

The complaint

Miss M is unhappy because she received two annual payments for her Cash-Out Retirement Plan with Legal and General Assurance Society Limited (L&G) in the same tax year and which meant she had to pay additional income tax.

What happened

I issued a provisional decision on 16 May 2025. I set out what had led up to the complaint and my provisional conclusions. I've repeated what I said here.

'L&G received Miss M's online application for a Cash-Out Retirement Plan on 23 March 2022. She'd be using funds held in a former employer's scheme to buy a short term (four years) annuity, after taking tax free cash. L&G received the funds on 31 March 2022. L&G sent Miss M the policy document on 19 April 2022. It said the start date of the policy was 31 March 2022. The total pension pot was £55,809.30, of which Miss M was taking £13,952.32 as tax free cash, with an annual payment in advance of £10,561.80 for four years and an end date of 31 March 2026. Miss M received her tax free cash and the first instalment on 22 April 2022.'

On 6 February 2024 Miss M emailed L&G to query why she'd been sent two payments in the 2022/2023 tax year. After the payment made on 22 April 2022, the second payment of £10,561.80 was then made on 30 March 2023. That meant both payments were made in the 2022/2023 tax year and Miss M had incurred some £3,300 extra tax. She asked L&G to pay her only once in each tax year so that her next payment would be after 6 April 2024.'

L&G sent Miss M a final response letter on 11 June 2024. L&G didn't uphold the complaint. It said it had received Miss M's application on 23 March 2022 and had made a fund request to the ceding scheme promptly. L&G received Miss M's funds on 31 March 2022 but still needed to check the right amount had been received, authorise it and put the policy into payment. That payment process is up to ten working days so the funds couldn't have been paid to Miss M in the same tax year. If she had queries about her tax position she should speak to HMRC.'

The complaint was referred to us. One of our investigators considered it. He issued a revised view on 18 October 2024 upholding the complaint. Amongst other things, he said L&G had pointed to a message given within the online application form which said:

'Your new plan will start once we receive the money. This can be several weeks after we make the request, and unless your pension is already with [L&G] your start date won't be backdated.'

Miss M's funds had been received on 31 March 2022 which was the date recorded on the policy document as the 'Start Date'. And the Terms and Conditions say:

'If we pay the Income Payments in advance (for the Payment Period ahead), we'll pay the first instalment on the Start Date shown in your Policy document or as soon as practicable after that date.'

So the first instalment might be after the start date of the policy. Here the first payment was made on 22 April 2022. L&G had received the funds on 31 March 2022 but still needed to check things. The investigator didn't think it should've taken 22 days. And if L&G had thought there was a chance Miss M wouldn't receive payment in the current tax year, L&G should've made her aware of that. But, in any event, the investigator said the payment could've been made in the current tax year – L&G's checks (which weren't complex) could've and should've been completed within two working days, so by 4 April 2022. That meant the payment would've been made within the 2021/2022 tax year and so Miss M wouldn't have received two payments in the next tax year, causing the increased tax bill.

The investigator said to compensate Miss M and put her back in the position she'd have been in had L&G processed her annuity more quickly, L&G should pay the additional tax and £150 for distress and inconvenience. Going forwards, the investigator's understanding was that Miss M would receive her annual income payments in March, so the issue shouldn't reoccur.

L&G didn't agree with the investigator's findings. L&G said, if the policy had been put into payment on 4 April 2022, Miss M still wouldn't have received her payment until three to five working days following authorisation due to the bank system L&G use and so after the new tax year. And L&G didn't have all its requirements to put the policy into payment. The transfer declaration wasn't received until 5 April 2022 and there was still information outstanding which L&G requested on 5 April 2022, called to chase up on 11 April 2022 and which was received on 12 April 2022. L&G also said that, when the plan was authorised, a policy document was issued with details of Miss M's payment date. As that date had passed, she'd have known she'd receive her payment later. So there was an opportunity for her to query that when she was still in the cooling off period. L&G said it had offered to write to HMRC on Miss M's behalf.

The investigator agreed it might be quicker to resolve the complaint that way rather than wait for an ombudsman's decision. L&G's letter of 5 February 2025 to HMRC explained what had happened, set out the gross payments Miss M should've received and asked if HMRC could reallocate the payments to the correct tax years and process any repayment of any tax due.

On 28 March 2025 the investigator contacted L&G to ask if a reply from HMRC had been received and, if not, suggested that L&G might want to send a reminder to HMRC. We didn't hear back from L&G. So it would seem that HMRC hasn't agreed to process any refund to Miss M and the complaint has been referred to me to decide.

What I've provisionally 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.

I think time was somewhat tight to put Miss M's annuity into payment before the 2021/2022 tax year ended. Her online application wasn't made until 23 March 2022 and L&G then had to request the funds from the ceding scheme. L&G did get those on 31 March 2022. But L&G's requirements weren't complete. L&G says it didn't receive the transfer declaration until 5 April 2022. L&G then had to email the ceding scheme for confirmation of the PSTR (Pension Scheme Tax Reference) number and if the MPAA (Money Purchase Annual Allowance) had been triggered. The ceding scheme replied on 12 April 2022 which completed L&G's requirements. So the policy was authorised and arrangements made to make the first payment which Miss M received on 22 April 2022.

I do think L&G could've dealt with things quicker. Once the funds had been received, an

email to the ceding scheme requesting an urgent reply should've enabled the outstanding issues to be resolved promptly. It may then have been possible for the policy to be authorised and the first payment made before the end of the 2021/2022 tax year. But, like I've said, I don't think there was a great deal of time and so I don't think it would be fair to uphold the complaint just on the basis that the first payment should've been made before 6 April 2022 and so in the 2021/2022 tax year.

However, like the investigator, I think L&G should've made Miss M aware there was a chance she wouldn't receive the first instalment in the current tax year. And that, because the second instalment would be made on the anniversary of the start date of the plan, she'd get two payments in the same tax year. I've considered if Miss M should've known that might happen. I've looked at what the policy terms and conditions and the key features document said. Some of what I've referred to was also pointed to by the investigator but for ease of reading I've set the relevant provisions out again.

Looking first at the terms and conditions, section 2.2 deals with income payments and says Miss M's income payments will be paid to her in instalments from the Start Date until the date her Plan Term ends. And L&G will:

'... pay your Income Payments every month, every three months, every six months or every year, as shown in your Policy document. The selected period between your Income Payments is called the 'Payment Period'.

If we pay the Income Payments in advance (for the Payment Period ahead), we'll pay the first instalment on the Start Date shown in your Policy document or as soon as practicable after that date.'

The Start Date shown in Miss M's policy document was 31 March 2022. L&G wasn't obliged to pay the first instalment on that date so long as it was paid 'as soon as practicable after that date' which I think 22 April 2022 just about was. It's the timing of the second payment that's caused the problem.

The 'Payment Period' is the selected period between the income payments. Miss M selected yearly payments, so, on the face of it, the income payments would be a year apart. If the first instalment was paid on 22 April 2022, the second payment would be on 22 April 2023. But instead it was on the anniversary of the Start Date, less than a year later.

The key features document set out the aims of the Cash-Out Retirement Plan which included: 'To allow you to choose the term of your plan and the intervals you would like your regular income payments to be made'. And: To set the amount of your regular income payments, so that you know exactly (my emphasis) what you'll get and when.' Miss M selected a yearly period between income payments, but the interval between her first and second payments was less than that. I don't think it was clear exactly when she'd receive her payments.

The key features document also said, under, 'What is the Cash-Out Retirement Plan?', that L&G commit to pay a regular income monthly, quarterly, half yearly or yearly over a fixed term of the policyholder's choice. Again, as Miss M selected a yearly income, she'd have reasonably expected there to be a year between payments. And the case study refers to receiving a fixed regular income of the amount stated each year (my emphasis). I note that the 'Is this plan suitable for me?' section referred to wanting to take money out of a pension pot without incurring a higher rate of tax by spreading the withdrawal over several years, which is what Miss M was aiming to do. The payment options section repeats the options as to frequency of payments and explains that payments can be made in advance or arrears. But no further details about actual payment dates are given.

L&G no doubt aims to keep its terms and conditions and information about the plan as simple as possible, which is to be applauded. And L&G wasn't giving advice to Miss M. But L&G needs to ensure policyholders are given all the details they need to make a properly informed decision as to whether a particular product is right for them. Here I don't think the terms and conditions or the key features document were sufficiently clear – they didn't deal with the situation which arose in Miss M's case and which meant the Payment Period was less than a year.

L&G has also referred to the message Miss M would've seen when she completed the online application – that the new plan would start once L&G received the money from the ceding provider. And which could be several weeks after the request has been made. I've said above that the start date was correctly set as 31 March 2022, when L&G received the funds from the ceding provider. If there'd been a delay in receiving the funds that would've been better for Miss M – the start date and the first payment would've both been in the new tax year. But, in Miss M's particular circumstances, the timing did matter. There was nothing to indicate that the second instalment might be paid less than a year after the first payment.

L&G has said that Miss M could've cancelled the policy. But I don't think she'd have seen the need to do that as she couldn't have worked out, from the information she had, that the second instalment would be paid on 31 March 2023 and so less than a year after the first payment. What she saw pointed to the payments being made once a year, a year apart. I think she'd have naturally assumed the second payment would've been made on or about 22 April 2023.

But I think it should've occurred to L&G what could happen. L&G was the professional here and would've known that the timing of transactions and payments around the end of a tax year could be important. At the very least I think L&G should've told Miss M that future payments would be made on the anniversary of the start date of the plan. Miss M would then have known exactly when (as the key features promised) she'd be getting the second instalment. As that would mean two payments in the same tax year, she could've cancelled the plan.

Miss M has said, and I accept, that, had she known what was going to happen, she'd have cancelled the policy. Because L&G failed to make clear to her the implications of the plan having a start date of 31 March 2022 and how that would affect the payment schedule, L&G is responsible for Miss M not cancelling the policy. So, and as it seems L&G hasn't made any headway with HMRC, I agree with the investigator that L&G should refund the extra tax (£3,313.56) Miss M has paid. I think L&G should also pay interest on that sum at 8% simple pa from when Miss M paid it to HMRC to when L&G refunds it. I'd ask Miss M to let the investigator know, in response to this provisional decision, the date of her payment to HMRC. L&G should also pay £150 to Miss M for the distress and inconvenience this matter has caused – getting an unexpected tax bill will have been upsetting and worrying for her and she'd have spent time sorting it out.'

Miss M accepted my provisional decision. She told us that she'd paid the extra tax on 6 February 2024. We didn't hear from L&G in response to my provisional decision.

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.

In the absence of any new evidence, information or comments on the merits of the complaint, my views remain as set out in my provisional decision. I've repeated what I said

there above and it forms part of this decision. For the reasons I've explained, I'm upholding the complaint.

Putting things right

L&G must redress Miss M as I've indicated above – by refunding the extra tax of £3,313.56 with interest on that sum at 8% simple pa from 6 February 2024 to the date of payment and paying Miss M £150 for distress and inconvenience.

My final decision

I uphold the complaint. Legal and General Assurance Society Limited must redress Miss M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 10 July 2025.

Lesley Stead
Ombudsman