

complaint

Mr S withdrew money from a pension in his name with Zurich Assurance Ltd ("Zurich"). After this Zurich realised it had previously merged Mr S' details with another one of its customers. This made it look like this other customer's pension belonged to Mr S. So Zurich asked Mr S to return the money he'd withdrawn because it wasn't his.

Mr S is unhappy that Zurich is asking him to return the money. He says he has spent it, and planned his life on the assumption of having the money.

background

Mr S took out a life insurance plan with Zurich in January 2012. He paid £278.67 into his plan. But Mr S stopped paying money into the plan in December 2012. Zurich says it wrote to him in January and February 2013 to say that his plan was underpaid. It wrote to Mr S again in March 2013 to say that his plan had been ended because of non-payment.

When Zurich set up Mr S' life insurance plan it made a mistake and merged Mr S' details with another customer. That customer had a pension with Zurich with a relatively large balance. From February 2012 onwards it sent Mr S regular statements which gave the impression that this other customer's pension belonged to Mr S. Zurich didn't realise what had happened until January 2017 when the other customer contacted it. By this time Mr S had withdrawn just over £21,000 from the pension. Zurich phoned Mr S and told him what had happened in February 2017. It has asked him to repay the money.

Zurich has apologised for its mistake. But it says the money didn't belong to Mr S, so he needs to repay it. It says Mr S knew he had only paid £278.67 into his life insurance plan (not into a pension) and it had lapsed. So he should've known he wasn't entitled to a pension worth more than £21,000.

Mr S told us he thought he'd taken out life cover, a level protection plan and a pension with Zurich. So he genuinely thought the pension belonged to him. He says he planned his family's future on the basis of the information he was given over five years.

Mr S also told us he spent the money and materially changed his circumstances when he withdrew the money from the pension, and he isn't in a position to repay the money now. He doesn't think it's fair for Zurich to make him repay the money. He says that Zurich's mistake has put him in a worse financial position. He also complains about the stress he has been caused.

Our investigator said that Zurich made a significant mistake that gave Mr S the false impression that the pension was his. But the money wasn't his, so she understood why Zurich has asked him to repay the money. Mr S provided her with limited information about what he did with the money, and how he changed his employment circumstances as a result of the information he was given. She recommended that Zurich pay Mr S £500 compensation to reflect the mistake and the significant impact it had on Mr S.

Zurich responded to say that Mr S hadn't engaged with it to set up a repayment plan to repay the money. So he needs to do that. It said it would be willing to reduce the amount Mr S owes by £500 once he agrees to a repayment plan.

Mr S remained unhappy and asked for the complaint to be reviewed. He didn't think our investigator took into account the impact of Zurich's mistake on him. After he asked for his complaint to be reviewed, Mr S provided us with detailed information about what he did with the pension money, and how he changed his circumstances as a result of it. This shows he used the money to repay a debt with a bank (that had been passed on to a debt collector), two loans, and to pay money he owed to HMRC. It also seems he used the money to repay mortgage arrears and a loan from a family member. He spent a significant amount of money on household bills in February and March 2017.

Mr S has also provided information to show that he changed jobs in January 2017, and took another job, working less hours. He says he wouldn't have done this if he didn't think the pension money was legitimately his, and he can't increase his hours with his new employer.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I took on board the fact that Mr S says he acted in good faith after he was led to believe that the pension money was his. I said I understood Mr S' position, but I thought it was surprising that Mr S thought he'd built up the pension when he'd only paid Zurich £278.67.

I said there's no dispute that Zurich made a mistake that had an impact on Mr S. But there's also no dispute that the money Mr S withdrew from the pension wasn't his. So I understand why Zurich has asked him to repay it. I didn't think it would be fair for Mr S to keep hold of more than £21,000 of someone else's money.

Mr S told us that Zurich's actions put him in a materially worse financial position than he was before. That's because he was working six/seven days a week for one business, but decided to move to another job (with fewer hours) on the basis of the information he was given.

I considered this, and Mr S' strength of feeling about what happened. But I thought that Mr S benefited from what happened – even if he's required to repay the money. That's because he was able to use the money to pay off a number of debts in early 2017. A debt collector was handling one debt, and Mr S told us that he was in arrears with his mortgage. So I thought he was experiencing some financial difficulties at the time. I said the money mistakenly paid to him gave Mr S some breathing space and meant that he was able to save a significant amount of money in interest payments when he repaid those debts.

Taking the matter as a whole, I said that Zurich was entitled to ask Mr S to repay the money. But Zurich should take £500 off what Mr S owes to reflect the distress and inconvenience it has caused. I considered asking Zurich to pay Mr S the £500 in cash, but I didn't think that would be fair and reasonable given the amount of time it's likely to take for Mr S to repay the money.

I encouraged Mr S to contact Zurich to set up a repayment plan to pay back the money at a rate he can afford.

In my provisional decision I also said that when it paid Mr S, Zurich deducted tax at source. It said it won't be requesting it back from HMRC, so there shouldn't be any additional tax

liability for Mr S resulting from all of the above. But I said that if Mr S or Zurich thought there were tax implications I didn't address, they should let me know.

Zurich agreed with my provisional decision, and Mr S didn't respond to us. Neither Mr S nor Zurich told me about any tax implications that I didn't address in my provisional decision.

In the circumstances, I remain of the view set out in my provisional decision, for the same reasons.

my final decision

My final decision is that I partially uphold this complaint. Zurich Assurance Ltd is entitled to ask Mr S to pay back the amount it mistakenly paid to him, less £500 to reflect the distress and inconvenience it caused. When asking for repayment, it should take steps to help Mr S pay back the money at a rate that he can afford.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 May 2018.

Laura Forster
ombudsman