

## Ombudsman's Determination

Applicant	Dr Y
Scheme	Reassure Personal Pension Plan ( <b>the Pension</b> )
Respondent	ReAssure Limited ( <b>ReAssure</b> )

## Outcome

1. Dr Y's complaint against ReAssure is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, ReAssure shall pay Dr Y £1,000 for the serious distress and inconvenience this matter has caused him.

## Complaint summary

2. Dr Y's complaint against ReAssure is that it provided incorrect information in relation to the amount of Lifetime Allowance (**LTA**) that would be used up by purchasing an annuity using his benefits in the Pension. He says had it provided correct information, he would have transferred his benefits to a drawdown plan instead.

## Background information, including submissions from the parties

3. Initially, Dr Y had three pension policies with ReAssure - H00444125, N00444125 and K00613312 - which together provided him with a guaranteed annuity rate (**GAR**).
4. In 2015, Dr Y decided to take his benefits from the Pension. As ReAssure did not offer annuities, its process was to introduce customers to Liverpool Victoria (**LV**), who would provide them with a comparison of the whole of the annuity market. Dr Y had discussions with LV and established there were limited options that did not "negate" the GAR. In the end, he ascertained that, after taking maximum tax-free cash (**TFC**), he had two options (1) withdraw the rest of his benefits in the Pension or (2) obtain a GAR quote. He chose (2). ReAssure recommended that Dr Y use the Government's impartial service, Pension Wise, or obtain financial advice. However, he did not do so.
5. LV obtained three quotations, including one from Hodge Life Assurance Company Ltd (**Hodge**). On or around 22 January 2016, Dr Y completed and returned the forms to Hodge, in order to proceed with the GAR annuity.

6. On 18 February 2016, ReAssure paid Dr Y's TFC, of £15,309.43, and transferred the remainder of his benefits, which amounted to £86,004.24, to Hodge. On or around 23 February 2016, ReAssure confirmed this in writing. Attached to its letter was a certificate showing the amount of Dr Y's standard LTA used up by the TFC and the purchase of the annuity. For policy H00444125, the LTA used up was 8.1%; for K00613312, it was 0.74%; and, for N00444126, 1.35% (**the first set of figures**).
7. As the total amount of LTA used by the whole Pension was 10.19%, that is, higher than Dr Y had expected, he contacted LV to cancel the annuity. He says it agreed to do so; and, it also agreed to ask ReAssure for more details on the LTA figures.
8. On or around 2 March 2016, ReAssure issued a revised certificate, showing an LTA of 4.89% for H00444125, which Dr Y received from LV on 10 March 2016. Based on this, he calculated that the amount of LTA used up by the whole Pension was 6.1%, that is, in line with what he had expected (**the second set of figures**). On 11 March 2017, he told LV to proceed with the annuity.
9. ReAssure says on or around 4 March 2016, it issued another revised certificate. This showed the LTA used up for H00444125 was 8.1% (**the third set of figures**). Whilst ReAssure says it provided these figures, it does not hold copies nor further evidence to substantiate that they were issued. Dr Y's position is no further figures were sent to him, by ReAssure, LV or Hodge, following the second set of figures.
10. In May 2017, Dr Y received from Hodge, a P60 form showing the total benefits paid in 2016/17 and associated LTA value. As the latter was 8.66%, that is, higher than he had expected, Dr Y contacted ReAssure to query this.
11. In June 2017, ReAssure said it had miscalculated the second set of figures and that the correct figure was in fact 10.19% for the whole Pension. The 8.1% figure applied to H00444125 alone. It also said it had followed HMRC guidance regarding the cost of outsourcing annuities including a GAR. However, it apologised for providing wrong information and offered £300 in recognition of the inconvenience caused to Dr Y.
12. This resulted in Dr Y's making a complaint to ReAssure.
13. In July 2017, ReAssure issued a response to the complaint but did not uphold it. Dr Y disagreed and appealed. In August 2017, ReAssure issued a second response to the complaint but again did not uphold it. Finally, in November 2017, Dr Y contacted The Pensions Advisory Service (**TPAS**) for assistance. The key points were:-
  - He applied for a Hodge annuity in order to "explore its potential". But at no point, prior to transfer of the funds to Hodge, did he receive figures for LTA that would be used up. This denied him the right to choose the most suitable option.
  - He received no explanation of ReAssure's calculation method, so there was no sign that this was not simply based on the value of his accrued benefits. Nor did Hodge or LV provide LTA figures, or confirm if ReAssure's figures were correct.

- The difference in LTA amounts “severely constrained” the growth margin for his other pensions. He would not have accepted an annuity on the basis of the higher figures, therefore he initially asked to cancel this.
  - It should not have been too late to cancel the annuity at that stage, even if funds had been transferred to Hodge, because there was normally a cancellation period. LV had agreed to cancel the process and Hodge would not have refused to return the funds as payment details had not yet been arranged.
  - Only based on the second set of figures did he agree to proceed with the annuity. 14 months later, in May 2017, Hodge provided information indicating that 8.6% of his LTA had been used up by the annuity. So it must have proceeded on the basis of the first set of figures and ignoring the second.
  - ReAssure later confirmed the first set of figures was correct, that is, based on HMRC guidance on the cost of outsourced annuities. But this was the first time ReAssure had mentioned its policy of including within its LTA calculation, the cost of an “uplift” in the transfer value in order for the GAR to be honoured by the annuity provider. This was counter-intuitive and potentially discriminatory.
  - In summary, ReAssure: failed to outline a non-standard LTA calculation method; failed to issue clear/correct LTA figures before transferring funds to Hodge, which denied him the chance to make other choices; failed to realise he had no chance to contest the figures, as funds were sent to Hodge before any LTA figures were issued; and, failed to tell Hodge about the second set of figures, or tell it that the third set of figures had been issued when there was time to cancel the annuity.
14. In January 2018, ReAssure issued a third response but did not uphold the complaint. The key points were:-
- It issued incorrect LTA certificates after Dr Y’s benefits crystallised, but correct certificates at the time of transfer, when the annuity could have been cancelled.
  - It had correctly provided details of the GAR and agreed to honour it via an uplift to Hodge. Hodge would have provided illustrations that included the uplifted figures, in order that the benefit of the GAR would be provided. So, the instruction to draw the uplifted benefits was made by Dr Y in the knowledge of the correct LTA.
  - As LV offered Dr Y further guidance on his options but he turned this down, it was possible there had been no assessment against the LTA, nor proper consideration of the tax implications of his chosen option.
  - Before choosing the GAR annuity, Dr Y held significant pension funds and he was close to his LTA. The uplifted pension transfer purchased only £25,000 additional pension and increased the LTA by only 3.2%. With such a small margin, and with no control over market movements, Dr Y should have obtained advice on whether the annuity was suitable.

- Given all the facts, and on the balance of probabilities, it was not responsible for Dr Y's potentially exceeding his LTA.
15. ReAssure did not make any further comments in response to Dr Y's complaint to the Ombudsman.
16. In February 2019, Dr Y provided his further comments on all ReAssure's responses to the complaint made to them. The key points were:-
- Much had been made of the fact he did not accept an offer of further guidance on his options. But he did speak with LV, which advised there were limited options which did not negate the GAR. So, he needed to obtain annuity quotes because ReAssure did not provide information on the GAR. This was the only information he required; he did not require financial advice.
  - Had the annuity been directly paid by ReAssure, the LTA would simply have been calculated based on the accrued value of the Pension. It was "outrageous" that he had to suffer a penalty, in the form of a higher LTA figure, because of ReAssure's policy of outsourcing annuities. This also contradicted HMRC guidance.
  - ReAssure acknowledged that the transfer was successfully blocked and accepted that he released the block after the second set of figures. His actions were carried out in the reasonable belief that the lower values were correct.
  - The difference between the higher and the lower values was 4%. By age 75, this would constitute significant growth. The higher values were unacceptable, as 4% meant that growth of only £50,000 could become subject to 55% tax at age 75.
  - Never had he experienced a company with such disregard for key elements of financial practice, namely: no notification of the initial funds transfer; no provision of key information to allow an informed decision; and, distortion of basic facts.
17. As part of our investigation, we asked Dr Y to explain what he would have done had ReAssure provided only correct figures. He said he would have transferred benefits to a drawdown plan, which would have allowed tax-efficient additional growth and "more flexible withdrawal of funds as required" for wider family expenditure, for example grandchildren, education and training. Further, it would have allowed controlled tax management of the portfolio. Finally, the higher margin, between the correct value of his benefits and his LTA threshold, would have allowed "more efficient use of funds", particularly in the event of his early death.

## **Adjudicator's Opinion**

18. Dr Y's complaint was considered by one of our Adjudicators, who concluded that further action was required by ReAssure. The Adjudicator's findings are summarised briefly below:-

- ReAssure's calculation method was not incorrect. Dr Y believed that had he taken an annuity from ReAssure, his benefits would have been based on the accrued value of the Pension. But this was not necessarily correct. If a pension has a GAR, the provider must convert the accrued value of the benefits into a pension at a higher rate than normally available. So, there is a benefit to the annuitant over and above the accrued value of his benefits; without the GAR, the same benefits would translate into a lower pension. So, it was reasonable for ReAssure to account for the extra income when valuing the Pension benefits for LTA purposes.
- ReAssure no longer offers annuities, so it arranges for LV to search its panel of providers for an annuity including the benefit of any GAR. This results in an uplifted value, which ReAssure pays to the annuity provider. But ReAssure must report to HMRC, the crystallisation event, which in this case is the revised, or the uplifted, amount. So, ReAssure had not acted incorrectly in this regard.
- Ideally, ReAssure would have provided Dr Y with LTA figures before he made his annuity decision. But it did not act incorrectly by not doing so. Although Dr Y said he proceeded with a quotation "to explore its potential", the evidence indicated he completed and returned the forms to proceed. So, the annuity would always have come into payment automatically after that.
- As Dr Y had significant pension benefits, it would have been reasonable for him to obtain advice about whether a GAR annuity was suitable. An adviser could have ascertained the level of income from a GAR annuity, and advised on the relative costs and benefits of a GAR annuity as against a drawdown plan.
- Although ReAssure provided incorrect figures, this did not cause Dr Y an actual financial loss. Usually, it was difficult to say what an applicant would have done had he received only correct information. In this case, it was known that Dr Y had sought to cancel the annuity on receipt of the first set of figures.
- ReAssure said it issued three sets of LTA figures, but had been unable to prove it issued the third set. Dr Y responded on receipt of the first set of figures. So, on the balance of probabilities, he would have taken action had he received the third set.
- According to Dr Y, LV had advised there were limited options that did not negate the GAR. As previously advised, there was a definite benefit to a GAR, and it was known in advance. Once the GAR annuity had been put into payment, the "extra" income was payable for life; on the other hand, the benefit of the GAR would have been lost on transfer. Without hindsight, Dr Y would not have been prepared to give up the GAR unless an alternative would clearly leave him better off. Based on what he knew in March 2016, and on balance of probabilities, he would not have been willing to give up the certain and guaranteed benefit of the GAR and risk receiving lower lifetime benefits via income drawdown.
- The assessment of whether a GAR annuity or income drawdown would pay higher lifetime benefits would have been complex, taking into account future movements

in underlying investments; life expectancy; and, future tax charges. But an adviser could have recommended the most suitable course of action in the circumstances.

- Although ReAssure's issuing incorrect figures to Dr Y, that is, the lower figures, amounted to maladministration, it had not caused an actual financial loss. But ReAssure's error had caused Dr Y non-financial injustice, that is, distress and inconvenience. Had ReAssure confirmed that the higher figures were correct, Dr Y could have sought advice on whether the annuity was still suitable.
- The Ombudsman's guidance on redress for non-financial injustice provides that an award of £1,000 is appropriate where there has been: serious distress and/or inconvenience that has materially affected the applicant; this took place on several occasions; there was a lasting effect over a prolonged period; and, the respondent was slow to put matters right.
- Mainly, £1,000 was justified because Dr Y would have experienced distress and inconvenience, and loss of expectation, on learning that the amount of LTA used up was higher than he expected, and than he was led to believe. And although he would, on the balance of probabilities, have made the same decision, he had been denied the opportunity to make an informed decision. Further, when Dr Y queried the first set of figures, ReAssure had an opportunity to check and confirm that they were correct; instead, it issued the second set of figures which were incorrect. And finally, ReAssure had been unable to show it issued the third set of figures. Taking this into account, one or more of the factors outlined above applied. So, an award of £1,000 was justified in the circumstances.

19. ReAssure accepted the Adjudicator's Opinion. Dr Y did not accept the Adjudicator's Opinion and made further comments. The key points were:-

- ReAssure's processes had not been fit for purpose. It was perverse to outline the financial consequences of buying an annuity after the pensioner had selected it. LV gave the strong impression that it was not aware of the implications for the calculation of the LTA, so any advice it provided would have been defective.
- It was also suspicious that a large, expert company like ReAssure could not only provide incorrect LTA figures but also lie about correcting them. The award of only £1000 would be greeted by ReAssure as a successful defence of its incompetence; worse, it would provide no incentive to address its flawed process.
- He did not accept the Adjudicator's conclusion that he would have accepted the annuity anyway. There was no reasoning to support this conclusion; and, it contradicted what actually happened. The decision to consider an annuity was very finely balanced; and, he immediately sought to cancel the annuity on receipt of the first set of figures.
- Had the higher LTA figures been confirmed, he would have transferred about £57,000 into his SIPP and would, by now, have withdrawn the whole of that sum over a four-year period with a 40% tax liability. The 4% lower LTA figure would

have allowed up to £60,000 more growth in the rest of his SIPP. As it stood, he now had an annuity, which would require him to live until his 80's before he recovered the initial capital alone. At the same time, the growth in his SIPP would be restricted by £60,000 or incur a 25% tax charge (on top of a 40% tax on subsequent withdrawal of any excess at age 75).

- The practice of companies like ReAssure purchasing pensions (especially pensions with a GAR) was contentious and requires High Court approval. The objective is to ensure scheme members are not prejudiced in any way. But ReAssure had reneged on this undertaking by changing its financial model to abandon direct provision of annuities. This is potentially illegal and introduces a penalty to members. In short, there is a major element of injustice.
- Although ReAssure was required to advise HMRC of the cost of the GAR, there was no sign that it also informed HMRC that this was not a voluntary decision. He had been forced to accept an annuity from another provider, as ReAssure did not offer them anymore. His own telephone conversation with HMRC indicated there was no official guidance about this specific circumstance.
- At no stage until after transfer of funds to Hodge did ReAssure or LV indicate that the GAR would be accompanied by a higher LTA figure. It would not have had this penalty had ReAssure remained the provider. So, signing the annuity application was “defective” in that full information was not provided and there was no way for him to know that a higher LTA would be involved.
- It seemed from the Opinion that his problem was considered “unique and trivial”. But in his view, there were major legal, moral and financial issues at stake.

20. Dr Y provided his further comments, which do not change the outcome. I agree with outcome expressed in the Adjudicator's Opinion and set out my reasons below.

### **Ombudsman's decision**

Dr Y considers that his annuity value was artificially inflated for LTA reporting purposes. I disagree for the following reasons. If a member decides to take benefits from a pension, the value of the benefits must be tested against the LTA applicable at that time. Every time benefits are taken, the member is using up a certain percentage of his LTA. There are a number of ways that benefits can be taken, including a scheme pension; lifetime annuity; or, an unsecured pension (income drawdown). Whenever benefits are taken from a pension, a benefit crystallisation event (**BCE**) occurs and the value of the benefits is tested against the LTA. In the case of an annuity (ie, where the member becomes entitled to a lifetime income under a defined contribution arrangement), the valuation basis is usually the market value of the fund used to purchase the annuity.

21. In that context, I have considered whether Reassure reported the correct value to HMRC. The annuity which was purchased honoured a guarantee which was above

the rate available on the open market. The annuity which was purchased was larger than the market would have provided for the sum of money which was transferred from Dr Y's DC pot. Therefore its market value was not the sum of money which was transferred. Rather, it was the total of the sum of money transferred and the uplift necessary to purchase it. Therefore I conclude it was not incorrect for ReAssure to include the value of the uplift in the figures it reported to HMRC.

22. I appreciate that Dr Y would have preferred to receive notification of the relevant figures before he made his decision. However there is no requirement to provide this information in advance of the BCE taking place. There is nothing in HMRC's Pensions Tax Manual which requires advance notice. LTA usage figures are given in order that the member can work out if they have any available LTA at subsequent BCEs and correctly complete any tax return. In my view, there was no maladministration in failing to provide LTA figures before Dr Y made his decision.
23. It is not disputed that, in fact, Dr Y tried to cancel the annuity once in receipt of the first set of figures, and that he proceeded with the annuity purchase only after receipt of the second set of figures, which were wrong. I appreciate that Dr Y considers that he would have made a decision to enter drawdown rather than annuitise at the guaranteed rate if he had known that the first set of figures was correct. I acknowledge that Dr Y is more than usually capable of making the complex comparisons required to work out whether he was likely to be better or worse off in drawdown rather than with an annuity. I accept that using the assessment methodology which he has set out, he may well have decided not to annuitise. However, I do not consider that he can prove that he is in fact worse off as a result of the decision to do so. Whether or not he would have been better off in drawdown is a question which turns on as yet unknown future rates of market return. There is no evidence from which I can infer that he has probably suffered a loss or from which I can ascertain what it might be.
24. In summary, I find that ReAssure's provision of incorrect LTA figures amounts to maladministration. I find that Dr Y suffered distress and inconvenience on learning that the amount of LTA used up by the annuity purchase was higher than he had been led to believe, and I agree that by providing him with the wrong figures ReAssure deprived him of the opportunity to plan his retirement affairs according to his preferred methods. However I do not find that Dr Y can demonstrate a financial loss flowing from his reliance on the incorrect figures provided.
25. Accordingly, and in line with the Ombudsman's published guidance, I find that an award in the amount of £1,000 is appropriate in the circumstances.
26. Therefore, I uphold this complaint in part.



**Directions**

27. Within 21 days of the date of this Determination, ReAssure shall pay Dr Y £1,000 for the serious distress and inconvenience this matter has caused him.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 March 2020