DRN-4972910

The complaint

Mrs D and Mr P, as trustees of a trust, have complained about Reassure Life Limited ('ReAssure') in relation to three Maximum Investment Plan ('MIP') policies held within the trust.

The trust was originally set up by Mrs D and Mr P's parents, who I'll refer to as Mr and Mrs P2 in my decision. Mr P holds power of attorney for both Mr and Mrs P2.

What happened

In 1984, through the predecessor business of ReAssure – Skandia – Mr and Mrs P2 invested into three life assurance investment policies (MIP policy numbers ending 030, 022 and 014) which were held within a trust. Mr and Mrs P2 were both settlors of the trust as well as trustees, along with other trustees over the period.

My understanding is that although a TSP policy has also been referred to, it is not the subject of this complaint and has only been referenced as the premiums for this policy were included in the total annual premiums paid on all policies.

The policies had 'Qualifying' status which meant they attracted tax benefits.

In 2013 Mr and Mrs P2 signed declarations for HMRC purposes to confirm that the annual premiums paid for the policies didn't exceed HMRC's limit of £3,600. Mr P says that because of incorrect advice given by ReAssure to his father at that time, the MIP policies were no longer Qualifying, and the status changed to 'Restricted Relief Qualifying Policies' ('RRQP') and subject to income tax of between £120,000 and £150,000.

Mr and Mrs P2 had extended the policies every ten years and were due an extension on 31 July 2022. ReAssure had written to Mr and Mrs P2 on 4 June 2021 stating that they needed a reply if the policies were to be extended, ReAssure didn't chase for a response when it didn't receive a reply. ReAssure only wrote to Mr and Mrs P2 on 20 June 2022 stating that the policies were due to mature on 31 July 2022.

Mr and Mrs P2 now both suffer from dementia and are in senior living accommodation. Mr P took over control of his father's finances and contacted ReAssure after he received the letter of 20 June 2022 and confirmed with ReAssure that the policies should not be terminated on 31 July 2022. However, the policies were terminated, and the resulting proceeds fall inside of Mr and Mrs P2's estate for inheritance tax purposes which will cost the estate over £200,000 in inheritance tax.

Mr P complained to ReAssure about both errors. He said it had a duty of care to his father to support him in the management of his investments and it had told Mr P that the policies wouldn't be terminated but they were. Mr P was also unhappy at the handling of his case and the inability to get the answers he wanted.

On 13 September 2022 ReAssure responded to the complaint about the extension to the policies;

• It apologised that on two occasions Mr P hadn't been called back as he should have been.

• It confirmed there was no longer an option for the policy terms to be extended. It apologised that Mr P was given incorrect information about this during telephone calls. He should have been told this during the call of 29 July 2022.

• Its records showed that a letter was issued to Mr and Mrs P2 on 4 June 2021 for each of the policies confirming that if an extension was required the deadline for a response was 1 August 2021. It was satisfied that the information and options were provided as they should have been.

• It offered £250 for the error caused and inconvenience.

ReAssure wrote to Mr P again on 16 September 2022 regarding the tax status of the policies;

• When taken out the policies were classed as 'Qualifying' under the Income and Corporation Taxes Act which meant that provided there were no changes to the tax status and premiums had been paid for at least ten years then the policies would be free of any income tax liability.

• Certain changes to the policies could impact the tax-free status and additional rules were introduced in the Finance Act of 2013.

• Mr and Mrs P2 had exercised the Term Extension Option on the policies from August 2012 which meant the new maturity dates altered to 31 July 2022. These alterations fell under the Finance Act 2013 and were in the 'transitional period' before the rules came into full effect and there was no requirement for Qualifying Policy Declarations to be completed in the time limits set by HMRC, but Mr and Mrs P2 needed to declare if the premiums paid exceeded the HMRC limit of £3,600 per annum.

• Mr and Mrs P2 did this in August 2013. But there was an error in the declarations as the limit applied to all the Qualifying policies held – not individually. For 2012 the annual total premium paid was £5,279.82 and so the policies became RRQP in April 2013 in line with HMRC rules. Only part of the chargeable gain would be assessable for tax based on a proportion of the premiums paid.

ReAssure wrote again to Mr P on 22 March 2023 further to a conversation;

• It apologised for its delay in responding and would be sending an additional payment of £250, making the total payment of £500.

• The policies were rendered as RRQP further to the April 2013 HMRC rule change as they were 'issued before 21 March 2012 and varied after that date so as to increase premiums' which breached the £3,600 limit. It provided details of the relief restrictions.

• It appreciated that Mr and Mrs P2 weren't informed of the change in the policy status to RRQP until November 2022 rather than in 2013.

• It didn't agree the policies should be extended beyond the maturity date of 31 July 2022 as letters were issued to Mr and Mrs P2 on 4 June 2021 so adequate notice had been given.

• As the policies were held in trust Reassure thought the maturity proceeds wouldn't be considered as an asset for Mr and Mrs P2 for inheritance tax purposes, but legal advice should be sought.

Unhappy with the outcome Mr P and Mrs D brought the complaint to the Financial Ombudsman Service.

Our investigator who considered the complaint thought it should be partially upheld. In her assessment of 8 April 2024, she said;

Qualifying or RRQP status

• With reference to either the Qualifying or RRQP status, after reviewing HMRC's tax guidance she couldn't agree that ReAssure was incorrect to record the status of the policies as RRQP. They had been significantly varied by the extension after they were taken out and the annual premium limit for Qualifying policies of £3,600 had been exceeded.

• ReAssure hadn't noticed the inaccuracy of Mr and Mrs P2's Declarations signed in 2013 but that didn't alter the fact that the annual premiums were more than £3,600. So, some, if not all, of the policies became RRQP regardless of when the error had been noticed.

• Mr and Mrs P2 had been told that 'recycled' premiums – I assume this means because segments were sold to pay the premiums and no new money was introduced – didn't count for the annual £3,600 limit but in correspondence ReAssure's predecessor made clear that it could only give its interpretation and couldn't be held responsible if HMRC's position was different. Mr and Mrs P2 were urged to speak with a financial adviser as Skandia wasn't authorised to give investment advice.

• At the time in 2012 there would have been two options available to Mr and Mrs P2 –

1. Stop paying into the policies to prevent them becoming RRQP by not extending the term but this would have meant additional premiums weren't added and the investment value would be reduced. Mr and Mrs P2 could have either taken other investments and put them into trust for the benefit of others or kept the investment benefit themselves.

Either way the investments would be unlikely to be tax free at surrender, it would just change who was liable for the tax.

2. Keep paying into the policies and allowing them to become RRQP by extending the term in 2012 and taken out additional investment by investing more money beyond the premiums paid for the policies, around the time the policies were maturing to mitigate the expected tax liability those maturing policies would incur.

But the tax incentive investment vehicles for such a plan would be exclusively high risk and the investigator wasn't convinced Mr and Mrs P2 would have used such investments to mitigate the tax liability of the 1984 MIP trust.

• The other alternative would have been to have paid the tax if the policies had matured in 2012 but the maturity value would be less because less premiums would have been paid in.

• The policies remained within trust, and it was only for the purposes of the annual premium limit that Mr and Mrs P2 were considered beneficiaries of the policies as per HMRC guidance. But the trustees should seek independent legal and taxation advice about this point as ReAssure wasn't able to provide it.

• She didn't think that ReAssure needed to do anything more to put the matter right.

Postponement of the maturity of the policies

• Mr P had been told – pending the production of the Power of Attorney documents – that the maturity of the policies would be postponed so alternatives could be explored. They had since matured so an extension wasn't possible. Mr P had already been paid £250 for this misinformation and the investigator thought this was fair.

• The investigator wasn't clear why the policies had matured in 2022 rather than 2024, as they were originally taken out in 1984 and extended on the tenth anniversary and ReAssure hadn't responded to her questions about this.

• On the basis that the maturity date should have been 2024 rather than 2022 then ReAssure ought to have written to the new trustees in June 2023. Mr P has said he would have extended the policy if he had been contacted – as he should have done – so the investigator recommended that ReAssure reinstate the policies and restructure them on the basis they had been extended as of August 2024.

In response to the investigator Mr P said he agreed with the investigator's complaint summary with some exceptions;

• He suffered from appalling customer service – taking a long time for ReAssure to answer the phone, being cut off and written responses which didn't answer his questions. It was impossible to talk to someone who could make a decision. This service had a role in pointing out unacceptable industry practice.

• ReAssure had sent him two cheques for £250 but the trustees hadn't cashed these as resolution to the complaint. He wanted ReAssure to rethink its customer service incompetence and issue an appropriate compensation payment.

• RRQP status

The investigator's interpretation of tax law may be valid, and he had taken legal advice.

Mr P's main issue was that ReAssure were able to make the interpretation in 2022 but failed to do so in 2013 when Mr and Mrs P2 signed the declarations that the policies' premiums didn't exceed £3,600. He had considered the alternative options that the investigator concluded Mr and Mrs P2 could have taken in 2012 but this didn't detract from the fact that ReAssure failed to advise the trustees that the declaration was incorrect. All of the MIP and TSP policies were held by ReAssure. It had a duty of care to make sure Mr and Mrs P2 didn't make false statements when signing the declarations. He requested that it be considered whether ReAssure were negligent in their duty of case.

• Maturity postponement

He was pleased that this complaint point had been upheld and that the correct trustees hadn't been told about the termination of the policies.

His main issue was that he was told it was impossible to reinstate the policies especially with the IHT tax status if held within the trusts. He had been advised that the termination had caused the sums to fall into Mr and Mrs P2's estate for IHT purposes. He had no reason to believe that ReAssure would be able to reinstate the policies with all the original benefits for the trust without any tax impact at the time of probate.

The policies were cancelled in July 2022 and stock markets had risen 20% since and ReAssure are duty bound to compensate for this loss. He had concerns about getting ReAssure to reinstate the policies in a reasonable time and wanted advice about this service's ability to enforce a ruling.

In response our investigator said the following to Mr P;

• Complaint handling isn't a regulated activity. But overall, she was satisfied with the payment of £500 that ReAssure offered Mr P for the delay in providing a complaint response and for the distress and inconvenience caused.

• The signing of the declarations in 2013 hadn't changed how the policies worked or viewed for tax purposes so she couldn't agree this had impacted on the decision making for the trust.

• If a business doesn't comply with a final decision that has been accepted by the complainant, then the complainant can have the decision enforced by a court of law.

ReAssure didn't reply to the investigator. As the complaint remained unresolved, it was passed to me for a decision. I thought the complaint should be upheld and broadly for the same reasons as the investigator but wanted to allow the parties the opportunity to provide me with any final comments or evidence prior to issuing my final decision. So, I issued a provisional decision. Here's what I said;

'I've had to reach my provisional decision in the absence of responses from ReAssure to some of the investigator's questions or her assessment of the complaint. This would have been useful as no doubt additional information would have been provided. I have to base my decision on the information and evidence I do have and what I consider to be fair and reasonable. And in the absence of information or evidence I have to further base my decision on the balance of probabilities and what I think more likely happened.

Qualifying or RRQP status

When the policies were taken out in 1984, they were classed as 'Qualifying' under the Income and Corporation Taxes Act. This meant there were attractive tax benefits. But the tax regulations and the policies themselves changed over the years – they were extended, and we know that Mr and Mrs P2 exceeded HMRC's annual limit for premiums of £3,600. ReAssure has said that for 2012 the total annual premium paid was £5,279.82.

As a result of the changes the policies' statuses were classed as RRQP rather than Qualifying. This meant some of the chargeable gain upon encashment would be assessable for tax proportionate to the premiums paid.

In his response to the investigator Mr P said his main issue with this is that ReAssure were able to make the interpretation in 2022 but failed to do so in 2012. He had considered the alternative options Mr and Mrs P2 could have made – which the investigator thought unlikely because of the level of risk of those vehicles – but he said ReAssure had a duty of care to make sure Mr and Mrs P2 didn't make false statements when signing the declarations.

Mr P hasn't suggested any alternative actions Mr and Mrs P2 could have taken at the time other than stating his father would have 'taken different financial decisions if he had been aware the policies would be declared RRQP in 2013'.

I can appreciate Mr P's frustration that the status of the policies has only been clarified around ten years after the status of them changed. But overall, I don't think this would have altered the status of the policies or the fact they may be assessable for tax when a chargeable event occurs, by whomever this may be payable. I've reviewed HMRC guidance for when a Qualifying policy becomes a RRQP, and this suggests the status changed because of the changes to both the policies and the tax legislation – the life of the policies was extended, and the annual premium aggregated amount was limited to £3,600 in April 2013.

So, I have considered what different action Mr and Mrs P2 would have taken if they had known about the change in status of the policies. Some examples of these were laid out by the investigator and I agree that sheltering the tax payable in the suggested investment vehicles would likely have posed too high a risk for Mr and Mrs P2. Mr and Mrs P2 could have looked at further policies but again they would have exceeded the £3,600 annual limit.

Mr P has questioned ReAssure's duty of care in his parents making incorrect HMRC declarations. I haven't been told of any impact of those incorrect declarations – action taken by HMRC against Mr and Mrs P2 – but I have considered what ReAssure's predecessor said to Mr and Mrs P2 about this at the time.

Mr P has located the documentation relating to the 'advice' given to his father in 2012 and I have reviewed that. Skandia wrote to Mr and Mrs P2 on 27 July 2012 post the March 2012 Budget and the tax rules change around qualifying policies.

It detailed the new cap of £3,600 that could be invested into 'all qualifying policies you own without being taxed on any gains.' It also referred to the potential impact of the new tax rules on currently held plans and taken before 21 March 2012 – change in premiums, partial encashment and an extension option. There was also the point that;

> 'Qualifying policies that are transferred to a new owner after 5 April 2013 may be affected, as will policies that are placed under trust. However, this proposal is currently still subject to consultation'.

The letter continued;

> 'The new rules are currently included in the Finance Bill 2012, however the final detail is subject to a Government Consultation Period. This is Skandia's

> current understanding of the impact of the changes to the qualifying policy rules.
>
> Please note, neither Skandia nor its employees are authorised to provide tax or legal advice and we cannot accept responsibility for any action taken or refrained from being taken as a result of the information contained in this letter. We strongly recommend that you seek advice from your financial adviser.'

Mr P has explained that Mr P2 was very diligent with his financial affairs and looking at Mr P2's thorough record of a phone conversation he had with the business on 8 August 2012 subsequent to the above, he notes the adviser 'was helpful but made the point that Skandia could only give their interpretation and could not be held responsible if the Revenue adopted differing positions.' The notes record that the adviser thought that because no 'fresh money' was added to the policies they would be protected, and he also thought that 'recycled' premiums wouldn't count.

I'm satisfied that the above – both the letter and Mr P2's phone notes – make clear that advice wasn't being given. Only information based on the business' understanding of the new rules post the Budget. But it's evident that the proposals were subject to change, the information given was the business' own current interpretation of those new rules, the business couldn't give tax or legal advice and that Mr and Mrs P2 should seek their own advice.

So, while I appreciate Mr P's question about duty of care, I think that is evident in the above in that it was made clear that there was still some ambiguity about the new changes. Quite simply I'm satisfied advice wasn't given – the implications of the Budget were for Mr and Mrs P2 to independently establish. However, its accepted that subsequently – when the rules became clearer – ReAssure missed the fact that Mr and Mrs P2's annual premiums exceeded HMRC's limits.

But returning to my above point, I don't think this would have made any difference to the outcome. Mr P hasn't made any suggestion about the alternative action Mr and Mrs P2 may have taken and it's not my role to retrospectively say what other options would have been suitable or available to them. My role is to consider what happened at the time and whether ReAssure (or its predecessor) treated Mr and Mrs P2 fairly and reasonably. And I don't think that Mr and Mrs P2 were mis-advised in that they weren't given advice, only information based on Skandia's then current understanding of changes to tax legislation.

Taking all of the above into account, I don't uphold this element of the complaint.

<u>Postponement of the maturity of the policies</u>

ReAssure has said that as Mr and Mrs P2 had exercised the Term Extension Option on the policies from August 2012 it meant the new maturity dates altered to 31 July 2022.

In her assessment our investigator explained it wasn't clear why the policies' maturity dates were set for 2022. Her understanding from the information available from ReAssure was that the policies could only be extended on the ten-year anniversary of the policies being taken. So, this would mean that the policies ought not to mature until 2024, rather than 2022. She asked ReAssure about this and why the communications about this were only sent to Mr and Mrs P2 rather than the other trustee(s) but ReAssure didn't respond. So, this point remains unclear.

However, from the information that is available we know that the 4 June 2021 letter sent to Mr and Mrs P2 about the extension option required a reply by 1 August 2021 and would apply to the maturity date which it said was the following year in 2022.

But I've seen no evidence as to why the maturity date was set for 2022 rather than 2024. I haven't seen any evidence of why this happened or why this would impact on the ten-year anniversary options in the future. The 2009 version of the terms and conditions for the MIP – the earliest that ReAssure has been able to provide – do say;

> 'On any anniversary of Commencement provided Premiums have been paid in full to that date the Policyholder may elect to continue payment of Premiums under the Policy for a further 10 years from that date and the Maturity Date shall be deferred accordingly.'

But I can't see why Mr and Mrs P2 would have decided to arrange for an extension any earlier than ten years after commencement but if ReAssure wishes to explain this further it should do so in its response to this provisional decision and provide the relevant evidence.

Currently we know the policies were taken in 1984 so extensions would have been every tenth anniversary after that – so 1994, 2004 and 2014. And Mr P has provided copies of Mr and Mrs P2's (plus the relevant trustee) Extension Option Request Forms for the MIP policies signed on June 1993 and June 2003. I haven't seen a copy of the Extension Option Request Forms for 2012 as referred to by ReAssure, only a copy of the HMRC declaration from August 2013 but that doesn't imply an extension in 2012.

The forms I have seen were signed a year in advance of the extension dates due the following respective years – 1994 and 2004. So logically I can't see any reason for the policies to have matured in 2022 rather than 2024. However, I note that the terms appear to allow the extension to be applied for each policy anniversary – so it's possible that Mr and Mrs P2 chose to apply for the extension early in 2012. This might have been because of the imminent changes to the tax legislation around that time – the Finance Act 2013. But ReAssure needs to evidence this in its response to me and without it, I'm currently minded to agree with the investigator, that ReAssure has the wrong maturity date for these policies.

If the maturity date should be 2024 and the relevant extension letter had been sent in June 2023 – a year in advance of the maturity in 2024 – rather than in June 2021 then Mr P, as well as having Power of Attorney for his parents, had been appointed as trustee (along with Mrs D) by this time and no doubt would have sought an extension as that has been his declared intention all along. As ReAssure hasn't responded to the investigator's assessment about the change in the ten-year anniversary date to 2022, I have no other information to make me consider otherwise.

Even if I am wrong about this, I'm currently of the opinion that ReAssure failed on another point with regard to the extension option in any event. I've noted that HMRC Guidance provided by ReAssure which it said referred to rules on reinstatement. The guidance says;

> **'Valid surrender or maturity cannot be reversed**

> Once a surrender or maturity has been validly completed under the terms of the policy or contract it cannot be retrospectively restructured or reversed. The insurer and policyholder cannot rewrite history to undo the surrender unless the insurer has clearly acted directly contrary to an instruction from the policyholder or from a person authorised to act for the policyholder in relation to the policy. Such as an independent financial adviser (IFA). This point may be particularly relevant in the context of cluster policies – IPTM7330.
>
> An option conferred by a policy, for example to extend the policy, must be legally completed before the policy matures. Otherwise, the policy ends on maturity and cannot be revived. After the policy has ceased to exist, all that can happen is that the insurer pays out the maturity proceeds or retains the proceeds for investment in a wholly new contract.'

I'm not sure whether Mr P was a 'person authorised to act for the policyholder in relation to the policy'. Even though Mr P had Power of Attorney for Mr and Mrs P2 I understand from ReAssure's letter to him of 5 August 2022 that with regard to the Attorney role it is limited to only acting on behalf of the settlors, and that the Attorney cannot perform any trustee duties.

Mr P only became a trustee of this trust in December 2022, so up until then he was only acting as his parents Attorney, not as trustee. ReAssure said the 'majority of the decisions within the trust must be authorised by the trustees acting together' and that a Power of Attorney 'will only allow for the Attorney to receive information or sign any document under the role of the settlor so its impact on this policy will be limited.'

That is my understanding also and, in my experience, if a trustee has lost capacity – which I understand to be the case for both Mr and Mrs P2 – then its usual for a trustee with capacity to step in and act rather than someone holding Power of Attorney. This is in line with what ReAssure said to Mr P in its letter of 5 August 2022. And in this case, we know that Mrs D was appointed as trustee in September 2019.

It's clear from the call log provided by ReAssure that further to Mr P's efforts to have the Power of Attorney put in place (which he thought it already had but, in any event, we know this was received by ReAssure by 19 July 2022) and his enquiries about the options upon maturity, Mr P was assured on 29 July 2022 that the 'contract would be honoured as maturity date is 1 August'. ReAssure has recognised this as it apologised for the error in its letter to Mr P of 13 September 2022 and said that Mr P shouldn't have been given this information.

But bearing in mind that Mrs D was already a trustee by this time, and as I said above, in my experience could have stepped in to give instruction, then during Mr P's calls with ReAssure he should have been advised of this which would have allowed him to contact his sister for her to act in her role as trustee and give the appropriate instruction.

It's not clear to me whether ReAssure had Mrs D's address to include her in the June 2021 extension option letter. And I appreciate it might usually only have written to the policyholders however, I would be grateful for its clarification on this point. But if Mr P had been alerted to the options during his conversations with ReAssure then I think it's more likely he would have contacted Mrs D who would have gone ahead and given the instruction to extend the policies and the cause of this complaint about the maturity of the policies wouldn't have arisen.

In conclusion, with regard to the postponement of the maturity of the MIP policies, as;

- I haven't been given any evidence that the policies were to mature in 2022 rather than 2024,

- Mr P was misinformed over the phone that the policies wouldn't be surrendered and

- Mr P wasn't informed that Mrs D could have given the instruction

I think this element of the complaint should be upheld.

To put the matter right ReAssure should reinstate the MIP policies and restructure them on the basis that they be extended to the ten-year anniversary date in 2024. Clearly this is time critical as Mr P and Mrs D may want to consider the extension option for this year. And because I am satisfied that the early maturity of the policies is because of ReAssure's error it should allow them this option.

As per the above guidance it's not clear whether HMRC would agree that 'the insurer has clearly acted directly contrary to an instruction from the policyholder or from a person authorised to act for the policyholder in relation to the policy' as I doubt whether Mr P – acting as Power of Attorney – could have given this instruction and we know that Mrs D wasn't given the opportunity to do so.

If HMRC doesn't allow reinstatement of the policies, then there is an outstanding question over whether the proceeds of surrender have fallen back into Mr and Mrs P2's estate for inheritance tax purposes. Provided the amount remains in accounts held by the trust, it's possible that it will be seen as the trust's money, and not Mr and Mrs P2's money – however I am not able to give tax advice so cannot confirm with certainty whether the surrender value would be considered to be within or outside Mr and Mrs P2's estate. However, I think it would be reasonable for ReAssure to provide peace of mind to the trustees and Mr and Mrs P2's Attorney regarding any inheritance tax that might fall due as a result of these policies being surrendered early. To do so, Reassure needs to provide an indemnity to pay any future inheritance tax liability related to these policies, if it is found that HMRC considers the proceeds to be part of Mr and Mrs P2's estate.

Mr P has not provided a detailed breakdown of the income tax implications of the 2022 maturity for income tax purposes. Nor am I sure of what the income tax position would have been if the policies had remained in force and paid out following a life assurance claim – this is because I don't have all the facts, for instance I don't know if the policies pay out on first death or last death.

However, as far as I am able to tell any income tax would be the same on surrender, as at the death of Mr or Mrs P2. But again, if the policies can't be reinstated, ReAssure should provide an indemnity to cover any income tax that has arisen because of the chargeable event, which otherwise wouldn't have arisen if the money had been received as a result of a claim, rather than surrender.

Poor customer service

Mr P has complained of the poor customer service he received while trying to contact ReAssure about the issues outlined above. He has referred to many phone calls and not being able to contact anyone who could make a decision. He has also said that ReAssure are holding the maturity proceeds while the complaint is being considered

by the service. I won't outline all of the examples of poor customer service Mr P has experienced but his frustration is evident, and I think he should receive more acknowledgement of this than he already has.

Mr P has been sent a cheque payment of £250 for calls not being returned to him and the distress and inconvenient caused to him and a further £250 for the delay in providing a complaint response. Though the latter relates to complaint handling which isn't a regulated activity, I consider that this service is ancillary to the preceding events, so it is something I can consider in this decision.

But I think Mr P should receive a total of £750 for the distress and inconvenience he has been caused – so a further £250. In line with our awards under similar circumstances I think that Mr P has been caused upset and worry that has impacted him over several months while he was trying to resolve the issue and it was being dealt with by ReAssure.

I see no reason why ReAssure is withholding the policy maturity proceeds from the trustees. If reinstatement can't happen, then it should pay out those proceeds if requested to do so by the trustees. 8% simple interest should be added to the total held, from the date the policies were encashed, to the date of settlement.

Taking all of the above into account, my current thinking is to partially uphold the complaint.'

I concluded by saying that I didn't uphold the complaint about the Qualifying policies becoming RRQP. I asked that ReAssure provide evidence and reasoning for the policies being extended in 2012 rather than in 2014 and that I intended on upholding the complaint about the maturity of the policies in 2022 and the matter should be put right as I had outlined. I also thought ReAssure should pay £750 for the service received and the inconvenience caused.

Mr P responded to say that he was happy with my provisional decision but expressed his concern about the implementation and how ReAssure would act in a timely way, especially with regard to the tax indemnities.

ReAssure replied and said;

• Policies being extended in 2012 rather than 2014

Policies can be renewed at any point during the ten-year term and a reminder is sent. If the customer does renew the renewal takes immediate effect ie not added on to the end of the previous policy term. The policies started on 1 August 1984 with expiry of 31 July 1994 but were extended on 1 August 1993 until 31 July 2003. By taking up the option to reduce the premiums in 1994 extended the term for a further ten years until 31 July 2004 and in 2003 the policies were extended again until 31 July 2013. The policies were extended again in 2012 until July 2022. Its interpretation of HMRC's rules meant it wasn't able to retrospectively allow an extension.

• Postponement of the maturity of the policies

It did have Mrs D's address on file, but its policy was to write to the policyholder. There was no indication that Mrs D played an active role as trustee. Even if Mr P had been alerted to the options in his initial call with ReAssure in 2022 the option to extend had already expired in August 2021.

• Poor customer service

Payment release forms were issued on all MIPs upon notification when they were due to mature in 2022. ReAssure was waiting for those release forms from the trustees/policyholders but it was happy to reissue them if contacted. It didn't believe 8% interest was due as the policy was administered in line with the terms and conditions.

As the information provided by ReAssure was likely to change the outcome of the complaint I wrote to the trustees allow them the opportunity to respond.

I explained that now ReAssure had provided additional information it seems clear that the policies were extended on 1 August 1993 until 31 July 2003. And by taking up the option to reduce the premiums in 1994 this extended the term for a further ten years until 31 July 2004 and in 2003 the policies were extended until 31 July 2013. The policies were extended again in 2012 until July 2022.

Any renewals came into effect immediately in that the new ten-year extension wasn't added on to the end of the previous term.

So, the maturity date of 2022 looks to be correct. The policyholders were written to on 4 June 2021 about the extension option requiring a reply by 1 August 2021 but ReAssure received no response, hence the policies maturing.

I explained that I was currently of the opinion that as I have been provided with what I considered to be sufficient evidence about the correct maturity date – 2022 rather than 2024 – I wouldn't be asking ReAssure to reinstate the policies.

ReAssure has confirmed that it did have Mrs D's address on file, but its policy was to write to the policyholder. As referred to in my first provisional decision I don't find this unusual. Mrs D was appointed as trustee in September 2019 but ReAssure has no record that Mrs D played an active role as trustee which could potentially have caused it to write to her.

And I also accepted the point that even if Mr P had been alerted to the options in his initial call with ReAssure in 2022, by that time the option to extend the maturity dates had already expired in August 2021. And I currently considered this to be the correct date bearing in mind the new information received and referred to above so despite Mr P not being given the information about the action Mrs D could have taken in her role as trustee, by that time she couldn't have given any instruction.

ReAssure said that payment release forms were issued on all MIPs upon notification when they were due to mature in 2022. I asked the trustees for any evidence that they returned those release forms or requested the funds be released. If that isn't available, then I was likely to agree that 8% interest wouldn't be due on those funds as the policy was administered in line with the terms and conditions.

Mr P responded. He accepted the policy termination date of 31 July 2022. But he said the policies shouldn't have been terminated as it was never the intention of the trustees or the policyholders. ReAssure acted negligently in doing so which cost the trustees significant tax advantages which should be compensated.

The policies had been in place for over 40 years and had been renewed each time renewal notification had been received. The policies were held in trust and the intent of the policyholders and trustees was clear.

One of the reasons the policies were held in trust was to make sure that if the policyholders weren't able to make a decision or manage the policies then other people – the trustees – would take appropriate action. In June 2021 only a single renewal letter was sent to the policyholders who at the time were suffering from early-stage dementia, about to go into a care home and their finances were in the process of being taken over by the attorneys, hence why the June 2021 letter wasn't responded to.

ReAssure were negligent in not chasing for a response for policies that had been in place for 40 years. And all trustees should have been informed about the renewal of the policies. If this had been done one of the active trustees could have taken action. That was the purpose of having the trustees outside of the policyholders.

ReAssure wrote to the policyholders again outlining the fact that the policies were about to be terminated but that they still had certain options regarding renewal, surrender or extension. So, at that stage it was ReAssure's assumption the policies were still to be renewed.

Mr P contacted ReAssure immediately to explain the policies should not be terminated but as it didn't have a record of Mr P acting as power of attorney for the policyholders it couldn't act. Mr P sent the documentation to record his status as attorney and called ReAssure for reassurance that no action would be taken. The call handler couldn't resolve the issue for Mr P who was assured he would be called back but this didn't happen. Mr P then received a letter on 15 August confirming the policies had been terminated.

In conclusion Mr P said the trustees and policyholders' intentions were clear but ReAssure acted independently to cancel the policies and ReAssure would no doubt stand behind the policy terms and conditions. But the trustees believed ReAssure had been negligent in the way they managed the policies and in misunderstanding the intent of its customer. It could have acted differently in July 2022 and Mr P had spent hours seeking reassurance the policies wouldn't be terminated.

The trustees asked that I hold to the outcome I reached in my initial provisional decision which they agreed with.

Mr P confirmed they hadn't attempted to access the funds as that would have implied they were in agreement with the action ReAssure had taken. As the released funds had been with ReAssure for nearly two years the trust should be compensated for this at a rate of 8% interest.

After reviewing the information provided I issued a further provisional decision as I didn't currently intend on upholding the complaint about the Qualifying or RRQP status of the policies. Nor did I intend on upholding the complaint about the encashment of the policies and that they should be reinstated. I maintained that the ReAssure has provided poor service that a total payment of £750 is warranted.

Here's what I said;

> 'In addition to the above points I already outlined to Mr P and Mrs D which I concluded would likely change the outcome to this complaint – further to a full response from ReAssure to my initial provisional decision – I shall address the points made by Mr P in reply to that response.
>
> Mr P has said that ReAssure has been negligent as it was clear from the 40 year history of the policies that it was the intention of the trustees and policyholders that

the policies should be renewed. And it was also negligent in only sending one renewal letter and not chasing for a reply if one wasn't received.

But I disagree here. There's no evidence that ReAssure acted or communicated differently with the policyholders than it had done during the previous periods of renewal options. It had always written to Mr and Mrs P2 as the policyholders and had always received an instruction. So there was no reason for ReAssure to know that the situations of Mr and Mrs P2 had changed and it should take further action in making contact.

Mr P has said that all of the trustees should have been written to. Not unusually ReAssure only wrote to the policyholders unless there was an actively involved trustee. Mr P has said that the reason for the appointment of trustees other than the policyholders was that they could make decision if the policyholders were [un]able to. But I note Mrs D had been a fellow trustee for a few years in June 2021, so I think she had had sufficient time to have made contact with ReAssure if she wanted to be involved in correspondence and decision making about the policies. Otherwise, ReAssure would have no reason to change its addressee details for these policies.

It's not in dispute that Mr P was misinformed by the call handler when he called on 29 July 2022. ReAssure has apologised and offered compensation for this. But I disagree that ReAssure could have acted differently when he did make contact as the extension option date had already expired.

The heading of letter of 4 June 2021 included **'Extension Option reply date**: 1 August 2021'. So, I think this made clear the date ReAssure needed a response by. Mr P has referred to the further letters sent on 20 June 2022. Those were headed '**Your policies are due to mature on 31 July 2022**.' The letter goes on to detail the estimated maturity value, how the policyholder should arrange for payment to be made and when the money would be payable etc.

There was some further information given which is what I think Mr P has referred to in his response to me. It is a paragraph headed;

> **'Are there any options other than taking my money?'**
>
> You may have other options, for example:
> - reinvest the maturity value
> - renew your cover
> - extend the term of your policy
> - convert your existing policy into a whole of life policy
>
> You should call us if you're interested in one of these options, and you've checked it applies to your policy'

I think the options given were sufficiently caveated that they may not apply to all policies ie 'You may have other options…' and that the policyholder should check 'it applies to your policy.' So, I don't agree with Mr P's comment that in June 2022 when the letter was sent 'at that stage they [ReAssure] also seem to have assumed that the policies were still able to be renewed.'

Mr P has said that the payment release forms weren't sent to ReAssure to arrange for payment of the funds as that would have implied the trustees were in agreement with the action ReAssure had taken. He further said that as the funds had been with ReAssure for nearly two years interest would be payable on those sums.

> But I disagree. I've seen letters that were sent by ReAssure about the payment of the funds and the forms that would need to be returned in order for those funds to be released. If the trustees chose not to return those forms that was their decision. By having the funds paid to them wouldn't have impacted on ReAssure's or this service's assessment of the complaint.
>
> So, I'm satisfied the trustees have had the option to release those funds for two years but have chosen not to do so. But I can't see that ReAssure is responsible for that decision, so it follows that I don't agree interest is due on the encashment proceeds.'

I concluded that I provisionally didn't intend on upholding the trustees' complaint about the status of the policies, the date of encashment or reinstatement or a payment of interest on the encashed sums. But I did intend on awarding a total of £750 for the poor customer service as previously outlined.

ReAssure replied to ask for clarification about the payment I was awarding for the poor customer service, but it didn't provide anything further for my consideration.

Mr P responded. He didn't agree with my second provisional decision and asked me to take the following points into consideration;

- I had concluded that in June 2021 when ReAssure wrote to the policyholders about the potential termination in July 2022 that it hadn't communicated with Mr and Mrs P2 any differently than it had previously done. Mr P didn't agree as he said that ReAssure had always received a response when it had previously written to Mr and Mrs P2 about a renewal and that to allow such a crucial policy decision to be made based on not getting an answer could be construed as proactive negligence. ReAssure had an obligation to ensure all the trustees agreed that the policies should be terminated and that should have tried to contact other trustees in light of a lack of response to the June 2021 letter.
- He had contacted ReAssure in June/July 2022 once he understood the policies were to be terminated at the end of July. He instructed that the policies weren't to be terminated and was assured that wouldn't happen. He wasn't advised that there was no way the policies could not be continued and that the message he received was 'don't worry'. He thinks that ReAssure should have done more in July 2022 once it was aware of the circumstances – Mr and Mrs P2's declining health and move into a care home – and that other decision makers were available to make those decisions. ReAssure was grossly negligent in ignoring his instructions.

  As a result of the termination the funds would no longer fall outside of the policyholders' estate which will have significant inheritance tax implications. He requested that I maintain my original decision that ReAssure provide an indemnity to pay any future inheritance or income tax liabilities related to the policies.

  He believed that 8% interest was due on the encashed funds. He hadn't withdrawn those funds in the belief that ReAssure was still obliged to reinstate the policies.

  He also asked that I review the suggested £750 compensation for his wasted time in trying to address the issue with ReAssure who had done nothing but stall the process. He felt that ReAssure had been hoping he would give up his complaint and that as these weren't standard ReAssure policies, but inherited, that they weren't well understood by its staff and were trying to close them down to clear up its portfolio.

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.

After reviewing Mr P's response, I'm not persuaded to reach a different conclusion that the outcome reached in my second provisional decision. I'll explain why.

I remain of the opinion that when ReAssure wrote to Mr and Mrs P2 in June 2021 about the potential termination of the policies in July 2022 that it hadn't acted any differently than it had done in previous years of communicating with them. Mr P says the communication was different as ReAssure didn't receive any response.

While ReAssure didn't receive a reply I don't think that meant that it had to escalate the matter. It hadn't been informed – understandably – by either Mr or Mrs P2 of any changes in their circumstances or address. But if they didn't have the capacity to do so then that task would have fallen to Mrs D as fellow trustee. And in the absence of being advised of any changes to Mr and Mrs P2's circumstances there was no reason for ReAssure to have acted any differently than it had previously done by writing to the policyholders.

It's accepted that Mr P was misinformed when he called ReAssure in June/July 2022 that the policies wouldn't be terminated. ReAssure has offered compensation for that misinformation. But as I said in my provisional decision, by that time it was already too late for Mr P – or Mrs D – to have given a different instruction. The deadline to respond to the termination/extension letter had already passed in August 2021.

It's extremely regrettable that the termination of the policies – held in trust – will have tax implications but I don't agree that has come about as a result of any error caused by ReAssure. So, it follows that I don't agree that ReAssure should provide an indemnity for those potential tax implications.

Mr P and Mrs D had the opportunity to withdraw the funds that came about as a result of the policy terminations. They were provided with the necessary forms to do so, and it was their choice not to take any action. So again, I don't find that ReAssure has done anything wrong in that it is liable for interest while it retained those funds pending instruction for withdrawal.

I'm aware that Mr P has been extremely frustrated by all of this and the misinformation he received from ReAssure leading to him understanding that the policies wouldn't be terminated. But I'm satisfied that £750 is fair and reasonable. Its in line with our awards under similar circumstances, where Mr P has been caused upset and worry that has impacted him over the time he was trying to resolve the issue and it was being dealt with by ReAssure.

Taking all of the above into account, I'm not upholding the trustees' complaint about the status of the policies, the date of encashment or reinstatement of the policies or a payment of interest on the encashment funds. But I do award a total of £750 for the poor customer service experienced by Mr P.

I appreciate my decision will come as a disappointment to Mr P and Mrs D – it's clear they feel strongly about the complaint, and I thank them for the time and effort they have made in bringing their complaint. But I hope I have been able to explain how I have reached my conclusion.

Putting things right

ReAssure should pay £750 for the poor customer service.

My final decision

For the reasons given, I'm not upholding Mr P and Mrs D's complaint acting as trustees about ReAssure Life Limited. I do award a total of £750 for the poor customer service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr P as trustees of the S Trusts to accept or reject my decision before 20 September 2024.

Catherine Langley
Ombudsman