can see no reason why Mrs C would not have said so at that time, it was still only January 2021 and as such there was still ample time for the encashment to complete prior to the end of the tax year.

In addition, at each stage of the process Mrs C responded to communication from ReAssure in a timely manner, supporting the fact she was keen to complete the encashment and suggesting that had any documentation been received in December 2020, it would have been actioned soon after receipt. In addition, ReAssure had the opportunity to unearth the email when it first investigated her complaint because it wouldn't have been deleted by that point. The fact that ReAssure didn't do so also suggests to me no such email was sent.

Given I have reached the same outcome as the investigator who concluded ReAssure were most likely responsible for the delay period from 22 December 2020 until forms were actually received on 9 February 2021, I have similarly concluded that were it not for this delay Mrs C would have encashed her pension before the new 2021/22 tax year commenced.

I have therefore gone on to establish the most likely chain of events were it not for this delay and provide redress instructions in line with this. In doing this I have wherever possible used the actual time taken for forms to be completed and returned in order to best estimate what would have happened.

If the e-mail with the forms had been issued to Mrs C via e-mail on 22 December 2020 then in line with what actually occurred, these would have been signed on 4 January 2021 and received by ReAssure on 6 January 2021.

Whilst these forms would have been received on 6 January 2021, there is no reason to assume that the forms themselves would have been completed any differently and as such Form D would still have been missing. The investigator stated that 10 working days was a reasonable timeframe for ReAssure to assess the documentation and contact Mrs C to request Form D be completed. I see no reason to disagree with this and as such this request would have been made on 20 January 2021.

It took Mrs C 11 working days to completed Form D when it was requested by ReAssure and as such it would be reasonable to use this timespan again. This would mean the form would have been signed on 4 February 2021. This would then have been received by ReAssure 2 working days later on 8 February 2021.

The investigator allowed 10 working days for the fully completed forms to be processed and an additional 5 working days for the payment of the funds to be made. This would result in the proceeds of the pension being paid to Mrs C on 1 March 2021. I consider both timeframes reasonable, with the end result being that the proceeds of the pension encashment should have been paid to Mrs C on or around 1 March 2021.

### **Putting things right**

There are two areas of redress which need to be considered. Firstly, the delay suffered by Mrs C which resulted in the net proceeds being received later than they should have been and secondly the tax paid on the encashed funds which could not be reclaimed.

#### *Delayed access to retirement funds*

ReAssure Limited should:

- Pay interest on the net payment from Mrs C's pension plan at 8% simple per year from 1 March 2021 to 1 May 2021 to compensate Mrs C for the delay in being able to access her pension.
- Interest at 8% simple per year should then be added to this amount from 1 May 2021 to the date of settlement.
- The net payment figure should be used, as tax would always be deducted from the payment by ReAssure Limited and the consumer would have to reclaim this from HMRC herself.

#### *Unreclaimable tax charge*

ReAssure Limited should:

- Calculate and refund the tax paid on the gross payment on the encashed funds which could not be reclaimed from HMRC and wouldn't have been chargeable, had the delay not occurred. ReAssure Limited may wish to confirm with HMRC total income for Mrs C for the 2020/21 tax year to establish the exact amount of the tax paid which could have been reclaimed.

- Pay interest on this amount at 8% simple per year from 1 May 2021 to the date of settlement. It is impossible to know exactly when Mrs C would have received this tax rebate from HMRC and as such it is impossible to pick the exact date from which Mrs C has been deprived of these funds. I consider the 1 May 2021 date proposed by the investigator to be a reasonable approximation.

In addition to the above ReAssure Limited should pay a further amount of £200 to Mrs C to cover the distress and inconvenience this issue has caused to her pension and tax planning.

Details of the redress calculations undertaken should also be provided to Mrs C in a clear and simple format.

### **My final decision**

For the reasons given above I have upheld Mrs C's complaint and direct ReAssure Limited to calculate redress in line with the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 4 November 2022.

John Rogowski  
**Ombudsman**