DRN-4167289

The complaint

Mr S complains Zurich Assurance Limited ("Zurich") unreasonably delayed the process and wasn't helpful when he wanted to cash in his pension, which led to a financial loss as the value fell. He says it failed to acknowledge his vulnerabilities and financial difficulty causing him additional stress.

What happened

Mr S held a personal pension policy with Zurich, which was invested in its managed fund. He started it back in January 1976 with Hambro Life which is now part of Zurich. Mr S assumed it would pay out automatically on his 65th birthday in August 2022. Instead of an annuity, he wanted to take the plan as an Uncrystallised Funds Pension Lump Sum ("UFPLS") in the 2022/23 tax year, as he was due to start receiving benefits from an occupational and his state pension in 2023, so he wanted to minimise his tax liability.

Zurich sent Mr S a wake-up pack in February 2020 to remind him his selected retirement date was two years away. It set out the process and his options and explained he could take benefits at any time up to age 75.

In January 2022 Zurich wrote to Mr S to ask if he wished to take benefits from the policy, which was valued at the time at around £60,250. To do so, Mr S was required to complete the relevant claim forms and go through the retirement journey process on the telephone or complete a risk questionnaire. Mr S wanted Zurich to send him all the paperwork in one go, as he knew what he wanted to do. Mr S felt he understood pensions as he'd sold them earlier in his career. Zurich told Mr S that taking his pension benefits was an important decision, so recommended he seek financial advice, and that going through the claim process was a regulatory requirement and couldn't be avoided. Zurich sent Mr S a retirement pack in March 2022 at which point his policy value was around £56,602. And it sent him another pack in June 2022 (value £54,942), reminding him of his approaching retirement date. Mr S didn't complete the paperwork sent with those packs. In November 2022 Mr S decided he wanted to take the plan as an UFPLS rather than income. So in December 2022 Zurich sent him another retirement pack, with a plan value of around £56,240, including the relevant risk questionnaire which had to be completed before the claim form could be sent out, but Mr S didn't return this.

In January 2023 Zurich wrote to Mr S again, with a plan value of £55,296. Mr S wrote back complaining about the service, and that Zurich hadn't sent him the forms together. He felt it was causing unnecessary delays by insisting he go through its rigid process when he'd made his intentions clear.

Zurich's final response letter in February 2023 mentioned it had responded in December 2022 to Mr S's complaint point that the policy didn't automatically pay out on his 65th birthday. It said funds weren't automatically released at retirement age and a claim form must be completed. It explained the fund value could fall in line with market volatility, but Mr S could switch funds if he wished.

Mr S wrote back to Zurich saying he didn't want to discuss things in a phone call as he found them stressful. In a further response in April 2023, Zurich explained that as Mr S hadn't claimed benefits, his planned retirement age had automatically increased to 75. He could take benefits when he wanted, if he completed the forms it had previously sent. Mr S asked why they hadn't been sent to him in time for his 65th birthday, and thought Zurich was being uncooperative, as he'd written a number of times explaining what he wanted to do.

In March 2023 Mr S complained to this service, and disclosed he was a disabled, vulnerable person due to financial difficulties and mental health issues. He said the money was needed to satisfy some debts he was increasingly worried about. As Mr S hadn't returned the risk questionnaire and claim form to Zurich in time he didn't receive the funds within the 2022/23 tax year.

In May 2023 Zurich sent a further claim form to Mr S by recorded delivery, which he did complete and return. Payment was made to him on 11 May 2023, based on a policy value of just over £56,964. Mr S received a net payment of just over £39,360 after income tax of £17,604 was deducted, as the rules allow 25% of any lump sum to be tax-free. Mr S wasn't happy with the amount he received, as the policy value had been higher in 2022, and he paid more tax than expected.

One of our investigators looked into what had happened. He sympathised with Mr S's situation but didn't think Zurich had done anything wrong. He'd seen no evidence Mr S had submitted the completed questionnaire and claim form in time to receive the funds around his 65th birthday. And Zurich had a responsibility to ensure Mr S understood the risks and implications of his choice to take his pension in full as a lump sum.

Mr S said the investigator had issued his view too quickly without taking full account of his lengthy correspondence, nor his poor mental health and financial difficulties. He felt the investigator had simply sided with Zurich, so the case has come to me to issue 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.

Having done so, I'm not going to uphold it. I realise this will be disappointing for Mr S, so let me explain why.

I'm sorry this has been a frustrating experience for Mr S. He told us he retired in 2012 on ill health grounds, and about some distressing events during his life, not described here to protect his privacy, but which have clearly impacted his health, wellbeing and personal relationships. I acknowledge he is a vulnerable customer in financial difficulty, who for various reasons finds dealing with important matters on the telephone and in writing quite stressful. It's clear he feels very strongly that Zurich hasn't helped him, and he's tried to bring his concerns to the attention of several unconnected public figures. He's also engaged in frequent and lengthy correspondence with Zurich.

I think Mr S's complaint concerns a number of issues:

- He expected the policy to pay out automatically when he turned 65
- the process was lengthy and complicated, and Zurich wouldn't simply accept his instructions
- Zurich didn't factor in Mr S being elderly, disabled and in financial difficulties
- the length of time meant the policy fell in value and was also paid in the wrong tax-year so Mr S paid additional tax

So I'll address these points in turn. I'd also like to clarify that the investigator issued his view promptly as we try not to keep vulnerable consumers waiting for answers unnecessarily. But he had read and considered all the evidence provided by Mr S and Zurich, in light of regulatory requirements and industry best practice.

The policy didn't automatically pay out on Mr S's 65th birthday

Zurich says this point was addressed in a previous complaint Mr S made, but for completeness I'll include it here. Unlike a workplace pension which is payable from a particular age, most defined contribution pensions need to be claimed, usually up to age 75 when the tax rules change. Zurich couldn't simply put Mr S's plan into payment automatically on his 65th birthday. Everyone's circumstances are different, some may still be working and contributing to the plan and so not yet be ready to retire. While Mr S was eligible to take benefits, Zurich couldn't know what he wanted to do until he responded to the wake-up pack.

The plan Mr S started as a young man in 1976 was set up to pay him a modest income for life by way of an annuity. But even if Zurich could automatically have established an annuity for Mr S, that isn't the option he wanted.

So Zurich needed to give Mr S clear information about his options to enable him to make the right choice. The wake-up pack reminded Mr S his selected retirement date was approaching, but he wasn't obliged to take his pension then if he didn't want to. And it explained what he needed to do to claim his benefits. This is what I'd expect a pension provider to do, so I don't think Mr S was treated unfairly.

The process took too long, the policy value fell, and payment was received in the wrong tax year

I've explained why Zurich couldn't simply make an assumption about how and when Mr S wanted to access his pension. Once he decided to take benefits from his plan, he needed to consider his options, and decide on the most appropriate one for his circumstances (usually having taken advice from "PensionWise" or a financial adviser). He'd then need to go through the retirement journey questions, usually during a phone call, or complete the questionnaire to acknowledge he understood the risks involved, and finally complete the application for the option he wanted. And he might need to provide further information to enable Zurich to make the payment, for example to confirm his identity and his national insurance number.

The wake-up pack dated February 2020 briefly explained Mr S's options and said that it would contact him again six months prior to his chosen retirement date, at which point he could start the claims process. As promised in March 2022 Zurich wrote to Mr S with a reminder (headed "*Your retirement, your choice*") that if he still intended to take his pension at 65 to give them a call to start the process. The letter gave Mr S five options including leaving his plan where it was, an annuity, drawdown (which Zurich doesn't offer) or taking the plan as a lump sum. It recommended taking advice or speaking to the free *PensionWise* service. It offered a phone number for queries and explained if Mr S didn't make his choice prior to his birthday Zurich would assume he wanted to delay taking his pension. A similar pack was sent out in June 2022.So I think Mr S was put on notice about what would happen if he didn't complete the claims process.

Zurich has subsequently explained that Mr S had been told in 2018 in response to a separate complaint that he couldn't withdraw 25% of the plan value every year for four years. As Zurich didn't offer a drawdown option, so he'd have had to seek advice and arrange to transfer the plan to another provider. It doesn't look like Mr S did seek advice.

I think the packs Zurich sent Mr S were reasonably clear, and had he done as suggested and called Zurich to start the claims process it would have been completed far more quickly than it was. Mr S told Zurich in March 2023 he finds telephone calls stressful, in which case he needed to complete the risk questionnaire to ensure he understood the risks involved in the choice he wanted to make.

Mr S didn't think that was necessary as he'd previously held a pension selling licence so fully understood how pensions work. But the process applies to everyone, even people with a financial background, as firms must comply with strict regulatory responsibilities. And the rules have changed substantially since Mr S started his plan with Hambro Life over forty years ago, when at the end of the term he'd have received an annuity, to pay him a fixed income for life. At that time it wasn't possible to move into a drawdown plan or take the funds as a lump sum (UFPLS), as the law didn't allow it.

The introduction of the Pension Schemes Act commonly known as "*pension freedoms*" in 2015, gave people more choice and flexibility over how they accessed their pensions, recognising an annuity doesn't suit everyone. But options other than an annuity run the risk of running out of money too soon. As taking pension benefits is an important, irrevocable decision, the regulator has insisted that providers like Zurich make their customers aware of the risks and pitfalls of the various options. Which is why Zurich recommended Mr S seek financial advice and offered to book an appointment with "*PensionWise*" (a government free advice service), which he chose not to accept.

I think it was possible for Mr S to receive the funds in the 2022/23 tax year close to his birthday. But unfortunately I think the delay was caused by him failing to comply with the process as he didn't agree with it. But the risk questionnaire explained Zurich would send him further information based on his answers to the questions. I think this is reasonable, as each option may have different requirements. Mr S made Zurich aware of his vulnerabilities and in March 2023 said that he found phone calls stressful. But it offered the option of completing the forms and recommended he seek assistance from a free impartial service which I think was reasonable. I'm not persuaded Zurich could have done more to assist Mr S, as it was legally required to ensure he understood the implications of his decision.

I can see Mr S did complete and sign Zurich's risk warning questionnaire on 21 December 2022. But he answered "*No"* when asked whether he'd sought advice from "*PensionWise"* or a regulated adviser. He said he had other means to provide an income in retirement, so wanted to use this money to buy and restore a classic car, and to "*enjoy life*". He didn't disclose at this point that he needed the money to urgently repay debts. I think Zurich would have been concerned that Mr S was at risk of losing his pension if his classic car project didn't succeed. It was obliged to ensure Mr S understood the risks of using his pension money for what appeared to be a non-essential purchase.

So Zurich sent Mr S a document headed "*Risks and implications of taking a lump sum"* which set out a number of risks specific to this option. These included considerations such as making his income last, that he might pay additional tax, and the impact on his debts or means-tested benefits. It repeated that taking pension benefits was an important decision that Mr S needed to think carefully about. Mr S completed the lump sum risk warning questionnaire on 7 March 2023. On this form Mr S ticked "*Yes*" to say he had received regulated financial advice, including the comment that he has a pension selling licence following 25 years working for another provider. While it might have been the case in the past, according to the FCA register he isn't regulated to give financial advice now, and I think it's likely he hasn't been since pension freedoms were introduced. So I see why Zurich needed to ensure Mr S understood the choice he was making.

In this form Mr S admitted he needed the funds to clear his debts, and around this time he sent Zurich copies of chasing letters from his creditors, but I can't see Zurich would have been aware of his financial difficulty prior to this. Mr S also explained in February 2023 that he didn't feel comfortable to go online or use computers. But I think he still had time to complete the process in the 2022/23 tax year, had he followed the steps and completed the forms, rather than writing back to Zurich complaining at the delay.

At the end of March 2023 Zurich told Mr S that 17 March was its cut-off date for ensuring payments were received in the 2022/23 tax year (which ended on 5 April) so any claims received after that would be processed on a "best endeavours" basis. It also sent a copy of the correspondence to the financial adviser firm named on Mr S's policy, although I understand they no longer work for Mr S.

In April 2023 Zurich wrote to Mr S acknowledging receipt of his questionnaire but it hadn't received a signed claim form. Point 5.2 of the letter explained Mr S could take the policy as a lump sum (UFPLS) and point 5.3 explained that only 25% will be tax-free and Zurich will deduct income tax from the remainder. Zurich told Mr S it needed his National Insurance Number and bank details. I can see Mr S found this frustrating as he believed he'd provided this information previously, but I think it was reasonable for Zurich to require a fully completed claim form. And as all the requirements hadn't been met before the deadline it wasn't possible for the money to be received within the 2022/23 tax year. I realise this was disappointing for Mr S, but I can't fairly say Zurich caused the delay here.

Each time a pack was sent out it contained an indicative plan valuation which wasn't guaranteed, and the value fluctuated over time. Zurich explained Mr S could switch to less risky funds if he wished, but he didn't take this option. I can see the value fell substantially in June 2022 but then recovered slightly by the time Zurich received the relevant forms. I think had Mr S completed the process in full in a timely manner he could have received the funds in the 2022/23 tax year, but it's not certain he'd have received a higher policy value. I can't hold Zurich responsible for the delay or for any additional tax Mr S paid by receiving it after the end of the tax year.

In summary, I realise the process has been frustrating and distressing for Mr S and he didn't understand why he had to follow such a rigid procedure. But the checks and steps involved are to ensure Mr S was making an informed choice. While I appreciate it might not have felt like it to Mr S, I'm satisfied Zurich wasn't deliberately preventing him accessing his pension or behaving in a fraudulent or corrupt manner. Instead they were acting in his best interests, and in line with their regulatory obligations. So I'm not going to ask Zurich to do anything to put things right.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 August 2023.

Sarah Milne
Ombudsman