DRN-4007797

The complaint

Mr C has complained that he wasn't given the right information from ReAssure Limited (referred to from hereon as ReAssure) about what would happen to his yearly With-Profits bonus when he switched his personal pension in early 2021.

What happened

Mr C arranged a personal pension with Legal & General in the late 1980s, which was invested in a With-Profits fund. Annual bonuses were added on 1 January each year, based on the performance of the fund during the previous year.

In September 2020 Legal & General transferred some of their business to ReAssure, including Mr C's personal pension plan. Under ReAssure's administration of the With-Profits Fund, new timelines were set regarding the annual bonus, which – from that point forward – would be declared in late February each year. In 2021 this date was set for 27 February.

On 1 February 2021, Mr C submitted an application to ReAssure to switch his existing plan to a Retirement Account policy, in order to facilitate a withdrawal of his tax-free cash lump sum entitlement (equating to a quarter of the plan value) and a further taxable withdrawal, as he had not yet used his personal allowance during the 2020/21 tax year.

Mr C contacted ReAssure by telephone on 10 February 2021 to say he had not received the annual bonus, despite having previously received yearly bonuses every January. He also queried whether the bonus would still be paid once his plan was switched to the Retirement Account. The call notes indicate that ReAssure said they would get back to Mr C to confirm.

ReAssure wrote to Mr C on 12 February 2021, as follows: '*In late February each year we announce the annual bonus rates for the year before. Please note if you switch out the With-Profit fund you will not accrue any future bonuses. However, your remaining bonus will be applied. The retirement account team will be in touch on the process shortly.*'

Mr C has said he called again on 16 February 2021 to enquire about his plan and bonus. On the same day, ReAssure sent him a letter which included the following extract: "*In regard to you[r] query [about] receiving a bonus from Legal and General each year, this will be lost on the transfer into the Retirement Account. When transferring into the Retirement Account a new fund investment is chosen and there is no with profits option so the bonus will no longer occur. Please call us to confirm if you are still happy to continue with the Retirement Account or not.*"

On 24 February 2021, Mr C telephoned ReAssure, asking for an update regarding the switch of his pension plan. He went on to say he had been told the yearly With-Profits bonus would be due soon and he had previously been told it would be backdated and added to his plan value, even though he was switching.

Towards the end of the call, the ReAssure call handler was just about to go and check some notes regarding the progress of the switch when Mr C raised one final question: *"The last question was the bonus payments. Usually, I get paid the bonus in January, but they are* *saying the bonus isn't paid, like, 'til February/March, then backdated to January. So, I said, well is my bonus going to be in? Because I'm converting over to a flexi account..."*

The call handler first responded to this question by saying, *"I don't know if it'll still be payable",* before going on to clarify as follows: *"So, it is something which is still payable to you whether it's been converted to drawdown or not. So, obviously if it's backdated then you should still have it. Let me just have a look and see - ok that's fine, right."*

Following this confirmation, the call handler then returned to the earlier question about the pension switch progress, saying *"What I'm gonna do is have a look through the back-office notes and just get an update for you, is it ok if I pop you on a really brief hold?"*

It appears that later in this call Mr C confirmed he wanted to proceed with the pensions switch. We know this because – although the call recording failed from this point onwards and the audio record is therefore not available - there are telephone notes made by ReAssure the same day which confirm Mr C's agreement to proceed. ReAssure then effected the switch based on 24 February 2023 plan values.

Mr C has told us that the following day he logged onto his online portal on 25 February 2021, and that he saw his plan value had increased by around £7,000. This point is not in dispute as ReAssure has since sent us actuarial calculations relating to Mr C's account on that day, which confirm the figure that Mr C saw at that time.

Mr C assumed that this increase in his plan value was explained by the annual bonus having now been finalised and paid. As such, he concluded that the annual bonus was around £7000. I understand this figure was broadly in keeping with the sort of sums he had seen in previous years' bonuses, such that it wouldn't have seemed an implausible figure to Mr C or have prompted him to question it further.

However, this was not the case. In fact, the annual bonus payment had not yet been confirmed, as this was not due to happen until 27 February, two days later. Instead, the increase value of around £7000 was associated with the 'terminal payment', which was due to Mr C on leaving the plan. The day before, the terminal payment was approximately £40,000, but new terminal payment rates happened to be applied on 25 February 2021 which meant the terminal payment associated with Mr C's account grew to approximately £47,000 on that day.

The interim annual bonus figure on Mr C account did not substantially differ between 24 and 25 February, was potentially still subject to change before being finalised on 27 February. However, if Mr C switched prior to this date (as he did, on 24 February), he would receive only the interim figure relevant on the date of the switch. It doesn't appear that any of this was properly explained to Mr C.

This means when Mr C viewed his account on 25 February, the picture was somewhat misleading as the switch was still in progress. Once the switch was completed a few days later, it became apparent that the sum that had been switched was based on the 24 February value – i.e., prior to the terminal bonus rates increase and the associated figure of around £7000 increased plan value. As this was the sum that Mr C had assumed came from the final annual bonus payment, from his perspective it appeared as though his annual bonus had disappeared.

Mr C raised a complaint. ReAssure responded saying that Mr C had confirmed he wanted to proceed with the switch on 24 February 2021 and that the correct policy value for that date had been applied.

Mr C then referred his complaint to this Service. Our investigator reviewed the complaint and upheld it, saying Mr C had not been correctly informed and, had he been, he would have most likely waited for the bonus to be added. The investigator therefore asked ReAssure to presume the annual bonus was notionally added back to the plan 24 February 2021 and to pay Mr C the difference between the actual transfer value and the notional value, with a notional deduction of tax and 8% interest per year added until the date of settlement. Following further correspondence between this service and ReAssure, the investigator's opinion was accepted, and the matter was considered resolved.

After a delay of five months, ReAssure contacted this Service asking to discuss the resolution to the complaint. In summary, they said the final yearly bonus which would have been paid amounted to £2,995.53. This was a lesser amount than the amount Mr C had already received based on the interim figures, which totalled £3,461.03. Therefore, ReAssure argued, Mr C had not suffered any financial loss.

A second investigator reviewed the complaint and clarified that the issue wasn't whether the valuation of 24 February 2021 was correct, but whether Mr C had been given sufficient information prior to his decision to confirm he wished to proceed with the pension switch on that date.

ReAssure said that the option to put the pension switch on hold until the annual bonus was paid was not available, as they had all the information they required to proceed with the transaction on 24 February 2021. However, our investigator pointed out that Mr C's consent was also required for ReAssure to proceed with the pensions switch and – had Mr C's withheld this until 27 February – the switch wouldn't have gone ahead before this date.

Furthermore, the investigator said Mr C only agreed to proceed on the basis that he was wrongly told the annual bonus would be backdated. Had the correct position been made clear to him, our investigator found that on balance Mr C would've most likely waited until 27 February 2021 before confirming he wished to proceed with the pension switch, as he could've reasonably expected this to have allowed sufficient time to arrange the relevant transactions before the end of the tax year.

ReAssure did not accept our investigator's view. As no agreement could be reached, the complaint was referred 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.

Mr C's objective was to access his pension benefits, by withdrawing a quarter of his pension fund tax free and making a further taxable withdrawal, thus utilising his income tax personal allowance and drawings above that limit being taxed at the basic rate. This meant the required transactions were time sensitive and had to be completed before 5 April 2021.

However, Mr C was also very much aware of the annual bonus he had been paid in previous years, and keen to ensure he still benefitted from 2021 bonus despite his plans to switch to a retirement account. So, it seems reasonable to assume that Mr C would've taken whatever steps necessary to secure this bonus, providing he still felt confident of meeting his deadline of completing the switch transaction before the end of the tax year.

I've looked at everything Mr C was told about annual bonus payments, both at the time ReAssure took over the policy and around the time the pension switch took place. Having considered the various communications between Mr C and ReAssure, I'm not persuaded that ReAssure gave Mr C sufficient information to make an informed decision about the timing of the switch.

ReAssure has argued that it doesn't matter, as – in the end – the final annual bonus figure that would've been paid on 27 February had Mr C waited to switch was less than the interim figure used to calculate Mr C's plan value on 24 February. So, whether or not the information he was given was lacking, ReAssure has said Mr C hasn't lost out as a result.

However, had Mr C waited until the annual bonus was paid on 27 February, he would've been better off overall. This is because – although the annual bonus payment wasn't increased in the way he might've hoped – the terminal payment was. Had Mr C delayed the switch until this date, he would've benefitted from this increase in the terminal payment, even if his motivation for delaying was based on a different set of hopes in relation to the annual bonus.

The question I therefore need to answer is, had Mr C been given the right information, would events have most likely unfolded differently? And, if they had, would Mr C now be in a better financial position? So, I've thought about what Mr C would've been likely to do if he'd been told that he could either proceed with the switch on 24 February on the basis of the interim annual bonus payment, or he could wait 3 days and proceed with the switch with the confirmed annual bonus payment.

At the time, no one could've confirmed to Mr C whether the final bonus payment would be more, less, or the same as the interim value. However, Mr C's experience prior to that point was that the value of his plan increased by several thousand pounds each time the annual bonus payment was finalised in previous years, hence why Mr C was expecting a similar increase in the value of his plan in early 2021. Even if it had been clearly explained to him that a similar increase in early 2021 was not guaranteed, I think that – based on Mr C's previous experience - he would've still considered it a strong possibility.

Looking at the figures Mr C has supplied from early 2020, I can see that the value of his plan does appear to have risen fairly sharply by several thousand pounds at around the time around the time that I understand the annual bonus was paid. Mr C has labelled this increase "Bonus added £3,513.76" on the document he has supplied, and it is clear that he believes that this is the explanation for the increase.

It's not possible for me to say for certain whether Mr C's explanation is the correct, or whether the increase was actually due to an adjustment in the terminal bonus rates (as happened a year later in early 2021), or some other factor. Nor do I think ReAssure necessarily had a responsibility to clarify this to Mr C, as it relates to calculations and payments made before their involvement.

However, what I can say is that – regardless of what it would or wouldn't have been possible to explain to Mr C regarding previous plan value increases – if ReAssure had at least explained to Mr C fact that switching prior to 27 February would mean he would only receive the interim bonus, then I think Mr C would've wanted to wait for the final annual bonus confirmation date to see if any such increase happened again. He was clearly aware of and very interested in the annual bonus payment, as indicated by his repeated queries on the matter. Given the relatively short window of only three days he would've had to wait, and given that this three-day delay is very unlikely to have caused him to miss his deadline for completing the switch, I find it probable that Mr C would've chosen to wait. Had he done so, I agree with ReAssure that it wouldn't have resulted in his receiving a higher annual bonus. But the knock-on effect would've been that Mr C would've benefitted from the changes to the terminal bonus rates.

For clarity, I am not suggesting that the call handler ought to have alerted Mr C to the upcoming changes to the terminal bonus rates – indeed, it is by no means certain that the call handler would've been aware of this information. I am saying only that Mr C should've been made aware of the correct position as regards the interim nature of the annual bonus, rather than being given insufficient information and being left to draw the incorrect conclusion that the final annual bonus would be backdated. And that, had this happened, Mr C would've most likely waited before confirming he wished to proceed with the switch.

I accept this would've slightly reduced the timeframe available in which to process the switch from the existing policy to the new one, but I think it is reasonable to expect that such a transaction could still have been concluded within the remaining window of nearly five weeks (which is the time that would have still been available even if Mr C deferred his decision until 27 February 2021). And I think Mr C is likely to have drawn the same conclusion when deciding whether or not to wait a further three days before proceeding.

I note ReAssure has said they would not put a pension switch "on hold" after all the requirements to begin the process had been met. However, as expressly stated in their letter of 16 February 2021, Mr C's consent to proceed was one of those requirements. As stated above, if given the correct information, I don't think Mr C would've provided this consent until 27 February 2021. So, it is not a question of putting the process "on hold". Instead, ReAssure wouldn't have been in a position to initiate the process until 27 February 2021.

Putting things right

My aim is that Mr C should be put as closely as possible into the position he would probably now be in if he had been given the right information.

I take the view that Mr C would have invested in the same funds he held in the existing personal pension and replacement retirement account.

Mr C's confirmation to proceed with the pension switch would have taken place on Saturday 27 February 2021 and taken effect from 1 March 2021.

He would have retained his instruction to withdraw a quarter of his pension as tax-free cash and draw a taxable income of £43,000.

My understanding is Mr C has made further subsequent withdrawals which have now exhausted his pension plan. The final withdrawal would likely have been larger as the notional plan value of 1 March 2021 is greater than the actual value of 24 February 2021 which was transferred.

ReAssure should calculate the value of the tax-free cash Mr C would have received and assuming the taxable payment was paid into Mr C's bank account by 1 April 2021, what the final encashment figure would have been (as at the same date of his final withdrawal).
I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

What must ReAssure do?

To compensate Mr C fairly, ReAssure must:

- Compare the performance of Mr C's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value, there is a loss and compensation is payable.

- ReAssure should also add any interest set out below to the compensation payable.

- ReAssure should pay into Mr C's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If ReAssure is unable to pay the total amount into Mr C's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr C is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr C would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr C £400 for upset caused by the raised expectations of having a back-dated yearly bonus.

Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest it should tell Mr C how much has been taken off. ReAssure should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Personal Pension & Retirement Account	No longer in force	With-Profits and Investment Pathway 1	27 February 2021	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

The tax-free cash lump sum that should've been paid to Mr C should be presumed to be 25% of plan value at the time it should've been withdrawn. The taxable withdrawals that Mr C made later from the Retirement Account should be deducted from the fair value calculation at the point they were actually paid, so they cease to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if ReAssure totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

To assess the past loss associated with the tax-free cash lump sum that was paid to Mr C, ReAssure should calculate:

A) Total of the notional tax-free cash sum which Mr C should have received, one day later than the actual payment, with interest added at 8% per year simple from the date it was due to the date of settlement

B) Total of the actual tax-free cash sum Mr C has received from the Retirement Account, with interest added at 8% per year simple from the date it was paid to the date of settlement

Tax-free cash Past Loss = A – B, which should be paid to Mr C in cash.

My final decision

I uphold the complaint. My decision is that ReAssure Limited should pay the amount calculated as set out above. ReAssure Limited should also provide details of its calculation to Mr C in a clear, simple format

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 24 April 2023.

Ellie Clare
Ombudsman