

The complaint

Mr P complains that as a result of the way his fixed term retirement plan (FTRP) was set up by Legal and General Assurance Society Limited, he will receive two payments in the same tax year. He says as a result it will mean he pays significantly increased income tax and also loses means tested child benefit.

Mr P wants Legal and General to change the payment date, or if that's not possible, to compensate him for the additional tax and loss of benefits.

what happened

Mr P's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties on 28 December 2023. The background and circumstances to the complaint and the investigator's findings were set out in that assessment. However to recap, Mr P had said that his wife, speaking on his behalf, had been clear during calls with Legal and General in March 2023 that he didn't want two payments from the FTRP in any tax year. The investigator, having listened to the calls, didn't agree that this was the case. He thought that although Mr P's wife had been clear that they didn't want the first payment to be made before the start of the 2023/2024 tax year, she didn't ask about future payments.

The investigator said, however, that he had gone on to consider whether the start date of the annuity has been recorded correctly. He referred to the terms and conditions of the policy which said:

"2. Benefit

2.1 We will pay benefits every month or every year, as we agreed with the policy owner. The period between benefit payments is called the 'payment period'.

*2.2 If we pay the benefit in advance (for the payment period ahead), we will pay **the first instalment on the 'annuity commencement date'** (see 2.5) agreed by us and the policy owner, or as soon as practicable after that date.*

If the agreed annuity commencement date is earlier than the date we receive the contribution (referred to in 1.1), the first instalment will be paid as soon as practicable following receipt by us of the contribution.

...

*2.5 **The 'annuity commencement date' will be the 'policy commencement date' or such other date as is agreed between us and the policy owner. The 'policy commencement date' will be the date all necessary requirements to implement the annuity have been met.*** [investigator's emphasis]

The investigator said it was clear that the first payment might be delayed after the annuity commencement date to some extent. In this case, Mr P selected "*as soon as possible*", so there was no specific date agreed. So he said the annuity commencement date was the same as the policy commencement date.

The investigator said the question therefore was when “...*the date all necessary requirements to implement the annuity*” were met.

Legal and General had said this was on 29 March 2023 when the majority of the pension funds were received. However the investigator didn't agree. He said Mr P's pension funds were transferred over two payments, £425,023.62 on 29 March 2023, and £18,511.82 on 31 March 2023. He said he thought it was a necessary requirement for the pension transfer to be completed before the annuity could be implemented.

The investigator referred to the word ‘*implement*’ used in the annuity terms and conditions. He said it wasn't defined in the terms. So he thought it appropriate to use its common meaning - to put something into effect. The investigator said he didn't think the date of receipt of the funds was necessarily the same as “...*the date all necessary requirements to implement the annuity*” were met.

The investigator noted that Legal and General had sent Mr P a letter on 17 April 2023 to check whether he wished to continue with the application as the figures had changed since the last quote. Mr P confirmed he wished to proceed on 21 April 2023.

The investigator said the fact that Legal & General had written to Mr P and waited for his response before implementing the annuity strongly suggested that obtaining Mr P's consent was, in Legal and General's view, a necessary requirement.

The investigator said his view was that *it was* a necessary requirement for Legal and General to obtain Mr P's consent as the quote had changed. And it wasn't able to implement the annuity until it had received Mr P's consent. So he thought “*the date all necessary requirements to implement the annuity*” as provided for in the terms was 21 April 2023, when Mr P confirmed his consent to proceed. He said it was at this date, and not before, that Legal and General had everything they needed to implement the policy.

The investigator said that given the circumstances he thought both the annuity commencement date and policy commencement date ought to be amended to 21 April 2023. And future annuity payments ought to be made on the anniversary of the correct annuity commencement date.

Legal and General had already paid Mr P £150 compensation for the trouble and upset caused. The investigator said he appreciated Mr P had been concerned that the upcoming payment would incur a large tax liability and result in the loss of a means tested benefit. And he thought it was right for Legal and General to acknowledge the concern it had caused. But he thought the ‘loss’ Mr P had complained about hadn't yet occurred. The financial loss hadn't yet crystallised or had an impact on Mr P. The investigator said considering everything in the round, he thought the £150 compensation Legal and General had already sent to Mr P for the trouble and upset caused was fair for that in the circumstances.

Legal and General didn't agree with the investigator's findings. It provided further evidence and arguments, however the investigator wasn't persuaded to change his view of the complaint. It was therefore passed to me to consider.

The investigator sent an e-mail to Legal & General on my behalf outlining my initial findings on the complaint. I said that I largely agreed with the investigator's view of the case, and in particular his interpretation of the Terms relating to the appropriate policy commencement date. I said I thought the key terms were:

2.2 If we pay the benefit in advance (for the payment period ahead), we will pay the first instalment on the 'annuity commencement date' (see 2.5) agreed by us and the policy owner, or as soon as practicable after that date....and

2.5 The 'annuity commencement date' will be the 'policy commencement date' or such other date as is agreed between us and the policy owner. The 'policy commencement date' will be the date all necessary requirements to implement the annuity have been met.

I said as no date was 'agreed', the first instalment was due on the 'annuity commencement date' – which 'will be the policy commencement'. And the "policy commencement date" will be the date all necessary requirements to implement the annuity have been met."

The investigator had said the fact Legal and General wrote to Mr P and waited for his response before implementing the annuity suggested obtaining Mr P's consent was, in Legal & General's view, a necessary requirement. I said I hadn't seen an actual copy of the letter that was sent to Mr P on 17 April 2023. However I noted that in Legal & General's complaint notes it referenced the letter saying:

17/04/23 All ok - COI issued. letter sent to say - We're in the process of setting up your Fixed Term Retirement Plan but the figures have changed since we issued your last quote. Please check the details in this letter. If you want to continue with your application, you don't have to do anything. We'll set up your policy after seven days and make payments in line with the details below.

Mr P did call Legal & General on 21 April 2023 and agreed to proceed with the revised quotation. On the one hand, I don't think Mr P's explicit consent was required given the annuity would have gone ahead if Legal & General didn't hear from Mr P – he didn't have to do anything.

However on the other, the Terms do say 'the date all necessary requirements to implement the annuity have been met.' As the investigator said, 'implementd' isn't defined. I said I thought the investigator's interpretation of its ordinary meaning – to put something into effect – was a reasonable one.

I said I understood the change in the annuity payable did require the 17 April 2023 letter to be sent to Mr P – the annuity couldn't be implemented or put into effect before that letter, as part of Legal & General's usual process, had been sent. My understanding was therefore that it was a 'requirement' that needed to be met before the annuity could be implemented. So I thought the commencement date would ordinarily be after the seven-day period referred to in the letter or, given in this case Mr P confirmed he wanted to proceed, 21 April 2023 as suggested by the investigator.

I went onto consider the points Legal & General had raised in response to the investigator's view. It had said:

"You say you [the investigator] feel we didn't receive all necessary requirements until Mr P... agreed to proceed but that is putting the policy into payment not determining the commencement date of the policy.

The commencement date is determined by the date we receive the funds and we can't deviate away from this rule, the commencement date has been set up with the terms and conditions of the policy."

I said if the 'policy commencement date' was simply the date Legal and General received the funds, that should have been set out in the terms. I didn't think the terms said that. They

weren't, in my view, consistent with that date in the particular circumstances of this case.

I said I'd also considered the other points made by Legal & General which were around the technicalities of setting up this type of annuity. But although I accepted they might be technically correct, again, I didn't think they were consistent with the Terms which, in my view, provided for a different policy commencement date in the circumstances here.

So I said for the reasons explained by the investigator and as I'd set out, I thought the commencement date and future payment dates should have been 21 April.

Mr P had said that he would pay more tax having two payments made in the same tax year and that he would lose child benefit. Given what Legal and General had said, I accepted it might not be technically possible to now change the policy commencement date. I said if not, and there wasn't an appropriate workaround, I thought it was fair for Legal and General to compensate Mr P for the additional tax (over and above what he would have paid if payment had been over two years) and any loss of child benefit (subject to Mr P providing appropriate evidence of the additional tax/loss of child benefit). And like the investigator, I thought the £150 offered for the distress and inconvenience caused was fair in the circumstances.

Legal and General responded to say, in summary, that it was prepared to forward date the policy in the particular circumstances. But that Mr P would have to return any payments that he'd already received. It said if Mr P didn't want to proceed with that option it could also provide him with information to provide to HMRC (HM Revenue and Customs) to say the annual payment date was 29 March 2023, and the first payment date would have been due the previous tax year.

Mr P said he wasn't able to repay the annuity as it had already been spent.

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.

Having done so, I've seen no reason to depart from my initial findings that the complaint should be upheld as set out above.

Mr P has said he can't return the payment already made as he's already spent the money. That's not unreasonable given the amount paid, and that it was paid to him some time ago.

Financial 'damage' will only result from how the FTRP was set up if two payments are made in the same tax year. I accept that there are rules and regulations surrounding such matters and Legal and General need to work within those rules. However I think it's for Legal and General to find a workaround. And if that's not possible, then it should compensate Mr P for any losses due to additional income tax paid (over and above what would have been paid in any event if payments had been made in separate tax years) and for any resulting loss of child benefit (subject to Mr P providing appropriate evidence of the additional tax/loss of child benefit if that occurs).

Putting things right

I appreciate there are some unknowns here as any 'damage' hasn't yet crystallised and won't now do so – if it does – until around this time next year. It's not possible to know what Mr P's specific circumstances will be at that time. But I don't think it's reasonable to wait for that period of time to resolve the matter. So I think it's appropriate and pragmatic to outline what Legal and General Assurance Society Limited should do in principle now.

Legal and General Assurance Society Limited should try and find a workaround to ensure that two payments aren't paid to Mr P in the same tax year. But without Mr P having to return the money already paid to him. If that's not possible, it should compensate Mr P for any additional income tax paid (over and above what would have been paid in any event if payments had been made in separate tax years) and for any resulting loss of child benefit (subject to Mr P providing appropriate evidence of the additional tax/loss of child benefit if that occurs).

Like the investigator, I think the £150 Legal and General Assurance Society Limited paid Mr P for the trouble and upset caused was fair in the circumstances.

My final decision

My final decision is that I uphold Mr P's complaint.

I order Legal and General Assurance Society Limited to find a workaround or, if that's not possible, compensate Mr P as I have outlined above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 April 2024.

David Ashley
Ombudsman