

## The complaint

Mr H complained that ReAssure Limited failed to calculate the tax-free cash he was entitled to from his Section-32 buyout policy (S32 policy) correctly, and put obstacles in the way of permitting him to draw that sum and transfer the residual fund to his chosen flexi-access drawdown provider, who I'll refer to as "C".

Mr H has been assisted in his complaint by his adviser, Mr B. Although Mr H has received the correct tax-free cash sum, he considers that the amount (and confirmation of that amount) was delayed – which led Mr B to ask C to return the residual funds to ReAssure, where they remain. Mr H says the offer of redress ReAssure has made is insufficient to cover Mr B's invoice for the time spent on his case.

## What happened

For simplicity, figures in this decision are given in pounds with the pence omitted.

Mr H originally held an Executive Pension Plan (EPP) with Zurich Assurance. This policy preserved a scheme-specific tax-free cash sum (which ReAssure terms 'transitional tax-free cash' or TTFC) in excess of the usual 25% maximum available. A letter from Zurich to Mr B on 10 March 2008 confirmed that the TTFC had been £28,805 on 'A day' (when the tax legislation changed on 6 April 2006).

*It went on to say: "Therefore the tax-free cash is 80.97% of the A-day fund value...Please note that any tax-free cash protection would be lost on transfer to another registered scheme other than to a Section 32 Buy Out or if a block transfer took place. In addition to the protected cash lump sum (which will be increased in line with increases in the lifetime allowance) [Mr H] will be entitled to 25% of the funds accrued in respect of payments made after 6 April 2006."*

Mr B appears to have been aware of this as he's said that he arranged a transfer of the Zurich plan to the S32 policy with Skandia / Old Mutual in October 2008, specifically in order to preserve the TTFC amount. This part of Old Mutual's business has since been acquired by ReAssure.

On 22 March 2022 Mr B contacted ReAssure requesting the 'form' to calculate the maximum tax-free cash payable, as Mr H intended to retire in the next 12 months. An automatic retirement pack letter was in any event sent by ReAssure to Mr B on 1 April, confirming that the fund value was £71,885 and there was £46,176 of TTFC (based on what we now know was the correct calculation methodology).

The letter noted that flexible withdrawals weren't an option from the existing plan, and the TTFC was only available if Mr H started taking an income with ReAssure from the residual fund. In order to make flexible withdrawals, Mr H would need to transfer either to a ReAssure Retirement Account or a similar product with another provider.

On 5 August 2022, Mr B specifically requested that ReAssure pay a 55.67% tax-free cash sum to Mr H (even though, at the most recent calculation, the tax-free cash amounted to

about 64%). He also asked for the necessary form to transfer the residual amount to another provider.

Two attempts to return Mr B's call on 9 & 10 August were unsuccessful, but there was a conversation on 15 August, in which ReAssure explained that an Open Market Option (OMO) could be completed without paperwork on the Origo 'Options' system.

This call seems to have been with Mr H, as it's absent from Mr B's records and I understand that Mr B has been reluctant to have any phone conversations with ReAssure because of his experience in general with staff he regarded as unqualified. There was again a question of how much TTFC was payable, and ReAssure was asked to email confirmation to Mr B.

Traditionally, policies like Mr H's were written to provide annuity benefits in addition to tax-free cash. An OMO is where the existing plan pays the tax-free cash but secures the annuity with a different provider at the policyholder's request (usually because of a more favourable rate or format of annuity). The payment of the annuity is in fulfilment of the terms of the originating pension scheme, rather than any new scheme. So it isn't the same as a transfer, where all rights under the existing scheme are given up on payment of a transfer value to a new scheme (which may offer features other than an annuity). Mr B evidently understood that an OMO wouldn't achieve the outcome Mr H wanted, so he still believed that paperwork would be needed to go down the transfer into flexible drawdown route.

ReAssure didn't provide an up to date calculation of the amount of TTFC to Mr B until 30 August, explaining that the query had to go to a specialist team. The latest figure (as at 21 August) was given as £46,170. Mr B immediately responded, questioning the absence of the forms he'd requested and which he'd been promised within 5-10 working days.

ReAssure then issued an alternative paper form for the OMO (the option which was in any event available electronically) on 2 September. But Mr B reiterated on 12 September that this wasn't the form he required. He explained his request as follows:

*"[Mr H] wants to take the max TFC in excess of 25% then transfer the residual balance to another provider's Flexi-Access Drawdown. SEND ME THE CORRECT FORMS BY POST TODAY or yet another formal complaint will be submitted along with costs and recompense if there is an investment reduction from the initial request."*

Shortly after, ReAssure posted Mr B a key features document and leaflet for a new Retirement Account (ReAssure's drawdown plan) – noting that this could be applied for online. It also phoned Mr B, and then sent a secure message on 20 September stating that Mr H's existing plan didn't offer flexi-access drawdown, so it couldn't put his plan into payment in this form in order to then transfer the residual fund elsewhere. It was, however, willing to use the Retirement Account to receive the residual funds, without Mr H losing his TTFC (which would normally be lost on transfer). This new plan could then be transferred elsewhere.

Mr B highlighted to ReAssure that he was unable to open the notification of this secure message which had come through to his own email account, and he couldn't see the content of the message on the usual website he used to exchange secure messages with ReAssure. It appears from Mr B's records that he was able to view it by 22 September. Mr H then called ReAssure directly on 23 September instead. He questioned why his TTFC was now about 55% of the policy's value rather than about 81%.

The following day Mr H signed OMO application forms, amended by hand to show his preference for transfer to his existing flexi-access arrangement with C. On 27 September ReAssure emailed Mr B asking him to clarify what forms he specifically required and it would

send them directly. It apologised that the notifications generated for secure emails were a necessary part of the system it used to protect Mr H's data.

It appears that Mr B repeated largely the same message to ReAssure on 6, 17, 18, 20 & 25 October 2022: ordering it to pay 80.97% tax-free cash to Mr H and transfer the residual fund to C. However on two other dates during this time, Mr B made more specific requests to attempt to resolve the impasse:

- On 13 October (chased on 26 October) he asked why the residual fund couldn't just be transferred *directly* to C, negating the need to use ReAssure's own drawdown product.
- On 21 October he asked ReAssure to send him the contract terms of the S32 policy that prevented the method of transfer he was requesting.

ReAssure responded to the first point by post on 18 October, as Mr B had asked it to do so. It explained: *"it is not possible for ReAssure to pay [TTFC] and then move the remaining funds to a drawdown account. The only way we may be able to pay the [TTFC] to [Mr H] is either via the Retirement Account option with ReAssure, or to take an annuity [OMO] with another provider. We understand that [Mr H] would like the funds to go to [C]..., if they can offer [an OMO] for [Mr H], then we may be able to pay [TTFC] directly to him. Or if they can offer a Section 32 Buy out Bond transfer, [Mr H] will keep his [TTFC] value upon transfer, then any further payment instruction would be negotiated with [C] directly."*

Mr B replied to ReAssure on 31 October noting that the S32 policy contract terms still hadn't been supplied – but that in any event, ReAssure hadn't explained why there was a difference between doing a drawdown-drawdown transfer (which it could do), and transferring the residual funds directly to C (which it couldn't). This crossed in the post with another letter from ReAssure to Mr B of the same date, in which it said:

*"We have explained to you many times that we cannot facilitate a Flexi Access Drawdown Transfer as this is not what we do. The only way for [Mr H] to take his TFC is through an Open Market Option, Retirement Account, or Transferring to a Section 32 Buy Out Plan. Flexi Access Drawdown is not part of our processes hence why we are not able to process this transfer as what you have requested."*

ReAssure issued a final response on 2 November to the complaint about sending Mr B the wrong forms and delaying the transfer. It admitted that it should have told Mr B on 15 August that it couldn't make the type of transfer he wanted, rather than referring to an OMO – so it provided a cheque for £125 to Mr H for the inconvenience this caused. However it pointed out that the options available were clearly outlined in the retirement pack. Confusingly, it added, with my emphasis:

*"We have since confirmed that **since the policy migrated to ReAssure we are unable to transfer into Flexi Access Drawdown as ReAssure do not offer this option.** We have explained the options available. Before we can proceed, we need you to confirm which of the options available to [Mr H] he wishes to take. We are happy to assess for any financial detriment our service errors have caused [Mr H], however, before we can do this, we still require confirmation of which option he wishes to take, and evidence of the Tax Free Cash value [Mr H] tells us he should receive, as this [~81%] is significantly higher than the entitlement our records indicate is available."*

Separately, ReAssure sent the S32 policy terms and conditions to Mr B on 10 November and rather vaguely said: *"We will be querying your request to transfer your client's policy into a Drawdown, as we have mentioned before we do not process this."*

By this point Mr B had already responded to ReAssure in a letter dated 9 November (but for reasons unclear, this either didn't arrive or wasn't scanned onto ReAssure's systems until 23 November). Amongst other things, the letter:

- enclosed a copy of the 2008 Zurich letter referring to 80.97% tax-free cash;
- pointed out that the migration of a policy from one provider to another doesn't alter the policy terms as ReAssure appeared to suggest; and
- added *"The option for ReAssure to transfer to a Flexi-Access Drawdown is LEGISLATIVE and not contractual. ReAssure cannot prevent a client from doing this."*

ReAssure subsequently agreed to undertake Mr B's requested format of transfer on an exceptional basis – i.e. not setting up a Retirement Account at all but seamlessly transferring the residual funds to C. This exception was also communicated to C, as ReAssure wanted to make clear that it wouldn't routinely allow direct transfers to drawdown given that the terms and conditions of Mr H's plan didn't allow a drawdown option. (ReAssure doesn't agree that this option must be permitted under legislation, which I'll address later in this decision.)

ReAssure confirmed in an email to Mr B that it would make the transfer as requested on 22 November, and Mr B asked it to confirm bank details with Mr H directly. On 30 November ReAssure emailed Mr H, also setting out its ID verification requirements. However Mr B suggested on 9 December that Mr H wasn't computer literate and would require this by post. Mr H then posted the required information back to ReAssure the following day.

An updated TTFC amount of £46,150 was then paid to Mr H on 16 December 2022 with the residual fund value of £25,632 paid to C. This resulted in Mr H's policy being terminated.

On 20 December Mr B informed ReAssure that Mr H had to pay an extra 5 months' payments at £343 on his car finance due to its delays. And he questioned why Mr H hadn't received £58,336, which would have been the 80.97% of the fund he thought should apply. He informed ReAssure on 5 January 2023 that he'd been promised a response within 5 working days, so he'd instructed C to return the funds – which C then did.

On 11 January ReAssure responded, apologising for the delay due to the need to refer the matter to its calculations team again. It explained: *"The reason why the TFC now is not the same percentage as it was when it was first calculated, is due to the fact that this is revalued and then any growth after A-Day that has occurred on this value is then applied added on to this using the standard rate of 25%. This dilutes the initial percentage as the value would have grown during the period, meaning that what was provided was the correct amount for the TFC as at the effective date on the request."*

Mr B told ReAssure he was again unable to open the notification for this message: *"I have told you REPEATEDLY not to send me those microsoft emails. Send it again using this secure website so I can read what you have said."* As a result ReAssure resent it to Mr B on 18 January and relayed Mr H the same message on 23 January.

Mr H called ReAssure on 27 January referring to a need to go to the ombudsman, as he pointed out that he hadn't made any further contributions into his policy since it started, and couldn't follow why his TTFC had been reduced to about 64% (the sum of £46,150 he received). He referred his complaint to our service two days later.

ReAssure didn't respond until 28 February when it provided an elaborated answer to Mr B – although it was again in a format he reminded ReAssure he would be unable to open. It said:

*"We can confirm that we re-calculated the TFC and our Manual Calculations team have confirmed that the reason why the TFC % has changed from around 80% to around 64% now, is that the TFC has to be recosted taking into account the growth and any premiums*

*that happened on the policy post A-Day.*

*This post A-Day movements are limited to 25%, which will reduce the value of the TFC, which is what has happened in this instance.*

*We hope this clarifies your query and can confirm that the amount that we paid out for the TFC (£46,150.63) is the correct amount.*

*I have enclosed the original correspondence dated 16 December 2022 to confirm the transfer completion."*

Mr H requested ReAssure provided this answer by letter so that he could bring it to our service, which it did on 16 March.

On 20 March C's platform requested an update from ReAssure on the status of the funds it had returned. ReAssure responded on 27 March, *"Please can you confirm what information you are outstanding. The amount which was sent to yourselves originally was correct. We have provided an explanation to the client and [Mr B] as to why the value was different. Please can you confirm if you will accept the funds which you returned to us"*.

Mr B's records show that C asked him if it should accept the funds back from ReAssure, and he replied that it should only do so when ReAssure had paid what he considered to be the correct TTFC amount.

Whilst the complaint was with our service ReAssure then issued a new final response on 25 July 2023 which stated that, *"Terms stating that [Mr H] can't transfer to another provider's Flexi-Access Drawdown don't exist for this plan" and "...the transfer of administration is not a trigger for any change in terms and conditions. There are no comparable terms and conditions illustrating any change that would've prevented the above mentioned transfer from going ahead."*

ReAssure agreed to send another £125 compensation to Mr H's bank account for the inconvenience caused. It subsequently clarified to Mr B and Mr H in full how the TTFC had been calculated, with reference to tax legislation. Mr B used the TTFC calculator of C's technical department and was able to agree with ReAssure's calculations to within a few pounds. He sent Mr H an email captioned *"Apology (TFC ONLY)"* on 1 August saying he was now happy that ReAssure was calculating the TTFC correctly.

ReAssure added on 7 August, *"In order to progress the payment we need confirmation from yourselves or the customer that you are happy for us to send the remaining funds to [C] as we did previously. This transaction will be a Drawdown to Drawdown transfer as our first payment made to [C] on 15th of December 2022. In order to set this matter right for [Mr H] we will pay the returned funds plus an 8% [pa] interest added to be calculated upon receiving the transfer request from [C]. Please be aware that this transfer can be requested through Origo platform again as long as it is marked as a Drawdown to Drawdown transfer from the Receiving Scheme."*

At the same time ReAssure told this service that it would increase the amount paid to Mr H for the distress and inconvenience caused to £1,000 in total (including payments previously made). It confirmed it was willing to carry out a loss assessment for the time Mr H's residual fund had been out of the market (since it was paid to C but returned) – and pay any further loss resulting that was in excess of the 8%pa interest it would already pay.

Our Investigator explained to both parties that she thought ReAssure's offer to resolve the complaint was fair, and why.

On 4 September Mr B presented Mr H with an invoice for the work carried out on his file which came to £19,012. He recommended that Mr H did not accept ReAssure's offer for reasons which included:

- it failed to account for the invoiced costs and *"the impact of the lies/misinformation/untruths told to me by ReAssure and the excess work they created for me"*.
- There had been no attempt to refer ReAssure for regulatory action.
- He had requested the TTFC be paid to Mr H on 22 March 2022, not 5 August 2022 – and Mr H had to pay a further five payments on his car finance of £343 each.
- If Mr H was unsuccessful in securing compensation for all of these losses, Mr B was prepared to fund a legal action himself *"based on the admission of fault by ReAssure in addition to the agreed faults found by the Financial Ombudsman Service."*
- ReAssure was giving unauthorised financial advice by encouraging Mr H to return his funds to C.

In response, our Investigator didn't think it would be fair to ask ReAssure to make a payment to Mr H in respect of Mr B's costs, when some work would always have been involved to make the type of transfer Mr H was making. Nor she said would we typically make an award for professional costs incurred by a representative in bringing a complaint. Instead we would consider any distress or inconvenience ReAssure's actions had caused Mr H directly, for which she thought the £1,000 payment was fair. She also noted that the car loan would have been due for repayment in any event.

ReAssure asked for it to be noted that Mr H and Mr B were not responding to its requests to confirm that the funds could be returned to C. As it didn't consider the dispute about costs should hold up the return of funds to C, it would cap its 8%pa interest offer by 12 October 2023 at the latest. It said it was prepared to consider a request separately from Mr B for direct reimbursement of costs through its financial adviser compensation procedures (which doesn't come under the jurisdiction of this service).

I'm aware that Mr B has told Mr H that he will not make his own claim for costs unless ReAssure invite him to do so directly, but if successful he will reduce his invoice by a corresponding amount. As the Investigator was unable to resolve this dispute informally, it's been referred to me for a decision.

### **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.

As I shall go on to explain, and ReAssure has already accepted, I think the service it has given to Mr H and Mr B (when acting on Mr H's behalf) has fallen short. But before I consider the impact this has had on Mr H, I need to address the fact that a large part of this complaint arises from two misunderstandings about:

- Whether ReAssure was required to offer Mr H a direct transfer to another provider's flexi-access drawdown plan.
- How the TTFC amount was calculated.

#### *Whether direct transfer to C's flexi-access drawdown had to be made available*

Mr B suggested on Mr H's behalf that the option for ReAssure to transfer to flexi-access drawdown was required by legislation rather than in the contract. But as our Investigator previously explained, the legislation commonly known as "pension freedoms" was *enabling* rather than mandatory. It didn't override existing policy terms.

So when we've looked at complaints about similar issues, this service hasn't generally required providers to offer flexi-access drawdown – by its nature a more complex product – where the existing policy terms don't require them to do so. One of the reasons is that, for most people, a simple transfer to a newer product operating on the appropriate systems to process flexible payments is going to be straightforward. (The existing provider isn't required to offer that new product either, as it can be bought anywhere in the marketplace.)

However Mr H had a particular difficulty because, as Zurich's 2008 letter explained, a transfer to a new pension scheme would normally result in any TTFC being lost and tax-free cash instead being limited to the standard 25% of the value of the scheme. That's a result of the legislation set down by HMRC. And from what I can see, Mr H already had other pension funds with C and, understandably, wanted to combine them together.

To overcome this problem a scheme provider can opt to use a permissive override allowed by HMRC, effectively permitting it to pay out the higher tax-free cash entitlement and designate funds to drawdown outside the scheme's rules. It's important to say that a policyholder can't compel their provider to offer this solution. And it will likely mean processing payments that the existing systems and processes of that provider weren't designed to accommodate, so it isn't without its difficulties.

ReAssure suggested that it could only offer the option of TTFC plus direct transfer to drawdown with another provider as a concession – whereas Mr B believes that Mr H was always entitled to this. So, I've looked at the original Skandia terms and conditions of his policy to understand what the position is. These say the following, with my underlining:

***“income withdrawals***

*6.10 This allows you to take income directly from your Policy fund without the need to purchase a lifetime annuity.*

*6.11 The income you can take in any year can be varied between 0% and 120% of the Relevant Annuity Rate.*

*6.12 Income withdrawals can cease at any time with the remaining Policy fund value being used to purchase a lifetime annuity, however they must cease on or before your 75th birthday.*

*6.13 Access to this facility with us is achieved through movement of your Policy fund value to another plan and is therefore subject to additional terms and conditions which are available on request.*

...

***10 transfers***

*10.1 On receipt of your written request and on satisfaction of all our requirements, a transfer of your Policy fund value may be made directly to any appropriate pension scheme as governed by the Act and any relevant regulations.*

This tells me several things:

- Mr H's pension *scheme*, albeit not the particular S32 policy he held under that scheme, allowed the option of capped drawdown (where the income was limited to a relevant rate set by the Government Actuary's Department).
- To enable this option, Mr H's funds had to be moved to a different plan within the same scheme (which would have further terms and conditions specific to drawdown).
- This was not described in the same way as a transfer under section 10. That sort of transfer takes place scheme-to-scheme, and would result in the restriction of tax-free cash to 25% of the scheme value (unless part of a block or buddy transfer).

It seems likely to me that Skandia / Old Mutual would have drafted the policy terms this way to make it attractive to applicants, as policyholders had the option to do capped drawdown

(the only form of drawdown available at that time), without losing their TTFC. I also agree with Mr B that ReAssure's takeover of Old Mutual didn't change this contractual position.

I think what ReAssure had been trying to say (but in a clumsy way) was that its appetite as an organisation for allowing non-contractual concessions, since taking over other providers, was limited. That was a commercial decision it was entitled to make, but the first question to determine is whether permitting Mr H to transfer into its Retirement Account (but keeping his TTFC) would ever have involved a concession – and I don't think it would, based on these policy terms. I think ReAssure had realised that by the time of its second final response to the complaint, judging by what it said at that stage.

But it nevertheless remains the case that Mr H couldn't take TTFC directly from his existing scheme without putting the residual funds into payment *with ReAssure* (either as an annuity, OMO or capped drawdown). And the terms and conditions don't suggest he could do flexi-access drawdown from that scheme at all. So, ReAssure's reference to its (limited) appetite to allow further concessions remains relevant, to this extent. And these were the very things Mr H was looking to do – he wanted direct access to flexi-access drawdown with C, without needing to take out a ReAssure Retirement Account as an intermediate step.

I can see why removing the need for Mr H to have a Retirement Account would cause ReAssure more difficulties. I've already mentioned that S32 policies were traditionally designed to pay tax-free cash, and then provide an annuity or OMO from the uncrystallised funds. It appears that Old Mutual had designed its systems around that, and put the part of the process which involved crystallising funds into drawdown under a separate system using a new pension plan number. That's understandable as, amongst other things, there's differing tax treatment between uncrystallised and crystallised funds, and how they're reported to HMRC.

#### *How the TTFC amount was calculated*

I think some of Mr H (and Mr B's) concern here might have been prompted by Zurich's partial explanation of how this amount is revalued. The amount of TTFC payable at any point after A-day isn't fixed at a set percentage of the policy's value. Zurich did say that the amount of £34,566 as at April 2006 was revalued in line with changes in the government's pensions lifetime allowance (LTA), which went from £1.5m to a maximum of £1.8m for the purposes of this calculation.

However, that isn't the only part of the calculation. Mr H is also entitled to the normal tax-free cash limit of 25% on any growth on his fund value since A-Day. The growth is calculated by how much more his fund grew than when measured in line with changes to the standard LTA. It isn't simply 25% of funds from the (zero) contributions Mr H has made since 2006, as Zurich's original explanation could be taken to read.

The change in the LTA won't be the same as the growth on Mr H's funds (both before and after they were moved to the S32 policy in 2008). As Mr H was receiving advice both at the time of taking out the S32 policy and subsequently, I don't think he should have expected that the amount calculated at 80.97% on A-day would still be that same percentage in 2022.

In any event Mr B originally asked for a form to calculate the tax-free cash, suggesting he was aware that there was a formula – and it wasn't simply a case of maintaining the 80.97% percentage. He later asked for 55.67% TTFC to be paid. Even though I'm not sure where that calculation came from (as the effective percentage in Mr H's retirement pack was about 64%), it also suggests an awareness that the 80.97% figure wasn't preserved – which would run counter to the later claims Mr B made to ReAssure.



I wouldn't expect a provider to set out how it had performed this calculation step by step in a standard retirement pack. It's understandable that an adviser would want to be satisfied that there hadn't been a mistake in the provider's calculation. However the calculation methodology isn't something unique to ReAssure or the former Zurich policy Mr H held. It's laid down by HMRC in its Pension Tax Manual, which has been further distilled into a variety of training material for advisers to use in their Continual Professional Development. Mr B has since referred to C's calculator tool, but that is only one source of this information.

I note Mr B later apologised to Mr H for asserting that the TTFC should be preserved at 80.97%. I'm not considering any complaint about Mr B's actions here, but when deciding what ReAssure's contribution was to the overall delays, I'm bound to take into account that the S32 policy was specifically arranged for the purposes of preserving the TTFC – and with a commensurate understanding of how TTFC is revalued, there wouldn't have been a reason to question ReAssure's calculations. All the figures ReAssure calculated (and paid to Mr H) look to have been correct.

*Irrespective of these misunderstandings, what did ReAssure get wrong?*

I now move to the main part of my assessment of what errors ReAssure made, and their impact on Mr H. As I said at the beginning, I agree that in some instances ReAssure provided poor service to Mr H (and to Mr B when he was acting on Mr H's behalf). But I have to take into account, as the Investigator has done, that ReAssure has now made an overall offer of £1,000 for the distress and inconvenience it caused Mr H. This is combined, once Mr H decides to return the funds to C, with a payment of interest – to be offset by a full loss assessment calculation for the time Mr H has been out of the market.

To require ReAssure to do more than this, I would therefore need to be persuaded that the amount of upset caused warranted more than the proposed payment of £1,000; or that the interest and loss assessment provides insufficient compensation; or that Mr H is entitled to recover the charges for Mr B's time as he is seeking. I've reached the following conclusions on the key issues argued in the complaint:

- **Sending Mr B the forms for an OMO:** I find it unlikely Mr B would have said Mr H was interested in an OMO, as it involved buying an annuity – which Mr H didn't want to do. ReAssure delayed sending Mr B this form, but in any event it wasn't the form he needed. ReAssure ought to have understood that Mr H was looking to do a direct drawdown external transfer, but that doesn't mean I can fairly say that it should immediately have proceeded with this. It wasn't automatically obliged to make the contractual concessions to allow this, for the reasons I've explained above.

There also wouldn't have been a form for making this sort of transfer from Mr B's policy, which only allowed for annuity, OMO, or movement of funds into another ReAssure drawdown plan. And I'm not surprised that ReAssure didn't interpret Mr B's request as a full policy-policy transfer (for which I expect another form was available), because Mr B had made clear that his client wanted to preserve his TTFC.

- **Time taken to calculate TTFC amounts:** ReAssure had to refer these to a specialist team and therefore the time to produce these values, at about two weeks, was around twice as long as I would normally expect valuations to take. I don't think that's unreasonable in the circumstances. Mr H's policy was set up to preserve legacy tax-free cash entitlements and I don't find it surprising that not all of ReAssure's front-line customer services staff would be trained to deal with these.

Whilst ReAssure did take three weeks to check that the TTFC amount was correct after Mr B questioned it on 20 December 2022, I've taken into account that this was over the

Christmas holidays, which would have extended that two-week period. And I've also taken into account that there shouldn't have been a reason to question it.

- **Timing of when ReAssure made various concessions to Mr H:** I've taken into account that the first 'concession' ReAssure offered – a transfer to its Retirement Account – was something Mr H was already entitled to under the policy terms, for the reasons I've explained above. However, I don't think this materially changes any of the timings of what happened subsequently, because Mr H and Mr B were unwilling to take up this option. They maintained throughout that they wanted to transfer the residual funds directly to C.

ReAssure later made what was properly a concession, avoiding the need to set up a Retirement Account at all. This was entirely at ReAssure's discretion, and it seems was at least in part prompted by the developing nature of the complaint. So I can't fairly say that ReAssure should have offered that concession sooner, and it doesn't logically follow that it *would* have offered it sooner even if it hadn't made the mistake of sending OMO forms. The options the policy offered had been clearly set out in the retirement pack and whilst Mr B was free to try arguing for others, there was no certainty of success.

I'm also not persuaded that it was unnecessary for ReAssure to flag up that Mr H could transfer to its own Retirement Account, and make an onward transfer after that. I've explained above why an internal transfer is likely to have been easier administratively and, for the sake of retaining a large TTFC amount, ReAssure would reasonably have expected clients to accept that.

All of this means I'm also not persuaded the impasse of about two months between around 22 September (when Mr B was reminded the Retirement Account was available) and around 22 November (when he got notice of the further concession), was of ReAssure's making.

- **Mr B's inability to view ReAssure's secure email notifications and lack of phone contact:** I have insufficient evidence on which to conclude that ReAssure was treating Mr B, as Mr H's representative, unfairly here. Secure emails have been put in place to protect customers' data. I understand why Mr B preferred to view all messages through a website rather than clicking on links sent to his own email address, but it's not my role in considering an individual complaint to mandate the type of system ReAssure must use. That is a matter for ReAssure, and it is accountable to the regulator directly for its systems and processes.

Again, as I'm looking at each case individually, I think it would have been in Mr H's interests as the client for more of these communications to be attempted by phone. There was some potential for the issues to be resolved more effectively than by letters crossing in the post. From what I can see ReAssure did attempt to call Mr B without success, and I'm not satisfied that further attempts would have been successful either.

- **ReAssure's explanations of why it couldn't offer direct drawdown transfer:** I agree that some of the references made that "*this is not what we do*" and "*not part of our processes*" were unspecific and unhelpful. At that stage ReAssure should have reiterated that Mr H was limited to the options under his policy, which permitted a transfer into a ReAssure drawdown plan and this would preserve his TTFC.

Yet at the same time, as Mr B had set up the policy for Mr H, I think it wouldn't have been unreasonable to expect him to be familiar with its terms. Or in the event that he wasn't, to ask to see them again. Mr H did ask to see them on 21 October 2022, but this was more than six months after the first retirement pack had been issued.

I also think ReAssure ought to have appreciated that its comment that it didn't offer this option on former Old Mutual policies, was open to being misconstrued as meaning that it had removed a direct external drawdown transfer option that Mr H was *contractually* entitled to under Old Mutual. That was never the case, and in my view ReAssure ought to have been more precise with its explanations.

- **Delay in sending contract terms:** When Mr B did ask to see the contract terms, it took ReAssure nearly three weeks to provide them. Although this time period also included ReAssure issuing its first final response to the complaint, that shouldn't have delayed an outstanding request. Sending the contract terms promptly after Mr B asked for them would also have limited the potential for ReAssure's comments about the policy migrating from Old Mutual to cause confusion. Equally however, the terms and conditions would have been issued when the policy commenced – and if Mr B and/or Mr H didn't have these, as I've noted above there were missed opportunities to ask for these so that they could check them much sooner.
- **Did ReAssure's actions cause C to return Mr H's funds in excess of the TTFC:** I'm satisfied that it was at Mr B's request that C returned these funds, and that was ultimately prompted by a belief that the TTFC had been calculated incorrectly. As Mr B has accepted, that belief was incorrect. It would have been possible to leave the funds with C (but out of the market) whilst Mr B sought to clarify this with ReAssure – as inevitably, this would have taken a while longer over the Christmas holiday. If Mr B's concerns had been proved correct, then I would have viewed this differently.
- **Should ReAssure have set out its TTFC calculation in detail sooner:** I've already taken the view, as set out above, that the TTFC calculations were correct – and there shouldn't have been a reason to suspect they were incorrect. The workings of the calculation wouldn't routinely be provided to clients, but this had progressed from being a routine case. Once ReAssure identified that Mr B, and therefore Mr H, weren't familiar with how the sum was calculated, I think it would have been helpful nonetheless to show the workings involved.

That could have been done in more detail when ReAssure replied on 11 January 2023, alluding to the TTFC being revalued plus 25% of the growth after A-day being added. ReAssure missed another opportunity to set out its calculation on 28 February (or 16 March in writing, if Mr B couldn't see the 28 February reply). It didn't actually provide the calculation until after its second final response – and it was only after that point that Mr B realised his mistake. Whilst ReAssure isn't responsible for that mistake, I consider it could have been more helpful in aiding Mr B's understanding sooner.

- **Did ReAssure cause Mr H to pay five more car finance instalments:** I take this to mean Mr H could have cleared this loan sooner if the TTFC had been paid earlier, but in my view this delay was largely caused by Mr H holding out (on advice from Mr B, and ultimately successfully) in the hope ReAssure would make a concession of a direct external drawdown transfer that it didn't have to make. It's instructive that Mr H doesn't actually agree in the complaint submitted to this service that Mr B had asked for the TTFC to be paid on 22 March 2022, and I think that's a fair analysis. Mr B was only at that stage asking for the paperwork to enable it to be calculated, referring to potential retirement within the next 12 months.

I've weighed up all of the shortcomings that can be attributed to ReAssure against the offer made, which includes £1,000 compensation for the distress it has caused. In my view this is broadly consistent with the examples on our website of where we award compensation of between £750 and £1,500 for "*substantial distress, upset and worry*". I wouldn't have

suggested a materially different amount than ReAssure has already offered and, as the Investigator has already noted, it could even have been less.

Mr B has argued to Mr H, and he has relayed to us, that the compensation is insufficient because ReAssure went to the extent of 'lying' to him. I've seen evidence of delays and confusion on both sides in this dispute, and around a somewhat technical issue some of this is understandable.

As I've noted, something ReAssure looked to be suggesting as a concession (a transfer into its Retirement Account), was something Mr H was already permitted to do under his policy. However I think that's a symptom of ReAssure struggling to get to grips with how the policy terms and systems it had inherited from a previous provider engaged with the complex rules governing the preservation of TTFC. Ultimately ReAssure *did* have to go further than this anyway and make a contractual concession to appease Mr B and Mr H. I don't think any of this is evidence of ReAssure setting out to be evasive or untruthful.

I also don't follow why the question of this service referring ReAssure for regulatory action is holding up Mr H acting to mitigate any potential loss by moving forward with the residual transfer. For the avoidance of any doubt, I won't be commenting on what matters this service decides to refer to the regulator, and I'm aware that the FCA typically won't provide commentary on what action it may take in response to concerns it receives. But Mr H or Mr B is in any event entitled to raise concerns with the regulator directly if they have wider concerns about ReAssure. This decision is about Mr H's specific complaint.

I find the suggestion somewhat absurd that ReAssure is providing unauthorised advice by encouraging Mr H to complete his aborted transfer to C. He has maintained throughout that he wants to transfer to C, no alternative instruction has been given to transfer elsewhere, and his contract with ReAssure has been terminated, again at his request – meaning an alternative destination for the money is required without further delay. I don't think ReAssure has done anything wrong in respect of not making this transfer. It requires a further instruction from C and/or Mr H to make it, and the ball is in Mr H's court to give that instruction.

This service has communicated its position separately to both Mr H and Mr B that we won't typically cover third-party fees that were involved in seeking to justify or then bringing a complaint. And I think it's particularly relevant here that significant parts of Mr B's invoice will have been incurred pursuing ReAssure on the basis of a misunderstanding of how the tax-free cash was calculated, as well as urging it to make concessions it wasn't obliged to make.

We offer a free service to consumers and don't require them to have professional representation. It's disappointing to see Mr B's invoice holding up the settlement of a reasonable offer I consider ReAssure has made to resolve the complaint. Notably the amount of the invoice significantly exceeds the amount of tax Mr H will have saved by preserving his higher TTFC (even if he pays higher-rate tax).

If that is the sticking point then it's a matter for Mr H and Mr B to resolve between them. DISP 3.5.2G in the regulator's handbook says that I may inform Mr H that it might be appropriate to complain against some other respondent, and that is a route open to Mr H to consider here.

ReAssure's first final response of 2 November 2022 offered to assess whether its delay in communicating the available options up to that point had caused Mr H loss. But I'm satisfied that offer was overtaken by subsequent events, as Mr H still wasn't willing to transfer to a Retirement Account and ReAssure agreed to make a further concession instead. The offer ReAssure is now making is to pay Mr H interest at 8%pa simple on the funds returned by C,

even though they haven't been invested. From what I can see a large part of the reason they were returned – and particularly why they have remained with ReAssure until now – hasn't been ReAssure's fault.

I don't think it was therefore unreasonable for ReAssure to cap the interest it would add to 12 October 2023. I further note that it's willing to calculate if the growth in the funds Mr H was originally going to invest in with C would have produced a higher return, and also pay the difference, which I think is fair. It's also reasonable that ReAssure can only be expected to pay the interest and any further loss calculated after the funds are returned to C, as the situation won't otherwise be resolved.

### **My final decision**

I uphold Mr H's complaint in part, as ReAssure has caused him distress and inconvenience in communicating, through his adviser, what options were available to him and how the amounts were calculated. However ReAssure has already offered a sufficient sum to put right this distress and inconvenience, and in my view made what is a very fair offer to pay interest (and further calculate if any financial loss has been suffered) in excess of this on the funds that haven't been invested following their return from C.

ReAssure must therefore pay Mr H £1,000 for his distress and inconvenience (less the previous sums mentioned in its two final responses if they were credited to or banked by Mr H). And if Mr H's residual fund of £25,632 is returned to C, ReAssure must also take the following steps:

- add interest at 8%pa simple from the date ReAssure originally received the funds from C up to 12 October 2023
- calculate whether any further loss has been suffered (over and above the interest at 8%pa simple) as a result of these funds being out of the market instead of being invested with C, from the date they were returned to ReAssure from C up to the date of this Final Decision. If there is any further loss, pay this as additional compensation.

ReAssure will only have to pay these amounts if Mr H accepts this Final Decision, which will become legally binding and in full and final settlement of his complaint. As Mr H has mentioned taking legal action, that route is open to him if he doesn't accept the Final Decision. But he should be aware that the court won't be bound by any part of this decision and will come to its own findings. It would be advisable for him to take his own independent legal advice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 December 2023.

Gideon Moore  
**Ombudsman**