

## **The complaint**

The estate of Mrs W complains about the way in which Legal and General Assurance Society Limited (L&G) have tried to reclaim an annuity overpayment.

## **What happened**

Mrs W held an annuity with L&G which made monthly payments to her.

In March 2021 Mrs W sadly passed away. Her son, Mr W, was the executor of her estate.

In late April 2021 Mr W informed L&G of his mother's death. He provided his address and contact details including an email address.

On 4 May 2021 L&G wrote to Mr W at the address he'd supplied. They said a monthly instalment of £398.12 was credited to Mrs W's bank account on 26 April 2021 which was no longer due. So, they asked Mr W to return this payment by sending them a cheque.

L&G sent further letters to Mr W on 22 September 2021 and 21 October 2021 asking for a different amount of £375.32 to be paid back to them.

Mr W says he didn't receive these letters from L&G. He said that the post was held in a communal area which meant he didn't always receive it. He says he moved out of the address to which the letters were sent in November 2021.

In February 2022 L&G sent a further letter before, sending an email to Mr W in March 2022 attaching the letters they'd previously sent him. L&G sent further letters in September 2022, January 2023 and February 2023. They then employed a tracing service which managed to locate a new address for Mr W.

L&G wrote to Mr W at his new address in April 2023. The letter was similar to those sent previously, asking for Mr W to return the overpayment amount within seven days. The letter warned that failure to do so may result in the debt being escalated to solicitors and further costs incurred.

Mr W complained to L&G. He didn't think it was fair for them to pursue him after two years for the overpayment. He also found it upsetting. He explained that the estate had been distributed in 2021 and the cost of living and his personal circumstances meant he was now unable to repay the overpayment.

In response to Mr W's complaint L&G explained the actions they'd taken to recover the overpayment, including the use of a tracing service. But as the executor of Mrs W's estate, Mr W had a duty to ensure that any debts from the estate were repaid. And they believed Mrs W's estate had sufficient funds with which to repay this overpayment.

L&G apologised that Mr W found their letter upsetting but explained their correspondence was direct due to its serious nature. They asked Mr W to make contact with their debt recovery team to discuss repayment.

Mr W wasn't satisfied with L&G's response. He didn't think they'd addressed his points about his personal circumstances and questioned why it took them so long to use a tracing service to locate him.

Our investigator looked into things. He thought L&G had acted reasonably when tracing Mr W and seeking recovery of the overpayment. He agreed it took L&G a long time to make use of a tracing service but said it wasn't our Service's role to tell a business how they should operate.

Mr W disagreed. He said he located an email he sent L&G from April 2021 asking for their bank details to make a payment. But they never responded and only contacted him two years later asking for the payment. He didn't think that was fair. He also said the email account used was closed in 2021.

Our investigator didn't change his opinion on the case. He thought the email Mr W had sent in April 2021 appeared to show that Mr W was aware of the overpayment and ought to have settled that before distributing the estate. As Mr W disagreed with our investigator's opinion, the complaint has been passed 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.

I'm very sorry to hear of Mr W's loss and I'm mindful that his complaint arises from some very difficult personal circumstances.

What I have to consider in this complaint is whether L&G have acted fairly when asking Mrs W's estate to repay the overpayment from her annuity.

Mrs W's annuity was only payable while she was alive, and L&G didn't learn of her death for several weeks. I understand entirely why it might take several weeks for Mr W to contact all the businesses he needed to, when acting as the executor for Mrs W's estate. But in the meantime, L&G had made a monthly annuity payment that Mrs W wasn't entitled to. So, it's reasonable, in those circumstances, for L&G to expect any payments that weren't due to be paid back.

As the executor of Mrs W's estate, Mr W took on certain legal responsibilities which I have no doubt he's taken seriously. But part of that duty was to ensure the estate had paid all monies due before being disbursed.

L&G wrote to Mr W just over a week after receiving notification of Mrs W's death explaining that an overpayment had been made. So, I'm satisfied L&G didn't delay in asking the estate to refund the overpayment.

L&G wrote to Mr W several more times between May 2021 and February 2023. They used the postal address and email address Mr W had provided them. While Mr W has explained that he didn't receive the letters or email L&G sent, I don't think it was unreasonable for L&G to follow up their requests when they didn't receive a response. And I can't hold L&G responsible for any problems Mr W had with his post at that time.

In April 2023 L&G used a tracing service to try and locate Mr W after a further period of no response. I understand Mr W's opinion that L&G should have utilised the tracing service much earlier, as he'd moved address in November 2021. And I agree that L&G *could* have used a tracing service earlier. But as far as L&G were aware they were using Mr W's correct

address. They'd checked the grant of probate for Mrs W's estate which also showed the same address for Mr W in September 2021. So, I don't think they acted unreasonably by sending multiple letters to that address, even when they were unanswered.

Mr W says he emailed L&G in April 2021 asking for their bank details to make a repayment. So, that shows he was aware of the overpayment even if he'd forgotten about it by 2023. I think that's understandable given the circumstances. It was, however, reasonable for L&G to continue to attempt to recoup the overpayment even after two years. And they'd made consistent attempts to contact Mr W throughout that time.

Mr W says L&G haven't taken his personal and financial situation into account when asking for the overpayment to be refunded. I appreciate that L&G explaining they may have to escalate matters to a solicitor would be concerning. But it's important that businesses are clear when explaining the consequences of not acting upon important communication – especially concerning debt – and that it can have serious consequences. I appreciate that can sometimes be perceived as a business being insensitive to the circumstances. But I think L&G's letters were factual and clear and weren't intended to cause upset even if they ultimately did.

L&G have offered for Mr W to speak to their debt recovery team. And they've told our service they'd accept payment by instalments over a reasonable timescale. So, I can't agree that L&G aren't taking Mr W's personal circumstances into consideration. And I think their suggestions are reasonable.

Having considered all the circumstances of this complaint, I'm satisfied L&G have acted fairly and reasonably in pursuing Mr W for a refund of the overpayment to Mrs W's estate.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs W to accept or reject my decision before 26 February 2024.

Timothy Wilkes  
**Ombudsman**