

The complaint

Mr H complains that Legal and General Assurance Society Limited (“L&G”) used his pension savings to purchase an annuity without his authorisation.

What happened

Mr H held pension savings with two other providers. In October 2020 he decided to transfer those pension savings to L&G. He was provided with indicative quotations for an annuity based on the expected transfer values, that he accepted.

L&G then started the process to request the transfer of the funds from the two providers. One provider transferred the funds almost immediately, however the other transfer was far more protracted. Mr H accepts that L&G did all that it could to expedite that transfer, however the funds were not received until early December 2020.

During the wait for the additional funds to arrive Mr H’s financial advisor had a number of conversations with L&G. During some of those conversations she clarified the process that would take place once the funds had arrived. L&G confirmed to the financial advisor that new final quotations would be sent out that Mr H would be asked to accept.

L&G did issue new quotations to the financial advisor, saying that Mr H needed to accept them. But since the new annuity was higher than the one that Mr H had previously accepted L&G applied an auto-acceptance process and put the annuity into payment. The first indication that Mr H had of that process was when a pension commencement lump sum (“PCLS” – otherwise known as tax free cash) was paid into his bank account.

Mr H complained to L&G about what had happened. L&G accepted that it had given incorrect information in the past about the acceptance process for the revised quotation. So it agreed with Mr H that he could cancel the annuity purchase if he wished. But Mr H didn’t accept that offer – he pointed out to L&G that he would also incur fees for financial advice if he needed to take an annuity from another provider. Since L&G was unwilling to meet those additional fees Mr H brought his complaint to this Service.

Mr H’s complaint has been assessed by one of our investigators. He noted that L&G had agreed it had provided incorrect information to Mr H and his financial advisor about the process for accepting the revised annuity quotation. But, given L&G had agreed to allow Mr H to unwind that purchase, he didn’t think the incorrect information had caused Mr H to lose out. Our investigator thought that the £100 L&G had agreed to pay to Mr H for the inconvenience he’d been caused was fair.

Mr H didn’t accept that assessment. Although I am only summarising here what Mr H has said, I want to reassure him that I have read, and carefully considered, all his submissions on this complaint. Mr H says that he considers the incorrect information provided by L&G to have been deliberate. He says that, if L&G hadn’t said he would be able to check the new quotation before accepting it, he’d have cancelled his purchase of the annuity. He says that L&G’s actions denied him the opportunity to provide his final approval for what was a very expensive purchase.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr H and by L&G. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There is no dispute that L&G provided, on multiple occasions, incorrect information to Mr H and his financial advisor in the lead up to him purchasing an annuity. L&G told Mr H that he would be sent a new, final, quotation once it had received the two pension transfers, and he would be given an opportunity to accept, or reject, that revised quotation.

But those assurances didn't give an accurate representation of how L&G's processes actually worked. It is true that, once the two transfers had been received, L&G issued a new quotation to Mr H's financial advisor. And that quotation incorrectly stated that Mr H had a period of time to confirm his acceptance. But, since the newly quoted annuity actually provided a higher income than the previous quotation that Mr H had accepted, L&G applied an automatic acceptance process and set the annuity up regardless. The first Mr H knew about the annuity being put into payment was when the PCLS was received.

I have no doubts that the unexpected receipt of that PCLS would have caused a great deal of surprise to Mr H. I have listened to a phone call his financial advisor made to L&G shortly after Mr H had made her aware that the PCLS had been paid. It is clear from that call how unhappy Mr H was, and how unexpected the receipt of the PCLS had been. But, as I've explained above, I need to consider what should have happened under the circumstances.

Mr H had already accepted an indicative quotation from L&G. He had decided, at that stage, to use L&G to pay his annuity income, and so had instructed that his pension savings be transferred to L&G from the other two providers. And it is clear from other phone calls I have listened to between L&G and Mr H's financial advisor that getting that annuity arranged, as quickly as possible, was of the utmost importance to Mr H. Had there not been a delay, in the receipt of the transferred funds from the second provider, I doubt there would have been much, if any, discussion about the need for Mr H to accept a revised quotation – it is likely that the original quotation he had accepted would have still been valid.

So what I now need to think about is what would have happened if nothing had gone wrong. I think that Mr H made it clear to L&G that he wanted a further opportunity to consider his annuity purchase once a final quotation had been issued. I don't see any reason why that opportunity couldn't have been afforded to Mr H. And, that was what L&G said it would do.

I have thought about the opposite approach. Mr H has said that, if L&G had told him he wouldn't be given an opportunity to reconsider the annuity purchase, he'd have cancelled his agreement there and then. But that would have still left Mr H in the position that he would eventually have received a new quotation, from L&G or another provider, when the funds were eventually transferred, and he would then have had an opportunity to accept or decline that quotation. So that situation appears, to me, almost identical to the one I've described earlier and that I will now go on to consider.

Mr H hasn't explained whether he thinks the annuity he was sold by L&G was poor value for money. On balance I haven't seen anything that makes me think it likely that Mr H held comparative quotations at that time that suggested he could have received a better annuity elsewhere. But of course it would be wrong to suggest that wasn't the case – there are many other annuity providers in the market. I am mindful however that Mr H has explained that his aim at the time, by transferring his two pension pots to L&G, was to put an annuity into payment with relatively little complexity. So he, or his financial advisor, might not have wanted to prolong the annuity purchasing process by seeking alternative quotations.

If L&G had given Mr H the opportunity to review the new quotation I think he would have been left with two choices. He could have accepted the quotation – in which case he would be in exactly the position he now finds himself. Or he could have rejected the quotation and sought an annuity from elsewhere – and that would be the position that Mr H would have been in had he accepted L&G's offer to cancel the annuity purchase. So I am not persuaded that L&G's actions in assuming acceptance of the new quotation, when taking into account the cancellation offer it made, caused Mr H to lose out.

I appreciate that some considerable time has now passed since Mr H was first paid the annuity, and when he made his complaint. And that additional time, and the annuity payments that Mr H has received, will no doubt make any cancellation of the annuity more complex. But I understand that the cancellation offer from L&G remains available to Mr H following the conclusion of my consideration of his complaint.

Mr H has said that he would consider a fair resolution to the complaint to include both the ability to cancel his annuity purchase, and for L&G to pay his costs, in terms of financial advice, in both unwinding the annuity and selecting its replacement. But I don't agree that would be a fair answer to this complaint. As I've explained earlier, I think that, had he been given the opportunity to decline the annuity purchase, Mr H would be in the same position as if it had been cancelled shortly afterwards – he would still have incurred advice costs in transferring his pension savings to L&G, and he would incur further advice costs in seeking a replacement annuity provider. So I don't think the communication errors that L&G made have resulted in Mr H facing costs additional to what he would have paid had he been allowed to decline the revised quotation.

As I said earlier, there is no doubt that the payment of the PCLS, and the purchase of the annuity, came as a great surprise to Mr H and caused him to make the complaint I am now dealing with. L&G has agreed to pay Mr H £100 for the inconvenience he's been caused. I think that is a fair offer in the circumstances and in line with what I would have directed should be paid. So, if Mr H accepts my final decision, L&G should pay that compensation to him.

I understand that the opportunity to cancel the annuity purchase remains open to Mr H. But as I've explained above he would need to meet any costs he incurs as a result of that cancellation, in terms of any fees he needs to pay to his financial advisor. Should Mr H now wish to implement the cancellation of the annuity he should make contact with L&G directly to discuss how that might be best arranged.

Putting things right

For the reasons I have explained above, L&G should pay Mr H the sum of £100 to reflect the inconvenience he was caused by the incorrect information it provided.

My final decision

My final decision is that I uphold a part of Mr H's complaint and direct Legal and General Assurance Society Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 September 2022.

Paul Reilly
Ombudsman