

The complaint

Mr C complains about the way that Utmost Life and Pensions Limited has administered his Whole of Life Assurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr C held a Whole of Life Assurance policy for many years. During the life of the policy, Mr C moved abroad. Utmost continued to send correspondence abroad by post, including Mr C's premium reminders.

In March 2022, Utmost wrote to Mr C to let him know that his annual premium of £36.36 was due by 10 April 2022. Mr C appears to have arranged an international transfer of the funds from his bank. However, the payment didn't go through.

Subsequently, Utmost wrote to Mr C in May 2022 to let him know that the premium hadn't been paid. It sent a further letter in October 2022 which let Mr C know that life cover had ended due to non-payment of premiums. This letter set out Mr C's option to bring the policy up to date by May 2023 and restart the premiums. It said that if premiums hadn't restarted by 10 May 2023, the policy would end and there would be a cash-in value available which would be fixed at that date. A further letter was sent to Mr C on 11 April 2023 restating this position.

As Mr C's premiums remained unpaid, Utmost wrote to Mr C on 30 May 2023, explaining that his life cover had ended and that his surrender value had been fixed at £6483.09.

Mr C got in touch with Utmost to let it know that he hadn't received its letters of May and October 2022 and April 2023. He said he hadn't received any correspondence after the March 2022 premium reminder until he received the letter of May 2023. He was also unhappy with the policy surrender value.

Utmost said that all of the letters had been produced and sent to Mr C by an international priority mail service. And it said that none of the letters had been returned.

However, ultimately, Utmost agreed to reinstate Mr C's policy if he brought the premiums up to date, without the need for further medical underwriting. It let him know though that the policy had lost its qualifying status with HMRC due to HMRC's rules. Therefore, it said payment could give rise to an income tax charge.

Mr C was unhappy with Utmost's offer and he asked us to look into his complaint. In brief, he didn't think Utmost had provided enough evidence to show the letters were produced or posted. And he didn't think it was fair that his beneficiaries could incur income tax liabilities.

Our investigator didn't think Mr C's complaint should be upheld. He was satisfied that Utmost had provided sufficient evidence to show that the letters had been sent and had been

addressed as he would have expected. He didn't think he could fairly hold Utmost responsible for any issues in the postal system. He was satisfied that Utmost had acted in line with the policy terms when it ended Mr C's cover in October 2022. And he felt that it had gone over and above its contractual obligations by offering to reinstate Mr C's policy upon the payment of the outstanding premiums. He added too that the error seemed to have stemmed from Mr C's bank, rather than Utmost.

Mr C disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 27 September 2024, which explained the reasons why I didn't think Utmost had treated Mr C unfairly. I said:

'First, I'd like to reassure Mr C that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.'

The relevant regulator's principles say that financial businesses must pay due regard to the needs of their customers and treat them fairly. I've taken those rules into account, together with other relevant considerations - such as industry rules and guidance, the policy terms, and the available evidence - to decide whether I think Utmost treated Mr C fairly.'

The policy terms and conditions

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr C and Utmost. In particular, I've referred to the policy cancellation terms and I've set these out below:

'If a premium is not paid on or before it's due date this Assurance shall nevertheless continue for (i) the days of grace and (ii) the non-forfeiture period.'

Days of grace is defined as:

'A period expiring on the fifteenth day after the due date if premiums are due at monthly intervals or on the thirtieth day after the due date in any other case.'

And the non-forfeiture period is defined as:

'The period beginning on the expiry of the days of grace and ending six calendar months after the due date of an unpaid premium (or if more than one premiums is unpaid, the due date of the first such premium).'

In my view, the policy terms make it sufficiently clear that if a premium remains unpaid for more than six months after its due date, Utmost is entitled to end the cover. In this case, there's no dispute that Mr C's April 2022 premium wasn't paid by his bank and that the premiums weren't brought up to date by 11 October 2022 - the end of the non-forfeiture period. As such, I find Utmost was contractually and reasonably entitled to end Mr C's life cover on 11 October 2022.

Did Utmost send the letters it says it sent?

It's clear that Mr C feels strongly that Utmost's position is unfair because he says he didn't receive Utmost's letters alerting him to the non-payment of premiums or notifying him that the cover would end/had ended on 11 October 2022. I've thought very carefully about his

submissions. Mr C feels Utmost hasn't sufficiently evidenced its position because it can't provide evidence of the actual production and postage of the letters.

Utmost has been able to provide copies of the letters which it says were sent to Mr C, by international priority mail, in May and October 2022 and on 11 April 2023. These letters clearly set out that the 2022 premium hadn't been paid; the consequences if it remained unpaid and ultimately, that Mr C had until 10 May 2023 to pay the premium before the policy surrender value was fixed. I'm satisfied that these letters were clear enough about the status of the policy and the potential implications on cover if the premiums remained unpaid.

On the balance of probabilities, I find it's most likely that these letters were produced and sent as Utmost says.

Having considered the address set out on each of these letters, it seems that one part of Mr C's postcode was wrong by one letter. I've considered this carefully and I asked Utmost for its comments on this point. I also asked it for evidence of other, previous correspondence it had sent to Mr C to check how post was usually addressed.

Utmost says that it held the same address on file for Mr C from 2007 and that it had been writing to him, at that address, including the slightly incorrect postcode, since that date with seemingly no issues. That accords with what Mr C told us – because he's maintained that he'd always received correspondence from Utmost up until May 2022. I note Mr C did receive the 2022 premium reminder letter which was sent to the same address and it seems the 2021 premium reminder letter was sent to that address, too. Utmost also says that despite the error, the postcode couldn't be mistaken for any other part of the country Mr C lives in, given the postcode numbering system used in that country. I've checked this independently and I'm satisfied it's correct – the postcode was correctly numbered in line with the relevant area Mr C lives in. On that basis, I'm not persuaded that the failure of the letters to reach Mr C was due to the small error in the postcode, especially given the previous history of letters containing the same slight error reaching Mr C successfully. And there's nothing to suggest Mr C had previously noticed the error or brought it to Utmost's attention.

On balance, I think the letters were sent to the usual address Utmost had held for Mr C for many years, seemingly without issue in post being received. And I think it's more likely than not that Mr C's failure to receive those letters was down to an issue with the postal service rather than because of any error on Utmost's part.

Utmost's offer to reinstate the policy

Despite the fact that I don't think Utmost ended the policy incorrectly or unfairly, it ultimately offered Mr C the chance to bring the premiums up to date and reinstate the cover. In my view, this was a very reasonable offer from Utmost.

I appreciate that Mr C is unhappy because the policy has lost HMRC qualifying status, meaning that the beneficiaries may need to pay income tax on any gains. However, Utmost is bound by HMRC's rules and it's simply the case that if premiums are unpaid, a policy will lose HMRC qualifying status. As I've explained, I find Utmost was entitled to end the policy due to the non-payment of premiums. So I don't think Utmost can reasonably be held responsible for any future tax liability Mr C's beneficiaries might incur.

Summary

Overall, I sympathise with Mr C's position because it's clear he wanted the cover to continue and it's simply unfortunate that his premium payment failed and that he didn't receive

Utmost's letters. I also understand he's disappointed that the fixed surrender value was substantially less than the amount the policy would have paid out in April 2021.

But, I don't think Utmost has made any error here which would lead me to think, on balance, that it was responsible for any financial loss Mr C has suffered or may suffer in the future. And so I'm not intending to direct Utmost to do anything more.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

Utmost had nothing to add.

Mr C didn't accept my provisional findings and I've summarised his response. He said insurance contracts are contracts of good faith. Insurers have additional duties over strict contractual ones. Mr C considered that Utmost had failed to act with the utmost good faith when:

- It failed to fairly review his file when it received his letter explaining that he hadn't received its communications. He felt the good faith response to a policyholder who'd held a policy with accumulated benefits over 50 years wasn't to terminate the contract and remove those benefits. He felt that instead, it should have offered him the chance to pay the outstanding premiums and then restore the policy in full;
- He felt it was so statistically unlikely as to be negligible that international postal services would lose five letters from one sender, which were being sent to an address which hadn't experienced any issues in receiving post from any other source. He felt the only possible conclusion was that the letters were never sent and Utmost hadn't been able to provide proof of postage;
- He considered Utmost had failed to keep proper mail room records to prove that letters were printed and sent. He felt it should have had a mail room system in place to ensure that mail was posted and records to show when mail had been despatched. He questioned how an insurer could operate with utmost good faith if it couldn't provide proof of postage of premium reminders and other communications;
- It had failed to send letters by registered post. Mr C said Utmost had sent the termination notice by registered post, so he questioned why it hadn't sent post which was important to an insured (i.e. the premium chaser letters) by this method too. He felt this was a gross failure of good faith – particularly given his long history of consistently paying his policy premiums. He felt that Utmost should have been looking after his interests rather than terminating the contract after more than 50 years;
- He requested that I direct Utmost to restore him to the same financial status he would have been in (including compensation for loss of tax status), had Utmost acted in good faith;
- And Mr C was concerned that the contractual treatment he'd received from Utmost may have been a pattern of behaviour, in which Utmost terminated older policies which were soon to pay out, affecting a small group of people without much of a voice. He felt that this should be investigated.

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, whilst I'm very sorry to disappoint Mr C and I'd like to reassure him that I've carefully considered his response to my provisional findings, I still don't think Utmost treated

him unfairly, for the same reasons I set out in my provisional decision. I'll explore this further.

First, I must make our role clear. We're not the industry regulator – that's the role of the Financial Conduct Authority. We have no power to fine or punish a business, or to tell it to change the way it operates or its policies and procedures. So while I appreciate Mr C has wider concerns about the way Utmost keeps records and about its management of older policies, I don't think it would be appropriate for me to comment on those points here, other than to say I've seen no persuasive evidence to suggest that Utmost was seeking to end Mr C's policy to avoid needing to ultimately pay-out the surrender value.

Our role is to look into complaints brought by individual consumers to decide, based on the specific circumstances of that complaint, whether we think a financial business has done something wrong which has caused a consumer to suffer financial loss or material distress and inconvenience. And, if we think it has, we'll decide what, if anything, that business needs to do to put things right. So my consideration of this complaint has focused on whether I think Utmost has made any error in the administration of Mr C's policy which has caused him a loss it needs to put right.

Mr C has referred to the duty of utmost good faith, which he feels Utmost has failed to apply to his particular circumstances. The duty of utmost good faith typically required insurers and policyholders to deal openly and honestly with each other – generally when taking out or renewing a policy or when making a claim. As I've explained in my provisional decision, the regulator's rules say that financial businesses must pay due regard to the needs of their customers and treat them fairly. And I've taken those rules into account, together with other relevant considerations, when deciding whether I think Utmost has treated Mr C fairly.

Fundamentally, the terms of the insurance contract between Mr C and Utmost say that if a premium isn't paid for more than six months after the date it's due, Utmost is entitled to cancel the cover. As Mr C's unpaid premium wasn't paid by 11 October 2022, I'm still satisfied that Utmost was contractually entitled to cancel the contract. Utmost offered Mr C the chance to reinstate the policy before 10 May 2023. But I don't think it had any obligation to do so after this date.

However, Utmost has offered to step outside of a strict application of the policy terms here, by offering Mr C the chance to bring the premiums up to date and reinstate the policy. I appreciate this will have potential tax implications for Mr C's beneficiaries, but I don't think I could fairly hold Utmost responsible for any change in the tax status of the policy. And in my view, Utmost's offer here is a fair and reasonable one.

I do accept Mr C's point that Utmost hasn't been able to evidence the actual production or postage of any of the letters it says were sent to him which he says he didn't receive. I can understand why Mr C has concerns about this, given the number of missing letters and their contents. I'm aware too that Mr C didn't receive the mail which notified him that he could reinstate the policy before 10 May 2023. And I've borne this in mind.

On the other hand, as I set out in my provisional decision, Utmost has been able to provide addressed and dated copies of the letters it says were sent in May and October 2022 and on 11 April 2023. These were all addressed to an address Utmost had been writing to for a number of years, seemingly without issue. And it says these letters were all sent by international mail.

I have to make my decision based on the balance of probabilities – what I think is most likely to have happened, given the available evidence and the circumstances. On balance, I think it's more likely than not that the letters were produced and sent, as Utmost says. And I think it's most likely that Mr C's failure to receive those letters was down to an issue with the

postal service rather than because of any error on Utmost's part.

Overall, I still don't find that it was unfair or unreasonable for Utmost to end Mr C's contract with it. It's still the case that the policy was ultimately cancelled because the international transfer of the premium payment from Mr C's bank didn't go through. Utmost wasn't responsible for the failure of the premium to reach it. And I remain satisfied that Utmost's offer to reinstate Mr C's policy if he pays the outstanding premiums is a very fair one. I don't think I could reasonably direct Utmost to pay compensation for any potential tax liability in these circumstances. It now remains open to Mr C to either accept Utmost's offer to reinstate the policy and pay the premiums should he wish to do so.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 November 2024.

Lisa Barham
Ombudsman