

The complaint

Mr G says that ReAssure Limited (ReAssure) is responsible for the poor administration and management of his personal pensions. Coupled with ineffective handling and communication, he says this has led to his financial detriment, inconvenience and distress.

Mrs G found herself in a similar position. And she has brought a separate complaint.

What happened

It's important context that Mr G's problems appear to have begun around the time of the transfer of the traditional insurance-based savings, pensions, life and with profits policies of Legal & General (L&G) to ReAssure. The proposal had been underway for a few years before being finalised in the High Court with an effective legal transfer date of 7 September 2020.

So, I'm mindful of the operational challenges ReAssure faced when taking on a significant element of L&G's book. But these are matters between the businesses concerned. The agreement reached would've required due diligence, one aspect of which would've been to ensure no harm to customers. It's not something Mr G should've been impacted by or worried about.

Mr G had two stakeholder pension plans with L&G. These were part of the transfer of business to ReAssure. So, it took on responsibility for his plans and became accountable for any acts or omissions in relation to these.

On 3 September 2020, Mr G contacted L&G with instructions to make certain switches to the funds in each of his pension plans. He says he was informed this could take a week or so post transfer of business to ReAssure, but that it would be executed at prices for that day. It seems from this point onwards, and over a couple of years, Mr G experienced many problems.

Mr G first brought his complaint to this Service in December 2020. But since this time further issues have arisen, some have been resolved, some are outstanding and some have become complicated because of attempted corrective action and poor communication about these. So, this has been a dynamic complaint, with many twists and turns.

The Investigator has set out the background to Mr G's complaint in some detail in the views he issued on 23 December 2021 and 27 July 2022. Neither party has challenged the broad thrust of what he set out.

To summarise, the scope of Mr G's extant concerns about ReAssure, which I'm considering in this decision are:

- The failure to properly execute his instructions to switch between holdings within each of his pension plans. This included inaction, delays, incorrect apportionment and incorrect fund selection. The period in question spans requests made between September and December 2020, but with the effect being felt beyond this time

horizon, for example through loss of investment opportunity. Further, communications about any remedial action taken were slow and lacking in necessary detail to provide the appropriate assurance the right corrective action had been taken.

- A delay in applying an employer contribution of £100,000 to Mr G's pension plan, which was made on 3 March 2021, but which didn't appear in his pension cash fund until 10 May 2021. He says this resulted in a lost investment opportunity.
- Incorrect application of annual management charges. Mr G notes an agreement he had with L&G that his linked plans would be taken together for the purposes of fees to be applied. And about the tiered tariff. But he says this agreement wasn't adhered to by ReAssure.
- A delay in the switch of his pension plans away from ReAssure to another provider. His request was issued on 20 November 2020. But as at the date of the Investigator's second view it still hadn't been effected. I understand he is now with an alternative provider.

While I'm not directly addressing some of the complaint points Mr G has raised during his journey with this Service, such as problems with his subject access requests to ReAssure and his access to its online portal, I'm aware of the issues raised and how these contributed to his overall frustration and worry about what was happening to his retirement funds.

Mr G has also set out in some detail the practical and emotional impact on him and his wife of the catalogue of problems he's experienced since ReAssure took on responsibility for his pension plans. And he seeks acknowledgement of such through a substantial award of compensation.

ReAssure has accepted responsibility for many of the failings set out, including:

- Problems with executing Mr G's switching instructions.
- A delay in endorsing the employer contribution made to his policy from 17 March until 17 May 2021.
- The impact of the delay of applying his employer pension contribution in March 2021 and the overlooking of his financial adviser's request for information about requirements for switching, on progress with moving to a different provider.

ReAssure also acknowledged Mr G's complaint about the annual management charges being applied to his pension plans. It asked him to supply it with the evidence which showed these should be different from the information it held in its key-facts documentation.

ReAssure has made some attempts to provide redress for Mr G, for example in relation to its switching errors. It has also provided him with several payments for the trouble and upset.

I'd observe that in trying to deal with and resolve Mr G's complaints, it has often been slow and its communications about what it accepted and what it didn't have lacked clarity, as have any remedies applied. In some instances its corrective action appears to have muddied the waters further.

In his view from July 2022 the Investigator upheld Mr G's complaint. He required ReAssure to remodel his pension plans such that his original instructions had been executed effectively. He also allowed for certain assumptions about how his funds would've been invested had they not been stuck in cash as a result of problems arising with Reassure.

The Investigator also said the remodelling should apply the correct annual management charges. He made provision that the employer contribution should have been invested from 17 March 2021. He required ReAssure to meet its undertaking to carry out a loss assessment following its role in the delay of the switch of his pension to another provider. And to make a further award to him for the trouble and upset its failings had caused.

ReAssure accepted the Investigator's first view which was issued in December 2021. It didn't respond to his follow-up letter of July 2022, which covered a broader set of Mr G's complaint points.

Mr G was broadly content with the Investigator's findings and conclusions, but he challenged aspects of the redress proposed. I'll deal with his points in this decision.

Because both parties couldn't agree with the Investigator's view, Mr G's complaint was passed to me to review afresh. I issued provisional decisions in November and December 2022. I'm grateful to both parties for their further submissions which I've taken into account in arriving at this final decision.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr G's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by ReAssure for Mr G. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like ReAssure. As such, I need to have regard to them in deciding Mr G's complaint.

The accounts of both parties haven't always been consistent. Both have provided notes contemporaneous with the events complained about. Ideally, copies of the recorded calls

could've been listened to in order to confirm which set of notes were more accurate. However, the key call recordings haven't been provided by ReAssure.

I think the Investigator's reasoning was sound when he concluded, on balance that:

"...the call notes provided by Mr G will be used to inform my outcome and redress. I have made this decision based on the fact that both call notes from ReAssure and Mr G are time stamped – ReAssure's being their own internal call notes and Mr G completing notes immediately after each call and emailing them to himself in order to provide an accurate audit trail and timeline. I have also considered the fact that the call notes provided by ReAssure were not actioned properly in any case and as such their accuracy in recording the funds switches requested must be questioned."

This is important in terms of some of the detail of aspects of the redress required, for example what should be accepted in terms of the switch instructions he provided.

As both parties appear to agree in broad terms about the background and the things that have gone awry in this case, my aim is to keep matters simple and to focus on what would be fair and reasonable redress in this case.

Putting things right

While the proposal I make is unlikely to be perfectly satisfactory to either party, I'm sure both will appreciate redress isn't often a scientific matter. And I'm conscious of the need to avoid the benefit of hindsight. Nevertheless, I believe my proposals are fair and reasonable in the circumstances.

Addressing each of the areas for redress already identified in turn, I've set out my proposal for bringing matters to a close.

The disputed switches

The Investigator recommended Mr G's pension plans be remodelled such that his original instructions from 3 September 2020 and subsequently on 10 November 2020 had been actioned correctly. And that from 11 December 2020 his funds should follow the performance of the FTSE UK Private Investors Income Total Return Index, until settlement.

Mr G agreed with the first two steps proposed by the Investigator but he argued the proposed index didn't fairly represent his established pattern of investment behaviour. He provided a summary analysis of the funds he'd invested in since 2006, including the propensity for investment in funds with a high risk rating.

Mr G also considered that indexation to a single benchmark shouldn't continue until the date of settlement because it didn't represent how he'd have moved his funds over the period. For example, he noted that in November 2011 declining market conditions triggered a switch back into cash for his wife's funds (which he managed). He says this is the pattern he'd have followed.

Here's what I've concluded.

There is agreement between the parties that Mr G's original instructions in September and November 2020 weren't executed properly. So, these first two steps of remodelling shouldn't be contentious.

I've thought carefully about what was happening to Mr G's pension plans. He said the move to cash he instigated on 11 December 2020 was requested only in order to simplify matters given the various fund switch issues he was facing. It was an attempt to gain clarity about the status of his pension funds. He says had there been no issues, the switch to cash wouldn't have happened.

This service would typically expect a consumer to mitigate their losses. So, there's an argument Mr G should've taken action to move his funds from cash and to have invested. However, there's a clear pattern of his instructions not being followed, being delayed, or being applied incorrectly. And, like the Investigator, I don't consider it reasonable to have expected him to have given further investment instructions to ReAssure at a time where he had several contested requests still outstanding.

So, I've concluded it's reasonable in the circumstances to ignore Mr G's instruction from 11 December 2020 to move all his funds into cash. Not to do so wouldn't provide for placing him back into the position he'd have been in now without ReAssure's errors.

As Mr G acknowledged along the way, there's a need to avoid hindsight in these matters. That's partly why I don't propose to use Mr G's then existing investment funds in whatever relative proportions as the basis for the method to assess investment opportunity loss.

That said I find some merit in his argument, based on the evidence Mr G provided about his investment behaviours since 2006, that the FTSE UK Private Investors Income Total Return Index doesn't provide the best fit for him. I think his proposed alternative index – FTSE UK Private Investor Ultra Growth Index is a better fit.

However I'm not persuaded this would be appropriate for 100% of his funds. I say this because his own analysis suggests over time broadly 25% of his pot has been in cash funds. So, I'm requiring ReAssure to conduct a third step to remodelling Mr G's pension plans that assumes from 11 December (a) 75% of his funds benefitted from the performance of the FTSE UK Private Investor Ultra Growth Index; and (b) the residual 25% would've mirrored the performance of the L&G cash fund.

This doesn't mean Mr G would have invested his money in the way I've set out. Rather, I consider this a reasonable compromise that broadly reflects the sort of return he could've obtained from investments suited to his risk attitude and investment approach.

Turning to Mr G's argument about the period of indexation. He's provided arguments about certain switches he'd have made in May 2021 and on 15 November 2021. I'm not persuaded by his argument to move away from the benchmark I've set out in May 2021. I think this would unnecessarily complicate what is already an imperfect solution.

However, Mr G has provided a strong argument he would've switched his funds into the L&G cash fund due to deteriorating market conditions from 15 November 2021, as he executed for his wife's pension plan at that time (remember, he was already in cash). So, I've concluded this is the date at which the third step indexation should cease. With his funds then all back into the L&G cash fund.

In his response to this Service dated 18 August 2018, Mr G told us:

"We have since been happy to remain wholly invested within the Cash Fund; partly because of the subsequent market reaction to Russia's invasion of Ukraine and also to maintain stable policy valuations in anticipation of transferring to a new provider. This reflected our understanding that the delays in the transfer of our policies were exacerbated because our

IFA's compliance process "timed-out" whilst confirmations of valuations and other responses were awaited from ReAssure."

In responding to my first provisional decision Mr G asked:

"Bearing in mind that my complaint in part arose because of ReAssure's misinterpretation of instructions, I would like [the ombudsman's] final decision to explicitly clarify and/or prescribe:

Which of the following happens after the end of the indexation period on 15/11/2021?

(a) Is the compensatory amount (excluding that for the delayed transfer) at this point to be calculated from the difference between the remodelled and actual value of each policy on 15/11/2021, with interest then applied until the date of settlement, or

(b) Does the remodelling continue until the policy transfer dates of 02/08/2022 & 10/08/2022 (these being the dates of ReAssure's confirmatory letters to me) with the compensatory amount (excluding that for the delayed transfer) calculated from the difference between the remodelled and transfer value of each policy on 02/08/2022 & 10/08/2022 respectively, again with interest then applied until the date of settlement?

I don't think either of Mr G's proposals is quite right, but I do think the compensation figures arrived at for the disputed switches and employer contribution (adjusted for any AMC over charging) do need to attract some investment return between 15 November 2021 and when each of his policies transferred in August 2022. Effectively then, a step 4. Given his recent testimony the index to be used here is the L&G cash fund.

ReAssure will then need to conduct a fifth step, which uplifts any loss calculated between the date of transfer of his pension policies to another provider and the date of settlement. I think the most straight-forward approach here will be to add 8% annual simple interest for this period.

As the Investigator noted, given the number of switches involved, the amount of documentation on file and the contradictory nature of some of this documentation it may be the case that some of the redress set out here has already been provided for by ReAssure.

So, in carrying out these calculations ReAssure can take into account any redress for these matters it has previously paid into Mr G's funds. And the consequential effects this will have had on his position over time. Mr G wouldn't expect to benefit from double redress in relation to the same issues.

However, confirmation of each step will be required for Mr G in order that he is able to ratify the movements on his pension for his own peace of mind.

The employer pension contribution

ReAssure has accepted Mr G's second smaller pension plan should've received the employer contribution of £100,000 by 17 March 2021. As we know, it didn't appear online until 10 May 2021. And for reasons already established previously, it sat in cash while he tried to resolve the various outstanding issues with his pension plans.

In line with the redress provided for above, it's not possible to know with certainty what investment decisions Mr G would've made with his additional £100,000. So, ReAssure should apply the same methodology as for the switching problems. From 17 March 2021 assume (a) 75% of this sum benefitted from the performance of the FTSE UK Private Investor Ultra Growth Index; and (b) the residual 25% would've mirrored the performance of

the L&G cash fund. And from 15 November 2021 all funds would've been moved to his L&G cash fund.

From 15 November any loss calculated should also be subject to the subsequent adjustments at steps four and five already set out for the methodology proposed for the disputed switches above.

The annual management charges

Mr G has previously said ReAssure has been using the wrong annual management charge (AMC) for his pension plans. It's surprising AMCs are in dispute – presumably these should be a matter of fact and established in contractual terms at appropriate times. Mr G has provided an audit trail from L&G, which appears to show the AMCs that should apply to his linked pension plans. I understand the Investigator also provided a copy of these documents to it.

In responding to my provisional decision ReAssure said:

*"We have looked into [Mr G's] policies and the tiered AMC's that were issued on the 26th May 2022 for policy *****2001 were incorrect, these were the original AMC's of the policy when it was taken out, this has now changed. This was an administration error only, the correct AMC's are being applied."*

*"The AMC for policy *****2001 is:*

- £0 to £24,999.99 – 1.000% Annual Management Charge applies*
- £25,000.00 to £49,999.99 – 0.850% Annual Management Charge applies*
- £50,000 and above – 0.650% Annual Management Charge applies."*

*"The AMC for policy *****7201 is:*

- £0 to £24,999.99 – 1.000% Annual Management Charge applies*
- £25,000.00 to £49,999.99 – 0.850% Annual Management Charge applies*
- £50,000 and above – 0.650% Annual Management Charge applies."*

"We can confirm the tiered AMC as above in the attachments are correct for both policies."

Subsequently Mr G has confirmed that these are the charges he thinks should've been applied. Both parties are therefore now on the same page in respect of this matter. It seems that previously on more than one occasion ReAssure has mis-quoted charges and this has led to some confusion.

In remodelling Mr G's pension plans as provided for in this decision, ReAssure will need to make explicit the charges it has applied throughout to give him assurance on this matter.

The delay in transferring Mr G's pension funds to another provider

Given ReAssure's acceptance that it contributed to a delay to the transfer of Mr G's pension plans to another provider, it should honour the commitment it gave him in its letter of 24 September 2021 to carry out a loss assessment.

Approach to any loss calculated

I'm grateful to Mr G for his latest detailed submission concerning his Lifetime Allowance and Annual Allowance positions, which I accept has been significantly complicated by what has

happened to his pension arrangements since 2020. I've borne this in mind in what I've provided for here.

ReAssure should pay compensation due, allowing for the effect of charges and any available tax relief. But it shouldn't pay the compensation into his pension plan because I'm satisfied that could potentially conflict with existing allowances. It should therefore pay that amount direct to him.

But had it been possible to pay into the plan, it would've provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. Mr G has told this Service he will be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr G would've been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

ReAssure should provide the details of the calculation to Mr G in a clear, simple format including information on all dates and fund prices used.

I understand why Mr G has asked me to require that ReAssure should assign him a named senior individual and provide their contact details. He's experienced a multitude of problems with the firm's handling and his confidence is low that matters will otherwise be effectively brought to a close. I'm sorry to disappoint Mr G on this point. It's not the role of this Service to interfere in operational matters. I'm sure ReAssure will now want to grip this matter. It's been a costly affair for it, as well as Mr G.

Subject to it receiving any information it requires from Mr G /his financial adviser in good time, then I would expect ReAssure will be able to provide closure within 28 working days of it receiving notice he's accepted my final decision. Indeed, given the award of interest I've made until settlement, it is in ReAssure's interest to put matters straight as soon as possible.

Distress and inconvenience

When I'm considering a complaint like Mr G's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of ReAssure's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

ReAssure should pay Mr G an additional £500, on top of the payments it had already made for trouble and upset (as at July 2022) for the distress and inconvenience it has caused through the things it got wrong in dealing with his pension plans over an extended period of time.

My final decision

For the reasons I've set out I'm upholding Mr G's complaint. ReAssure Limited now needs to

put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 2 March 2023.

Kevin Williamson

Ombudsman