DRN-5284008

The complaint

Mr and Mrs M have complained about the incorrect information they were given by ReAssure Limited ('ReAssure') about the transaction history of an investment bond they held which led to them incurring a tax liability. To put the matter right they would like tax repaid to them plus additional compensation for the resulting stress and anxiety they have been caused which left them feeling very vulnerable.

What happened

Mr and Mrs M's relationship with their independent financial adviser ('IFA') began in September 2021 when it acquired the predecessor business. In 2022, based on the information Mr and Mrs M's IFA received from ReAssure about the transaction history, Mr and Mrs M went ahead and surrendered an investment bond. The IFA's chargeable gain calculation proved to be incorrect as ReAssure had only provided two years of transaction history. As result a chargeable gain arose, and Mr and Mrs M incurred an income tax liability they wouldn't otherwise have had – £2,516 for Mr M and £1,007.20 for Mrs M.

Mr and Mrs M weren't happy about this and raised a complaint with ReAssure who responded on 14 November 2023. It said it had been confirmed during the three calls had with the IFA that only the previous two years transaction history could be provided. So, it was unable to agree with Mr and Mrs M's complaint.

Unhappy with the response Mr and Mrs M brought their complaint to the Financial Ombudsman Service. Upon the initial review the complaint was upheld to the extent that the investigator concluded ReAssure was responsible for 50% of the tax liability and it should also pay Mr and Mrs M £250 for the distress and inconvenience caused.

ReAssure didn't agree with the outcome and provided some further information which caused another of our investigators to conclude that the complaint shouldn't be upheld. But payment of £150 should be made for the stress and anxiety caused by the unexpected tax liability. The investigator said that while Mr and Mrs M say they wouldn't have encashed the bond had they known there was going to be a chargeable gain, she agreed with ReAssure's point that there would always be a chargeable gain upon surrender.

Mr and Mrs M didn't agree. They say there was an error by ReAssure which resulted in an income tax liability for that year. If the correct information had been provided by ReAssure, then they wouldn't have encashed the amount of the bond that they did in that tax year. Mr and Mrs M said the follow up email from their IFA to ReAssure had requested a full history and questioned why ReAssure was able to limit the history to two years. And the history provided only documented withdrawals from January 2021 in any event.

Mr and Mrs M say if the correct information had been provided to their IFA, they would have withdrawn funds at a level that would not have incurred a tax liability in that tax year and manage the remaining withdrawals over the following years as required.

As the complaint remained unresolved it was passed to me for a decision in my role as

ombudsman. I was thinking of reaching a different outcome than the investigator so issued a provisional decision to allow the parties to provide me with any evidence or information they wanted me to consider before I issued my final decision.

Here's what I said;

> 'I should first make clear that I am only considering Mr and Mrs M's complaint about ReAssure Limited.
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> As a background to the investment, I understand the investment bond had been taken out by Mr and Mrs M investing £80,000 in 2012 with all the segments assigned to them. Regular monthly withdrawals of 5%, or £333 of the value of the investment bond, were taken from December 2012. An additional £210,000 was added at the same time and statements show monthly withdrawals from the £210,000 investment of £875 or 5% were also taken. So, in total Mr and Mrs M were receiving per £1,208 from the investment bond a month.
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> In October 2022 the policy was to be split and reassigned and in November 2022 ReAssure confirmed that segments 00 to 15 had been assigned to a trust and segments 16 to 32 to an individual. Mr and Mrs M retained the remaining segments of 33 to 99 – 67 segments – which they surrendered in March 2023.
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> My understanding of investment bonds is that no tax is paid at the point of the 5% monthly withdrawals, that is deferred until the final surrender. The chargeable gain when the bond is fully surrendered is calculated by adding together the profit on the final surrender and all the withdrawals previously taken within the annual 5% allowances after taking account of top slicing relief. As Mr and Mrs M fully surrendered their segments of the investment bond, all of the gains on the growth plus the 5% withdrawals were rolled up creating a chargeable gain and hence an income tax liability.
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> Mr and Mrs M have argued that if their adviser had been given a full transaction history then he would have been able to make a correct calculation for chargeable gain purposes. And Mr and Mrs M would then only have gone ahead with a partial surrender which wouldn't have triggered a chargeable gain to the extent that income tax would be payable. And they say they could have managed any future tax by partially disposing of the rest of the investment bond over later years.
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> I've reviewed all of the information provided about the request for the transaction history and listened to the call recordings provided by ReAssure. Below is a timeline of the events relevant to the complaint about the provision of information;
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> - 24 October 2022 – a representative of the IFA who I shall refer to as 'Representative B' called ReAssure requesting a transaction history of the bond. During that call ReAssure confirmed monthly withdrawals had been taken from the investment bond, the number of segments and surrender value. In response to the request for a transaction history ReAssure also advised it could only provide the previous two years transaction history and Representative B agreed to this. The turnaround for this information was ten days.
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> - 28 October 2022 – a different representative of the IFA who I shall refer to as 'Representative C' emailed ReAssure requesting details of the bond and a full transaction history for it to complete its calculations for surrender. It requested a current and surrender valuation, a full

transaction history since inception showing contributions, withdrawals and charges paid etc.

- 28 October 2022 – ReAssure wrote to the IFA. It said;

  'Thank you for your recent enquiry, I have attached the Transaction history that you requested.'

- 4 November 2022 – ReAssure wrote to the IFA using the name of Representative C under 'Your reference' providing details of the bond, number of units held, bid price and value etc. it also said;

  'A transaction history was sent in our letter dated 28 October 2022.'

As the IFA didn't hold the historic files for the bond prior to September 2021 – when it acquired the predecessor business – it was reliant on ReAssure to provide the information it requested. And because of the information provided, the IFA based its calculations on withdrawals from the bond of £26,576 rather than £97,123.20 which gave rise to the chargeable gain and income tax liability.

However, it's clear from the call of 24 October 2022 that in response to ReAssure saying it could only provide two years of transaction history that Representative B said, 'OK that's fine.' And I think it is most likely that the letter of 28 October 2022 from ReAssure was in response to that call request rather than the email that superseded it of 28 October 2022.

I say this because the letter sent by ReAssure on 4 November 2022 was specifically marked for the attention of Representative C who had sent the email request of 28 October 2022. And I would be surprised if ReAssure could have arranged for the information requested in that email for a letter to be sent on the same date of receipt of the email bearing in mind the en day turnaround time mentioned in the call of 24 October.

As mentioned, the letter of 4 November 2022 included the information requested in the email and stated that 'a transaction history was sent in our letter dated 28 October 2022.' That letter didn't confirm the transaction history previously provided was limited to two years and was not the full transaction history information requested in the 28 October 2022 email from Representative C. I'm satisfied the email request of 28 October 2022 superseded the request made during the call of 24 October 2022 and it seems likely to me there was a crossover in the information provided by ReAssure. While it confirmed in its call of 24 October 2022 that it would only provide two years' worth of transactions which it sent in its letter of 28 October but its subsequent follow up letter of 4 November 2022 to Representative C at the IFA didn't clarify that the information previously sent was for two years only as had been requested in Representative C's email of 28 October, and to which it was responding.

In its submission to this service ReAssure told us it was standard to provide a transaction history for the previous two years only. This is because, in this case, it hadn't received any contribution to the policy in the past two years, the last one being in November 2012. It said the policy holder would have the annual statements or anniversary certificates, plus bank statements which would have included that information.

I asked ReAssure why it would only provide the previous two years transaction history and it said this was part of its Service Charter which had since;

> 'been removed and … we will and do provide full transaction histories as we don't wish to obstruct our customers.'

While I accept this may have been its standard service at the time, I don't think it unreasonable to assume that if a client's IFA was asking for a full transaction history information – as per the email request of 28 October 2022 – it would be reasonable to assume the IFA was potentially considering a partial/full surrender of the bond and needed that information for calculation purposes. So, I'm satisfied that information should have been provided and if ReAssure wasn't in the position to do so – despite being in possession of that information as it would be needed for the provision of a chargeable event certificate – it should clearly have said so in the correspondence sent to the IFA.

ReAssure has a responsibility to provide clear, fair and not misleading information to its customers when requested. But the response to the request of 28 October 2022 for information wasn't accurate. And while I appreciate the requests were only four days apart, the latter request of 28 October 2022 superseded the earlier request of 24 October and in response to that latter request for a full transaction history it wasn't provided, only referral to information that had previously been provided which its accepted was limited to two years of transaction history.

Mr and Mrs M have confirmed that they are both basic rate tax payers and I note from the IFA's calculations that the surrenders (other bonds were also being surrendered) would cause them both to become higher rate tax payers for the year but wouldn't incur any additional tax on this bond surrender because of top slicing relief. Mr and Mrs M have also said there was no financial need that impelled the surrender of the bond. It was surrendered on the basis that no income tax liability would arise.

ReAssure has said that there would always have been a final chargeable gain when the bond was fully surrendered because of the regular withdrawals and that Mr and Mrs M's view that they had to pay tax was due to the fact a full transaction history hadn't been provided wasn't correct. But I think this misses the point.

I say this because I haven't seen any evidence that it was financially necessary for Mr and Mrs M to have fully surrendered the bond. They were in a comfortable financial position and had other assets they could have used if they needed to raise funds and, in any event, there's no compelling evidence to show that they needed to raise the amount of funds they did at that specific time. Mr and Mrs M have said they could have managed the chargeable gain over the coming tax years so as to avoid incurring an income tax liability.

But this would have been subject to their IFA receiving the correct transaction history. Mr and Mrs M have provided a copy of their IFA's tax calculations made in advance of the total surrender of the investment bond – along with a further two. And it's clear from those calculations that the full surrender was made on the basis that Mr and Mrs M wouldn't incur any income tax because of the top slicing rules. I am persuaded this is the reason that Mr and Mrs M went ahead with the full surrender rather than the partial surrender.

Mr and Mrs M have also provided a copy of their tax bills paid for the year ending April 2023. They show that Mrs M paid £1,007.20 and Mr M £2,516. This was

accompanied by a letter from their accountant that there would have been no tax liability (with the exception of £2.00 for Mr M) due for the year ending April 2023 except for the full surrender of the ReAssure investment. And as already explained, I am satisfied that Mr and Mrs M would only have proceeded with a full surrender of the investment bond because of the incorrect transaction information given in response to their IFA's request for a full transaction history.

It follows I uphold the complaint and Mr and Mrs M should be repaid those tax amounts they would otherwise not have incurred. And I also think a payment should be made to reflect the distress and inconvenience Mr and Mrs M have been caused because of the error.'

I detailed how I thought the matter should be put right and for ReAssure's consideration the investigator to forwarded copies of Mr and Mrs M's IFA's tax calculations, HMRC's 'Tax year overview' documents (UTRs redacted) plus a letter from their accountant confirming they would otherwise not have incurred a tax liability.

Mr and Mrs M didn't respond to my provisional decision. ReAssure agreed with the suggested outcome. But it said while the information provided with my provisional decision showed that tax charges were paid, it would need evidence to show when they were paid in order to calculate the interest.

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.

As neither party has disagreed with the findings in my provisional decision, I confirm those findings and uphold the complaint. For completeness I reiterate how the matter should be put right. And Mr and Mrs M will need to provide evidence of the payment date of the tax to ReAssure in order for it to be able to carry out the necessary 8% interest calculations.

Putting things right

To put the matter right ReAssure should;

- Repay the amount Mr and Mrs M unnecessarily paid in tax - £1,007.20 for Mrs M and £2,516 for Mr M (less £2.00 as per the accountant's letter).
- Add interest at a rate of 8%* simple per year from the date the tax was paid by Mr and Mrs M to the date of payment to reflect the time they have been out of pocket.
- Mr and Mrs M have also been inconvenienced because of ReAssure's error and I award £200 because of this.

*Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest, it should tell Mr and Mrs M how much has been taken off. ReAssure should give Mr and Mrs M a tax deduction certificate in respect of interest if Mr and Mrs M ask for one so they can reclaim the tax on the interest from HMRC if appropriate.

My final decision

For the reasons given, I uphold Mr and Mrs M's complaint about ReAssure Limited and the matter should be put right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to

accept or reject my decision before 21 February 2025.

Catherine Langley
Ombudsman