

The complaint

Mr W complains that ReAssure Limited (ReAssure) didn't advise him to, nor give him enough clear information to, consider the wider pension market and the option of an enhanced annuity.

What happened

In February 2010 Mr W called ReAssure (at the time Windsor Life) to enquire about taking his benefits.

ReAssure issued a retirement options pack which included information about the various options available to him. Included within this was the regulator's, Financial Services Authority (FSA), factsheet that included more information about his options.

ReAssure sent more information later in February following Mr W informing them of his choice. This contained information about his selected option and the various forms required should he wish to take his benefits and an *'About Our Services'* leaflet.

Mr W confirmed he wanted to take a 25% tax-free lump sum and purchase an annuity and that he'd not received any advice from a financial adviser.

Mr W's representative, complained to ReAssure in January 2023. They said that Mr W should've been advised to look at an enhanced annuity.

ReAssure rejected the complaint and explained it did not provide advice to Mr W, as it was a non-advised sale, but he was given clear information to make an informed choice.

The complaint was referred to this service and our investigator looked into matters. He concluded that ReAssure hadn't done anything wrong and it had given Mr W information about taking an enhanced annuity.

Mr W's representatives disagreed. They said it wasn't enough for ReAssure simply to tell Mr W about his options. They argue that it ought to have given Mr W the various quotations to properly assess his options.

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.

Mr W's representatives said ReAssure had failed to advise Mr W to review the whole of the market. And they referred to numerous bits of legislation which they say that ReAssure did not meet. However, the legislation they referred to post-dated the advice by a number of years and isn't retrospective. So it isn't relevant here.

At the time when Mr W took his benefits in 2010, ReAssure as Mr W's pension provider needed to give him all the relevant information to make an informed decision about his options. More specifically I'll set out the rules, good practice and industry context relevant

here:

COBS 2.1.1R (the 'client's best interests rule') requires a firm to act honestly, fairly and professionally in accordance with the best interests of its client.

COBS 4.2.1R (the 'fair, clear and not misleading information rule') requires a firm to take reasonable steps to ensure that a communication is fair, clear and not misleading.

Rules specific to annuity sales came into place on 1 November 2007 - COBS 19.4.1R(3) said the provider has to issue an open market option statement which it defines as either:

(a) the FSA's "*Your pension: it's time to choose*" factsheet, together with a written summary of the retail client's open market option, which is sufficient for the client to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or

(b) a written statement that gives materially the same information.

The FCA factsheet in use at the time was from 2009 and mentions both enhanced and impaired life annuities in relation to both health and lifestyle. Lifestyle uses the examples of being overweight or smoking.

So from 1 November 2009 a provider shouldn't just tell a customer that annuity enhancements are only for someone in poor health, but might also cover lifestyle conditions such as being overweight, or smoking.

The Association of British Insurers (ABI), published in July 2008 a '*Good Practice Guide*' to "*Improving customers' retirement experiences*". The Guide stressed the importance of providing adequate information to customers in relation to enhanced annuities, encouraging providers to draw the customer's attention to product features and terms and conditions that may significantly affect benefits. Under the Guide the provider should "*In quoting all available options draw the customer's attention in good time to particular options that may be to their advantage.*"

More recently, the Financial Conduct Authority (FCA), decided to conduct an industry wide review of non-advised annuity sales made after 1 July 2008. This was generally known as the '*Thematic Review*'. The review examined whether customers were given enough information about the availability of, and their potential eligibility for, enhanced annuities. The review also examined if customers were made aware of the Open Market Option (OMO), where they could get an annuity from another provider.

The FCA also wanted to establish if customers were provided with sufficient information about enhanced annuities before they purchased their annuity. In particular the FCA wanted to establish if customers were made aware:

- That they could receive a higher income if they had certain medical or lifestyle conditions. This is known as an '*enhanced annuity*'.
- If they were eligible for an enhanced annuity with a firm that they could shop around for an enhanced annuity from another provider in order to potentially get a higher income; and
- That even if they were not eligible for an enhanced annuity with a firm that they may still be eligible for an enhanced annuity from another provider.

When Mr W contacted ReAssure about taking his benefits it said:

'You may wish to consult on your personal circumstances before making your choice. If you do, then you should consider taking independent professional advice. Please note you may have to pay for this.'

'Tell us what you decide and we will send you full details of the option you are interested in, with the paperwork we need you to fill in.'

And an accompanying leaflet said:

'You will not receive advice or a recommendation from us. We will provide you with the information you need. You will then need to make your own choice about how to proceed.'

On the forms Mr W returned to ReAssure he ticked 'no' in relation to the question as to whether he'd sought advice.

So, I think it's clear that ReAssure did not provide an advice service to Mr W. Its responsibility was to give him clear information in line with good practice and the relevant rules at the time.

Within the retirement pack Mr W was given numerous bits of information about the open market option.

The covering letter said Mr W had the option of taking an annuity with ReAssure or from another provider using the OMO. The retirement quote contained annuity quotes with ReAssure as well as the amount available as an OMO which could be used to buy an annuity with another insurance company. It stated

'You can decide to take your money built up with us and buy an annuity with another insurance company. You may get a better deal by shopping around.'

The pack also included a section called 'Current pension benefits - what do I need to know?'

'If you wish to consult on your personal circumstances before deciding what to do, you should consider taking independent professional advice. Please note that this would be at your own expense.'

'5. Can I shop around?'

'In this pack we have included illustrations of how much money you could get from us under the different pension types. If you want to ask other providers for quotes on how much money they would give you, you must give them the transfer value shown on your yearly pension statement.'

'6. What else could I do?'

'If you don't want one of the pension choices shown earlier in this brochure, then here are a few others you may wish to consider. You would need to exercise your right to shop around to buy one of these...'

Impaired Life Pension Annuity

Some companies offer pensions that are designed for people with health problems such as cancer, heart attack, stroke or renal failure.'

The retirement pack also included the FSA factsheet called *'Just the facts about your pension - it's time to choose.'* This factsheet explained the various retirement options available including the OMO and enhanced and impaired-life annuities.

In respect of the OMO it stated *'Not all companies will deal with you direct so it may be advisable to consult a whole-of-market adviser, who should be able to look at all the annuity rates on offer.'* For enhanced and impaired life annuities it stated:

'Some companies offer impaired-life annuities that pay a higher than normal income if you have health problems that threaten to reduce your lifespan.'

'You might be able to get an enhanced annuity if you are overweight or smoke regularly. Some companies offer higher rates to people who have followed certain occupations or people who live in certain parts of the country.'

'Always check whether you may be eligible for either of these options. Check whether you could get a better income because of your health, lifestyle, occupation or where you live.'

It also included a flowchart to check through options. This said:

'Do you have a history of poor health?

'Yes'

'Check if you are eligible for an impaired-life annuity.'

'You may be able to get an enhanced annuity if you are overweight, a smoker, have done some manual jobs or live in a particular part of the country. So this is worth checking.'

The About our services leaflet issued to Mr W made it clear ReAssure was not offering products from the whole market as it stated, *'We only offer our own products.'*

From the evidence we have and from looking at the complaint submitted, it appears the information relied upon in this sale was largely physical documents and not verbal communication. And so evaluating the information provided is the key issue in this complaint.

The evidence shows that ReAssure did make Mr W aware of the open market option. And on a number of occasions. Mr W chose to continue with ReAssure rather than taking the OMO but as ReAssure did not give any advice, this was Mr W's choice.

In his complaint to this service Mr W has told us he had health issues and he was a heavy smoker and overweight. He was provided with information that said he may benefit from a higher annuity on the open market option due to health/lifestyle issues and specifically ones that he's told us he suffered from. So I think the information ought to have been clear to him that he may benefit from an impaired/enhanced annuity elsewhere due to his health/lifestyle.

So I am satisfied that ReAssure gave Mr W sufficient and clear information about his options – that he would've understood. It may be perhaps that Mr W didn't read this information carefully, but I can't hold ReAssure responsible for that. It provided it to him. The evidence suggests ReAssure met the rules applicable at the time in the annuity sale and acted broadly in line with good practice at the time. I've considered whether it would be fair and reasonable to uphold this complaint in light of the evidence and the particular circumstances, and I've concluded it shouldn't be upheld.

Mr W's representatives have said ReAssure should've provided Mr W with quotations from other providers with which to make his decision. However, this wasn't something it was obliged to do at the time. But it did give Mr W the information on how to do this himself. That he chose to take an annuity with ReAssure was his choice and after considering the rules at the time and evidence provided – I don't think ReAssure did anything wrong.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 November 2023.

Simon Hollingshead
Ombudsman