DRN-4676335

Financial Ombudsman Service

The complaint

Mr M is unhappy that, having asked for his annuity with Just Retirement Limited (Just) to be paid annually in arrears, he expected his first payment to be made in the 2024/2025 tax year. But the first payment is due to be made on or about 1 April 2024.

What happened

Mr M had pensions with Willis Towers Watson and Aviva. In February 2023 he was looking to purchase an annuity. Liverpool Victoria Financial Advice Services Limited (LV) was appointed to facilitate the purchase of annuity and obtained quotations from various providers. Mr M wanted the annuity to be paid annually in arrears with the first payment being made in the 2024/2025 tax year. He was still working at the time and didn't want the first payment to be made until then because he'd have to pay more income tax.

LV obtained quotations from various providers. Mr M accepted a quotation from Just. LV contacted Just on 27 February 2023. Just said that the start date would be the date on which Just received the funds. So, for an annuity paid annually in arrears, the first payment would be a year from the date the funds were received. LV asked Just if there was any way to make sure the annuity didn't get set up before 6 April 2023. Just said that could be requested but not guaranteed as would depend on date the funds are transferred which was down to the ceding provider. Just also said they had a backlog and didn't see the annuity being set up before 6 April 2023 as they were operating a 20 working day turnround.

On 31 March 2023 LV sent Just the annuity application form. Just then said the payment would be backdated to the first of the month in which the funds were received. LV queried that given what LV had previously been told – that the payment date would be the date the funds were received. Just said they'd check with their technical team. But Just then requested the funds from Willis Towers Watson on 2 April 2023 and which were received on 17 April 2023. The first payment date was therefore set as 1 April 2024.

Because that wasn't what Mr M wanted there were discussions between LV, Just and Willis Towers Watson about returning the funds and sending them back in May 2023. But Willis Towers Watson wouldn't accept the funds back.

LV then obtained quotations from Scottish Widows – Just was prepared to transfer the funds received from Willis Towers Watson to Scottish Widows which would ensure the first payment was made in the 2024/2025 tax year.

Mr M eventually decided against that. He says he was put off by online reviews and because the process could potentially take up to 12 weeks to complete. Mr M had the right to cancel his annuity with Just within 30 days of receiving the policy documents. He didn't cancel and instructed LV to proceed with the Just annuity on 31 May 2023.

Mr M complained to Just about what had happened. Just didn't complete their investigation within eight weeks of receiving the complaint and so Just told Mr M he had the right to refer the matter to his service. Mr M contacted us in October 2023.

One of our investigators looked into what had happened. She issued her view on 30 January 2024. In summary she referred to what Just had told LV. She said Just had given LV incorrect information. And there were missed opportunities to correct the position. If correct information had been given, steps could've been taken to ensure the funds weren't received before May 2023. But Mr M could've mitigated his position so as to avoid the extra tax – he could've bought an annuity with Scottish Widows or exercised his right to cancel the annuity with Just.

The investigator recognised Mr M's concerns – about buying an annuity with another provider and the fact that delays might result. But, in the end and knowing the tax implications that would result, Mr M had opted to proceed with the Just annuity. Although the investigator didn't think any payment for financial loss was warranted, she recognised Mr M had been caused distress and inconvenience in respect of which she said an award of £500 would be fair and reasonable.

Mr M explained to the investigator why he didn't agree. After considering Mr M's comments, the investigator wrote to him on 9 February 2024, explaining that her view was unchanged.

Just wrote to Mr M on 21 February 2024. Just confirmed the first payment of Mr M's annuity was due on 1 April 2024 but as that was a bank holiday the first payment would be issued on 29 March 2024. Just apologised if Mr M had been led to believe the first payment would be mid month. Just said if the policy started on any day other than the 1st an initial proportionate payment to cover the period from the policy start date to the next payment due date would be made. For example, if a policy is to be paid monthly in advance and has a start date of 15th January the first payment will be made as soon as the policy starts to cover the period from 15th January to 31st January. All subsequent payments will reach the policyholder's account by the 1st of the appropriate month. As Mr M's policy started on 17 April 2023 and was on a yearly basis, the appropriate date to make the first payment is 1 April 2024. Just said they'd paid the £500 we'd suggested into the account it held for Mr M.

Mr M told us he wanted the matter referred to an ombudsman. He said, at the time he'd had to make a choice whether to proceed, he had no confidence in the advice he was getting from either Just or LV. He said the investigator hadn't mentioned that at one point his work place pension provider had been asked to take back the funds so they could be resent to Just stamped with a May date which Mr M suggested was irregular or possibly illegal.

The only other options he had – to take the Scottish Widows option or start again – would've meant his retirement was postponed for up to six months. And the annuity wasn't guaranteed and could've been subject to adjustment. He was aware that annuity rates were high but they were subject to market conditions which may have lowered the annuity rate. To ensure he could retire as planned he felt he had no choice but to instruct LV/Just to go ahead with the annuity purchase and pursue a claim for the tax liability.

Mr M also said he'd received Just's letter of 21 February 2024 and the payment of £500. He queried what he needed to do about it as he didn't accept that resolved his complaint.

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 mentioned above, another business, LV, was also involved. Mr M has also complained about LV's part in the matter. That complaint has been dealt with under separate reference but I've considered both complaints together, as did the investigator.

I’ve considered carefully all Mr M has said. I can see he feels very strongly about what’s happened. I understand Mr M’s position. From the outset he made it clear that he didn’t want the first annuity payment to be made in the 2023/2024 tax year. He’s done nothing wrong and was guided by Just and LV. So it’s understandable that he considers he shouldn’t have to meet the higher tax charge that will result from the payment being made earlier than he wanted and had made clear. So he expects the extra tax liability to be met, whether by Just or LV or between them.

And, as far as Just is concerned, there’s no dispute that Just didn’t handle things well. In particular Just gave incorrect and inconsistent information to LV.

But, where a business hasn’t acted as it should’ve done, that won’t automatically mean we’ll award compensation for any financial loss that the consumer has suffered. We’ll look at the whole picture in deciding what’s fair and reasonable in all the circumstances of the particular complaint. That will include considering what the consumer might’ve been able to do, once any mistake came to light, to try to mitigate or avoid any potential financial losses.

Here I agree with the views expressed by the investigator and the reasons she gave as to why it wouldn’t be fair to say Just should cover the additional income tax Mr M will incur because his first payment is imminent and so will be received during the current tax year. I know Mr M will be disappointed as he considers he had no choice but to proceed with the annuity with Just even though the first payment would be received in the current tax year which wasn’t what he’d instructed. But, like the investigator, I think it was open to Mr M to take steps to avoid that.

A possible solution would’ve been for Just to return the transfer payment it had received from Willis Towers Watson. I note Mr M’s comments about that being irregular and possibly illegal but I don’t agree. Sometimes where a transfer payment has been made in error the ceding scheme will agree that it can be returned and resent at a later date. I don’t see that indicates irregularity or illegality. It reflects the situation that’s arisen – that the transfer payment was requested on the basis of a mistake. But in the end Willis Towers Watson wasn’t prepared to accept the funds back. So that wasn’t an option.

But Mr M didn’t have to proceed with the annuity from Just. He was within Just’s 30 day cancellation period and so he could’ve cancelled the annuity. And Just offered him the opportunity to take his annuity with Scottish Widows instead which would’ve meant a later payment date in the next tax year. I think that could’ve been sorted out fairly quickly – I don’t see that would’ve delayed Mr M’s retirement by up to six months – his first annuity payment would’ve been in about May 2024 which was only a month after he’d originally wanted.

I accept that Mr M was put off taking an annuity with Scottish Widows because of poor reviews. And, if he hadn’t wanted to take his annuity with Scottish Widows then, as he’d be effectively starting over, that would’ve meant more time. Mr M has suggested it could’ve taken up to six months and which would’ve put back his retirement and meant he’d have had to rely on savings or continue working. But I can’t see it would’ve been likely to take that long. Looking at the time actually taken, it seems Mr M got in contact with LV in February 2023 about buying an annuity. And later that month he accepted the quotation from Just. Assuming a similar timeframe would’ve prevailed, there’d have been a few weeks delay but not months. Of course things may not have proceeded smoothly and could’ve taken longer but, in deciding how long things might’ve taken, I don’t think it’s unreasonable to take into account what had actually happened first time around.

Mr M has also said that annuity rates could’ve fallen if he’d opted to get new quotations. My understanding is that, during the period in question, the trend was upwards – since the start of 2022 until mid 2023, annuity rates continued to increase. And it seems the quotation from

Scottish Widows was higher than the annuity from Just. Mr M wouldn't have known at the time how annuity rates might change. So he might've been worried that any new quotations, if he didn't accept Scottish Widows' quotation, might be based on a lower annuity rate. But, even so, I don't think that was enough to mean that he should've felt compelled to proceed with the annuity from Just which didn't achieve his main objective – payment in the next tax year – and which he knew would result in a larger tax bill. Mr M has indicated that the extra tax will be around £10,000. I think that liability should've been factored in and taken into account against the risk that there might be some reduction in annuity rates.

I accept that the situation Mr M found himself in and which wasn't of his own making wasn't ideal. But, on balance, I don't think the reasons he's put forward as to why he didn't feel able to take either of the options offered and so avoid the extra tax burden are compelling. So I don't think it would be fair and reasonable to say that Just should cover the extra tax Mr M will incur.

Just accepts that Mr M has suffered distress and inconvenience and has, I understand, already paid Mr M the £500 which the investigator suggested would be appropriate. Mr M has made it clear that he didn't accept the payment as resolving his complaint and that he wanted the matter referred to an ombudsman. That's been done but my view is that £500 is fair and reasonable for the reasons the investigator gave and taking into account the impact on Mr M of Just's errors. I've made a direction below but, if Just has already made a payment of £500 to Mr M which hasn't been returned, Just doesn't have to make any further payment.

My final decision

I uphold the complaint in part. Just Retirement Limited must pay £500 to Mr M as compensation for the distress and inconvenience he's suffered in consequence of Just Retirement Limited's poor service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 April 2024.

Lesley Stead
Ombudsman