DRN-4961212

Financial Ombudsman Service

The complaint

Mr M complains that Legal and General Assurance Society Limited (L&G) delayed setting up an annuity, causing the quoted annuity rate to be lost. He wants the original rate honoured.

What happened

Mr M had a pension with Aegon and wanted to take his benefits. As it no longer offered annuities it introduced him to L&G. An annuity illustration and application pack were issued by L&G on 7 November 2023. The annuity rate was guaranteed until 17 December 2023, provided Aegon transferred the funds to L&G by then. Mr M completed the paperwork, returning it by first class post on 9 November 2023. L&G says it received this on 15 November 2023 and the funds were requested from Aegon on 17 November 2023. On 21 November 2023 Aegon asked L&G whether Mr M wanted any tax-free cash paid from his plan. He didn't as he'd confirmed on the L&G application. However, L&G emailed Mr M on 29 November 2023 to query this, and he confirmed he didn't the same day.

When Mr M didn't hear further from L&G, he emailed it for an update on 11 December 2023, concerned about the approaching illustration guarantee date. L&G replied on 19 December 2023 advising the funds hadn't been received and suggesting he contact Aegon. Dissatisfied, Mr M emailed L&G and asked if it would honour the annuity rate. L&G opened a complaint and said it would chase Aegon for an update. It then emailed Aegon on 21 December 2023 confirming no tax-free cash was required. An IFA acting for Mr M pressed L&G for updates and for it to honour the original annuity rate through December 2023 and into January 2024. But, without a reply from L&G, Mr M says he instructed Aegon to pause the transfer.

L&G accepted Mr M's complaint in part and apologised. It said it had taken too long to reply to Aegon's tax-free cash query and paid Mr M £200 compensation for the distress and inconvenience caused by the delays. L&G said it had chased Aegon on 9 and 21 January 2024 before being told Mr M had cancelled the transfer. But it said given the length of time Aegon typically took to complete transfers, which L&G said was around three to four weeks, it probably wouldn't have received the funds before the guarantee date of 17 December 2023 in any case.

Mr M referred his complaint to our service. He said he wanted to proceed with the annuity and for L&G to honour the original rate offered. Our investigator looked into it, and she upheld the complaint.

Our investigator said, as Mr M had stated he didn't require tax free cash on the application form it wasn't clear why L&G had queried this with him, instead of just confirming that to Aegon. And she said L&G should have done this by 23 November 2023. She said L&G hadn't provided evidence of how long Aegon took to make payments. And that ABI guidelines stated open market option transfers like this should be completed in 30 days. She said as L&G had all the information it needed by 15 November 2023; it should have been able to set the annuity up before 17 December 2023. As it was likely Aegon would have made the transfer by then. She said the £200 compensation paid was fair for the distress and inconvenience caused. But that L&G should honour the original illustration and set the annuity up as if it had received the expected transfer value on 15 December 2023. And that L&G should pay Mr M the income due from that date with interest at 8% per year simple added.

L&G didn't agree. It said had it contacted Mr M over Aegon's tax-free cash query within its normal five-day timeframe (rather than the six it took) this would have still only left 13 working days before the guarantee expired on 17 December 2023. L&G said it wasn't fair to assume the funds would be received in time as the average number of calendar days taken by Aegon to make transfer payments once requested had been 44.03 during 2023 and was 49.08 so far in 2024. L&G said as Mr M had decided to cancel the application it wasn't fair that it be required to backdate income payments and that it couldn't be held responsible for any change in the value of his pension fund.

Our investigator said the average payment time quoted by L&G would be influenced by the complexity of each transfer request, with some being completed in only a few days. She said Mr M's transfer was straightforward, with no reason for it not to have completed before the quotation expired. She said it had been the delays and inactions of L&G that led Mr M to pause, rather than to cancel, his application, which he'd wanted to continue, whilst waiting for clarification. And this wouldn't have happened if it had processed the application correctly.

As L&G 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.

When considering complaints about how long a provider takes to arrange an annuity our service looks to see if there were any avoidable delays in the process. Here L&G accepts it caused delays but argues this didn't matter as based on its average experience of Aegon's own processing times, the deadline still wouldn't have been met. I don't think this argument is reasonable. Average timeframes are just that and some applications will be processed promptly. And it seems likely given the extreme delay of around a month to answer Aegon's routine query over tax-free cash that delays caused by L&G itself will impact how quickly other providers can complete transfers on average.

The most recent industry guidance on how long an open market annuity purchase should take is from 2012. And says the providers involved must "*use best endeavours to ensure the product is set up within 30 days from the receipt of information by the receiving provider".* From the evidence available L&G made no attempt to meet this standard. Since this guidance was issued electronic data exchange between providers has become widely used, which should reduce processing times. And reflecting this in the similar area of pension switching in 2016 a group comprising the ABI and nine other industry bodies suggested that each step of a transfer process should be completed within two working days.

Aegon's enquiry about tax-free cash was routine and there was no need for L&G to contact Mr M over it. So, I think it should have confirmed that no tax-free cash was required by 23 November 2023. Had it, Aegon then had around 17 working and 25 days in total to make the payment to L&G, by 17 December 2023. That would be a total of 31 days since L&G requested the transfer. And Aegon was already actively working on Mr M's application. So, I think on the balance of probability it is more likely than not that Aegon could have made the payment in time, given the average quoted by L&G. And had L&G responded as it should have it's also likely that Mr M would have chased Aegon to expedite matters just as he did L&G, which could include asking that payment be made by same day CHAPS transfer, if necessary, typically saving around two working days. So, I think the annuity rate was lost due to delays caused by L&G.

I've thought carefully about the consequences of Mr M deciding to pause the transfer. I think the key issues here are why he requested that and what would have happened if he hadn't. The evidence shows that he and his IFA made multiple attempts to obtain updates from L&G through December 2023 and January 2024 and for assurances about the annuity rate. But L&G either didn't respond or provided much delayed responses to the queries. I'm mindful that arranging his annuity was an important financial decision for Mr M. And, given the uncertainty of what rate would be available, through no fault of his own, I don't think it was unreasonable for him to pause matters until clarification was provided.

But if Mr M had continued with the transfer, and L&G hadn't honoured the annuity rate, I think he would have referred the complaint to our service. And it would be one that I would uphold because I think there were avoidable delays that caused the original annuity rate to be lost. If that had resulted in losses for Mr M, I'd tell L&G to honour the original annuity rate and make good any fall in the transfer value due to the delay, to put Mr M back into the position he should have been in, but for the errors. I think that same outcome is fair now. The annuity rate was lost and any change in the fund value is only due to delays caused by L&G.

So, I don't think L&G has treated Mr M fairly, it effectively ensured there was no chance the transfer could be completed by the guaranteed date, rather than doing all that it could to help meet it. If that has resulted in losses for Mr M it is fair that he be compensated.

Putting things right

My aim in awarding compensation is to put Mr M as closely as possible into the position he should have been in but for the errors made by L&G.

Mr M has said he wishes to proceed with the annuity on the terms offered in the illustration of 7 November 2023 and I think that's reasonable in the circumstances. L&G required the funds by no later than 17 December 2023, which was a Sunday. So, as payment would need to be made no later than 15 December 2023 by CHAPS or a few days earlier if by BACs, I think it's reasonable to base the Aegon plan value on that of 15 December 2023.

Aegon will need to provide a value for the policy on 15 December 2023 and subsequently complete the transfer. Mr M may need to complete application forms for both L&G and Aegon in respect of this, but L&G should simplify this as far as possible for him.

Using 15 December 2023 value provided by Aegon, L&G must then set up an annuity on the same basis applied for by Mr M using the annuity rate applicable to the illustration dated 7 November 2023.

L&G must calculate the shortfall in income payments since the annuity should have been set up and pay this to Mr M subject to a notional reduction for tax, so the right amount of compensation is paid. Mr M has confirmed he is a basic rate taxpayer, so a deduction of 20% is appropriate. As this is a notional reduction for tax purposes Mr M won't be able to reclaim anything from HMRC.

L&G must add interest to the missed income payments from the date they became due to the date of settlement at 8% per year simple.

Income tax may be payable on any interest paid. If L&G deducts income tax from the interest, it should tell Mr M how much has been taken off. L&G should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

L&G should provide Mr M with a simple calculation of how it worked out the figures.

Mr M has been caused distress and inconvenience by what has happened but as this remedy should put him back into the position he should have been in I think the £200 already paid for this is fair in the circumstances.

My final decision

My final decision is that I uphold the complaint against Legal and General Assurance Society Limited.

I direct Legal and General Assurance Society Limited to compensate Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 January 2025.

Nigel Bracken
Ombudsman