

The complaint

Mrs H complains that Legal and General Assurance Society Limited (L&G) incorrectly requested the full value of her self-invested personal pension (SIPP) from her SIPP provider. This caused her to suffer financial losses.

Mrs H is represented by Mr H.

What happened

Mrs H held a SIPP with a provider I'll call A. Her pension was invested in over 20 funds and she also held cash reserves in her SIPP. Her funds were uncrystallised. Mrs H wanted to access some of her pension funds to provide a financial bridge until she began to receive her state pension. And so she applied to L&G to request that £35,000 be transferred from her SIPP to L&G's Cash Out Retirement Plan. Mrs H intended to purchase a three-year fixed term annuity and use some of the funds to take 25% tax-free cash. As Mrs H's SIPP with A included cash reserves, she'd intended that the cash be transferred to L&G, without her funds needing to be disinvested.

L&G received the application on 13 May 2020. It requested the pension funds from A on the same day via an online transfer platform called Origo. However, it requested a transfer of all of Mrs H's SIPP funds from a drawdown plan. A turned down this request, as Mrs H didn't hold a drawdown plan with it. So L&G sent a further transfer request via Origo on 8 June 2020 – again for the full value of Mrs H's SIPP, rather than the partial transfer she'd asked for.

A disinvested Mrs H's full SIPP funds on 2 July 2020 and let Mrs H know that it'd done so. Mrs H got in touch with A to ask it to pause the transfer, as this wasn't what she'd wanted. L&G sent the correct request via Origo on 14 July 2020 for the partial transfer of £35,000.

The funds were received by L&G on 18 August 2020. Mrs H took £8750 as tax-free cash, with L&G paying an annuity of £8706.60 gross per year, in monthly instalments. Mrs H received her first annuity payment on 27 August 2020.

Mrs H was unhappy that L&G had wrongly requested the full value of her SIPP from A, rather than the partial transfer she'd applied for. She said she'd lost out financially because her funds, which had been built up over a number of years, had been disinvested. And therefore, she'd incur losses in reinvesting the liquidated funds.

L&G accepted that it'd made an error when it requested a transfer of the full value of Mrs H's SIPP. But it understood that Mrs H had begun reinvesting her SIPP funds on 17 August 2020. And it concluded that by 18 August 2020, when it had received the correct transfer of £35,000, Mrs H had been in a position to reinvest her disinvested funds. Mrs H initially indicated to L&G that her losses due to lost growth were around £450. Therefore, it offered to pay Mrs H £500 to reflect the lost portfolio growth between 2 July and 18 August 2020, and it said it would arrange a payment of £250 for her trouble and upset.

Mrs H remained unhappy with L&G's stance. In February 2021, she told it that her SIPP

funds had been reinvested at an additional cost of around £5934. She felt that L&G should pay her a total amount of £10,000, to represent the additional cost of reinvestment; an additional tax burden she was likely to incur as a result of receiving the annuity later than she'd planned and to represent her distress, time and inconvenience. Mr H asked us to look into Mrs H's complaint.

Our investigator asked Mrs H and A for some further information about the reinvestment of the SIPP funds and when Mrs H had started reinvesting them. A told us that Mrs H's liquidated SIPP funds were available for reinvestment on 3 July 2020. It also told us that it'd recorded the loss figure of £5934 at Mrs H's request, but it could only speculate how this amount had been calculated. Mr H told us that L&G had done nothing to correct its error and queried whether we expected victims to repair the damage caused by L&G itself. Having given up on a proper response from L&G, they'd decided to reinvest the funds with A themselves on 27 January 2021. Mr H also told us that Mrs H no longer wished to pursue the part of the complaint which related to potential further tax losses.

The investigator thought L&G had made a fair offer to resolve Mrs H's complaint. He considered it'd been fair for L&G to rely on the loss figure Mrs H had given it in September 2020, when calculating the loss its error had caused her. And he didn't think it would've been fair to require L&G to keep any potential loss ongoing until such time as Mrs H had reinvested the liquidated funds. So he concluded that £500 was a reasonable sum to put right Mrs H's actual financial loss. He also felt that £250 compensation was fair to reflect the impact L&G's error had had on Mrs H.

Mr H disagreed with the investigator and I've summarised his responses:

- L&G's error had been made against a lack of background controls and a lack of security controls at A;
- L&G had never paid the £250 compensation it'd offered;
- L&G had offered £1500. Our investigator asked for evidence of this offer, but to date, this has not been received;
- L&G had done nothing to put things right – it didn't tell Mrs H what to do once her funds had been liquidated. She hadn't reinvested the liquidated funds on 17 August 2020, as L&G hadn't told her how to do so with a shortfall. Instead, she'd made an unrelated investment with A. The earliest they could've reinvested was November 2020, when L&G issued its response to their complaint, but it hadn't explained the reinvestment process. It hadn't attempted to reinstate her funds – it had simply sought to limit its own liability;
- L&G had slightly increased its compensation offer to £764. But this amount bears no relation to the actual reinvestment value;
- L&G should've asked A to reverse the mistaken transfer request at the time;
- The operational controls surrounding pension transfers were non-existent. L&G had had no authority to request liquidation of the fund and A shouldn't have done so without checking Mrs H agreed to it.

I issued a provisional decision on 30 August 2022. In my provisional decision, I explained the reasons why I thought Mrs H's complaint should be upheld in part. I said;

'First, it's important that I explain our role. We're not the industry regulator and so we have no power to tell a financial business how it should operate or to change its processes. This means I can't tell L&G to change the way it processes pension transfer requests, or what systems should be in place. And L&G isn't responsible for the way Origo works – this is a separate platform, which isn't owned by L&G and it is widely used to carry out pension transfers between pension providers. I must also make clear that this decision only concerns L&G and how it handled Mrs H's transfer request. I can't look here into any concerns Mrs H

has about how A handled the requests it received from L&G via Origo.

Mrs H is understandably very unhappy that L&G wrongly requested the full value of her SIPP funds from A. I've seen a copy of her 'Cash Out Retirement Plan' application form. Mrs A clearly indicated that she only wanted £35,000 to be transferred from her SIPP to L&G and that this amount wasn't her full pension fund. Despite this, L&G agrees that it wrongly sent a request for Mrs H's full pension funds. This led to A liquidating her investment funds, when it appears she had the cash reserves to allow the transfer to take place without any need for disinvestment at all. I don't doubt how frustrating and worrying this was for Mrs H when she learned from A about the instruction it'd been given by L&G and the action it had taken accordingly.

I appreciate Mrs H feels that L&G ought to have told her how to go about reinvesting the funds, or indeed, reinstate them itself. I appreciate that any decision about what to do with Mrs H's SIPP funds needed to be made by her and communicated to A to be actioned. L&G had no authority to reinstate the disinvested funds itself. With that said, I do think that L&G could've let Mrs H know it would pay her any financial loss she suffered in reinstating her funds as a result of its mistake. And I think it could've been clearer in letting her know that she had a choice to reinstate the disinvested funds if she wished to. It doesn't appear though that L&G gave Mrs H any such communication or took any real lead in trying to help Mrs H sort things out.

As L&G made a clear error, which it promptly acknowledged, it needed to ensure Mrs H was placed in as close to the position that she would've been in but for that error. In this case, it means that if Mrs H suffered any loss of growth of her investment funds as a result of the liquidation or any reinvestment fees, L&G would be responsible for paying them. This is to ensure that Mrs H's position wasn't prejudiced by L&G's failing.

I can see that L&G asked Mrs H if she could tell it about any financial disadvantage she'd suffered. Mrs H responded by email on 27 September 2020 and said:

'I had cash in my...pension pot to purchase the L&G annuity, no investments should have been sold. As it was, all of my portfolio was sold, value £83,071. To re-purchase the investments (valued at 26 September) would cost £83,502, an extra £431.

So if I re-bought now, I would lose £431, plus the cost of selling the portfolio, plus the cost of buying back, plus any income between selling and re-buying.'

On 20 October 2020, Mrs H let L&G know that she'd assessed her loss at £10,000. L&G requested information from A about her potential losses and it appears that Mrs H did so too. However, little information was forthcoming from A. L&G asked for clarification as to how Mrs H had quantified her loss, given the marked increase between the estimate she'd provided in September and the estimate around a month later. I don't think this was an unreasonable request from L&G – in my view, it was entitled to see evidence of the financial losses Mrs H had said she'd sustained.

In the absence of such detailed evidence from either Mrs H or A, L&G had to assess Mrs H's likely loss based on its own investigations. It concluded that A didn't charge buying or selling fees for funds. I've checked A's website, and this still appears to be the case. It noted that Mrs H had invested SIPP funds on 17 August 2020 – which it said tied-in with when it received the correct transfer funds from A on the following day. So it decided that Mrs H could reasonably have reinvested the liquidated funds by 18 August 2020.

As such, L&G was able to calculate the cost of repurchasing Mrs H's portfolio on 18 August 2020, using published unit prices from a reputable source of information. This showed that

the cost on that date would've been £83,833.09. This was a difference of £762.13 between Mrs H's fund on the date her SIPP was liquidated and 18 August 2020. It therefore told Mrs H it would review its original £500 loss offer.

Currently, I think L&G should pay Mrs H £762.13 to represent the actual loss it caused her. I say that because I'm satisfied it's provided enough evidence to demonstrate that this is the likely amount Mrs H would've paid had she reinvested her SIPP into the same portfolio on 18 August 2020. This was around 45 days after Mrs H's SIPP was liquidated. A told us that Mrs H could've reinvested her funds from 3 July 2020.

While I can understand why Mrs H may have wanted to resolve her complaint with L&G before reinvesting her funds, I think it would've been reasonable for her to try and mitigate her financial losses. She seems to have been aware that the costs of reinvestment were likely to continue to rise and also that she could lose out on potential income and growth. And so I think she ought to have sought to limit her potential losses and L&G's potential liabilities. In my opinion, 45 days was a reasonable timeframe for her to discuss her options with A and seek the reinvestment of her liquidated funds. I don't think it would be reasonable for me to find that L&G should be liable to pay any ongoing increased reinvestment costs between 18 August 2020 and 27 January 2021, as I consider Mrs H could've reinvested her funds much sooner than she did.

And in the absence of any evidence from A that L&G's calculation of £762.13 is substantially inaccurate and that it would've cost more for Mrs H to reinvest her funds on 18 August 2020, I presently find that this award is fair and reasonable.

L&G also said it would pay Mrs H £250 compensation for her trouble and upset. As I've set out above, I don't doubt how upsetting it was when Mrs H learned about L&G's mistake. And as I've referred to above, I don't think L&G clearly communicated Mrs H's options to her at an early stage. Neither do I think it took direct action to put things right as quickly as it should have, nor did it seem to take responsibility for its mistake at an early point. It's clear too that Mrs H was put to some time and inconvenience in dealing with the mistake and in needing to contact A to reinvest her funds. Mrs H also then experienced an unnecessary delay in receiving her annuity payments, which I think is likely to have caused her additional frustration, given the reason for taking the annuity was to provide a financial bridge. And Mr H told us that Mrs H had to borrow money from family and friends due to this delay, which I think is also likely to have caused her some distress. In my view then, I currently find an award of £400 total compensation (inclusive of L&G's original compensation offer) to reflect Mrs H's trouble and upset appears fair and reasonable in the circumstances of this case.'

I asked both parties to provide me with any additional evidence or comments they wished me to consider.

L&G had nothing further to add.

Mrs H didn't accept my provisional findings and so I've summarised the further representations Mr H made on her behalf:

- L&G's story around what had happened in August 2020 was a lie. Mrs H had made a small investment in an unrelated fund, using cash. It was nothing to do with the liquidated fund and wasn't the start of the re-invested monies. It was convenient for L&G to latch onto this date, but it wasn't true. He also questioned how L&G had become aware of this transaction. Mrs H hadn't given permission for A to share such information and so L&G had obtained it illegally. For me to endorse this reasoning was endorsing a lie and an illegal act;

- I'd incorrectly stated that A had said it could only speculate how the amount had been calculated. A's platform recorded all of the transactions and it was a simple matter of subtraction to find the difference between the liquidation transactions and the reinvestment transactions;
- Mrs H had kept the liquidated funds ring-fenced until January 2021, as she'd expected L&G to take responsibility for its actions. She couldn't have reinvested without injecting more funds. She'd felt L&G had to agree to cover those additional funds. The claim of £10,000 was intended to cover the variable and increasing capital loss, liquidation costs, loss of income and compensation;
- L&G's settlement should be based on at least the actual capital loss of £5934.30, which had been checked by A.
- I hadn't charged L&G any penalty and awarded Mrs H no compensation. I had given the impression that L&G's behaviour was ok and my conclusions were heavily biased towards L&G with minimal support for the victim.

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, my final decision is the same as my provisional decision and I'll explain why.

It's clear that Mrs H feels strongly that A has shared information with L&G about the transactions on 17 August 2020, which she believes L&G wasn't entitled to see. As I set out in my provisional decision, I am only considering L&G's actions and how it handled Mrs H's transfer request. I am not looking into any concerns Mrs H may have about the way A handled information relating to her SIPP transaction history. And I think L&G clearly explained to Mrs H how it had obtained this information in its final response to her complaint. It said:

'The documentation (A) sent us suggested you started re-investing the proceeds of the disinvested pension on 17 August 2020.'

In my view, L&G was entitled to rely on the evidence it was sent by A when assessing Mrs H's financial loss and her complaint. I've seen no persuasive evidence that L&G acted unreasonably or illegally in this regard. Whether the transaction was an unrelated one or not (and L&G concluded it wasn't), the evidence still shows that Mrs H was actively investing on 17 August 2020. By this point the wrongly liquidated funds had already been available for reinvestment for around five weeks.

Mr H says the funds were ring-fenced until January 2021, as Mrs H expected L&G to take responsibility for its actions. It's clear though that in mid-September 2020, L&G had told Mrs H that it would look to review her losses as a result of its mistake. On 27 September 2020, Mrs H gave L&G a potential loss value of £431, plus lost income and charges. It seems to me then that by mid-September at the latest, Mrs H knew that L&G was seeking to compensate Mrs H for financial loss she incurred as a result of its error. This didn't mean that L&G accepted ongoing liability for an indeterminate period and it wouldn't be fair for me to find that it should do so.

It remains the case then that I still think it would've been reasonable for Mrs H to try and mitigate her financial losses. As I explained above, she seems to have been aware that the cost of reinvestment was likely to continue to rise and also that she could lose out on potential income and growth. So I still find that she ought to have sought to limit her potential losses and L&G's potential liabilities. And I remain persuaded that 45 days was a reasonable

timeframe for her to discuss her options with A and seek the reinvestment of her liquidated funds. I don't think I could fairly find that L&G should cover Mrs H's losses until January 2021, as I remain satisfied that she could've reinvested much sooner than she did.

Turning to the loss itself, Mr H considers that Mrs H had demonstrated her actual capital loss had been £5934.20, which had been checked by A. However, A told our investigator that it hadn't calculated this figure and it couldn't comment whether or not it was correct.

But regardless of this figure and whether or not the calculation of it was correct, it still seems to me that the funds could've been reinvested from 18 August 2020 onwards. The figure of £5934.20 appears to have been calculated some time after I think Mrs H could reasonably have reinvested her funds. For that reason, I think it was reasonable for L&G to calculate Mrs H's losses from that time, using published unit prices from a reputable source.

As I explained, I've found that it was fair for L&G to calculate Mrs H's losses up until 18 August 2020. And I'm satisfied that L&G took reasonable and appropriate steps to calculate what Mrs H's actual losses were at this point – an amount of £762.13. I remain persuaded that this amount represents the financial and evidenced loss which I can reasonably hold L&G responsible for.

Mr H has raised concerns that I haven't applied a penalty to L&G. As we're not the regulator, I have no power to fine or penalise the financial businesses we cover. Our role is to consider whether a financial business' error has caused a consumer to lose out or suffer material distress and inconvenience and if so, how it should put things right. In this case, I've set out how I think L&G should put right the financial loss which I think can reasonably be found to have flowed from its error. And I've also awarded total compensation of £400 to reflect the trouble and upset I think L&G's actions caused her. I still find that this represents fair and reasonable compensation for the material distress and inconvenience L&G's error caused Mrs H.

In summary, I now direct L&G to pay Mrs H £762.13 to represent her financial loss and a total amount of £400 compensation (less the £250 it's already offered if it hasn't paid this amount). I find this is fair compensation to put right L&G's mistake.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part.

I direct Legal and General Assurance Society Limited to:

- Pay Mrs H £762.13 to represent her financial losses. L&G must add interest to this amount at an annual rate of 8% simple from 18 August 2020 until the date settlement is paid.
- Pay Mrs H a total of £400 compensation (inclusive of the £250 compensation it's already offered if it hasn't already paid this amount.) This compensation must be paid within 30 days of any final decision being accepted. If the compensation is not paid within 30 days of decision acceptance, then L&G will also need to pay interest on the compensation amount at an annual rate of 8% simple from that date onwards until the date it's paid.

If L&G considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs H how much it has taken off. It should also give Mrs H a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 November 2022.

Lisa Barham
Ombudsman