

The complaint

Mr H has complained that information provided by Legal and General ('L&G') concerning the limits which applied to his annual pension contributions in 2019 was incorrect.

As a result of this, Mr H has stated he did not contribute as much as he could have done and has therefore been financially disadvantaged.

Since 2019 ReAssure Limited ('ReAssure') have assumed full responsibility for Mr H's pension, including responsibility for the past actions of L&G in this case.

What happened

On 8 March 2019 L&G emailed Mr H to confirm the sale of their pensions business to ReAssure. This email provided contact details for ReAssure and included generic information about the Annual Allowance. The email stated:

"Annual Allowance

You can contribute, and normally receive tax relief on, up to 100% of your earnings in a tax year up to a maximum contribution of £32,000 net (£40,000 after tax relief has been added). If your income is less than £2,880, you may still contribute up to £2,880 (£3,600 after tax relief has been added)

The Annual Allowance for the current tax year is £40,000. It takes into account gross contributions paid by you and any contributions paid by your employer or third parties to any registered pension scheme. If the total contributions to all of your pensions adds up to more than the Annual Allowance, you will have to pay a tax charge on the amount paid above the Annual Allowance. However, unused allowances from up to three previous tax years may be available.

A reduced Annual Allowance may apply if your Income (including the value of any pension contributions) is over £150,000 and your Income (excluding the value of any pension contributions) is over £110,000. The minimum this could be reduced to is £4,000."

Mr H replied to the email the same day and questioned, *"I will be making the payment from my company, does this affect the salary limit?"*. I would note here that an additional question was also asked at this time however this has no bearing on this complaint and as such I have not included any further detail on this.

In response L&G stated that *"the salary limit stays the same regardless of the source of the funds"*.

On 15 May 2019 L&G wrote to Mr H to confirm receipt of a contribution of around £49,000 from his employer. This letter confirmed that:

The Annual Allowance for the current tax year is £40,000. It takes into account gross contributions paid by you and any contributions paid by your employer or third parties to any registered pension scheme. If the total contributions to all of your pensions adds up to more than the Annual Allowance, you will have to pay a tax charge on the amount paid above the Annual Allowance.

However, unused allowances from up to three previous tax years may be available. Further information on this can be found at <https://www.gov.uk/tax-on-your-private-pension/annual-allowance>.

In October 2022 Mr H emailed ReAssure stated that he now believed the information provided in 2019 was incorrect advice, and that as a result of this his pension fund had received lower contributions than it otherwise would have.

Mr H requested that he (via his employer) be allowed to pay an additional amount (of around £100,000) that he believed he would have contributed in 2019 had correct information been provided at that time. In addition, Mr H asked ReAssure to cover any tax on this amount that may now be payable and requested the £100,000 investment be backdated to 2019 to consider any lost investment growth / bonuses that it would otherwise have earned.

ReAssure issued a complaint response on 9 February 2023 stating that they had concluded the information provided was correct and were not upholding the complaint.

Mr H did not believe ReAssure had understood his complaint point and responded the same day stating asking them to reconsider. Mr H remained of the opinion that L&G had been wrong to state that the 'salary limit' remained the same regardless of the source of funds.

ReAssure issued another response on 16 February 2023.

This accepted that an employer could make pension contributions in excess of the annual allowance (£40,000 in 2019) and the employer would be able to claim tax relief on the entirety of their contributions.

However, employer contributions would count towards the scheme members annual allowance, leaving the possibility that the member would suffer a personal tax liability if their employer contributed above the annual allowance. As such ReAssure again stated that they were not upholding the complaint.

Mr H remained of the opinion that the information he had been provided with was incorrect and forwarded his complaint to this service for consideration.

Our investigator looked into things but didn't believe ReAssure (L&G) had acted unreasonably stating that it was not L&G or ReAssure's role to provide advice on pension contribution limits.

Mr H did not agree and as such the case has been passed to me for a final 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.

Firstly, I would like to be clear that ReAssure (and L&G) were not authorised to provide Mr H with advice. That includes advice in relation to the suitability of his pension, the underlying investments, or tax planning advice in relation to what he (or his company) could contribute

to the pension.

Within the commentary on file there is additional reference to “operational” and “procedural” advice. To clarify, L&G and ReAssure are not authorised to provide any advice. It was / is their role to administer the policy as per the terms and conditions and provide accurate information to their policyholders.

The email provided on 8 March 2019 contained generic information on contribution limits and was not personalised to Mr H in any way. I see no issue with this email.

In response to this Mr H questioned, *“I will be making the payment from my company, does this affect the salary limit?”*.

The term ‘salary limit’ is not one which L&G had included in their original email and was one penned by Mr H himself, with L&G’s response stating, *“the salary limit stays the same regardless of the source of the funds”*.

This response forms the whole basis for the complaint, and I have I have considered the content of this carefully. Mr H has stated that this issue was also discussed with L&G over the phone in 2019, however unfortunately recordings of these conversations were not passed to ReAssure when they took over the administration of the policy. As such they are not available for use as part of this decision, and I have therefore based my outcome on the documentary evidence available.

Evidence on file shows Mr H had a salary of around £49,000 in the 2018/19 tax year.

As such, in that tax year Mr H’s ‘salary limit’ of 100% of his earnings (£49,000) up to a maximum contribution of £32,000 net (£40,000 after tax relief has been added) could be considered the same, regardless of whether the contribution was being paid by Mr H directly, or by his employer.

As Mr H has pointed out in his correspondence with this service, the answer provided by L&G does not consider that this may be different for people whose salary is less than the £40,000 annual allowance, however that was not the case here. Whether L&G knew this or not is of secondary consideration, as this decision is focussed on Mr H’s own individual circumstances.

The redress requested by Mr H suggests that what he was actually looking to do in March 2019 was to carry forward his unused allowances for the previous three tax years (£120,000 in total) as well as utilise his current years allowance to give an overall allowance of £160,000. This contribution would then have been made by his employer - given his £49,000 salary would not have allowed this to have been made tax efficiently if paid by him personally.

The 8 March 2019 answer provided by L&G makes no mention of the impact of the carry forward rules on pension contribution limits, nor how these mean the ‘salary limit’ may not then apply to company / employer contributions.

However, the question posed by Mr H also made no mention of his desire to use carried forward allowances. I do not believe it is reasonable to expect a pension provider to include such additional detail without prompt.

For L&G to go further and explain how the annual allowance, carry forward rules, and the taxation implications of contributions made by an employer could be utilised by Mr H (and his employer) to maximise pension contributions would be considered taxation advice, not

something which they were authorised to do.

I can appreciate Mr H's frustration that previous years unused allowances are no longer available to him, however I do not consider it reasonable to hold ReAssure responsible for this.

The level of information, detail and advice that would have been required in order to confirm Mr H's desired course action was possible would have required the consultation of regulated financial advisers and / or tax advisers and is not something I would have expected L&G or ReAssure to do.

As such, I am not upholding this complaint.

My final decision

In line with the rationale above I am not upholding this complaint and require no further action from ReAssure Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 May 2024.

John Rogowski
Ombudsman