

The complaint

Mrs L complains that she was unsuitably advised to transfer the benefits in an occupational pension scheme (OPS) to a personal pension causing a loss in the value of her pension benefits.

What happened

Mrs L had deferred benefits in an OPS that she'd been a member of from February 1981 to March 1990.

Mrs L was advised to transfer her OPS benefits to a personal pension. That pension is now administered by ReAssure who are responsible for responding to Mrs L's complaint about the advice she received to transfer.

Mrs L complained to ReAssure via a personal representative that the advice to transfer had been unsuitable. ReAssure responded to say that it upheld Mrs L's complaint. It didn't think that the advice she'd received to transfer had been suitable for her. So ReAssure offered to perform a loss calculation in line with the Financial Conduct Authority's (FCA) Pension Review guidelines.

ReAssure contracted out the redress calculation to actuaries and on 6 February 2020, ReAssure made Mrs L an offer to increase her pension by £25,797.

The offer of compensation wasn't accepted. ReAssure's contractor conducted a further loss calculation based on the issues that had been raised. On 22 April 2020 ReAssure made a further offer to increase the redress to £28,479, as at 1 April 2020.

Mrs L didn't accept that offer and brought her complaint to our service. Our investigator looked into things and explained that our service isn't able to check that the loss calculations are correct. She checked the data that the calculation was based on and considered that the calculation had been done in line with the pension review methodology, as amended by the FCA in 2017.

Mrs L didn't agree with our investigators view. So this case was passed to an ombudsman for a final decision. I issued a provisional decision explaining my views on this case and allowing both parties the opportunity to comment.

What I said in my first provisional decision:

I explained that, because ReAssure had accepted that Mrs L's complaint should be upheld, both parties in this complaint agree that Mrs L was given unsuitable advice to transfer her OPS. So I also thought that the complaint should be upheld.

The issues of dispute in the complaint had evolved over the time that the complaint had been with our service. In my provisional decision I identified what I considered to be the remaining areas of disagreement in ReAssure's approach to calculating the loss. I explained what I thought of those issues as follows:

Calculation of deferred pension at Normal Retirement Date (NRD)

The deferred benefits in Mrs L's OPS were revalued in order to protect their value in real terms. And ReAssure's actuaries performed a calculation revaluing the benefits. They have explained the way they conducted this calculation. They counted the full years from leaving the scheme in March 1990 to Mrs L's normal retirement age. And applied an aggregate inflationary increase between the start and finish dates.

I don't think that what ReAssure have done in this regard is unfair. And I cannot see that it departs from the guidance it should have been following. Mrs L's representative has said that the revaluation should include the part years. Whilst that would be counted for the purposes of indexed increases for a pension in payment, the revaluation of a deferred pension to the NRD isn't calculated in the same way as a pension in payment. Revaluation of a deferred pension is done on the basis of full financial years. I don't think that I can say that the way that the actuaries have done this is wrong.

Assumption that Mrs L would take the benefits in their standard form

When it comes to making a calculation for future loss an assumption needs to be made about the benefits that would be taken. And neither ReAssure or Mrs L can know how Mrs L would have taken her benefits had she remained in the scheme. The standard benefits offered an annual income and a lump sum of three times that annual income figure.

I understand that the OPS allowed for the option of commuting salary to a lump sum and vice versa. So it's fair to say that Mrs L had a large range of choices. I wouldn't expect ReAssure's actuaries to calculate every possible choice Mrs L might make. Although I agree that they may all provide slightly different loss figures. It was reasonable to assume that the benefits would be taken in their standard format, in the absence of any contemporary evidence to say otherwise.

Assumption that there would be no increase applied to the pre-88 GMP

The benefits in Mrs L's OPS were made up of different elements based on the HMRC rules in place when those benefits were accrued. With the parts of her benefits accrued by opting out of State Earnings Related Pension (SERPS) being treated differently.

The OPS booklet provides a summary of the way the scheme works. It explains that, for those reaching state retirement age after December 2018, any increase in the GMP part of a pension will be dependent on the application of the scheme rules and the relevant legislation at the time.

Under the government rules that were in place when ReAssure performed the loss calculation, schemes were not required to provide increases to GMP rights accrued between 1978 and 1988 (pre-88 GMP). But were required to increase GMP rights accrued between 1988 and 1997 (post-88 GMP) in line with prices subject to a 3% cap. Which ReAssure's actuaries took into account.

I've considered Mrs L's representative's arguments that her OPS will have to increase the pre-88 GMP because of legislative changes. But those things are, as yet, still undecided. FG17/9 allows for actuaries performing the calculation to make assumptions. And I think the assumption that the pre-88 GMP wouldn't be increased was consistent with the legislation at the time.

I didn't think that the way that ReAssure had tried to put things right for Mrs L was unfair.

Responses to my provisional decision

Mrs L didn't agree with the outcome I'd reached. There was agreement that I'd identified the correct issues still in dispute. But for the same reasons that I'd previously been asked to consider, Mrs L disagreed with the outcome that I'd reached. No new evidence was presented for me to consider. Although Mrs L continued to argue regarding the way that the pre-88 GMP would now be treated by her OPS.

ReAssure had no further comment to make following my provisional decision.

Change to my first provisional decision

In response to the issues that Mrs L raised regarding the pre-88 GMP, I looked again at the changes being made to Civil Service pension schemes.

The Treasury conducted a consultation into the way that Principle Civil Service Pension Schemes (PCSPS) are indexed. And whilst there was previously no requirement of pension schemes to increase the pre-88 GMP element of pension benefits, the consultation was considering the issue for PCSPSs. In March 2021 The Treasury published the result of its consultation, and the decision had been made that PCSPSs would need to provide indexation for pre-88 GMP.

This was significant for the OPS benefits Mrs L had given up. The OPS she transferred from was set up in such a way that its benefits mirrored those of PCSPSs. So changes made to PCSPSs would more likely than not impact members of Mrs L's OPS too. In December 2021 Mrs L's OPS issued a newsletter for members, which recognised the government recommendation and the impact it will have on its members.

I contacted ReAssure and Mrs L to explain that I was considering a different outcome based on these changed circumstances. I explained that Mrs L's complaint was not yet resolved. The developments in the scheme benefits were clearly not known at the time that ReAssure did its loss calculation. So ReAssure couldn't have been expected to allow for it then. But because I need to decide a fair and reasonable outcome now, I thought it was fair to take these changes into account.

I set out my proposal for an up to date loss calculation to be carried out accounting for this new assumption regarding the pre-88 GMP. ReAssure responded to confirm that it would be prepared to recalculate the loss in line with the guidance I'd suggested.

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.

For the same reason that I explained in my provisional decision, I uphold Mrs L's complaint. The merits of this matter have never been in dispute. What has been disputed is whether or not ReAssure's offer of redress was fair.

ReAssure offered to follow the FCA's Finalised Guidance (FG) 17/9. This was issued in October 2017 and updated the redress methodology that had been put in place for the Pension Review. I think it was a fair way for ReAssure to have looked to put things right. And I disagree with Mrs L's view that ReAssure had been inherently unfair in the way the calculation was made.

As I explained in my provisional decision, FG17/9 provided guidance on the assumptions that need to be made in each case. It was understood that the calculations are complex and were expected to be carried out by actuaries. I think it was reasonable for ReAssure to contract the loss calculation out to a specialist firm, and to then rely on the calculations that it provided.

I can't overlook the fact that this case currently remains unresolved as no compensation has yet been paid. So what is decided now has to determine a fair way to put things right for Mrs L currently. And I now think that the circumstances have changed sufficiently with regards to Mrs L's former pension scheme, that it isn't enough for me to direct ReAssure to pay the compensation it proposed in 2020.

Mrs L's representative has referred to a Court of Appeal ruling in January 2020 that he believes meant ReAssure should have assumed that pre-88 GMP would be increased by the scheme in payment. But I don't agree that was the case. That ruling related to a request by the ceding OPS to bring a judicial review about The Treasury's proposed consultation regarding public sector pensions. The ceding scheme lost the appeal and were denied that right. I still don't think it was something that ReAssure's actuaries ought to have considered in making assumptions for its loss calculations.

But in March 2021 The Treasury announced the conclusion of its consultation into public sector scheme GMP increases. And agreed that public sector pensions will in future pay full indexing for the GMP. And in December 2021, Mrs L's ceding scheme recognised the impact this would have on the members of that scheme, in a newsletter.

I appreciate that this information post-dates ReAssure's attempts to resolve Mrs L's complaint. And the case being referred to our service. But it does mean that it is currently more likely than not, that Mrs L's scheme will now provide indexed increases to the pre-88 GMP element of her pension. So any calculation of Mrs L's loss now has to account for that change.

I've also considered the two other areas on which Mrs L disputes the approach ReAssure had taken in calculating redress (*calculation of deferred pension at NRD and that Mrs L would take benefits in their standard form*). I set out above what I'd provisionally decided on those matters. I've seen no evidence to change my opinion on those points, so my final decision remains the same as the above explanation in that regard. I don't agree that ReAssure's approach was unreasonable. So I won't specifically direct them to amend the way it approached the loss calculation for those areas that Mrs L disputed.

The complaint that I'm being asked to consider is whether Mrs L's pension transfer was suitable or not. ReAssure has upheld Mrs L's complaint from the outset. And as explained in my provisional decision, like ReAssure, I'm also upholding the complaint. So I need to consider how to put things right now. The fairest way to resolve this is for ReAssure to perform an up to date loss calculation, based on current assumptions (including the change to the pre-88 indexation). This method may produce a loss figure that is higher or lower than the existing loss calculation, or Mrs L's estimated loss calculation. But this will replace existing offers made.

Putting Things Right

A fair and reasonable outcome would be for the business to put Mrs L, as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have remained in the occupational scheme. ReAssure must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers*.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. Including the current assumption regarding pre-88 GMP I've addressed above. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs L's acceptance of the decision.

ReAssure may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs L's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mrs L's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs L's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs L as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mrs L within 90 days of the date ReAssure receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes ReAssure to pay Mrs L.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

My final decision

For the reasons given, I uphold Mrs L's complaint and direct ReAssure to compensate Mrs L in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 28 April 2022.

Gary Lane
Ombudsman