

The complaint

Mr N says ReAssure Limited is responsible for poor handling of his pension. Amongst other matters he identifies the provision of incorrect or incomplete information, inadequate processes and delays. He says he also incurred unnecessary tax charges.

What happened

Mr N had a pension plan with ReAssure which had a guaranteed minimum pension (GMP) element. In 2016, he protected his lifetime allowance (LTA) at £1,250,000 and by 2022 he had used 98% of this allowance.

Mr N says he'd been exploring withdrawing benefits from his ReAssure pension since May 2021. ReAssure sent Mr N an options pack on 15 August 2022 which included a lifetime allowance form. However, it did not include an options form. On 12 October 2022, he says he obtained an annuity quote from Legal & General.

On 19 October 2022, ReAssure sent him a letter asking for him to complete the lifetime allowance declaration. Again, this did not include an options form. Mr N signed the lifetime allowance form on 23 October 2022 and ticked 'yes' when asked if he was likely to exceed this limit. His cover letter stated:

"I can confirm my intention to take the GMP under the policy and the remaining balance of £34,701.86 as an uncrystallised funds pension lump sum. I have been fully advised on this decision".

Mr N contacted ReAssure on 24 October 2022 and it confirmed that once it had received his lifetime allowance form it would issue the annuity and lump sum forms. ReAssure received his correspondence on 1 November 2022. On 8 November 2022, he received incorrect annuity documents as they did not mention taking the GMP.

Mr N didn't receive the correct forms from ReAssure until 21 December 2022. On 16 January 2023, he sent it a cover letter and completed a retirement benefits application form. The cover letter stated:

"My intentions remain the same;

1) To take the GMP under the policy, now identified as £499.44. I enclose my completed Form B to that effect.

2) To take the remaining balance of £32,509.50 as an uncrystallised lump sum. I enclose the Pension Lump Sum application form."

Mr N called ReAssure on 23 February 2023. During this call, it stated that it wasn't aware he was about to exceed his lifetime allowance and that it would need to reissue forms and revalue the policy. It also made him aware that it wasn't possible for him to take an uncrystallised fund pension lump sum (UFPLS) because he was going to exceed his lifetime allowance. It says Mr N confirmed he wanted to proceed and understood that his pension funds in excess of his LTA would be taxed at a rate of 55%.

On 24 February 2023, Mr N sent a letter of complaint to ReAssure about its service. He summarised this in the following terms:

“Throughout my dealings with ReAssure the individuals handling the calls have mostly been courteous and often apologetic although in many cases unable to move the matter on. Response times have been incredibly slow, both to my adviser and to me. Forms and letters issued have been generic and not specific to my decisions and in two occasions, actually wrong. Information provided has been on occasions contradicted. There has been no consistency in dealing with this matter.”

“The most recent call with [X] is frankly the last straw. In it she denied prior knowledge that ReAssure were aware of the lump sum payment exceeding my Lifetime Allowance. The evidence clearly shows otherwise. I have no confidence that ReAssure possess the technical competence to be able to resolve this matter but ask that an urgent meeting be arranged with myself, my Financial Adviser and senior management from ReAssure to bring this to a sorry conclusion before I raise this with the Financial Ombudsman.”

On 6 March 2023, ReAssure said it made the decision to progress Mr N's request without issuing new forms and set up the annuity on 8 March 2023 based on the complaint letter. Then, on 15 March 2023, the Chancellor announced the removal of the LTA limit.

On 20 March 2023, ReAssure sent Mr N a letter confirming the annuity had been set up and had a start date of 17 January 2023. The annuity would pay £41.84 per month in advance. Also, a tax-free lump sum of £4,269.99 and a taxable lump sum of £29,959 had been paid to him (worth £13,481.55 after a 55% tax charge had been made). The letter also noted:

If you choose to cancel the plan within the first 30 days we will refund all your money. You must return any tax-free cash and annuity payments you have already received. Please note we will refund the money to the administrator of the pension scheme it came from.

Then further down the letter Mr N's attention was again drawn to his cancellation rights.

On receipt of these notifications from ReAssure, on 31 March 2023 Mr N raised a further complaint because it proceeded to pay his benefits without re-issuing him with updated forms. He says he could've avoided the LTA charge because he'd have had more time to consider his options and by that time he would've been aware of possible reform of the LTA regime. He could've avoided a tax charge of 55%.

On 21 April 2023, ReAssure called Mr N to discuss the complaint. The phone note stated:

“...he would like the revised figures in writing and wishes to return the funds”.

Mr N brought his case to this Service on 15 May 2023. He reiterated the concerns he'd set out in his two complaints to ReAssure in February and March 2023.

On 17 May ReAssure issued its final response to Mr N. It apologised for providing incorrect information and forms regarding the UFPLS, which wasn't an option available to him as he'd be exceeding his protected LTA. It also apologised for the delay this then caused in paying his lump sum. For the inconvenience and delays caused they offered him £712 (£600 for the compensation and £112 to cover loss of interest). It has also backdated the annuity start date to 17 January 2023 – when it had all the necessary information to set up the payment.

An Investigator looked into Mr N's complaint. She upheld it but not to the extent he wanted. She thought ReAssure's mistakes had meant the payment of his benefits had been delayed. She said it should recalculate what he should've received, assuming 6 December 2022 as the payment date rather than 17 January 2023 as it had done.

But the Investigator wasn't persuaded that ReAssure should meet Mr N's LTA tax charge. Essentially she considered that if the main elements of his first complaint were upheld, and he was put back into the position he should've been in, then his second complaint about incurring an LTA charge wouldn't have arisen.

Neither party agreed with the Investigator. Mr N focussed on his rights to cancel his policy. He said:

"I have been working under the assumption that my pension funds and the decisions affecting how they are to be dealt with are mine under the rules as set out by the UK government. That includes the right to challenge those service providers, such as ReAssure Ltd when they get their processes wrong and also the right to cancel the contract within 30 days of receiving my policy provisions. That latter right has been denied to me. March 2023 was, after all, the first time they had provided me with any policy documents. This is not solely a matter of the tax implications but the broader issue of my right to cancel the policy within 30 days if I so decide."

ReAssure focussed on the timing of when Mr N's benefits should start from. It said:

"Whilst we did indeed send to Mr N option forms for a lump sum payment we did also send him options relating to his GMP benefits on 8 November 2022...Also an option letter including GMP benefits was issued to his Financial Advisor on 15 August 2022."

"It is our view that Mr N would have been aware that he would be unable to take the UFPLS and this is something that we would expect his advisor to discuss with him. As we feel that Mr N would have been aware of this and had received the relevant options available to him I don't agree that we should be backdating his benefits."

As both parties couldn't agree with the Investigator's findings and conclusions, Mr N's complaint has been passed to me to review afresh and to provide a final 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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr N's complaint, but not to the extent he'd like. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by ReAssure for Mr N. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.

- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr N's complaint.

There's broad agreement between the parties about what happened. But there's a material difference in terms of how each believes matters should be put right.

Mr N was broadly content with the elements of the Investigator's recommendations where she upheld his case. But he didn't think she'd considered his right to cancel the payment of his pension benefits. In responding to her he said:

"I was fully aware of the tax implications of the lifetime allowance and this is not in dispute. I have no dispute with my Financial Advisor over this matter."

"The lifetime allowance form was returned to ReAssure immediately after it was issued."

"The issue on which I seek Financial Ombudsman ruling is whether or not you believe I was provided with my statutory right to cancel the insurance contract. My position is and remains that I was not. The prior actions of ReAssure though frustrating and incompetent are not relevant to this matter."

The Financial Conduct Authority (FCA) Conduct of Business Sourcebook(COBs) 15.2 confirms that a consumer has the right to cancel a life policy (including a pension annuity, or a pension policy etc). The cancellation period is 30 days. And the cancellation period begins:

1) either from the day of the conclusion of the contract, except in respect of contracts relating to life policies where the time limit will begin from the time when the consumer is informed that the contract has been concluded; or

(2) from the day on which the consumer receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook or the PRIPs Regulation, if that is later than the date referred to above.

Although ReAssure issued letters to Mr N on 20 and 23 March about his annuity and on 22 March about his LTA, Mr N says he didn't receive notification of the contractual terms under which he was taking his pension benefits and the annuity until 31 March 2023. He then raised a further complaint against ReAssure the same day, this time focussed on his concerns about the LTA tax charge he'd incurred.

ReAssure didn't follow-up Mr N's second complaint until 21 April 2023, when it had a conversation with him during which he confirmed he would like to return the funds. ReAssure says his 30 day cancellation period ended on 19 April 2023.

On the face of it, given the regulations, ReAssure has a case to answer here. It's clear that Mr N raised his second complaint on 31 March 2023, which could've been a trigger for undoing the transaction well within the 30 day period. It also seems likely that even at 21 April 2023 Mr N's time wasn't up because as established above, he was required to have received the contractual terms and conditions to start the clock, and that didn't happen according to him until 31 March 2023.

However, like the Investigator, I've decided that the issue of cancellation is a moot point in the circumstances of this case. That's because when Mr N brought his complaint to this

Service, the first matters he raised related to errors and delays in ReAssure's handling of access to his pension benefits.

Mr N's testimony shows he had wanted to access his benefits in the 2022/23 tax-year. In making his initial complaint to ReAssure he said:

"...Due to the delays in finalising this pension payment I have had to make other personal financial arrangements to cover the cash flow delays."

The Investigator noted:

"...evidence Mr N provided also shows he cashed in £170,000 from his investment ISAs on 24 February 2023. He explained to me that he needed the funds (including the ReAssure lump sum) to help his daughter who was in the process of building her house...I can't say that this amount would not have been cashed in regardless of ReAssure's delay. For that reason, with the evidence I have currently, I can't reasonably suggest ReAssure cover investment loss for an investment which we can't say with any certainty would not have been cashed in anyway."

And ReAssure's records of a phone conversation Mr N had with one of its staff on 23 February were as follows:

"I called the [policyholder] on Thursday...I explained to him that when we issued the claim form we had realised that when he takes these benefits that he will exceed the LTA. The option we had offered him will only apply to funds under the LTA, so not something we can offer in this case. UPLFS can only be paid from funds under the LTA."

"We can pay him the following:

- Our first duty is to cover the GMP*
- the funds between the GMP and the LTA as a tax free lump sum*
- the funds above the LTA can be taken as a lump sum taxed a 55% or pension taxed at 25%."*

"The [policyholder] wanted to take options with the 55% LA [charge]"

It's agreed that ReAssure got things wrong and caused delays. It accepted that Mr N should've had his benefits from 17 January 2023 had everything worked as it should've. The Investigator concluded that its errors had caused a longer delay and she recommended that 6 December 2022 should be taken as the date from which his benefits should've been paid.

While I understand the point ReAssure makes about the involvement of Mr N's adviser in helping him navigate the system. That doesn't excuse it from sending out accurate and timely paperwork from which both he and his adviser can work from. Not doing so caused confusion and undermined confidence. Although the Investigator's calculation about when matters should've been executed by ReAssure for Mr N isn't scientific, I think her conclusion was reasonable and I don't propose to disturb her recommendation.

The purpose of redress is to return the customer to the position they would've been in, or as close to that as reasonably possible, had it not been for the errors and omissions of the firm. So, in addressing Mr N's initial complaint, he will be returned to the position he'd have been in had ReAssure acted more effectively on his instructions.

Mr N's second complaint, that he ended up paying an LTA charge in 2022/23 when he should've been able to cancel the transaction and then taken his benefits in 2023/24 after the LTA regime had been changed, therefore fails. That's because it's clear he had wanted

his funds in 2022/23 to support his daughter, and he was frustrated in gaining access to these as early as he wanted by ReAssure's failings.

Mr N's second complaint, which was raised on 31 March 2023, comes with the benefit of hindsight. The Chancellor announced the change to the LTA regime on 15 March 2023. Had he not done so, it seems more likely than not Mr N's focus would've remained on the delays and errors ReAssure had been responsible for previously. And that is the focus for redress.

Putting things right

I require ReAssure Limited to conduct the following loss calculation:

- Step 1 – derive the notional value of Mr N's annuity, tax free cash and lump sum payment had these been calculated with an effective execution date of 6 December 2022.
- Step 2- from each of these three individual sums derived at Step 1 it should deduct the relevant actual figure it paid Mr N, which had an effective execution date of 17 January 2023.
- If the result of any of these individual calculations results in a loss to Mr N it will need to provide him with redress for that amount.

ReAssure Limited should also pay Mr N for the value of any missed annuity payment due between 6 December 2022 until 16 January 2023.

ReAssure can adjust the redress due to account for Mr N's proper tax liability and allowances. It will need to assess whether he had any remaining tax-free cash entitlement and consider if any LTA charge is appropriate. I understand his marginal rate of income tax was 40%. Mr N will be able to liaise with ReAssure on these matters.

To any sum(s) due ReAssure Limited must add 8% interest from the date payments were due until it settles. It may offset any award of interest calculated as part of its final response proposal to put things right, if it has already paid that to Mr N.

When I'm considering a complaint like Mr N's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of ReAssure Limited's actions was greater than just a minor inconvenience or upset. It's clear to me this was the case here.

ReAssure Limited offered Mr N £600 for the distress and inconvenience it had caused him through its errors and delays. I think that is fair. If it hasn't paid Mr N already, then it should now make arrangements for doing so.

My final decision

For the reasons I've already set out, I'm upholding Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 March 2024.

Kevin Williamson

Ombudsman