

The complaint

Mrs L and the Estate of Mr L complain that ReAssure Limited (ReAssure) caused delays and failed to progress an ill health retirement claim before Mr L passed away meaning his pension benefits can't be entirely paid as a lump sum. Mrs L would like this to be corrected.

I'll refer to Mr L and Mrs L in this decision.

What happened

In 2021 the late Mr L was suffering from terminal cancer. He had two linked s32 plans with ReAssure which had arisen from the transfer of an occupational pension scheme. Mr L and Mrs L called ReAssure to ask about accessing tax-free cash from the plans on 3 August 2021 and informed it about his terminal cancer. It isn't disputed that it made an error and didn't refer this immediately to its "*Health Claim Team*" given the potential for a "*Serious Ill Health Lump Sum*" (Ill-health) claim to be made. This would potentially allow the benefits to be paid as a tax-free lump sum. Instead, it arranged for a retirement pack to be generated, which would give valuations and details of the normal benefit options.

However, nothing was received, so Mr L called back on 9 September 2021 and authorised Mrs L to act for him. ReAssure said it was still calculating the benefits and would be in touch. On 27 September 2021, having realised that an Ill-health claim might be possible it called Mr L, but the call wasn't answered. It wrote the next day saying if Mr L had been advised he had a life expectancy of less than 12 months he would be able to withdraw his pension as a lump sum. It asked Mr L to call or to write to its chief medical officer to discuss this further.

ReAssure then wrote to Mr L on 26 October 2021, saying it had completed calculations which showed it wasn't possible for him to take retirement benefits then as the Guaranteed Minimum Pension (GMP) which had to be paid was underfunded. The rules around GMP meant benefits could only be paid before age 65 if at least the GMP pension was provided. For Mr L this was a pension of £5,939.61 per annum. ReAssure said this would cost around £221,600, much more than his plans were worth. It recommended Mr L take financial advice.

Of the two s32's, Plan 1 had a value of around £84,700. This was the original arrangement and contained benefits arising from contracting out of the State Earnings Pension Scheme (SERPS), the GMP. Plan 2 was worth around £47,000 and had been set up later to receive a compensation payment following a review of the appropriateness of the advice Mr L had been given to transfer to the first s32. Benefits under Plan 2 had to be taken at the same time as Plan 1, but couldn't be used to fund any GMP shortfall, which was guaranteed by ReAssure.

Mrs L and Mr L then called ReAssure on 17 November 2021 to query why the letter saying benefits couldn't be taken had been sent given the Ill-health position. It transferred the call to the health claims team, who explained the necessary criteria. Mrs L was managing the call and said they didn't want to know what Mr L's life expectancy was at that time. ReAssure says it sent the forms necessary to make the Ill-health claim on 25 November 2021. Mrs L says these weren't received. Mr L's Oncologist wrote a letter of 5 January 2022, confirming his life expectancy was less than 12 months. But this wasn't sent to ReAssure then.

On 22 February 2022 Mrs L contacted ReAssure and asked for confirmation that if an Ill-health claim was successful the payments would be tax free. She also asked for details to be sent of the other benefit options available. ReAssure wrote on 1 March 2022 confirming the GMP was still underfunded, and benefits couldn't be taken.

Mr L passed away on 6 March 2022. Mrs L was very distressed and ReAssure wasn't notified of his death until February 2023.

ReAssure said Plan 1 could provide a lump sum of £9,144.39 to the estate and an annuity income of £2,341.93 per annum to Mrs L for the rest of her life. Some of the annuity would increase in payment. It said Plan 2 could provide a lump sum death benefit of £47,253.80, payable to Mr L's estate.

Mrs L complained to ReAssure in June 2023 about the Ill-health claim and how it wanted to pay the death benefits. She said she wanted the benefits paid as a lump sum, which was her late husband's specific wish.

ReAssure said the payment of the benefits it had set out was correct. But it apologised for some failings in its service and sent Mrs L £700 in compensation for this. Mrs L referred her complaint to our service and sent the Oncologists letter to ReAssure on 28 July 2023.

ReAssure wrote to Mrs L on 22 August 2023 to explain why it couldn't pay all of Plan 1 as a lump sum due to the pension legislation in place.

Our investigator looked into Mrs L's complaint and asked ReAssure for its records. It provided these and also increased its offer of compensation to £1,000.

Our investigator said she thought the complaint should be upheld in part, because ReAssure, had caused some delays. However, she said the total of £1,000 now offered to Mrs L in compensation was fair.

Our investigator said ReAssure accepted it had made mistakes and caused delays. But she said it had to follow the legislation relating to pensions set out in the Finance Act 2004. Which meant it couldn't pay out benefits on an ill-health basis without there being medical evidence that Mr L had less than 12 months to live. She said ReAssure had confirmed this in its letter of 28 September 2021 and the matter had been discussed on 17 November 2021. At which point Mrs L didn't wish to address this. She said medical evidence wasn't available until 5 January 2022 and wasn't provided to ReAssure until July 2023. And other retirement options were still being requested on 22 February 2022.

Because of this our investigator said it didn't appear the initial delay in ReAssure notifying the health claims team had delayed the medical information being requested. And the other claim forms needed weren't completed subsequently. She said once ReAssure had confirmed on 26 October 2021 that Mr L couldn't take his normal benefits before age 65, his only option was an Ill-health claim. And the conversation with the health claim team took place after that. She said whilst Mrs L had said the Ill-health claim forms hadn't been received these had been sent to the correct address. And ReAssure had no record of these being re-requested. So, she didn't think ReAssure was at fault for not processing any Ill-health claim.

In terms of the benefits available after Mr L's death our investigator said the rules around the GMP benefits required that Plan 1 provide a spouses' pension of 50% to Mrs L. And it wasn't possible for this to be paid as a lump sum unless the capitalised value of the pension income

was below £30,000, which it wasn't. Whereas Plan 2 was separate to the GMP and so could be paid as a lump sum.

Our investigator said the £1,000 compensation now offered was fair as it was in line with our service's guidelines when substantial distress and inconvenience over many months had been caused.

Mrs L didn't agree. She said the Oncologists' letter had been sent to ReAssure before Mr L had passed away. She said the necessary forms hadn't been provided and as her late husband's health deteriorated, they hadn't been able to pursue this with ReAssure. She said whilst she understood there were rules, if the pension couldn't be commuted to a lump sum because it was valued at more than £30,000. Then ReAssure should arrange things so that a lump sum of £30,000 be paid from Plan 1 and the rest as an annuity which could continue to be paid to her children in the event of her death.

As Mrs L doesn't agree it has come to me to decide.

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 am upholding the complaint in part. I understand what has happened is very distressing for Mrs L. But I can't tell ReAssure to change the way it has paid Mr L's benefits and I don't think it is fair to say it prevented him taking his benefits before he passed away.

Unfortunately, the rules on how pension benefits can be paid are both strict and complex. Those relating to GMP benefits are particularly so. And all pension providers have to apply the rules as they are. And whilst ReAssure caused some delay and should have picked up the potential for an ill-health claim to be made in August 2021, I don't think this resulted in the claim not being made. And because of how the rules applied to a pension carrying GMP benefits, I don't think there is a significant difference between how the benefits could have been paid before and after Mr L passed away.

I understand the great difficulty in discussing the life expectancy of a terminally ill loved one. But unfortunately notifying ReAssure of Mr L's terminal diagnosis verbally wasn't sufficient, under the law, for ReAssure to grant the payment of his benefits as a tax-free lump sum. This would have been the case for any pension plan, not just those containing GMP benefits.

The legislation requires that medical evidence be provided which confirms that the person's life expectancy is less than 12 months to allow such a claim. This was set out in ReAssure's letter of 28 September 2021 and was discussed subsequently during the telephone call of 17 November 2021. So, I think Mrs L was reasonably aware of this requirement.

ReAssure says it sent the necessary forms to begin an ill-health claim on 25 November 2021. The letter was correctly addressed and referred to the telephone call of 17 November 2021. Mrs L says she doesn't recall receiving this. She has said she requested these forms subsequently, but there's no record of that. She did speak to ReAssure on both 22 and 23 February 2022. Unfortunately, recordings of these calls aren't available. But ReAssure has notes of them. These indicate Mrs L asked what would happen if the plans were left as they were in terms of benefits. There is reference to an ill-health claim. Perhaps indicating that Mrs L thought this was in hand but was still undecided.

This was an opportunity for ReAssure to confirm that an Ill-health claim wasn't being dealt with, but it doesn't appear to have acted on this. I've considered the consequences of this. Unfortunately, this was just seven working days before Mr L did pass away. So, even if ReAssure immediately re-issued the necessary forms it's unlikely anything could have been progressed before then. So, having considered these events carefully I don't think it is reasonable to say that ReAssure delayed or prevented an Ill-health claim from being made in time.

But I've thought carefully about what would have happened had the claim form sent on 25 November 2021 had been completed and returned. And whether this would have better met Mr L's wishes over how his pension benefits be paid. I don't think that it would have. I'll explain why.

The forms provided for ReAssure to contact Mr L's doctors for it to request medical information necessary for it to assess the claim, as required by the law. There was no requirement for Mr L or Mrs L to see that information before it was sent to ReAssure. Based on the Oncologist's letter written around six weeks later it would be highly likely that the claim would have been accepted by ReAssure. This letter wasn't addressed to ReAssure but to Mr L's GP and copied to him. Had the Oncologist been contacted before then by ReAssure, it's reasonable to assume this evidence would have been available before January 2022.

Once the evidence was received ReAssure would have needed to process this and undertake some calculations regarding Plan 1, which I'll set out below. I'd expect it to undertake these promptly, but some time would still be needed and then they'd need to be put to Mr L for him to make a decision.

Assuming he went ahead Plan 2 could have been paid out as a tax-free lump sum, which is what happened after Mr L passed away.

Unfortunately for Plan 1 that wouldn't have been possible because of the GMP requirements. ReAssure was required to retain sufficient funds from Plan 1 to provide a spouses' pension for Mrs L. Which would be 50% of what the GMP would have been for Mr L. If there was any money left over after providing for this, it could be paid as a tax-free lump sum. And if he subsequently passed away ReAssure would then pay that spouses' pension to Mrs L, for the rest of her life.

Mr L did pass away very soon after this. And what that means is that if the figures had been calculated by ReAssure before his death, I think they would have been very similar to those that were calculated after his death. That means the available lump sum under an Ill-health claim would likely to have been similar to the lump sum benefit available after his death.

Following Mr L's death ReAssure did consider whether the pension triviality rules could be used to allow a greater lump sum to be paid for Plan 1. These rules, potentially allow pension funds worth less than £30,000 to be taken as a lump sum. Because of the requirement to pay a GMP pension these rules are also complex and come in two parts. First, they require the spouse's GMP pension to be valued by multiplying the annuity income by 20. If the resulting value is less than £30,000 the pension could be commuted for a lump sum. As the spouses' pension is £2,341.93, this calculation gives a capital value of £55,435.60.

Second, it was also necessary to compare the cost of actually providing the spouses' GMP to the £30,000 threshold. This was also higher, being the difference between the fund value of £89,098.80 and the lump sum paid of £9,144.39. That means it isn't possible to commute

the annuity for a lump sum. And for the same reasons it wouldn't have been possible to fully commute Plan 1 on grounds of triviality before Mr L passed away either.

The GMP rules say where there is a spouse, a spouse's pension must be provided for. And after both spouses have died annuity payments would normally stop. Even if an annuity could be arranged to provide benefits for any children following the death of the annuity holder, these can only normally continue until the child is 23 years old, then must stop.

Unfortunately, it seems Mr L's wishes for Plan 1 weren't available due to the pension legislation in place, even if there had been no delays, no issues with the paperwork and evidence necessary to process an ill-health claim.

I've considered whether ReAssure's actions have resulted in a delay in Mr L's benefits being paid. Most pension providers seek to process ill-health claims promptly, subject to receipt of the required medical evidence. It's likely therefore that this could have been completed before Mr L's death, but it isn't certain when. After Mr L had died ReAssure could only pay the benefits once it had been notified of this, which wasn't until nearly a year later. But it does seem that the potential time difference of when benefits could have been paid on either an ill-health or a death claim basis would have been relatively short. And as I've said, I don't think it is fair to say that this was delayed by ReAssure.

From the evidence available ReAssure has paid interest on the benefits since the date of Mr L's death as I'd expect it to do. So, whilst there was an initial delay in ReAssure recognising the possibility that an ill-health claim could be made, I don't think this affected the outcome here. The primary cause of Mr L's wishes not being met is the pensions legislation in place. I agree that this does seem very restrictive, but GMP can offer valuable, guaranteed benefits for many people and the rules in place reflect that. And ReAssure must abide by the legislation and I think it has settled Mr L's pension benefits in the only way available to it.

I appreciate this has been very distressing for Mrs L, but I can only consider the issues caused by ReAssure. And taking everything into account I think the offer of £1,000 compensation it has made for the delays it did cause is fair. So, I can't reasonably ask it to do any more than it has offered.

Putting things right

ReAssure did cause some delay and I think this caused Mrs L distress and inconvenience and it's fair that it compensates her for that.

I understand ReAssure has already paid her £700 in compensation for this. It has offered to increase that to £1,000. I think that's fair in the circumstances here.

My final decision

My final decision is that I uphold the complaint in part against ReAssure Limited.

ReAssure Limited must pay Mrs L a total of £1,000 compensation for the distress and inconvenience she has been caused, allowing for any payment it has already made.
Your text here

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

Nigel Bracken
Ombudsman