DRN-4887381

The complaint

The estate of Mrs F complains that Rothesay Life Plc (Rothesay) withdrew an offer of a lump sum following the passing of Mrs F. It says that Rothesay delayed matters and used this to its benefit. The estate is represented by Mr and Mrs F's son.

What happened

On 7 May 2008, the late Mr F purchased an annuity with Rothesay Life. This provided a spouses pension payable to Mrs F upon his death should he pre-decease her.

Mr F sadly passed away on 30 June 2023 and Mr F's son sent correspondence to Rothesay to notify it of this on 8 July 2023.

Rothesay say it was first aware of the death of Mr F on 17 July 2023 through its online mortality screening service and it wrote to the Estate on 19 July to ask for forms to be completed. It says on 26 July it received confirmation Mrs F was the surviving spouse.

Sadly Mrs F then passed away on 30 July 2023. Unaware of this at this point Rothesay issued correspondence on 3 August offering Mrs F either a lump sum of £3,490.25 or an annual income of £364.20 per annum.

Mr and Mrs F's son contacted Rothesay to tell it Mrs F had sadly passed away. In response Rothesay expressed its condolences but said the offer was no longer valid and it instead could only pay the additional spouse's income that was due of £24.35.

Mr and Mrs F's son was unhappy with Rothesay's explanation and feels it used the delays to their advantage. Our investigator looked into matters and said that whilst Rothesay could've dealt with matters quicker, its response times hadn't been unreasonably long. He explained that once it was aware Mrs F had passed away it was obliged to pay the pension due between the period of the first payment date and Mrs F's passing. And that overpayment may cause issues with HMRC.

Mr and Mrs F's son explained the reasons why he remained unhappy, I've summarised these below:

- The start date of the offer/entitlement to payment began on the date Mr F passed away and not the point at which correspondence was received. However long it took to do sort out the payment shouldn't impact the entitlement to benefits of Mrs F and the estate.

- Mr F wouldn't have wished for a single payment of £24 and he wouldn't have wanted the estate to receive the annual option as Mrs F had been ill with Alzheimer's for ten years and had been given weeks to live. Rothesay simply picked the cheaper option for them.

- Other institutions sent back the death certificate immediately and didn't need to do any checking. The investigator had said Rothesay needed time to validate the death, but he questions what they needed to validate.

- The dates of Rothesay's letters are questionable as it took 4-6 days to arrive by Royal Mail and this is longer than other institutions. They also chose to converse by letter until they were emailed and then still there were delays in response. No other financial service provider was as delayed.

- The offer made of £24 was almost vindicative. Another firm had actually overpaid a policy as a gesture of goodwill rather than work out the money to the point of pence.

- Rothesay had acted unethically. It claims to be ethical but it clearly isn't and therefore is guilty of mis-selling a product.

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.

Firstly I'd like to say I was sorry to read about the circumstances here, losing both parents so close together must have been very hard. And the matters relating to this complaint couldn't have been easy to deal with especially with the unfortunate timing of the offer.

In relation to the merits of the complaint, I've thought about what Mr and Mrs F's son has said about what Rothesay did wrong but I'm afraid I broadly agree with what our investigator has already explained.

One thing that perhaps hasn't been explained in much detail is the basis/context of the offer made by Rothesay. When Mr F sadly passed away Rothesay, the same as any other pension provider in its position, has to provide benefits in line with the terms of the annuity contract. Mr F's contract was that a spouse's pension of £364 would be payable to Mrs F if he pre-deceased her. So if Rothesay stuck rigidly to the entitlement under the contract the spouses pension would've been paid until the passing of Mrs F, as this was her entitlement. And it would have only paid what it has in reality, as upon the death of the last remaining person insured the contract ends. To pay more than was due to a customer under a pension could attract the attention of HMRC, as an unauthorised payment.

There will have been no entitlement to a lump sum payable to a dependant under the terms of the pension contract Mr F had. However, Rothesay have taken up the option allowed under legislation to instead offer a lump sum in place of the customer's entitlement to their spouse's pension for the rest of their lives. This isn't something it has to offer. In doing so it obviously adds another step to the process of paying the death benefits by giving people a choice to make.

Of course it is not doing this to be purely charitable, like all insurance providers it is a business first and foremost. In offering this option it is essentially betting that this will be cheaper in total than paying all of its policies out as a spouse's pension for life. But this is broadly the basis of any insurance offering. Some will be better off than others but the insurer over time aims to profit. To come to a figure for the lump sum Rothesay will have used a calculation based on what it believes is the likely life expectancy of the recipient and how much in pension benefits it would likely pay to that customer for the rest of their lives. This isn't done on the circumstances of the specific customer (I suspect this is because it would be a costly exercise) and instead on average mortality rates.

As I've said this will make the process longer as customers are given the opportunity to make a choice regarding the pension benefits due to them. One consequence of this could be that as happened here, before this process is completed the spouse passes away. In that instance aside from possible HMRC issues of overpaying from a pensions contract, a business is not going to pay a lump sum based on an estimate of unknowns when the event has already occurred. I appreciate that must have been hard to take for Mr and Mrs F's son. But the lump sum payment was to be paid to Mrs F as she was part of the insurance contact when Mr F included a spouse's pension within his annuity. So once it had been informed that Mrs F had passed away and this was before it had been notified of her choice (I appreciate the choice was her sons as he had power of attorney), Rothesay had in my view no realistic course of action other than to pay the amount of spousal benefits it owed. And this was for the period after the first payment was due under the contract and Mrs F's passing.

I appreciate Mr and Mrs F's son has told us other providers were more generous, it's not clear if these were also pension contracts and what the exact circumstances were but I don't think this means Rothesay did anything wrong. We have seen instances where businesses have paid more than was due under a contract because it made a mistake, or it wasn't aware a death had occurred and they have had to claim back the overpayments. So whilst I understand it is very upsetting that the offer was made and then withdrawn, I don't think Rothesay did anything wrong here.

However, there is an argument to say if a provider takes so long over the offer process and a customer passes away within that period it should pay redress. As the customer would have received that money if it wasn't for the unreasonable delays caused by the business. Having looked into the circumstances here, whilst Rothesay could have been quicker, I don't think it caused an unreasonably long delay in making the offer.

From being notified of the death to sending the offer out, less than a month had passed. In this time it had to send and receive the forms it required and process that information and then calculate and send out the offer. I don't know what day it received the notification of Mr F's passing but at the earliest this would've been 10 July and to the date the offer was made was less than twenty working days after this. Whilst it could've acted quicker, I don't think this is unreasonable, especially as there were additional steps required between receiving the notification and sending out the offer.

To answer Mr and Mrs F's son's question directly, I don't know what Rothesay's processes are for validating information about deaths. I suspect the death certificate should be enough but regardless of this it still had to get additional information about whether there was a surviving spouse and then formulate the offer letter. So I don't think it could've made the offer immediately. It's my view that it's just a set of very unfortunate circumstances that the offer letter went out after Mrs F passed away. In doing so expectations were raised of an offer that couldn't be followed through.

I appreciate Mr and Mrs F's son had no control over this situation and he was completely reliant on Rothesay for the time it would take to make the offer. And had it done things much quicker, the Estate would have received the lump sum. I appreciate this must be frustrating and upsetting but I can only uphold a complaint where the business did something wrong that caused a customer to suffer a loss. I don't think what happened here fits that description for the reasons I've explained.

I can also see why Mr and Mrs F's son feels that the payment of £24, considering what was initially offered, is very unfair and almost rubbing his nose in it. And he finds Rothesay's actions unethical. But I'm not sure it actually had any choice in the matter, it had to pay Mrs F's entitlement under the contract to the estate. And as I've said to pay more could attract the attention of HMRC under its unauthorised payment legislation. Gov.Uk says about unauthorised payments:

'What is an unauthorised payment?

The tax rules specify the conditions that need to be met for payments to be authorised. Any payment that does not meet these conditions is an unauthorised payment.

Common examples of situations where payments are classed as unauthorised include:

- *trivial lump sums in excess of £30,000*
- *continued payments of pension after the member's death'*

Payments made after the member's death is the second example provided of many on its website. And I think for Rothesay to pay a lump sum of over £3,000 from a pension to Mrs F when she had at the point passed away would likely meet this criteria. And unauthorised payments come with sanctions to both the provider and the recipient. I've not based my decision on this as I don't think Rothesay was wrong in any event but I suspect had it paid the lump sum after notification of Mrs F's passing, it would've been treated as an unauthorised payment.

In conclusion I do sympathise with Mr and Mrs F's son's arguments, and I think it's completely understandable that he feels let down by what occurred especially in the circumstances in which this offer was made. But as I've said I think this is down to a set of circumstances and timings that Rothesay had no way of foreseeing rather than anything it did wrong. This doesn't diminish the impact it had on Mr and Mrs F's son, but I can only direct Rothesay to do something if I felt it was fair and reasonable to say it made an error that caused a loss. And having considered everything I don't think it acted unfairly or unreasonably.

My final decision

For the reasons explained I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs F to accept or reject my decision before 8 November 2024.

Simon Hollingshead
Ombudsman