

## **The complaint**

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

Mr G found himself in a similar position. And he has brought a separate complaint.

## **What happened**

It's important context that Mrs 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 Mrs G should've been impacted by or worried about.

Mrs G had a stakeholder pension plan with L&G. This was part of the transfer of business to ReAssure. So, it took on responsibility for her plan and became accountable for any acts or omissions in relation to this.

On 3 September 2020 Mrs G contacted L&G with instructions to make certain switches to the funds in each of her pension plans. She says she 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, Mrs G experienced many problems.

Mrs G first brought her 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 Mrs 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 Mrs G's extant concerns about ReAssure, which I'm considering in this decision are:

- The failure to properly execute her instructions to switch between holdings within her pension plan. 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 £38,800 to Mrs G's pension plan, which was made on 2 March 2021, but which didn't appear in her pension cash fund until 23 April 2021. She says this resulted in a lost investment opportunity.
- A delay in the switch of her pension plan away from ReAssure to another provider. Her request was issued in November 2020, but this wasn't given effect until August 2022.

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

Mrs G has also set out in some detail the practical and emotional impact on her and her husband of the catalogue of problems she's experienced since ReAssure took on responsibility for her pension plan. And she seeks acknowledgement of such through a substantial award of compensation.

It is my understanding that ReAssure has accepted responsibility for many of the failings set out, including:

- Problems with executing Mrs G's switching instructions.
- A delay in endorsing the employer contribution made to her policy from 16 March until 25 April 2021.
- The impact of the delay on applying her employer pension contribution in March 2021 and the overlooking of her financial adviser's request for information about requirements for switching, on progress with moving to a different provider.

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

I'd observe that in trying to deal with and resolve Mrs 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 Mrs G's complaint. He required ReAssure to remodel her pension plan such that her original instructions had been executed effectively. He also allowed for certain assumptions about how her funds would've been invested had they not been stuck in cash as a result of problems arising with Reassure.

The Investigator also made provision that the employer contribution should have been invested rather than sitting in cash. He required ReAssure to meet its undertaking to carry out a loss assessment following its role in the delay of the switch of her pension to another provider. And to make a further award to her 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 Mrs G's complaint points.

Mrs G was broadly content with the Investigator's findings and conclusions, but she challenged aspects of the redress proposed.

Because both parties couldn't agree with the Investigator's view, Mrs G's complaint has been passed to me to review afresh. I issued provisional decisions in November and December 2022 to try to arrive at an agreed position on redress. This is my 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 Mrs 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 Mrs 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 Mrs 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 she provided. As both parties appear to agree in broad terms about the background and the things that have gone awry, 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 redress I've decided 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 what I've provided for is fair and reasonable in the circumstances. Addressing each of the areas for redress already identified in turn, I've now decided how ReAssure Limited needs to put things right.

### **The disputed switches**

The Investigator recommended Mrs G's pension plan be remodelled such that her original instructions from 3 September 2020 and subsequently on 11 November 2020 had been actioned correctly. And that from 14 December 2020 her funds should follow the performance of the FTSE UK Private Investors Income Total Return Index.

Mrs G agreed with the first two steps proposed by the Investigator but she argued the proposed index didn't fairly represent her established pattern of investment behaviour. She provided a summary analysis of the funds she'd invested in previously, including the propensity for investment in funds with a high risk rating.

Regarding the length of indexation, Mr G told this Service:

*“...for my wife's policy...she (or more accurately, we) took back investment control of her policy with fund switching instructions (into the three favoured equity funds) on 03/05/2021 and again on 12/11/2021 (back into the cash fund) ...”*

Mrs G also considered the indexation should run from 14 December 2020 until 3 May 2021. And from this date an assumption that subsequent switches required by her in May and November 2021 were effected.

Here's what I've concluded.

There is agreement between the parties that Mrs 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 Mrs G's pension plans. She said the move to cash she instigated on 14 December 2020 was requested only in order to simplify matters given the various fund switch issues she was facing. It was an attempt to gain clarity about the status of her pension funds. She 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 Mrs G should've taken action to move her funds from cash and to have invested.

However, there's a clear pattern of her instructions not being followed, being delayed, or being applied incorrectly. And, like the Investigator, I don't consider it reasonable to have expected her to have given further investment instructions to ReAssure at a time where she had several contested requests still outstanding.

So, I've concluded it's reasonable in the circumstances to ignore Mrs G's instruction from 14 December 2020 to move all her funds into cash. Not to do so wouldn't provide for placing her back into the position she'd have been in now without ReAssure's errors.

I find some merit in Mrs G's argument, based on the evidence she's provided about her investment behaviours since 2017, that the FTSE UK Private Investors Income Total Return Index doesn't provide the best fit for her. I think her 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 her funds. I say this because her own analysis suggests over time broadly 25% of her pot has been in cash funds.

So, I'm requiring ReAssure Limited to conduct a third step to remodelling Mrs G's pension plans that assumes from 14 December (a) 75% of her 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 Mrs G would have invested her money in the way I've set out. Rather, I consider this a reasonable compromise that broadly reflects the sort of return she could've obtained from investments suited to her risk attitude and investment approach.

Turning to the period of indexation. I think it's appropriate for this to run from 14 December 2020 until 3 May 2021, after which her subsequent switching instructions kick-in.

In responding to my provisional decision Mrs 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 03/05/2021?*

*(a) Is the compensatory amount (excluding that for the delayed transfer) to at this point be calculated from the difference between the remodelled and actual policy values on 03/05/2021, with interest then applied until the date of settlement, or*

*(b) Does the remodelling continue until the policy transfer date of 11/08/2022 (this is the date of ReAssure's confirmatory letter to me) with the compensatory amount (excluding that for the delayed transfer) calculated from the difference between the remodelled and policy transfer values on 11/08/2022, again with interest then applied until the date of settlement?*

I do think the compensation figures arrived at for the disputed switches and employer contribution need to attract some investment return between 4 May 2021 and when her policy transferred in August 2022. Effectively then, a step four. Given that I've already accepted Mrs G's switching instructions were followed by ReAssure Limited from 3 May 2021, it follows the benchmark used here should be the actual performance and mix of her funds over the relevant period.

ReAssure Limited will then need to conduct a fifth step, which uplifts any loss calculated between the date of transfer of her pension policy 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 Mrs G's funds. And the consequential effects this will have had on her position over time. Mrs G wouldn't expect to benefit from double redress in relation to the same issues.

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

### **The employer pension contribution**

Mrs G's pension plan should've received the employer contribution of £38,800 by 16 March 2021. As we know, it didn't appear online until 23 April 2021. And for reasons already established previously, it sat in cash while she tried to resolve the various outstanding issues with her pension plans.

In line with the redress recommendations above, ReAssure Limited should apply the same methodology as for the switching problems. From 16 March 2021 until 3 May 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.

From 4 May 2021 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 delay in transferring Mrs G's pension funds to another provider**

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

### **Approach to any loss calculated**

If there is a loss, ReAssure Limited should pay into Mrs G's pension plan, to increase its value by the amount of the compensation and any interest. Its payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance (Mrs G has made reference to her Annual Allowance in this regard).

If ReAssure is unable to pay the compensation into Mrs G's pension plan, it should pay that amount direct to her. 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 Mrs G won't be able to reclaim any of the reduction after compensation is paid. The notional allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age.

It's reasonable to assume that Mrs G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs G would have 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 Limited should provide the details of the calculation to Mrs G in a clear, simple format including information on all dates and fund prices used.

I understand why Mrs G has asked me to require that ReAssure should assign her a named senior individual and provide their contact details. She's experienced a multitude of problems with the firm's handling and her confidence is low that matters will otherwise effectively be brought to a close.

I'm sorry to disappoint Mrs 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 Mrs G.

Subject to it receiving any information it requires from her/her financial adviser in good time, then I would expect ReAssure will be able to provide closure within 28 working days of it receiving notice she'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 Mrs 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 Mrs 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 her pension plans over an extended period of time.

### **My final decision**

For the reasons I've already set out, I'm upholding Mrs G's complaint and require ReAssure Limited to put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 February 2023.

Kevin Williamson

**Ombudsman**