

The complaint

Mr G has complained about how Utmost Life and Pension Limited ('Utmost') dealt with his lump sum withdrawal request. Utmost didn't act as it was instructed, and Mr G missed out on a tax-free lump sum withdrawal. Mr G wants to be compensated for this.

What happened

In 2020 Mr G wanted to withdraw a tax-free lump sum from his flexible drawdown plan and instructed annual tax-free lump sum withdrawals of £43,000 for the following four years.

The first payment was made in March 2021. In 2022 Mr G wanted to alter the amount of withdrawal to £10,000. He completed the withdrawal form but during a phone call on 28 February 2022 was advised that he hadn't completed both parts of the two-part withdrawal form and that the payment of £43,000 was still in the process of being issued on 25 March. Mr G said to allow that payment to go through and then for the withdrawal instruction of £43,000 to be cancelled. But the payment wasn't made as Utmost hadn't received the relevant payment forms.

Mr G wasn't happy and complained to Utmost. It didn't uphold his complaint. It said;

- During the call of 28 February 2022 Mr G had been advised that Utmost would require a completed cash lump sum and regular payment form and a payment reply form to make the payment.
- A letter had been sent to Mr G on the same day confirming the regular payments of £43,000 had been cancelled and enclosed the forms he would need to complete.
- Mr G had called again on 1 March to confirm he wished to take a single income payment of £43,000 and he was told he would need to return a completed cash lump sum and regular payment form. But the form wasn't received by Utmost, so no payment was made.

Mr G didn't agree. His recollection of the phone call was different. He wasn't happy with the outcome and brought his complaint to this service.

Our investigator who considered the complaint didn't think it should be upheld. She said;

- She accepted there may have been some confusion about the requests and changed instructions, but Utmost couldn't process the payment without the completed application.
- Mr G had been through the process before and ought to have expected to do so again in line with the business' agreed terms and conditions.
- Utmost had sent Mr G a letter which Mr G didn't open it as he thought the withdrawal was organised. But it wasn't unfair of Utmost to write to Mr G and expect him to read the letter.
- Utmost had acted in line with its processes, and it wasn't for this service to interfere with a business' procedures.

Mr G didn't agree with the investigator. He was concerned that Utmost hadn't been able to provide call recordings as they had been referred to in conversations he had with Utmost. His recollection was that during his call of 28 February he asked for the £43,000 withdrawal to proceed on 25 March and for it to be cancelled after that.

As the complaint couldn't be resolved, it has been passed to me for a 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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

Utmost hasn't been able to provide recordings of the calls that took place on 28 February or 1 March but it has been able to provide us with its notes for all of the calls had with Mr G. I note there were several requests for changes to both the annual regular payments as well as ad hoc payments. From the call notes provided by Utmost and relevant to this complaint, I've listed below a timeline of what happened;

- 28 February 2022 – At 15.03 Utmost called Mr G as it still needed a correctly completed payment form to amend his regular payment to £10,000 plus an ad hoc payment of £10,000. Utmost was to send the form by first class post. The phone note goes onto say 'Agreed to stop £43k income due March 2022'.

At 15.30 – Utmost spoke with Mr G. He wanted to switch into a less risky investment. Later Mr G called Utmost as he wanted the annual payment of £43,000 to be paid as soon as possible as he was concerned about market movements. He gave a revised income instruction and asked for previous ones to be ignored. He wanted the annual payment of £43,000 which was due in March.

A letter of confirmation of the amended instructions was sent to Mr G on the same day.

- 1 March 2022 – During a call to Mr G an ad hoc payment of £43,000 was agreed and discussed. Utmost could make the payment once it had received the payment form it was to send to him. The call note says 'Currently, client just wants an ad hoc of £43k with no income'.

It was this payment instruction form that was never received so no payment was made.

On the same day Utmost had received the earlier payment form from Mr G stating he wanted to take a single payment of £10,000 and amend the regular payment to £10,000. As the form had been completed prior to this later amended request it was agreed during the call that this earlier instruction would be disregarded, and Mr G would send in a new payment form with his new instructions.

12 April 2022 – At 13.59 Mr G called Utmost and said he had returned his ad hoc payment form for £43,000 but Utmost said it hadn't been received. A new payment pack was sent to him by first class post. Utmost's note of the call says, 'Please note, the income payment was stopped on Mr [G's] instruction & my letter of 28/02/22 confirmed this.'

At 15.34 Mr G called Utmost as he had been expecting a payment of £43,000 around 25 March. He was advised that his instruction had been cancelled. Mr G said this wasn't correct.

Mr G called again at 16.30 disputing the letter that had been sent to him on 28 February but which he said he had only opened that day.

I appreciate that Mr G doesn't agree with Utmost's records about the phone calls, and he is unhappy the recordings cannot be retrieved. Clearly having those call recordings would have been very useful when considering this complaint and I've borne this in mind when reviewing the complaint file. And I don't doubt Mr G's recollection of what was said during those calls but equally I don't think it is unreasonable of me to review the contemporaneous phone notes that were made by Utmost at the time of those calls. And I think it is unlikely that those call notes have been altered since they were made.

But I have also considered other records available and not just the phone notes. Clearly there was some confusion during the calls, and I think a misunderstanding may have arisen during the calls of 28 February. After the first call the phone note says 'Agreed to stop £43k income due March 2022'. But I don't think Mr G was aware of this as evidenced by his later call of the same day to say he wanted the March 2022 payment of £43,000 to be paid as soon as possible because of his concerns about the stock market.

This suggests to me that Mr G was under the impression the £43,000 instruction was still in place as he went onto ask that the previously talked about instructions – the amendment to a £10,000 regular payment and the ad hoc payment of £10,000 – be ignored.

Clearly, I can't know for sure what was said and agreed during those calls, but I think it most likely this is where the confusion came about. Mr G wanted to continue with the regular £43,000 payment which he told us he understood was going ahead as usual and that Utmost would ignore his earlier call to amend instruction payments.

Even if I am right about this point and that a misunderstanding had arisen, while I could solely make a finding on the balance of probabilities, I think it's only right I consider this in the context of the other evidence that is available.

After the calls of 28 February 2022 Utmost wrote to Mr G on the same day to confirm what was discussed during those calls. The letter said;

'You have chosen to receive regular withdrawals of £10,000 before tax per annum, payable to you yearly started 25 March 2022. You have also chosen to receive a one-off lump sum of £10,000 before tax.'

Further correspondence said;

'Your regular payments of GBP43,000 paid annually from 25 March 2022 have been cancelled with immediate effect. Enclosed with this letter is a revised projection of benefits showing the effect of the proposed reduction to your regular income, to GBP10,000 annually and the single income payment of GBP10,000...'

Mr G needed to return the payment reply form and the cash lump sum and regular income payment form.

Unfortunately, Mr G didn't open that letter until 12 April 2022. Even though I appreciate that Mr G has told us the reason for that was because he thought everything was in order, I can't

find that Utmost was at fault. And I don't think it was unreasonable for Utmost to have written to Mr G with the expectation that he would read the letter upon receipt.

Mr G is adamant that Utmost didn't carry out the instructions he gave during his phone calls and as I've outlined above, I think it most likely there was a misunderstanding during those calls. But as I've already said, bearing in mind the conflicting testimony and phone notes, it would be difficult for me to solely make a finding of who was at fault without consideration of all of the facts surrounding this complaint.

The correspondence of 28 February made clear what Utmost understood from the calls and the instruction that Mr G had given. If Mr G had opened that letter at an earlier date, he would have discovered that Utmost's understanding wasn't a reflection of what he wanted. So irrespective of the call notes – and in the absence of the actual recordings – I'm satisfied that Utmost did inform Mr G of the action it would be taking for the income payments from his plan. If it had misunderstood his instruction and an error had been made, that could have been corrected at the time and payment could have completed.

I accept the point that Mr G has made that it would have been unlikely for him to have not taken advantage of the annual lump sum tax exemption. And the phone notes from subsequent calls suggest that he was under the impression that payment was being made as during the follow up call of 1 March an ad-hoc payment of £43,000 was discussed and agreed.

But I think at this time Mr G was referring to his usual regular payment which he thought was still in place. However, Utmost's records show that the regular income payment of £43,000 had been stopped, which I think is why it referred to the payment as being an ad hoc payment rather than a regular payment in the later call. However, for that payment to be made – now that it was an ad hoc payment – Mr G would need to complete and return further forms. And those forms weren't received so no payment was made.

And on the same day, Utmost had received Mr G's amended instruction forms for the regular payment of £10,000 and an ad hoc payment of £10,000 but as a result of the call, it was agreed that instruction should be ignored, hence that payment not being made either.

Taking all of the above into account, I don't find that Utmost has done anything wrong. While I think there was a misunderstanding during the calls Mr G had, I'm satisfied that misunderstanding would have been corrected if Mr G had opened the letter of 28 February. But as that letter wasn't opened and any error corrected or Mr G returning any completed payment form sent to him on 1 March, I don't agree that Utmost has been unfair in its treatment of Mr G.

It follows that I don't uphold Mr G's complaint and I won't be asking Utmost to do anything more.

It's clear that Mr G feels strongly about his complaint and no doubt he will be disappointed by my decision. But I hope I have been able to explain how and why I reached that decision.

My final decision

For the reasons given, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 December 2023.

Catherine Langley
Ombudsman