

The complaint

Mr D has complained that ReAssure Life Limited wouldn't allow him to transfer – either fully or partially – his personal pension plan (PPP) to a new pension provider. Although ReAssure did later agree to the transfer, this was some four months after he'd initially submitted the request, and Mr D has said that he lost out on investment growth within the receiving plan.

What happened

On 8 July 2022, ReAssure wrote to Mr D to explain that nine funds within Mr D's pension plan had been suspended due to the Russian-Ukrainian conflict. The letter confirmed that Mr D's annual statement included a list of the funds he was invested in and also said the following:

"It means you can't pay in, or take money out, of any suspended Russian-linked fund."

On 14 July 2022, the new pension provider, Parmenion, wrote to ReAssure, confirming that Mr D had requested a transfer from ReAssure and enclosing his signed authority for the transfer to be processed. Parmenion requested fund information, including a valuation of all funds.

ReAssure wrote to Mr D on 20 July 2022 and provided him with his current pension value, which was £62,731.99. The letter also included a transfer payment release form.

Shortly afterwards, Parmenion sent an email to ReAssure dated 28 July 2022 requesting an update on the transfer. A follow-up letter was sent to ReAssure on 1 August 2022 requesting an update.

ReAssure contacted Mr D on 8 August 2022 and again confirmed his fund value and enclosed a transfer payment release form.

Parmenion sent another letter to ReAssure on 15 August 2022 requesting an update on Mr D's transfer.

On 19 August 2022, Parmenion emailed ReAssure and said the following:

"I am writing in reference to Mr D's transfer from Reassure into Parmenion. We have received correspondence from the client's IFA that they request that all available funds be transferred over into our management leaving any suspended assets with yourselves."

Please can you facilitate the request and proceed with the transfer."

ReAssure wrote to Mr D on 24 August 2022 and provided an update. It said the following:

"We can confirm that after thorough investigations we are unable to proceed with a partial/full transfer of the policy in subject."

Due to the current situation with Russia, it is uncertain when these funds will be available. However, when these funds become available we will write to yourself and your financial advisor that we are able to facilitate a transfer.”

Parmenion contacted ReAssure on 2 and 5 September 2022 asking for fund information and updates. On 8 September 2022, ReAssure replied and confirmed a breakdown of the funds in which Mr D was invested.

Parmenion requested another update on Mr D's transfer on 20 September 2022 and, on the following day, ReAssure replied to Parmenion with a breakdown of funds. This letter confirmed Mr D's fund had increased to £63,049.60.

The investigator said that she didn't have a copy of the complaint submitted by Mr D's financial adviser but she was aware of ReAssure's final response letter of 21 September 2022, within which it said the following:

- It understood that Mr D was unhappy because he couldn't transfer his fund, due to being invested in a suspended fund
- Any suspended fund Mr D was invested in would show a zero value and couldn't be transferred
- The fund managers responsible for the suspension were external and, therefore, the matter was outside of its control

The investigator said that she hadn't seen the financial adviser's reply to this letter, however, ReAssure sent a further response via email on 29 September 2022. Within it, ReAssure said the following:

“The assessments by our Product & Governance team are carried out on a case by case basis as it is that an exception can be made under exceptional circumstances. The standard procedure is that transfers cannot be processed on plans invested in suspended funds as stated in previous correspondence.

I have discussed this case with a Senior Manager within the team as requested. We feel that we have expressed and explained that a transfer out from a suspended fund which has been checked by our specialist team at this time it is not possible.”

From 11 October 2022 to 14 November 2022, Parmenion sent four further requests for updates and information, until, on 24 November 2022, a full transfer of Mr D's fund was sent to Parmenion.

Once Mr D had referred the matter to this service, the investigator contacted ReAssure in December 2022 and asked it the following:

- What constitutes an exceptional circumstance?
- Why was Mr D unable to transfer the assets which were not invested in Russian-linked funds?

ReAssure responded to say that the transfer had completed in full on 24 November 2022. It also confirmed exceptional circumstances would include financial hardship or health issues and Mr D couldn't have a partial transfer because his policy didn't offer that option.

Therefore, it became a business decision as to whether ReAssure would allow the transfer.

In response, the investigator contacted ReAssure and highlighted how, in July 2022, the regulator of the industry, the Financial Conduct Authority (FCA), released guidance to businesses on how they could help and protect their customers invested in suspended funds.

In particular, the investigator noted that section 1.7 of PS22/8 said the following:

“Side pockets would give AFMs the option to separate affected investments from the fund’s other investments. The fund’s existing classes of units would no longer reflect the value of these affected investments, but the value of units in a new unit class would be determined only by reference to the affected investments. The existing unitholders at the time the side pocket is created would receive units in the side pocket class, giving them the right to a portion of the affected investments. Side pockets therefore could allow:

- *new investors to enter the fund without sharing in the exposure to the affected investments*
- *existing investors to sell the units which relate to assets that are not affected investments*
- *some funds to end their current suspension of dealing”*

The investigator thought that this guidance was relevant to the situation in which Mr D found himself, and so she asked ReAssure why it took four months to approve the transfer, when it could’ve been accepted and facilitated sooner.

ReAssure replied, but, in the investigator’s view, only reiterated how suspended funds couldn’t be transferred ordinarily, and transfers would only be approved under exceptional circumstances.

The investigator concluded that the complaint should be upheld, saying the following in summary:

- The issue stemmed from unprecedented circumstances, which were outside of both Mr D’s and ReAssure’s control.
- But ReAssure had repeatedly said that transfer requests which included suspended funds would be considered on a case by case basis and could be approved in exceptional circumstances.
- As the transfer did proceed in November 2022, the investigator had asked what exceptional circumstances had applied in this case, but ReAssure hadn’t confirmed what the deciding factor was in this case.
- Now that the transfer had completed, she needed to consider whether Mr D had been impacted financially or otherwise by the delay.
- ReAssure had confirmed that it received the completed transfer payment release form for Mr D’s transfer on 8 August 2022.
- Allowing ten working days for the transfer to be processed, this meant that Mr D’s transfer could have been processed by 22 August 2022.

The investigator recommended that ReAssure calculate any loss Mr D had suffered by determining the notional value of the pension from ReAssure and subtracting the current value of his pension from that notional value.

The investigator said that any loss should in the first instance be paid to Mr D's pension plan, but if this wasn't possible, it should be paid directly to Mr D with a notional deduction for the (assumed) basic rate income tax which he would have paid on the post tax free cash benefits – amounting to 15% on the redress amount.

Mr D accepted the investigator's recommendation, but ReAssure disagreed, saying the following in summary:

- The FCA's statement referred to by the investigator was only guidance and wasn't mandatory for businesses.
- It had a duty to protect its customers who were invested in suspended funds, and whilst Mr D's case was reviewed, the business decision was to not allow a transfer at the time.
- Although Mr D's financial adviser had requested a partial transfer, this wasn't permissible on this type of plan. Its specialist "Product Governance Department" reviewed exceptional circumstances and confirmed that transfers couldn't be processed on plans invested in suspended funds. This was similar in nature to the situation when property funds had been suspended previously.
- The Fund Managers were external to ReAssure.
- It had informed Mr D that a transfer wouldn't be possible because of the suspended funds on 12 March 2022 and then again on 8 July 2022 – this predated the request from Mr D/his adviser to transfer the plan.

The investigator wasn't persuaded to change her view of the matter, however, saying that although ReAssure had said that it wasn't possible to facilitate a full or partial transfer, this did then happen in November 2022. And although she'd enquired as to what had changed in that period to allow the transfer to happen, she hadn't received a response.

On balance, she considered that the decision to allow the transfer could have been made earlier, and so she remained of the view that ReAssure should determine whether this had caused Mr D a financial loss.

ReAssure then responded to say that the reason the plan could be transferred in November 2022 was that it was no longer invested in suspended funds. It provided a copy of the message which it sent to Mr D on 17 November 2022 advising him that this was the case, and that a full cash transfer value was available for the plan.

As agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on 25 April 2023, in which I set out my reasons for partially upholding the complaint. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd firstly comment that I accept the point ReAssure has made about it being entitled to

make, and implement, legitimate business decisions on its pension plans. And I'm satisfied that it has now provided the rationale as to why the full transfer could be facilitated in November 2022.

In essence, for the period in which Mr D was invested in suspended funds, the policy couldn't be fully transferred. This position changed in November 2022, as ReAssure has latterly confirmed that Mr D's plan was no longer invested in suspended funds. And this was why Mr D was by that time able to transfer his pension funds.

But ReAssure nevertheless needed to clearly communicate the rationale for why it couldn't, and then could, transfer Mr D's plan. So I've then thought carefully about whether ReAssure has treated Mr D fairly in terms of the provision of information about why he wasn't able to transfer his plan, and why this position changed in November 2022.

ReAssure did set out its rationale as to why the pension plan couldn't be transferred in March and July 2022. And whilst I note that it wasn't brought specifically to the investigator's attention until March 2023 that the reason for the change in position was that the plan was no longer invested in suspended funds by November 2022, this had nevertheless been communicated to Mr D (or his financial adviser) at the time.

Therefore, whilst this has perhaps drawn out the complaint handling aspect of the matter longer than should have been the case, I don't think I could fairly and reasonably conclude that ReAssure has treated Mr D unfairly here in terms of communicating why a full transfer wasn't possible before November 2022.

But there remains the matter of ReAssure clearly communicating to Mr D as to why a partial transfer wasn't possible. As noted by both the investigator and reassurance, the FCA issued guidance relating to this type of position, and whilst ReAssure has said that, as guidance, it wasn't mandatory for it to adhere to this, I nevertheless think that, to comply with its obligation to clearly communicate with Mr D – and treat him fairly – it ought to have offered more of an explanation as to why it was unwilling to facilitate a partial transfer before November 2022.

In the course of the investigation, ReAssure has said that a partial transfer wasn't permissible on the plan, which might suggest a prohibition on this within the terms (which as far as I'm aware hasn't been provided), but has also at other points alluded to this being a decision made by its Product Governance Department.

But I don't think the actual rationale for Mr D not being able to partially transfer the non-suspended funds has been adequately explained to either this service – or more importantly – to Mr D. And as such, I think Mr D will have been left confused and concerned as to why this wasn't possible – and what this might mean for the future of his pension funds. After all, whilst ReAssure said in its letters about the fund suspensions that Mr D should refer to the terms of his policy to see if he'd be able to withdraw from his pension plan, I can well imagine that Mr D might also have had concerns about his ability to partially access his pension funds at all.

And so, whilst I don't think the complaint should be upheld on the basis of Mr D not being able to transfer his pension plan sooner than November 2022 – as I think ReAssure was entitled to make this decision – I currently think that ReAssure should pay Mr D £100 in respect of what I consider to be the unnecessary uncertainty and concern caused to him for several months up to the point that it was effectively resolved in November 2022."

I asked the parties to provide any further submissions they may wish to make by 23 May 2023. Neither party has made any further points in response to the provisional 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.

My conclusions remain the same as those set out in the provisional decision, and for the same reasons.

Putting things right

As set out in the provisional decision, ReAssure Life Limited should pay Mr D £100.

My final decision

My final decision is that I partially uphold the complaint and direct ReAssure Life Limited to pay Mr D £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 June 2023.

Philip Miller
Ombudsman