

## The complaint

In August 2020 Ms W instructed Legal & General ('L&G') to conduct fund switches in her Self-Invested Personal Pension ('SIPP') and then she requested a transfer of the SIPP to a new provider; both tasks were delayed by the effects of a change of business at the time between L&G and ReAssure Limited ('RL'); Ms W complained about this; on 13 October 2020 RL upheld her complaint; it confirmed that the switches had been concluded and that valuations backdated to 26 August 2020 had been used; with regards to the SIPP transfer delay it undertook to calculate if there had been a financial loss in the delayed investments in the new SIPP (caused by the delayed transfer) and to compensate her for that; it also offered her £200 for the trouble and inconvenience the matter had caused her.

On 27 October 2020 Ms W submitted to RL the information and documents it needed to conduct the compensation calculation.

She referred the matter to this service because RL was yet to conduct the calculation and had therefore not paid her the compensation. She says this service's intervention is needed to clarify the calculation approach RL must follow (including an update to the calculation that is needed because of the passage of time). She also says £200 is not enough to cover the trouble and inconvenience caused to her.

## What happened

One of our investigators initially addressed the complaint, then it was referred to me. I issued a Provisional Decision ('PD') on 27 June 2022. My provisional findings were as follows –

*"... liability has already been conceded by RL and does not need to be treated. RL's complaint response confirms this, available evidence supports why it has conceded liability and I have not seen anything from it to show or suggest it has withdrawn or changed its stance in this respect. I also agree with the investigator's finding – for the same reasons he gave – that RL has adequately resolved the matter about execution of the switches instructed on 21 August 2020 by using the prices/valuations on 26 August 2020. Ms W appears to have previously argued for the use of valuations on 25 August 2020, but it appears that she now accepts the investigator's finding on the matter.*

*For the sake of completeness, I consider that RL is responsible for the delayed execution of the switches instructed by Ms W and for the delayed SIPP transfer that she also instructed; that RL has resolved the former; that resolution of the latter remains outstanding; and that such resolution must involve the consideration of whether (or not) the delayed SIPP transfer has caused, to date, a financial loss to Ms W and, if so, the payment of compensation to her for such loss. As the award for trouble and inconvenience remains in dispute, this too will be addressed. I make the following additional provisional findings:*

- It is important to note, at the outset and as part of my response to Ms W's assistance request, that this service does not have enforcement powers, so nothing in this decision exists for that purpose. In this decision – and in the final decision – I can uphold the complaint and order RL to calculate and pay Ms W redress and compensation for trouble and inconvenience, and if she accepts such*

*an outcome (after the final decision) RL will be legally bound to comply with such an order. I can also specify a time limit for payment, by RL, to Ms W and I can provide for interest to be calculated and added to the compensation if and where RL is late in paying the compensation. However, as is broadly the case for any other legally binding order, the expectation at first instance is that the party that is bound will comply with the order, but Ms W should be informed (or should be reminded) that, unlike in the courts, if that does not happen after a decision from this service, we do not have a secondary set of powers for the practical enforcement of an order made in a decision. If a party needs to pursue such enforcement that is a separate and distinct matter that is beyond our powers.*

- I understand the investigator's view about the case being upheld by RL, about RL agreeing an approach to compensation that is fair and about both being enough to consider the case resolved. However, I am persuaded by Ms W's key submission that, as a matter of fact and despite the information and documents she gave RL a significant period of time ago (in October 2020), the case remains unresolved and needs our intervention. Her communication at the time reserved her position on the distinct matter of the trouble and inconvenience award but it is clear from the communication that she was fully engaged with the process of having redress calculated and paid to her and that she did that on the basis of the approach agreed with RL at the time. I have not seen cause for RL to have delayed the calculation and contact with her since late 2020. I also do not consider that the COVID-19 pandemic explains this. Even if 2020 is discounted altogether, RL had all of 2021 and the past six months of 2022 to provide the outcome of the calculation it agreed to provide or, as a minimum, to make interim contact with Ms W. I consider this delay and lack of contact unreasonable. It adds weight to Ms W's pursuit for a decision on redress from this service and to her request for a review of the trouble and inconvenience she has faced in the matter (and the award in this respect).*
- Overall and for the above reasons, I am satisfied that Ms W should receive £500 for the trouble and upset this case has caused her. She was entitled to timely action by L&G (then RL) in response to her two instructions but, instead, both faced delayed action. To RL's credit, it promptly undertook responsibility for this and for the calculation of redress for investment loss caused by the delayed transfer. Then, for at least the past year and a half, it did nothing in this respect. This has clearly compounded the trouble and inconvenience caused to Ms W. I acknowledge the need to balance this view with the fact that the impact upon her has been less than it would have been if RL had not conceded liability promptly and if the resolution of liability had also been delayed over the past year and a half. However, there is nevertheless a notable impact upon her arising from the fact that she has been deprived a conclusion to her case (and any compensation she is due) for such a long time. For all these reasons, I consider it fair for RL to pay her £500 for the trouble and inconvenience she has been caused to date. If I retain this finding in my final decision, I will order RL to do this.*
- I am satisfied that redress to Ms W must be calculated (and, if arising, paid) to address the impact, if any, upon her transferred SIPP, the investment/reinvestment of that SIPP and any financial loss resulting from RL's delay in transferring it. Given the passage of time, I also consider that there is a need to ensure the calculation (and any payment) is brought up to date. I will also address Ms W's point about making any payment that is due to her into her SIPP.*

- *If I retain the above finding in my final decision, I will set out the following –*
  - *My aim will be to put Ms W as close as possible to the position she would now be in if RL did not delay the transfer of her SIPP. I consider that she would have behaved differently in terms of the timing of the post-transfer investments in the SIPP, but the balance of evidence shows that she would have made the same investments that were eventually made in the SIPP. For this reason, Ms W's SIPP serves as the natural benchmark for calculating redress from what I define below as the start date to the end date. I consider this a fair way to reflect how any compensatory amount arising at the former would have performed up to the latter. I will order RL to follow this approach and I will order Ms W to engage meaningfully and co-operatively with RL to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.*
  - *RL received the transfer request on 7 September 2020 and it ought reasonably to have been completed within 10 working days, by 21 September 2020. Instead it was completed on 15 October 2020. Due to that delay, the investments in the transferred SIPP were made on 20 October. On balance, I consider that, but for the delay, those investment would probably have been made earlier. I am mindful that they were made on the third working day after the delayed completion of the transfer. Without the delay, Ms W should have been in a position to make the investments by 21 September 2020. I have considered whether (or not) to add three working days to this date in setting the start date for calculating redress, and to reflect the three working days gap in October. Overall and on balance, I am not persuaded to do so, because this is not the definitive date on which the transfer would have been completed. It is not possible to make such a precise finding. Instead, it is the date 'by' which the transfer should have been completed. Potentially, and but for the delay, it could have been completed earlier than this date. Therefore, I consider it broadly reasonable to say the transfer would probably have been completed and Ms W's SIPP investments would probably have been made by 21 September 2020 – without cause to add three further working days. 21 September 2020 will be the 'start date' that RL will be ordered to use in calculating redress for Ms W.*
  - *The 'end date' that RL will be ordered to use for the calculation will be the date of my final decision, because the subject of redress relates to an invested SIPP that has remained invested from the start date to the present date and, based on available evidence, will probably continue to be invested on the date of my final decision. By using this end date, the redress calculation will reflect the performance that any compensation amount arising on the start date ('C') would have had up to date (that is, the date of my final decision).*
  - *As I said above, the natural benchmark for calculating redress is Ms W's transferred SIPP and RL will be ordered to use it as such. By using this benchmark, the calculation will reflect the performance of C consistently with the performance of the SIPP over the relevant period (including a reflection of any changes within the SIPP) – as though C was part of the SIPP throughout that period.*
  - *I will order RL to calculate the total units Ms W's SIPP invested in on 20 October 2020 ('A') and then calculate the total number of units, in the same*

*funds and based on the same allocations of capital, that the SIPP could have purchased on 21 September 2020 ('B'), at the prices on that date. If A is the same or greater than B, no compensation is due. If B is greater than A, compensation is due to Ms W, I will order RL to calculate the difference and to calculate the total monetary value of the difference based on the relevant funds' units' prices on the start date. This total monetary value will be what I referred to as 'C' above – that is, the compensation amount arising on the start date.*

- *I will then order RL to calculate the performance of C from the start date to the end date based on the SIPP benchmark, and to pay Ms W the concluding amount as compensation for the financial loss she has incurred as a result of its delayed transfer of her SIPP. I will order RL to make this payment within 28 days of receiving notice of Ms W's acceptance of the final decision, and I will provide that if RL does not make the payment to her within this period it must pay her interest on the full compensation amount at the rate of 8% simple per year from the date of the final decision up to the date the payments settled/made to her. This provision will be to compensate her for any undue delay by RL in settling redress.*
- *I will also order that RL pay the compensation into Ms W's SIPP, to increase its value by the amount of the compensation and any interest; that the payment should allow for the effect of charges and any available tax relief; that the compensation (and any interest) should not be paid into her SIPP if it would conflict with any existing protection or allowance; that if the compensation (and any interest) cannot be paid into her SIPP, it must be paid directly to her; that had it been possible to pay it into the SIPP, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid; that the notional allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age (for example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax and if she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation).*
- *I will order RL to provide Ms W with a calculation of the compensation in a clear and simple format.*
- *Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept a final decision. In Ms W's case, the complaint event occurred after 1 April 2019 (it happened in 2020) and the complaint was referred to us after 1 April 2020, so the applicable compensation limit would be £355,000."*

Both parties were invited to comment on the PD by a particular deadline. Ms W did so. The investigator assisted me in reminding RL of the invitation to comment on the PD, but RL

does not appear to have done so. However, through Ms W, we were made aware of contact recently made by RL with her, which I refer to below.

Ms W mainly said as follows:

- The statement in the PD that says “... *RL has adequately resolved the matter about execution of the switches instructed on 21 August 2020 by using the prices/valuations on 26 August 2020. Ms W appears to have previously argued for the use of valuations on 25 August 2020, but it appears that she now accepts the investigator’s finding on the matter*” is inaccurate, because she never argued for the use of valuations on 25 August 2020. RL initially, and wrongly, sought to use the valuation date of 21 August 2020, but it then agreed to use the prices for 26 August 2020, which were determined on the evening of 25 August 2020.

[Through the investigator, I replied and quoted to Ms W a specific statement previously made, which was the reason I had said in the PD that she *appeared* to argue for the use of valuations on 25 August 2020. I also noted that, in any case, the issue about the switches had been resolved.]

- Her understanding is that, should the PD be confirmed, compensation should not be paid into her SIPP as that would trigger loss of her Fixed Protection 2014; both the compensation and the award for trouble and inconvenience should therefore be paid directly to her; and, she is a higher rate tax payer so any compensation payment should be reduced to notionally allow for the income tax that she would have paid on 75% of the compensation.
- There are long term adverse effects of RL’s wrongdoing that cannot be addressed by the compensation, due to the fixed protection issue. As a result of this issue and its effect in preventing the compensation from being paid into her SIPP she stands to be deprived the benefit of having had the compensation amount invested in the SIPP since 21 September 2020 and the benefit of having that passed on to her nominated beneficiaries in the future (as is her intention). In this context, use of the SIPP as the redress benchmark is arguably redundant, so she invites me to consider applying an alternative benchmark or applying simple interest for the calculation of redress. If I disagree, and in order to bring the matter to a conclusion, she will accept direct payment of ‘C’ (corrected for tax) and the trouble and inconvenience award.
- She received a letter from RL (dated 14 July 2022) presenting its assessment of the compensation it has calculated as due to her and stating its intention to make payment to her. In response, she has told RL to make no payment into her SIPP, for the reason of the fixed protection issue, and to make no payment of any kind prior to my final decision. What RL has presented is flawed in parts. She agrees with my provisional finding that, but for the delay, her investments would probably have been made on 21 September, so this should be the redress calculation start date. In contrast, RL has used, without explanation, the start dates of 5 and 6 October. The calculation end date it has used is 24 June 2022, three days prior to when the PD was issued. Overall, she considers its calculation flawed and agrees with the approach set out in the PD.

The case was then returned to me.

## 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.

In doing so, I have reviewed the PD and given due consideration to Ms W's submissions on it. As I said above, RL does not appear to have commented on the PD. However, a copy of its letter to Ms W (of 14 July 2022) has been shared with us and I have noted its contents. Overall and on balance, I am satisfied with the PD's findings, I maintain them and incorporate them into the present decision and I have not seen cause in Ms W's submissions or in the contents of RL's letter (to her) to alter those findings. As I said in the PD and, through the investigator, to Ms W, the switches issue has been resolved. I have also explained, through the investigator, the quote from the PD (about this issue) that she queried. Overall, I do not consider that there is need to address this issue any further.

In response to Ms W's other comments:

- What I said, in the PD, about the redress I intended to apply in this final decision is as I have quoted above.
- Ms W's confirmations of a Fixed Protection 2014 issue in her case, of the effect being that both the compensation and the award for trouble and inconvenience should be paid directly to her (and should not, or cannot, be paid into his SIPP), and of her higher rate tax payer status are helpful. Below, I will draw RL's attention to what she has said about the fixed protection issue and her tax status, as I set out my orders for calculating and paying redress/compensation to her.
- The redress/compensation orders I set out below will be consistent with the provisions that I said, in the PD, I intended to set out in the final decision. Overall and on balance, I am not persuaded to change them. I can understand, in broad terms, what RL set out to her in its recent letter, but I agree with her observation that some parts of it are unexplained. In any case, RL had my invitation to comment on the PD and was reminded to do so by the investigator. Despite that opportunity, it does not appear to have commented and it did not copy us into the letter it sent Ms W. Thankfully, she provided us with a copy. On balance, I maintain that what I set out below fairly resolves the complaint, for the reasons given below and in the PD. Ms W agrees, in the event that the alternatives she has proposed are not upheld, and RL has not told us of a reason(s) to consider otherwise.
- I have considered the alternatives that Ms W has proposed, in terms of applying different provisions and orders for redress/compensation, and a higher award for trouble and inconvenience. On balance, I am not persuaded to do either. I understand her points. However, I do not consider that any of them defeat or devalue the reasons why, as I set out in the PD (and as quoted above and incorporated into this decision), the SIPP is the natural benchmark for redress. My aim is to reflect, as closely as I practically can at present, what would have happened but for the transfer delay. I am satisfied that – but for the transfer delay – the same SIPP investments would probably have been made earlier than they were and that 'C' would have been part of that, hence why the performance of 'C' would have followed the performance of the investments that were eventually made in the SIPP (when calculated from the start date to the end date). It does not appear that Ms W disputes this, but she says the fixed protection issue changes matters. However, the only or main effect she has referred to is that the compensation cannot be paid into the SIPP. As I said in the PD – *"... the compensation (and any interest) should not be paid into her SIPP if it would conflict with any existing protection or allowance ... if the compensation (and any*

*interest) cannot be paid into her SIPP, it must be paid directly to her ...*". If, in applying the orders below, the loss of fixed protection issue and its effect are established, then this provision will apply and RL will make the compensation payment directly to her. However, the benchmark for calculating the value of that payment remains unaffected. What is affected is that the compensation would not thereafter be a part of the SIPP. In this context, I do not accept that the SIPP based benchmark is redundant. For the reasons I have already given (in the PD and in this decision), it is the natural redress benchmark in this case so there appears to be no reasonable cause to explore an alternative or to apply simple interest as a substitute.

- I understand Ms W's overarching point that the idea of putting her into a position as though the delayed transfer did not happen is arguably unachievable, given the prospect that the compensation payment will not or cannot be a part of the SIPP's future. She says, but for the complaint events, that would have been the case. That, essentially, the SIPP would have included the relevant value (arising from the compensation amount) from the transfer to date and that would have continued to be the case (with any growth) into the future and up to its passage to her intended beneficiaries. I acknowledge the absence of evidence, since the transfer and to date (and at present), that says otherwise – which further supports the SIPP as a natural redress benchmark. Application of the SIPP benchmark to the compensation calculation up to the end date (that is, the date of this decision) treats the compensation amount as though it has been a part of the SIPP to date. This much is achieved, at least. Where the compensation amount cannot be a part of the SIPP's future it will be paid to Ms W. It will be in her hands, so she is not being deprived of it.

### **Putting things right**

My aim is to put Ms W as close as possible to the position she would now be in if RL did not delay the transfer of her SIPP. I consider that she would have behaved differently in terms of the timing of the post-transfer investments in the SIPP, but the balance of evidence shows that she would have made the same investments that were eventually made in the SIPP. For this reason, her SIPP serves as a natural benchmark for calculating redress – to be calculated from what I define below as the *start date* to the *end date*. I consider this a fair way to reflect how any compensation amount arising at the former date would have performed up to the latter date.

I order RL to follow this approach (and that set out below) and I order Ms W to engage meaningfully and co-operatively with RL to provide it with all information and documentation, relevant to its calculation (and payment) of redress, that it does not already have.

RL received the transfer request on 7 September 2020. It ought reasonably to have been completed within 10 working days, and by 21 September 2020 at the latest. Instead it was completed on 15 October 2020. Due to that, the investments in the transferred SIPP were delayed and Ms W has clarified, in her recent comments and with supporting evidence, that they were made on 19 October 2020. On balance, I consider that, but for the delay, those investments would probably have been made earlier. They were made on the second working day after the delayed completion of the transfer. Without the delay, Ms W should have been in a position to make the investments by 21 September 2020. I have considered whether (or not) to add two working days to this date in setting the start date for calculating redress – in order to reflect the two working days gap in October. Overall and on balance, I am not persuaded to do so. This is not the definitive date on which the transfer would have been completed. It is not possible to make such a precise finding. Instead, it is the date *by* which the transfer should have been completed. Potentially, and but for the delay, it could have been completed earlier than this date. Overall, it is reasonable to conclude that the transfer would probably have been completed and Ms W's SIPP investments would probably

have been made by 21 September 2020 – without cause to add two further working days. 21 September 2020 is the ‘start date’ that I order RL to use in calculating redress for Ms W.

The ‘end date’ that I order RL to use for the calculation is the date of this final decision, because the subject of redress relates to an invested SIPP that has remained invested from the start date to the present. By using this end date, the redress calculation will reflect the performance that any compensation amount arising on the start date (which I refer to as ‘C’ and which I define further below) would have had up to date.

By using the SIPP as the redress benchmark, the calculation will reflect performance of C consistently with the performance of the SIPP over the relevant period (including a reflection of any changes within the SIPP in that period) – as though C has been part of the SIPP throughout.

I order RL to do as follows:

- Calculate the total units Ms W’s SIPP invested in on 19 October 2020 (‘A’); then calculate the total number of units, in the same funds and based on the same allocations of capital, that the SIPP could have purchased on 21 September 2020 at the prices on this date (‘B’).
- If A is the same or greater than B, no compensation is due.
- If B is greater than A, compensation is due to Ms W. In this case, RL must calculate the difference. Then it must calculate the *total monetary value* of the difference based on the relevant funds’ units’ prices on the start date. This total monetary value is what I referred to as ‘C’ above – the compensation amount arising on the start date.
- RL must then calculate the performance of C from the start date to the end date based on the SIPP benchmark, and pay Ms W this *concluding* compensation amount (C +/- the relevant performance) as compensation for the financial loss she has incurred as a result of the delayed transfer of her SIPP.
- RL must make this payment to Ms W within 28 days of receiving notice of her acceptance of this final decision. If RL does not make the payment to her within this period it must pay her the amount, and interest on the amount at the rate of 8% simple per year from the date of this final decision up to the date the payment is settled/made to her. This is to compensate her for any undue settlement delay by RL.
- RL should pay the concluding compensation amount (and any interest) into Ms W’s SIPP, to increase its value by the amount of the compensation (and any interest); the payment should allow for the effect of charges and any available tax relief; the compensation (and any interest) should not be paid into her SIPP if it would conflict with any existing protection or allowance; she has explained, with regards to the Fixed Protection 2014 issue, that this is the position she is in, so both parties should engage reasonably and meaningfully with each other to establish and verify, transparently, the facts and details of the position; if the compensation (and any interest) cannot be paid into her SIPP, it must be paid directly to her; had it been possible to pay it into the SIPP, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid; as stated above, Ms W says she is a higher rate tax payer, so this should be noted and verified; the notional allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age (for example, if she is likely to be a basic rate taxpayer at the selected



retirement age, the reduction would equal the current basic rate of tax and if she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation).

- RL must pay Ms W £500 for the trouble and inconvenience she has been caused in the complaint matter, and for the reasons I set out in the PD.
- RL must provide Ms W with a calculation of the compensation in a clear and simple format.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept a final decision. In Ms W's case, the complaint event occurred after 1 April 2019 (it happened in 2020) and the complaint was referred to us after 1 April 2020, so the applicable compensation limit would be £355,000.

### **My final decision**

For the reasons given above, I uphold Ms W's complaint and I order ReAssure Limited to calculate and pay her compensation as set out above, and to provide her with a calculation of the compensation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 24 August 2022.

Roy Kuku  
**Ombudsman**