

The complaint

Mr R's complaint was initially about the administration of his pension after it was transferred from Legal and General to ReAssure Limited ('RL') around August 2020. He alleged maladministration, by RL, of contributions to the pension and associated poor customer service, which led to his decision to transfer his pension away from RL and to Hargreaves Lansdown ('HL'). The present complaint is about RL's delay in completing the transfer to HL and about redress for Mr R.

What happened

I issued a Provisional Decision ('PD') in this case on 11 August 2022, and both parties were invited to comment on it. The PD's main contents were as follows:

In terms of background, I mainly said –

“Mr R's pension transfer request was submitted to RL on 11 December 2020. The transfer was completed, with the funds arriving in Mr R's HL Self-Invested Personal Pension ('SIPP'), on Friday 5 February 2021. There is evidence of the SIPP being invested on Monday 8 February 2021.

Mr R complained to RL and its response of 23 February 2021 conceded responsibility for the delay and apologised for it. RL confirmed that the transfer value that was used for the pension was that of 11 December 2020, when the transfer request was received, so there was/is no wrongdoing in that respect. It confirmed that a cheque for £100 was being sent to Mr R for the inconvenience he had been caused by his experiences with RL and that it would proceed to conduct a financial loss assessment – with regards to the delayed transfer and the effect that had on growth of the pension.

Mr R referred his initial administration related complaint to this service in December 2020. In June 2021 we contacted RL about the new issue to address, in the form of the pension transfer delay and its effect on growth of the pension (because the pension was uninvested/in cash during the transfer). That led to the opening of the new/present complaint, as Mr R said he had not heard from RL about the loss assessment since its letter of February 2021.”

I then summarised events that happened in the course of this service's treatment of the complaint, including our investigator's findings and conclusions on the case and including the following –

“RL presented its loss assessment calculation to Mr R in July 2022, offering compensation of £2,141.79. RL says this amount was paid into his SIPP on 15 July 2022. He disagrees with the calculation and he has given the following main reasons:

- *He is not happy with the calculation start date (of 5 January 2021) used by RL, but he could compromise on that; however, RL has used an arbitrary calculation comparison date of 24 June 2022, which has no significance and which he does not accept.*

- *Instead, the comparison should be made between the units he could have invested in on 5 January 2021 and those he invested in on 8 February 2021, and the difference arising from this (amounting to a value of £3,165.18) should be the base for compensation.*
- *The effects upon subsequent investments in the SIPP (and associated income/dividends from some of them) are not reflected in the calculations.*

Mr R also confirms that, to date, the compensation payment RL says was made into his SIPP has not been received."

I then made the following main provisional findings –

"RL is responsible for the delayed transfer of Mr R's pension to the HL SIPP and it has accepted this. For the sake of completeness, I consider that the balance of available evidence supports its responsibility for the delay.

There is no dispute about the pension's transfer value, so that does not need to be addressed.

In terms of determining when the transfer should have been completed, I endorse and incorporate into this PD the investigator's reference to the TRIG guidance and her finding that – based on that guidance, based on 10 working days being a reasonable time period for completing the transfer and with allowance for the bank holidays in December 2020 – the transfer process for Mr R's pension that was initiated on 11 December 2020 should have been completed by 29 December 2020. I also note that RL's recent loss assessment calculation accepts and incorporates the finding that the transfer should have been completed by 29 December 2020 – before proceeding to set a start date at 5 January 2021."

"I make the following additional provisional findings:

- *First, it could be helpful to summarise my remit. In this PD I will provisionally uphold the complaint and I will set out the orders that I intend to give RL to calculate and pay Mr R redress and compensation for trouble and inconvenience. If, upon consideration and treatment of comments on the PD, my Final Decision ('FD') remains the same – and if Mr R accepts the FD – RL will be legally bound by it. In it, I can also specify a time limit for payment, by RL, to Mr R and I can provide for interest to be calculated and added to the compensation if and where RL is late in paying the compensation. The expectation at first instance is that RL will comply, but Mr R should be aware (or be reminded) that, unlike in the courts, if that does not happen this service does not have a secondary set of powers for the practical enforcement of an FD. If a party needs to pursue such enforcement that is a separate and distinct matter that is beyond our powers. I have noted previous expressions from Mr R about the lack of accountability upon RL to address his complaint in a timely manner, so I consider it important to be clear about the remit I have summarised in this paragraph.*
- *I have not seen cause for RL to have delayed its loss assessment calculation for Mr R since February 2021. I also note that despite its proposal of a cash settlement (unrelated to the actual loss assessment calculation) in September 2021 he had to wait for a further 10 months before the loss assessment was eventually presented to him. Overall and in total, he awaited the calculation for 17 months. This justifies a review of the award for trouble and inconvenience distinct from the previous payment(s) RL has made and above what the investigator proposed. For these reasons, I am satisfied that he should receive £500 for the trouble and inconvenience*

caused to him by this significant delay, which has clearly compounded the trouble and inconvenience he faced from the underlying delayed transfer matter. I have balanced my consideration with the fact that, to its credit, RL readily accepted responsibility for the delayed transfer – and with the possibility that the impact upon Mr R has probably been less than it would have been if RL had not conceded responsibility so promptly and if the resolution of liability had also been delayed. However, there is nevertheless a key impact upon him resulting from being deprived a conclusion to, and compensation for, his case for such a long time. As such, I conclude that it is fair for RL to pay him £500 for the trouble and inconvenience he has been caused. If I retain this finding in the FD, I will order RL to do this.

- *I am satisfied that redress to Mr R must be calculated (and paid) to treat the impact, caused by the delayed transfer, upon his HL SIPP and the investment of that SIPP. Given the passage of time, there is also a need to ensure the calculation (and any payment) is brought up to date. This, as I explain below, should cater for and address his points about loss of how the value lost in the deficit units would have performed, been reinvested (and subsequently performed) and, where relevant, produced income/dividends. In terms of redress for financial loss, and if I retain this finding in the FD, I will set out the following –*
 - *My aim will be to put Mr R as close as possible to the position he would now be in if RL did not cause a delay to the transfer. I consider that he would have behaved differently in terms of the timing of the SIPP investments, but the balance of evidence shows that he would have made the same post transfer investments that were eventually made in the SIPP. For this reason, his 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 Mr R 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.*
 - *For the reasons addressed above, RL should have completed the transfer, up to receipt of funds in the HL SIPP, by 29 December 2020. Instead it was completed, up to receipt of funds, on Friday 5 February 2021. The SIPP's investments were made on the next working day (Monday 8 February 2021). On balance, I consider that, but for the delay, those investments would probably have been made earlier. I am mindful that they were made on the next working day after the delayed completion, so I have applied that to the date of 29 December 2020 (when the transfer should have been completed) and I have reached the same date of 30 December 2020 used by the investigator. This is the date on which, but for RL's delayed transfer, the SIPP's investments would probably have been made. Therefore, this will be the 'start date' that RL will be ordered to use in calculating redress for Mr R.*
 - *The 'end date' that RL will be ordered to use for the calculation will be the date of the FD. This is because the subject of redress (and, as I said above and explain further below, the relevant benchmark) is Mr R's SIPP which 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 the FD. 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 the FD.*

- *By using the SIPP as the redress benchmark, the calculation will reflect the performance of C consistently with the performance of the SIPP over the relevant period (including reflection of any changes within the SIPP that would have related to C and any performance and/or dividend and/or income in the same respect). On this basis, the calculation should and would treat C as though it has been a part of the SIPP throughout the redress period (between the start date and end date). RL's loss assessment calculation does not appear to cater for this. It seems to have limited itself to the value/performance of C (using a different start date) without reflecting what has happened in the SIPP over time – but instead based only on the value of the relevant units (for C) at the time of the calculation.*
- *I will order RL to calculate the total units Mr R's SIPP invested in on 8 February 2021 ('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 30 December 2020 ('B') at the prices on that date. If A is the same as or greater than B, no compensation is due. If B is greater than A, compensation is due to Mr R. 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 is 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 Mr R the concluding amount (that is, C +/- the relevant performance) as compensation for the financial loss he has incurred. I will order RL to make this payment within 28 days of receiving notice of Mr R's acceptance of the FD, and I will provide that if RL does not make the payment to him within this period it must pay him interest on the full compensation amount at the rate of 8% simple per year from the date of the FD up to the date the payment is settled/made to him. This provision will be to compensate him for any undue delay by RL in settling redress.*
- *I will also order that RL pay the compensation into Mr R'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 his SIPP if it would conflict with any existing protection or allowance; that if the compensation (and any interest) cannot be paid into his SIPP, it must be paid directly to him; 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; and that the notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age (for example, if he 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 he 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 Mr R with a calculation of the compensation in a clear and simple format."*

Mr R responded and accepted the PD's findings. He also updated us to say – "... having not been visible in my HL SIPP previously I can now see that a SIPP transfer of £2141.79 has

been made and shows a settlement date of 26/07/2022. Assuming your Final Decision does not change and the calculated loss to transfer to my HL SIPP is greater than this (which I believe it will be), I appreciate that the amount owed would be offset by what has already now been transferred".

RL asked for additional time, beyond the deadline, to respond and it was granted such time. However, no response was thereafter received from it, up to the extended deadline.

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.

I have reviewed the case (including its contents) and the PD. Mr R accepts the PD and I have noted his update. RL has not submitted comments on the PD. In these circumstances, I do not find cause to change the findings of the PD – other than to reflect Mr R's update – so I endorse those findings and I incorporate them into the present decision. I uphold Mr R's complaint for the reasons given in the PD and as quoted above. I will reflect his update in my orders (below) to RL for compensation (to him), but other than offsetting the payment he has received – as he acknowledges – my orders for compensation (to him) will be as I intended and expressed in the PD.

Putting things right

My aim is to put Mr R as close as possible to the position he would now be in if RL did not cause a delay to the transfer. I consider that he would have behaved differently in terms of the timing of the SIPP investments, but the balance of evidence shows that he would have made the same post transfer investments that were eventually made in the SIPP. For this reason, his 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 order RL to follow this approach and I order Mr R 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.

For the reasons addressed above, RL should have completed the transfer, up to receipt of funds in the HL SIPP, by 29 December 2020. Instead it was completed, up to receipt of funds, on Friday 5 February 2021. The SIPP's investments were made on the next working day (Monday 8 February 2021). On balance, I consider that, but for the delay, those investments would probably have been made earlier. I am mindful that they were made on the next working day after the delayed completion, so I have applied that to the date of 29 December 2020 (when the transfer should have been completed) and I have reached the same date of 30 December 2020 used by the investigator. This is the date on which, but for RL's delayed transfer, the SIPP's investments would probably have been made. Therefore, this is the 'start date' that RL is ordered to use in calculating redress for Mr R.

The 'end date' that RL must use for the calculation is the date of this decision. This is because the subject of redress (and the relevant benchmark) is Mr R's SIPP which has remained invested from the start date to the present date. 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 the present.

By using the SIPP as the redress benchmark, the calculation will reflect the performance of C consistently with the performance of the SIPP over the relevant period (including reflection of any changes within the SIPP that would have related to C and any performance and/or

dividend and/or income in the same respect). On this basis, the calculation will treat C as though it has been a part of the SIPP throughout the redress period (between the start date and end date). RL's loss assessment calculation does not appear to cater for this. It seems to have limited itself to the value/performance of C (using a different start date) without reflecting what has happened in the SIPP over time – but instead based only on the value of the relevant units (for C) at the time of the calculation.

I order RL to calculate the total units Mr R's SIPP invested in on 8 February 2021 ('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 30 December 2020 ('B') at the prices on this date. If A is the same as or greater than B, no compensation is due. If B is greater than A, compensation is due to Mr R. I 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 is what I referred to as 'C' above – that is, *the compensation amount arising on the start date*.

I order RL to calculate the performance of C from the start date to the end date based on the SIPP benchmark, then to deduct from that result the payment of £2,141.79 that it recently made to Mr R (and that he says he received on 22 July 2022) and then to pay Mr R the concluding amount (that is, C +/- the relevant performance, minus £2,141.79) as compensation for the financial loss he has incurred. I order RL to make this payment within 28 days of receiving notice of Mr R's acceptance of this decision. If RL does not make the payment to him within this period it must pay him interest on the full compensation amount at the rate of 8% simple per year from the date of this decision up to the date the payment is settled/made to him. This is to compensate him for any undue delay by RL in settling redress.

I order that RL pay the compensation into Mr R'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 his SIPP if it would conflict with any existing protection or allowance; that if the compensation (and any interest) cannot be paid into his SIPP, it must be paid directly to him; 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; and that the *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age (for example, if he 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 he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation).

For the reasons given above and for the trouble and inconvenience he has been caused in the complaint matter, RL must pay Mr R £500. It must also provide him 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 Mr R'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 (but before 1 April 2022), so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Mr R's complaint and I order ReAssure Limited to calculate and pay him compensation as set out above, and to provide him 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 Mr R to accept or reject my decision before 13 October 2022.

Roy Kuku
Ombudsman