

## The complaint

Mr R complains about advice from Stirling House Financial Services Limited to transfer his personal pensions and says he suffered a loss as a result, in particular due to losing the guarantees included with his previous pension plans.

## What happened

In 2017 Mr R spoke to Stirling House about his pensions. A fact-find document was completed which recorded that Mr R:

- was 54 years old, divorced and in good health;
- did not have any financial dependants;
- ran a company of which he was the Managing Director and had an income of £45,000 per year, with a net monthly income of £2,700 and expenditure of £1,200;
- had £6,500 in a savings account;
- had six pensions with Reassure with a value of around £86,000 in total and one pension with Standard Life with a value of around £104,000; and
- had no other assets or liabilities.

Stirling House also completed a risk profile which assessed Mr R as a dynamic investor.

The notes of a meeting in December 2017 recorded that there was a discussion of various options and noted that:

- Mr R wasn't happy being in With-Profits investments, which were not in line with his attitude to risk;
- he wanted flexibility on income withdrawal and his existing plans didn't offer flexible income drawdown;
- he didn't want an annuity;
- he wanted to be able to pass funds to his beneficiaries on his death;
- pro-active management of his pension funds appealed to him;
- exit penalties and transfer costs were discussed;
- there were guaranteed income/annuities attached to some of his pension plans but he felt potentially better growth, flexibility and investments in line with his attitude to risk were more valuable, particularly as he didn't want to have an annuity.

In January 2018 Stirling House sent a suitability report to Mr R. This noted that Mr R's target retirement income was £24,000 and he would like to start taking his retirement income at age 65. The report said he wasn't sure when he would access his tax-free cash but was aware it would be available from age 55. He was recorded as being a moderately experienced investor with a moderate capacity for loss. The report also noted that four of Mr R's pension plans provided a guaranteed pension income from Age 60 of £1,109.16, £1,129.92, £172.20 and £1,722.72 respectively.

The report recommended that Mr R switch his pensions to the Aviva platform and invest in the HC Stirling House Dynamic Fund. He agreed with the recommendation and the switches took place between March and May 2018. By that time, a pension sharing order had been made in relation to the pension with the second provider and around £54,000 was paid to his

former wife, leaving around £53,000 which was switched to his new pension.

Mr R later complained, with the help of a representative. The complaint included that:

- he had lost valuable guarantees and enhanced tax-free cash;
- the assessment of his attitude to risk was contradictory;
- the switch wasn't justified;
- there had been no consideration of simply balancing the existing portfolio;
- the information about the plan charges had been incorrect.

Stirling House didn't accept that it was at fault but when Mr R referred his complaint to this service, our investigator thought it should be upheld. The investigator said Mr R should not have been classed as a dynamic or moderately experienced investor and did not have a high attitude to risk; he wasn't given all the information needed to make an informed decision; and he lost important guarantees without a good reason for this.

The investigator noted that Mr R was 12 years from his chosen retirement age and there was no need for him to switch at that point. They didn't think the advice was suitable and thought Mr R would have left his pensions where they were if he had been given suitable advice about the loss of the guarantees.

The investigator recommended that Stirling House carry out a calculation to see if Mr R had lost out as a result of switching his pensions and, if he had, to compensate him for that loss. They also recommended that compensation of £200 be paid in respect of the distress caused to Mr R.

Mr R accepted the investigator's view but Stirling House didn't. It raised a number of points, including that:

- The recommendations were in line with Mr R's needs and objectives.
- He had seven pensions and had little knowledge about any of them – his main objectives included having them all in one place, with the option to leave any remaining funds to his beneficiaries.
- The only option available with one of his existing pensions was to take an annuity, which he didn't want – flexibility was a key driver for him as, although he planned to retire when he was 65, he wanted flexibility and to have access to his pension if his circumstances changed.
- The pensions held with the other provider, which had guaranteed retirement incomes, were in With Profits funds and had no option for a switch to different funds.
- Although some of the funds could be switched, that was limited to 22 alternative funds unlike the new pension that was recommended, which had over 3,000 options.
- Mr R was very clear he didn't want a fixed income and wanted to have access to his pension earlier if that became necessary. His circumstances had changed as his business went into voluntary liquidation and the new pension had shown its value as he could access his pension funds if he needed to.
- Information about alternatives was provided in a clear format and Mr R signed a document confirming his understanding of them.
- The target retirement income was £24,000 and checks were done which showed that if Mr R left his pensions where they were, he would only have received his target income until age 69; after that point he would have had a lower income. Switching his funds meant he would achieve his target income until age 74.
- When they saw Mr R, he was unaware of what retirement income he would have. He was clear he wanted to put all his funds together. He wanted flexibility, good death benefits and to consolidate his pensions in one place, all of which could be done through the recommended pension. Although he gave up some guaranteed income, its income modeller showed that the recommended pension could provide him with a

higher level of income and so it was in his best interests.

As no agreement was reached, the complaint was passed to me to decide.

Before proceeding with the decision I sought some further clarity over the nature of the guaranteed pensions in four of Mr R's Reassure pension plans. Stirling House has confirmed these did not provide a guaranteed minimum pension (GMP) or guaranteed annuity rates (GAR). They are described as Versatile Individual Pension plans, which provided a minimum income from age 60 as a monetary amount, and appear to be deferred annuities. These provided a minimum retirement income, which was guaranteed for five years, on a single life basis.

I also sought further information about Mr R's circumstances, following the comment from Stirling House about his business going into voluntary liquidation and the value his more flexible pension would have in those circumstances. His representative advised that:

- a voluntary arrangement was entered into, to clear an outstanding debt;
- this was completed and the business remains viable and continues to operate; and
- Mr R did not need to access his pension funds and doesn't intend to do so until his full retirement.

I then issued a provisional decision. I explained that I intended to uphold the complaint but thought the loss should be calculated in a different way from that suggested by the investigator. I set out my reasons as follows:

*When advising Mr R on his pensions I'd expect Stirling House to act in accordance with the requirements set out in the Regulator's principles and standards, including that it should exercise due skill, care and diligence, pay due regard to a customer's interests and treat them fairly. It should have obtained enough information about Mr R's financial situation and objectives to ensure its recommendation was suitable for him.*

*I've also taken into account a report from the then Regulator in 2009 on pension switching that highlighted four main areas where consumers had lost out:*

- *they had been switched to a more expensive pension or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason;*
- *they had lost benefits without good reason, which might include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age;*
- *they had switched to a pension that didn't match their recorded attitude to risk and personal circumstances;*
- *they had switched to a pension where there was a need for ongoing investment reviews but this wasn't explained, offered or put in place.*

*The suitability report said the pension recommended for Mr R was in line with his attitude to risk. But he was assessed as a "dynamic investor". This was defined as someone who is "...relatively comfortable with investment risk..." and whose aim is to achieve "higher long term returns and understand that this can also mean some sustained periods of poorer performance. You are prepared to accept significant fluctuation in value to try and achieve better long term Results."*

*Looking at the assessment of Mr R's attitude to risk I agree with our investigator there were contradictions about this in the suitability report. Mr R had no investment experience. His existing pension had been chosen for him by his then financial adviser and he said he hadn't reviewed the plans. And Stirling House says he didn't know what retirement income he would have.*

*As Mr R had 12 years until his expected retirement date I agree it's likely he would have been prepared to take some risk but there's nothing in the report that persuades me he would have had a high attitude to risk, or a high capacity for loss. These pensions were the only pension provision he had for retirement and in my view he wouldn't have been able to bear the risk of making any large losses.*

*The pension recommended for Mr R was the HC Stirling House Dynamic Fund, suitable for someone with a higher degree of risk. As I've said, Mr R had little knowledge of his pension and no real investment experience. I don't think this assessment of Mr R matched his experience, attitude to risk or capacity for loss.*

*The other justifications for recommending the switch focused on the ability Mr R would have to drawdown funds when he wanted to; the ability to leave money to his dependents on his death; consolidating his funds in one place; and having an ongoing service from an adviser, with active management of his funds.*

*I appreciate these are things Mr R said he wanted. But the fact that someone is attracted to the features of a new plan doesn't necessarily mean they need it – or that it should be recommended for them; Stirling House had to ensure its advice was suitable for someone in Mr R's circumstances.*

*Stirling House should have provided comparisons between the existing plans and the recommended plan, and reasoning, so Mr R could make his decision fully informed about the alternatives. But the suitability report had little by way of comparisons between what Mr R would expect to achieve from the recommended pension and his existing plans.*

*The report did say the costs of the recommended pension were likely to be higher and that Mr R would lose out on the guaranteed minimum income provided by four of his existing plans, but I think it down-played the significance of that. Where there is a loss of guarantees it's important to consider whether any potential increased value was enough to justify that loss but there's little consideration of that.*

*Stirling House says there was the potential to provide higher benefits but doesn't set out in detail the risks involved to achieve that. And these were likely to be higher risks that wouldn't have matched Mr R's attitude to risk.*

*It's also relevant that Mr R had 12 years until his expected retirement date. Stirling House says the recommended plan met his objectives of being able to drawdown pension funds when he wanted to – and that would have been possible soon after, when he reached age 55. But there was no apparent need for him to access his funds then.*

*If Mr R reached retirement age and wanted to access his pension through drawdown he could have switched at that point, and would have known exactly what he required. There was no need to make the switch at this time – at the time of the advice Mr R didn't know when he might need access to his funds or how much he might need, and that remains the case since he does not intend to access his pension funds before retirement.*

*Two of Mr R's existing plans had exit penalties. I appreciate these were only two of his seven plans but it was nevertheless a factor to consider. On making the switch Mr R lost around 5% of the value of those two plans. And there were other costs as a result of the switch.*

*As mentioned, the objectives given by Stirling House as reasons for the switch were mainly flexibility, consolidating his pension, that Mr R didn't want an annuity and that his current plans were not in line with his attitude to risk. I think his current plans were suitable for a*

*more medium risk investor and therefore more in line with his attitude to risk than the recommended plan.*

*Taking into account all of the above – the assessment of Mr R's attitude to risk, the additional costs involved, the loss of benefits and the fact that Mr R didn't need to make the switch at that point – I'm not persuaded it was in Mr R's best interests to switch or that it was suitable for him.*

*I don't think the desire for flexibility or to consolidate his pensions outweighed the other factors involved. Although Mr R had seven plans, six of these were with the same provider. Stirling House says Mr R's circumstances have changed and it was helpful for him to be able to access his pension funds if he needed to. But these factors could still have been considered at a later date, when Mr R could have made a decision based on his circumstances at that point.*

*If Stirling House had explained properly to Mr R the benefits of guaranteed pension income from four of his plans at age 60 I think it's unlikely he would have given those up at that point. And finding out that he had potentially lost out on that income would have been upsetting for Mr R.*

I set out in the provisional decision how I intended to direct Stirling House to put things right, with two sets of proposed calculations to assess whether there was a loss. The first calculations were for the plans that did not provide a guaranteed pension, and the second were for the four ReAssure Plans that had guaranteed pension income.

I said I also intended to direct Stirling House to pay compensation of £200 for the distress caused to Mr R.

### **Replies to the provisional decision**

Stirling House replied to the provisional decision with the following points:

- The provisional decision says Mr R should not have been assessed as having a higher attitude to risk but his answers initially identified him as being in this category, based on the investment being long-term. That was its assessment at the time but his attitude to risk would have been reviewed every year and as the term reduced his attitude to risk may have reduced.
- The provisional decision says it downplayed the value of the guarantees. It gave Mr R a guarantee disclaimer, which highlighted the difference between the minimum income attached to the policies with the best annuity rates. This was discussed with Mr R, who signed to confirm his understanding. He also confirmed that he didn't want an annuity.
- It had no comments to make about the redress calculations.

Mr R's representative also replied, with the following comments:

- Reassure has confirmed to them that Mr R was entitled to more than the usual 25% tax-free cash.
- The two unit-linked plans (which did not have any guaranteed pension income) would have been taken 100% tax-free. The four With-profits plans (which provided the guaranteed incomes) provided tax-free cash of 30.84%.
- As the transitional tax-free cash available to him would have been taken mainly from the two unit-linked plans not providing the valuable guarantees, he would have access to more tax-free cash while still being able to benefit from the guarantees.
- The annuities offered by the Reassure plans were equivalent to rates much better than the standard rates available on the open market. It wished to clarify that in relation to the second calculation, the redress was the difference between the cost of

providing this guaranteed monetary amount as an annuity and the amount Mr R could purchase with the Aviva transfer value, after completion of the Reassure transfers.

I advised Stirling House of the representative's comments about the tax-free cash and explained that this meant the redress would likely be amended; if the tax-free cash would be more than 25%, the notional deduction for tax would need to reflect that. I set out to both parties a proposed additional calculation to reflect this.

Stirling House says it had asked about any guarantees or safeguards and the information provided at the time said there wasn't any enhanced tax-free cash. As Mr R's representative has received contradictory information from the provider, Stirling House questions what responsibility the provider has for that – since it can only advise a client on the basis of the information it has.

### **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 considered all the further comments carefully, I don't see any reason to change my view that the complaint should be upheld. This is for the reasons set out in the provisional decision, together with the following comments on the additional points that have been raised.

- Stirling House says it was the answers Mr R gave that identified him as having a higher attitude to risk. But I think there were contradictions about this in the suitability report. He had no investment experience and little knowledge or understanding of his pensions. And it's not just attitude to risk that is relevant but also his capacity for loss. These were his only pension provision and he wouldn't realistically have been able to stand large losses.
- I appreciate Mr R signed a disclaimer. But Stirling House had to ensure its advice was suitable for Mr R taking into account all his circumstances. Taking everything into account – Mr R's attitude to risk, his capacity for loss, the additional costs involved, the loss of benefits and the fact he didn't need to make the switch at that point, I don't think the advice was suitable.
- I agree Stirling House could only advise on the basis of the information it had, and I appreciate the information provided at the time didn't say Mr R would be entitled to enhanced tax-free cash. But I don't think that changes the outcome. My provisional decision took into account the information Stirling House had at the time and my view was that the advice wasn't suitable, for all the reasons set out above.
- The information I have now seen about the tax-free cash is set out in a letter from the provider in response to a question Mr R's representative asked. While it appears different from the information given at the time, that was in a standard format document rather than a letter put together specifically to respond to the request. In my view, that letter carries more weight. If the original information was incorrect, that's something for Stirling House to take up with the provider; I don't think Mr R should lose out as a result of this.
- The redress in the second calculation is intended to reflect the cost of providing the guaranteed monetary amount as an annuity (in other words, what Mr R would have been entitled to). If the notional fund values at the date when he transferred his

pension away from Aviva, for the proportion of the Aviva pension funded by these four plans (together with a fair value from that date onwards) is less than the amount he would need to buy such an annuity, he should be compensated for the difference in value.

- If in fact Mr R is entitled to more tax-free cash, that needs to be reflected in the redress calculation, as it wouldn't be fair to make a notional deduction for tax based on the wrong figures. If Mr R had kept his Reassure plans, he would have been entitled to more than 25% tax free – the two unit-linked plans would have been taken as 100% tax-free cash; and the four with-profits plans provided 30.84% each. Mr R will now be charged tax which he would not otherwise have had to pay, so he should be compensated for this.

### **Putting things right**

In assessing what would be fair compensation, my aim is to put Mr R as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr R would have remained with his previous provider but I can't be certain that a value will be obtainable for what the previous policy would have been worth. I'm satisfied what I have set out below is fair and reasonable, taking this into account and given Mr R's circumstances and objectives when he invested.

I have provided two redress calculations. The first calculations are for the proportionate transfer value for the total of Mr R's Standard Life plan and the two ReAssure plans that did not provide a guaranteed pension income.

Mr R took further advice and moved his pension again in November 2018. From that point onwards I don't think it's reasonable hold Stirling House responsible for advice and any losses incurred after the switch.

The other ReAssure plans were "Versatile Individual Pension Plans" which appear to be deferred annuities. They were set up on a With-Profits basis to provide a guaranteed annual pension amount. The remedy for these is set out in the second calculation below.

### ***Redress recommendation for the plans that did not provide a guaranteed pension income***

To compensate Mr R fairly Stirling House should:

- Compare the performance of Mr R's investment with the notional value if it had remained with the previous providers. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Pay any interest set out below.
- If there is a loss, pay into Mr R's pension plan, 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. Compensation should not be into the pension plan if it would conflict with any existing protection or allowance.
- If it's not possible to pay the compensation into Mr R's pension plan, the amount should be paid directly to him. But had it been possible to pay into the plan, it would have 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 R won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.
- Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R 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%.

Income tax may be payable on any interest paid. If Stirling House considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much has been taken off. Stirling House should also give Mr R a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Notional value	From ("start date")	To ("end date")	Additional interest
Proportionate value of Aviva Pension Plan (Total of Standard Life and ReAssure plans 5 & 6 referred to above)	No longer exists	Notional value from previous providers	Date of transfer to Aviva	Date Aviva plan was transferred away	Any loss calculated should be brought up to date using the FTSE UK Private Investors Income total return index

### **Actual value**

This means the actual amount paid from the investment at the end date.

### **Notional Value**

This is the value of Mr R's investment had it remained with the previous provider until the end date. Stirling House should request that the previous provider calculate this value.

Any additional sum paid into the Aviva Pension Plan should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the Aviva Pension Plan should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Stirling House totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Stirling House will need to

determine a fair value for Mr R's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

### ***Why is this remedy suitable?***

I've chosen this method of compensation because:

- Mr R wanted capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's circumstances and risk attitude.

### ***Redress recommendation for the four ReAssure Plans that had guaranteed pension income***

To compensate Mr R fairly Stirling House should:

- 1) Obtain details of the annuity income that Mr R could have taken at the date of calculation on a single life basis and a five-year guarantee period (which is what he would have been entitled to).
- 2) Using current annuity rates, work out how much it would cost to buy an annuity for Mr R at the date of calculation providing the same benefits as calculated under (1).
- 3) Obtain the notional fund values from the provider Mr R switched to (Aviva) at the date when he transferred his pension away from Aviva, for the proportion of the Aviva pension funded by these four plans, together with a fair value from that date onwards, using this benchmark – the FTSE UK Private Investors Income Total Return Index.
- 4) The loss to Mr R's pension funds at the date of calculation is calculated as the difference between (2) and (3). If the answer is negative, there's a gain and no redress is payable.

The loss should if possible be paid into Mr R's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If Reassure is unable to calculate a notional value, Stirling House will need to determine a fair value for Mr R's investment instead, using this benchmark – the FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R 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%.

### ***Additional compensation relating to the enhanced tax-free cash Mr R lost***

For the two unit-linked plans that would have been taken 100% tax-free:

Mr R will be able to take 25% tax free cash from his current plans. So he has lost out on 75% of his pension that was funded by these plans being paid tax-free. Instead he'll likely pay 20% tax on these funds. To compensate him for his additional tax liability, Stirling House should:

- take 75% of the part of Mr R's current pension which was funded through these plans after being adjusted for losses or gains as calculated above
- pay 20% of this sum to Mr R in cash.

For the four With-profits plans where Mr R could have taken 30.84% tax-free cash:

Mr R will be able to take 25% tax free cash from his current plans. So he has lost out on 5.84% of his pension that was funded by these plans being paid tax-free. Instead he'll likely pay 20% tax on these funds. To compensate him for his additional tax liability, Stirling House should:

- take 5.84% of the part of Mr R's current pension which was funded through these plans after being adjusted for losses or gains as calculated above
- pay 20% of this sum to Mr R in cash.

Stirling House should also pay Mr R £200 for the distress caused by finding himself in a situation where he has lost out on valuable pension benefits due to the unsuitable advice provided by Stirling House.

### **My final decision**

I uphold the complaint and direct Stirling House Financial Services Limited to pay compensation as set out above.

Stirling House Financial Services Limited should provide the details of the calculations to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 April 2023.

Peter Whiteley  
**Ombudsman**