

complaint

Mr M complains Legal and General Assurance Society Limited (L&G) made repeated mistakes in the information they provided regarding the amount of tax free cash he could take from his pension. This has resulted in the need for him to return funds and caused him significant trouble and upset.

background

Mr M holds two buy-out pension plans with L&G and had been considering his retirement options with his financial adviser.

L&G provided Mr M with an illustration of his benefits in July 2016. This showed a fund value of £110,380.78 and the option of a tax-free cash (TFC) sum of £35,921.34. This represented more than the standard 25% TFC allowance.

Mr M's adviser says he contacted L&G to query the amount and was told there was an enhanced TFC payable on Mr M's policies.

In August 2016, L&G issued another valuation of the pension fund. This time the fund was valued at £117,070.24 and the TFC was showing as £32,845.26. On 09 December 2016, the same valuation was sent to Mr M and again the TFC was showing as more than the standard 25% allowance.

Mr M sought financial advice in regard to his pension planning and based upon the enhanced TFC he decided to retain his pension with L&G and move the fund into a drawdown option.

In September 2016 L&G wrote to Mr M and confirmed they had received all the necessary paperwork to complete the transaction, were able to release the TFC of £33,094.88, and would place the remaining funds of £83,770.25 into drawdown. The amount of TFC paid was in excess of the standard 25% allowance.

Mr M received a further letter from L&G, this was undated but received in March 2017. The letter said L&G has miscalculated Mr M's protected rights element when calculating the TFC. Mr M had subsequently received less than he should have done and was due a further payment of £5,064.70.

Mr M had no further correspondence until October 2017 when he received a letter from L&G explaining they had made an error. He was in fact only entitled to standard 25% TFC and so had actually been overpaid £8,327.88. They explained the calculator they had used had the wrong formulas and this had resulted in the incorrect calculation. They apologised for their mistake but said Mr M would need to repay the £8,327.88 or it would be classed as an unauthorised payment, which would give rise to a tax liability.

Understandably, this caused Mr M a significant amount of trouble and upset. He had taken financial advice and the TFC he had received was a part of that financial planning. Mr M was very unhappy he had taken financial decisions based upon incorrect information L&G had provided and was now required to repay a significant sum of money due to their errors or face a tax liability. He complained to L&G who accepted they had made a number of errors and apologised. They explained the only way to avoid an unauthorised payment was to

repay the £8,327.88 and they offered Mr M £250, later increased to £500, in recognition of the trouble and upset this caused.

Mr M remained unhappy; he wanted L&G to cover the cost of the tax liability and asked this service to look into matters for him.

Our adjudicator looked carefully at what happened and agreed there had been significant errors on L&G's part. She understood Mr M would have difficulty in repaying the £8,327.88 and issued her first view on that basis. She explained in looking at redress she couldn't agree that L&G should pay the tax liability for Mr M. This is because this service would look to put Mr M back in the position he would have been in had the error not occurred. In retaining the additional payment it would have to be classed as earned income and that would have presented a tax liability. If L&G covered the tax due this would put Mr M in an enhanced position and so she didn't agree. She did acknowledge Mr M had suffered a great deal of trouble and upset and invited L&G to reconsider the £500 they had offered as well as indicating the steps they should take regarding the unauthorised payment.

Mr M then found he was able to find a way of repaying the £8,327.88 and so our adjudicator issued a second view. In repaying this amount, L&G's error was corrected and there would no longer be an unauthorised payment. She asked L&G to pay a further £250, making a total of £750 by way of redress for the trouble and upset the whole matter had caused Mr M.

Mr M accepted our adjudicator's findings but L&G thought £500 was sufficient redress and so asked for this review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've looked at all the information provided by both parties afresh. Having done so I'm in agreement with our adjudicator's findings for broadly the same reasons.

There's no dispute here that L&G have made a series of errors that have caused Mr M a great deal of trouble and upset. As an agreement has been reached on the way to rectify L&G's error and Mr M has been able to access the £8,327.88 to repay the unauthorised payment, it's left to me to decide on fair and reasonable redress.

I've considered the number of times Mr M received incorrect information from L&G and the impact of that information on the financial decisions he took. There are three occasions where L&G provided TFC calculation that exceeded the standard 25% allowance. Mr M's advisor also queried this and he was also given incorrect information.

There was an opportunity in March 2017 for L&G to have picked up on the incorrect formula in the system calculating the TFC when they thought they had paid Mr M less TFC than he was entitled to and I think L&G should have spotted there was something wrong at this stage. Unfortunately, that involved L&G paying Mr M a further payment of £ 5,064.70 without realising their mistake.

It actually took a further seven months before L&G identified the error and the actions Mr M would need to take to rectify what was now an unauthorised payment. I sympathise with Mr M as this information came unexpectedly and he had already started his financial planning based upon the information L&G had provided. I think Mr M should have been able to rely on

the information from an established provider such as L&G and I appreciate how Mr M feels let down and frustrated by the whole matter.

I've also considered the amount Mr M has had to repay, which is a significant amount of money to find in rectifying an error that wasn't his.

I think L&G have acknowledged the errors are theirs alone and I can see from the records they have provided they have tried to find the easiest way of addressing the issue but unfortunately this resulted in Mr M being impacted again in having to find the funds to repay what would otherwise be an unauthorised payment and attract a tax liability.

I agree with our adjudicator that Mr M can't retain the funds and have L&G cover the tax liability as that would put him at an advantage. In any case, Mr M has agreed to repay the funds but I'm persuaded there grounds for increasing the redress offered by L&G to fairly reflect the trouble and upset this has caused Mr M and so I'm going to ask L&G to do so.

my final decision

For the reasons I have given I'm upholding this complaint and I direct Legal and General Assurance Limited to pay £750 redress for the trouble and upset their error have caused Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 November 2018.

Wendy Steele
ombudsman