

## The complaint

The estate of Mr M complains about how Zurich Assurance Ltd (Zurich) managed Mr M's Retirement Annuity contract on his 75<sup>th</sup> birthday. In particular, it complains that Zurich set up a default annuity on his behalf at age 75 without his consent.

## What happened

I understand that the late Mr M took out a Retirement Annuity contract with a provider I'll refer to as provider A in 1985. And that he made contributions into this plan until 1995. The plan is now provided by Zurich, but the administration and terms of the plan haven't changed.

At the time the plan started, the only option for taking benefits from the plan was to use the benefits to buy an annuity at the policyholder's Selected Retirement Age (SRA) or any other age between 60 and 75 if the policyholder provided appropriate notice. The plan couldn't continue to be invested after age 75. I understand that Mr M's SRA was 65.

Zurich said it didn't have contact details for Mr M between October 2008 until March 2020. So it couldn't write to him as he approached his SRA in 2011. But it wrote to him on 22 June 2021 to remind him that as he was approaching his 75<sup>th</sup> birthday he needed to make some decisions about what to do with his plan. The letter said:

*"Your plan isn't designed to continue past age 75 so if you haven't claimed all benefits from the plan by then, no further payments will be allowed and the plan will end."*

The letter explained what would happen if Mr M didn't make a decision before he reached 75. It said:

*"Approximately four weeks before your 75<sup>th</sup> birthday, if we haven't heard from you by then we'll provide you with a Zurich annuity quote. If you contact us before age 75 and you want to choose an annuity, we'll put you in touch with an independent annuity service who can help you find one."*

*"If we don't hear from you, your plan will end at age 75 and Zurich will use the remainder of the plan value after applying any lifetime allowance tax charge to set up a Zurich annuity for you. We'll assume that you cannot take a tax-free lump sum and we'll calculate the income payable using a default Zurich annuity basis of single life, level payments paid yearly in advance, with a guarantee period of five years".*

The letter stated that Mr M could still choose any preferred retirement option. But that he would have to contact Zurich before age 75 to do so. It also said that before age 75, he'd be able to choose to take an annuity from another provider.

The letter provided information about all of the options available to Mr M. It also provided details of a free guidance service. The letter included a Lifetime Allowance (LTA) check form. It said:

*“If you haven't claimed your benefits by age 75, HMRC require us to check the value of your pension plan, any withdrawals you have taken and any pension plans you hold elsewhere against the 'lifetime allowance'. To meet this requirement we need you to please complete and return the enclosed 'Lifetime allowance check form'. The enclosed guide has more information about the lifetime allowance.”*

Mr M didn't respond to the June 2021 letter. So Zurich sent a chaser letter on 11 October 2021. This said that higher income than that a Zurich annuity might provide might be possible from other annuity providers, especially if Mr M had any health issues which could lead to an enhanced annuity with another provider. It also noted that Mr M had yet to provide a completed LTA check form.

Zurich sent Mr M a final reminder on 5 November 2021. The letter said:

*“This is a final reminder of your other retirement options and is the last time we'll contact you about this”.*

The letter repeated what would happen if Mr M didn't make an active choice on his retirement benefits before age 75. And said that if Mr M didn't respond before his 75<sup>th</sup> birthday there could be a tax charge. It stressed how important it was for Mr M to engage with it if he wanted to choose a different retirement option.

Mr M didn't get in touch with Zurich about his options. So after he'd reached age 75, Zurich deducted a 25% LTA charge and set up an annuity on Mr M's behalf with the remaining fund. This led to a level annual single life annuity of £1,790.50 with a five-year guarantee period being set up for Mr M.

Zurich wrote to Mr M at the time it set up the annuity to tell him what it'd done. It said that because Mr M hadn't sent it a completed LTA Check form, it'd deducted a 25% tax charge based on the value of his plan as at age 75, and sent this to HMRC. It said that Mr M could get this money back if he could confirm that his overall pension benefits were within the standard LTA.

Zurich also said that if Mr M wanted to change the basis on which the annuity had been provided, he had 30 days in which to tell it. It enclosed a Cancellation Notice which it said he could use to amend the basis on which the pension was paid. It also said that it would send the pension payments to Mr M's home address unless it had bank details.

Mr M didn't contact Zurich at all after the annuity had been set up. He banked the first of the two annuity cheques I understand Zurich had sent him in December 2021 in June 2022. But he banked the second cheque sent in December 2022 around the time he received it.

The estate of Mr M informed Zurich that Mr M had died on 10 May 2023. Zurich then wrote to the estate on 17 May 2023 to ask the estate to complete the LTA questionnaire. And on 24 May 2023, Zurich wrote to the estate to confirm the annuity payments that would continue to be paid to it for the next three years.

The estate of Mr M replied to Zurich to provide the information it held about Mr M's pension policies on 30 May 2023. It also requested details about Mr M's annuity including its cost and details about any requests Mr M had made for the annuity to be guaranteed for five years. Zurich replied that the annuity had been set up on the default basis as Mr M hadn't made a claim against his plan before his 75<sup>th</sup> birthday. The estate of Mr M asked Zurich to provide both the cost of the annuity and all documentation it held about the default option.

On 14 June 2023, Zurich wrote to the estate of Mr M to say that as the LTA hadn't been

exceeded, it could reverse the LTA charge deduction. It said the amount due to the estate before tax was £8,804.

On 28 June 2023, Zurich wrote to the estate of Mr M to explain how the death benefits would be paid to it. It said it would pay the remaining three guaranteed annuity payments to the estate of Mr M and that it would refund the tax charge as a taxable lump sum death benefit.

The estate of Mr M wrote to Zurich on 3 July 2023 to ask for further information. It also raised a concern.

Zurich issued its final response to the complaint on 14 August 2023. It didn't uphold it. It acknowledged that the estate of the Mr M was unhappy that it'd set up an annuity for Mr M, but said it hadn't done anything wrong. It said that the plan's purpose was to provide Mr M with an annuity at retirement, and that at the time he'd taken out the plan, there was only an annuity option. It also said that the plan hadn't been set up to continue investing after age 75. Therefore as Mr M hadn't taken his benefits before age 75, it had written to him six-months, ten-weeks, and four-weeks before his 75<sup>th</sup> birthday to make clear what would happen. It said it'd sent the letters before Mr M had reached age 75. And that the letters had been clear about his options and the consequences of not claiming his benefits.

Zurich said that as Mr M hadn't replied to any of its letters, it set up a default annuity and informed him what had happened, including telling him he could cancel this if he wanted to. It said Mr M didn't challenge the default annuity, so it had started to make the annuity payments. And that Mr M had banked the two annuity cheques it had sent him, which it felt showed he was aware that an annuity was being paid.

Zurich also said that it'd needed Mr M to complete the LTA questionnaire it'd provided. And that because Mr M hadn't returned a completed questionnaire, it had needed to deduct a 25% tax charge. Therefore Zurich had used the reduced fund value, after it'd made a deduction for the LTA charge, to set up the annuity. It also said that there were three annual annuity payments remaining under the five-year guarantee.

Unhappy with Zurich's response, the estate of Mr M referred the complaint to this service on 21 November 2023. It wanted Zurich to pay it the sum of £35,216, plus lost investment return between 25 November 2021 and the date of settlement, less the value of the two annuity income payments Mr M had received. It made the following complaint points:

- Zurich had unilaterally converted the pension fund, after a 25% LTA charge had been deducted, to an annuity without Mr M's permission or knowledge. The annuity was a level annual annuity of £1,790.50 with a five-year guarantee which began on 1 December 2021.
- The estate felt that the total of the payments Zurich had offered to make, including the annuity payments that had been made to Mr M, was £17,756.50. It didn't think this was fair when compared to what it thought the fund had been worth before the conversion to an annuity.
- The estate didn't agree with Zurich that it was entitled to unilaterally convert the fund to an annuity. It felt that the terms and conditions of the plan didn't give Zurich the right to send Mr M the three letters it said it'd sent him in June, October and November 2021 and to subsequently set up the annuity. It felt that the terms and conditions specified that the payment of the pension under the plan should have started at Mr M's SRA.
- It felt that the terms and conditions required a policyholder to give Zurich written

notice if he wanted to postpone taking his pension beyond his SRA. It didn't believe that Mr M had given Zurich any such notice. And felt that the terms and conditions contained no provisions for Zurich to enforce an annuity purchase at age 75.

- The estate of Mr M also felt that Zurich's actions were questionable and possibly designed to take advantage of vulnerable customers.
- It also felt that the terms and conditions allowed Mr M to transfer the pension using an open market option, to commute part of the pension and to take a pension other than a level pension. It said that Zurich had acknowledged that the annuity it had purchased for Mr M wasn't the best value. The estate said that the three letters Zurich had sent Mr M in 2021 had noted the importance of shopping around to get the highest level of income. And that the November 2021 letter had acknowledged that while Zurich didn't offer enhanced annuities, other providers might be able to provide a much higher level of income. The estate felt that there was no doubt that Mr M could've achieved a better outcome with a different provider.
- The estate of Mr M also felt that when Mr M hadn't replied to any of the three letters Zurich said it sent to him in 2021, Zurich should've realized that he might be in a vulnerable position. And it shouldn't then have taken any actions that could be detrimental to his interests. The estate felt that Zurich shouldn't have purchased an annuity for Mr M in this situation. It felt the most appropriate course of action would have been to have moved the funds to cash and then wait for active instructions from Mr M or notification of his death.

Our investigator didn't think the complaint should be upheld. He felt that Zurich had set up the annuity in line with the terms and conditions. He considered that Zurich had provided Mr M with all his options in its 2021 letters, which he felt were clear and not misleading. He also noted that Zurich stated that higher rates of annuity might be available with other providers, and that it had signposted a guidance service if Mr M had needed help making his decision.

Our investigator acknowledged that the policy provisions stated that a policyholder needed to give notice if he wanted to postpone taking his pension. But said that the latest pension date was defined as "*the Policyholder's 75<sup>th</sup> Birthday*". Therefore he felt that it was reasonable for Zurich to take the actions it had when Mr M was about to turn 75. He also indicated that because Mr M had banked the two annuity payments Zurich had sent him he must've been comfortable with the arrangement.

The estate of Mr M didn't agree with our investigator. It didn't feel that Zurich had acted reasonably as it had taken an action it had no legal right to take when it'd set up the annuity. It felt that Mr M's pension hadn't been designed to end at age 75. But that it had been designed to end at the SRA, or any other time of the policyholder chose by giving notice between age 60 and age 75. It also felt that Zurich hadn't evidenced that Mr M had given it notice that he wanted to defer his pension beyond his SRA. Therefore it should've paid him his pension from age 65 under the terms and conditions of the plan.

The estate of Mr M said that if Zurich had contacted Mr M in 2011, around his SRA, he would've been far better positioned to engage with it than he was in 2021. It felt that there were warning signs in 2021 that Zurich had ignored. Specifically, it said the following:

- At age 75, it was more likely that Mr M was in ill health than when he was 65.
- Mr M hadn't responded to any of Zurich's 2021 letters. It felt this suggested ill-health or alternatively significant financial security. But that the potential for significant financial security was lowered as Zurich knew Mr M's address wasn't of significant

value. So it therefore should've been aware that Mr M's purported acceptance of the LTA charge was another warning sign that he was in ill-health and/or vulnerable.

The estate felt that if Zurich had acted on the warning signs it could've taken different actions in 2021. It felt that it wasn't reasonable for Zurich to have taken the irreversible action to purchase a poor-value annuity and to pay a significant level of unnecessary tax.

Our investigator considered the estate of Mr M's points. But they didn't change his view. He said Zurich had confirmed in its final response letter that Mr M's SRA had been 65. He still felt that regardless of Mr M's SRA, his plan hadn't been set up to continue beyond his 75<sup>th</sup> birthday. Our investigator felt that Mr M had benefited from the annuity income payments. He was satisfied that Mr M could've responded to Zurich's 2021 letters or asked someone to do this on his behalf. He also felt that if Mr M had been concerned about the annuity, he would've contacted Zurich to raise his concerns.

Our investigator asked Zurich to provide the letters he felt it would've sent Mr M about his pension benefits before he reached his SRA at age 65. He also asked it if Mr M or his representative had provided Zurich with any information about his health between 2011 and his death.

The estate of Mr M felt that our investigator had relied on the fact that Mr M had banked the two cheques from Zurich and had then inferred that Mr M understood what was happening and was content with it. He said that Mr M had only banked the first cheque, dated 1 December 2021, on 28 June 2022, 7 months after it was sent. He felt this showed that Mr M hadn't fully understood what was happening at the time.

Our investigator asked Zurich to provide a copy of the covering letter he felt it would've sent to Mr M with the December 2021 and 2022 cheques. He asked the estate of Mr M to provide copies of Mr M's bank statements to show when the annuity cheques had been cashed.

The estate of Mr M provided the requested bank statements. These confirmed that two payments for £1,790.50 had been banked on 28 June 2022 and on 6 December 2022.

Zurich told our investigator that when Mr M had reached his SRA of 65 in 2011, it didn't hold a current contact address for him. It said it hadn't held one from October 2008 until March 2020. Therefore it said it hadn't been able to write to him during this period. It also said it hadn't received any communication from him at the time of his 65<sup>th</sup> birthday. Zurich also said it'd never received any health information from or about Mr M. Zurich said that the cheques it had issued to Mr M weren't sent with a covering letter.

As agreement couldn't be reached, the complaint has come to me for a review.

I asked Zurich to provide further information about the address information it held for Mr M from October 2008 until March 2020 as it'd said it didn't have an address for him during this period and therefore couldn't write to him. I asked it if it had attempted to trace Mr M over this period. And if it had followed its usual process for tracing a policyholder's address.

Zurich provided a log extract which it said showed that it didn't hold a contact address for Mr M from October 2008, so it had tried to trace him in November 2008. Zurich said that the trace had used Mr M's previous known address. It said that when that trace had returned an address for Mr M, it issued him with an "Are You There?" letter on 12 December 2008. This asked him to complete and return an address confirmation so that it could complete its verification checks and confirm he was the correct person it was trying to trace. Zurich said that it didn't receive a response from Mr M. It said that if it had, it would've updated Mr M's contact details with the new confirmed address.

Zurich said that it wouldn't have attempted to trace Mr M again in 2011 under its normal process as it had already tried to trace him relatively recently without success. But it said that it carried out another trace attempt in 2019. This returned the same – correct – address as the previous trace. But Zurich said that by this time the tracing services available to it had improved sufficiently to allow it to successfully trace Mr M without the need for an “Are You There?” letter. So it updated its records with the address from the trace in March 2020. And used this address when it wrote to Mr M in 2021 as he approached age 75.

### **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 know this will be disappointing to the estate of Mr M. I'll explain the reasons for my decision.

Before I start, I note that Zurich has given its consent to this service to consider the complaint. So I've not considered whether or not it has been brought in time.

In reaching my decision, I haven't commented on every point of concern the estate of Mr M has raised. I don't intend to offend it by not doing so or mean any disrespect to it in taking this approach. Instead, I've focussed on the key issues I think I need to consider in deciding on whether or not Zurich did anything wrong in converting Mr M's pension into an annuity when it did.

It's clear to me that the estate of Mr M is unhappy that Zurich set up an annuity with Mr M's pension fund when he reached age 75, rather than ensuring his benefits were paid at his SRA of 65. It feels that the terms and conditions of the policy required Mr M to have given Zurich notice that he wanted to defer his pension beyond his SRA. And that as there's no evidence that such notice was given, Zurich should've paid Mr M his pension from age 65.

The evidence shows that Zurich carried out an address trace in 2008, as it didn't hold an up-to-date address for Mr M at that time. The address returned by the 2008 trace has now been established as Mr M's correct address at that time, and was the same address that Zurich eventually used to successfully write to him in 2021. But I'm satisfied that when Zurich received no response to its “Are you there?” letter in 2008, it couldn't reasonably assume that the address used for the trace was correct. So I understand why it didn't update its records with the address the trace had suggested in 2008. I'm therefore satisfied that it was reasonable for Zurich to consider that the trace hadn't been successful.

I'm also satisfied that there's no evidence that Zurich failed to follow its normal process for tracing its policyholders with Mr M. As such, I'm persuaded that Zurich acted fairly when it didn't attempt to trace Mr M again in 2011 as he approached his SRA.

I do understand why the estate of Mr M feels that Zurich should've done more. But I can't reasonably agree. I say this because it's not only Zurich's responsibility to keep track of the policy and make sure that the benefits are paid out at any date agreed at the policy's start. It's also the policyholder's responsibility to keep Zurich informed about their current wishes and any address changes.

I appreciate that the estate of Mr M thinks that Zurich has benefited from buying an annuity for Mr M. It feels that Zurich should've contacted him in 2011, around his SRA, when he would've been far better positioned to engage with it than he was in 2021. But the evidence shows that Zurich followed its normal tracing process. And that Mr M didn't engage with it.

If Mr M had replied to the “Are you there?” letter in 2008, I’m of the view that Zurich would’ve written to him ahead of his SRA in 2011, and he could’ve then made his own decision about whether he wanted to take his benefits at that time, or leave them until later. But I can’t reasonably hold Zurich responsible for maintaining the policy until Mr M’s 75<sup>th</sup> birthday, rather than paying the benefits at the SRA. I say this because I’ve seen no evidence that he contacted it at any time to tell it when and how he wanted to take his benefits. And under the terms and conditions of the plan, Zurich was required to buy an annuity for Mr M when he hadn’t engaged with its 2021 letters before his 75<sup>th</sup> birthday.

I can see that the estate of Mr M doesn’t agree that Zurich had the right to buy an annuity for Mr M at age 75. It felt that the terms and conditions required Mr M to give Zurich written notice if he wanted to postpone taking his pension beyond his SRA, which he hadn’t done. It also felt that there was no provision in the terms and conditions for Zurich to enforce an annuity purchase at age 75.

While I agree with the estate of Mr M that there’s no evidence that Mr M ever provided Zurich with written notice that he wanted to defer taking his pension, I don’t agree that there was any need for such notice at age 75. Zurich has said that the terms of Mr M’s pension meant that he had to take his pension by age 75. I’ve reviewed the policy document. It defines the “Latest pension date” as the policyholder’s 75<sup>th</sup> birthday. So I’m satisfied that this is correct. I’m also satisfied that, as Mr M hadn’t taken his pension benefits before he reached age 75, Zurich acted reasonably when it followed its default approach at age 75.

I’ve also thought about whether it was fair and reasonable of Zurich to purchase an annuity in the way it did. The estate of Mr M has argued that more should’ve been done by Zurich to protect Mr M’s best interests.

I’ve considered the contact Zurich had with Mr M prior to his 75<sup>th</sup> birthday. The evidence I’ve seen shows that it wrote to him in June 2021, October 2021 and November 2021 about his retirement options. These letters explained that he needed to make a decision about what benefits he wanted to take before his 75<sup>th</sup> birthday. They explained what would happen if Mr M didn’t make a choice himself, but said that he could still choose any preferred retirement option. I think they were clear and not misleading. Overall I’m satisfied that the information that Zurich sent Mr M explained the importance of him telling it how he wanted to take his pension and the consequences of not doing so.

When Mr M didn’t respond, Zurich set up the default annuity it had told Mr M it would arrange for him if he didn’t respond. And told him what it had done. It also told him he could cancel the annuity if he wanted to. But Mr M didn’t respond.

I acknowledge that the estate of Mr M felt that Zurich knew that the annuity it purchased for Mr M wasn’t the best value for him. But I’m satisfied that Zurich clearly explained in its three letters from 2021 what would happen if Mr M didn’t respond, and what he could himself do to ensure he took the right benefits for him. The June 2021 letter had told Mr M that if he contacted Zurich before age 75 and wanted to take an annuity, it would put him in touch with an independent annuity service who could help him find one. But he didn’t respond by age 75. So it was then up to him to look around for a better annuity, if that’s what he wanted to do. I’m satisfied he had enough information from Zurich to make his own decision on this point. And I’m not persuaded that Zurich did anything wrong when it bought the annuity it had explained it would buy for Mr M if he took no action after receiving its 2021 letters.

I also acknowledge the estate of Mr M’s point that it took Mr M 7 months to bank the first annuity cheque. I understand why it considers this showed that Mr M hadn’t fully understood what had happened. But I don’t agree that it could’ve expected Zurich to do more than it did. I say this because, as I noted earlier, I’m satisfied that Zurich provided Mr M with clear

information about what it would do if he didn't make a choice about how to take his benefits at age 75. I'm also satisfied that the benefits had to be taken at that point. And that Zurich provided cancellation rights for the annuity it had set up.

I can see that the estate of Mr M felt that if Zurich had contacted Mr M in 2011, around his SRA, he would've been in a much better position to engage with it than he was in 2021. Zurich said that it didn't receive any communication from Mr M around this time. And that it had never received any health information from or about Mr M.

While I understand why the estate of Mr M felt this way, I can't reasonably hold Zurich responsible for the lack of contact with Mr M in 2011. I say this because it has evidenced that it followed its normal process for tracing Mr M in 2008, but he didn't reply. As I noted earlier, if he had done so at that time, I'm satisfied that Zurich would then have contacted him in 2011, as he approached his SRA.

I also acknowledge that the estate of Mr M felt that Zurich should've identified what it felt were warning signs about Mr M's behaviour in 2021. But I don't agree that there were any obvious warning signs. And in any event, I consider that Zurich's role was to provide information on which Mr M could then base his decision. Its role wasn't to advise or assist him to get the best value allowing for their own circumstances. So I'm not persuaded that Zurich should've acted any differently here.

As I've found no evidence that Zurich did anything wrong, I can't reasonably uphold the complaint.

### **My final decision**

For the reasons I've given above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 19 June 2024.

Jo Occleshaw  
**Ombudsman**