

## **The complaint**

Mr A complains about the way that Legal and General Assurance (Pensions Management) Limited (L&G) managed his pension, including the way that it processed a requested investment fund switch causing Mr A to suffer losses.

## **What happened**

Mr A has a stakeholder pension with L&G. In August 2021 Mr A decided to move his pension pot from cash to a lifestyle investment profile. Mr A explains that he made an online request to move 70% of his pension pot to a five year Lifestyle Profile.

L&G explain that the online switch request was an automated process. And 100% of Mr A's pension pot was re-invested in line with L&G's Managed Lifestyle Profile (10-Year Lifestyle Profile).

Mr A complained to L&G in January 2022 about the following points:

- That L&G had incorrectly executed his fund switch request of August 2021
- That L&G didn't send him a confirmation letter following his fund switch
- That L&G's charges were unreasonable on his cash fund and weren't clear or transparent

L&G investigated Mr A's complaint and partially upheld it. It explained that:

- Mr A's selected fund switch was part of an automated process and said that he had selected the 10-Year Lifestyle Profile in the online portal, not the 5-Year Lifestyle Profile.
- The annual management charge on Mr A's pension plan covers the costs of administering the plan. It said that the monetary value of the charge is shown on his statements and that further information about the charge would have been provided in the member booklet and key facts document.
- It made a mistake when it reapplied Mr A's fund choice following his request to change his retirement age on the same date. It said that, after the retirement age change it had to reapply the fund manually. And, instead of placing the pension pot back into the profile choice, the fund was manually distributed into the specific individual funds. It meant that the funds would not automatically adjust as intended with the profile.

So L&G offered to correct its mistake and offered £100 for the distress and inconvenience its error had caused.

Mr A remained unhappy and brought his complaint to our service. He wanted us to address the following:

- L&G's failure to provide him with confirmation of his fund switch
- That L&G failed to confirm to him that he could switch his funds again without it affecting his complaint

- That L&G are incorrect about the lifestyle fund he selected and have not provided a sufficient audit
- Mr A doesn't accept L&G's loss calculation which isn't clear enough to be understood
- That he now understands the charges but doesn't think L&G have been sufficiently transparent about them

Our investigator looked into what happened and partially upheld Mr A's complaint. But was unable to resolve the issues. And both Mr A and L&G asked for the case to be referred to an ombudsman.

I considered the circumstances of Mr A's complaint and issued a provisional decision explaining what I thought L&G had done wrong. And what I thought it should do to put things right. L&G responded to accept what I'd provisionally proposed. Mr A responded to explain that he still didn't agree with my conclusion. But had no further evidence or comments to make.

### **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 everything in this case a final time my final decision is the same as the provisional decision that both parties have already seen. For the following reasons, I'm upholding Mr A's complaint. The reasons for reaching the outcome I have are the same as those set out in my earlier provisional decision.

There are a number of issues that Mr A is unhappy with and wants answers on. Our service is intended to resolve disputes quickly and with a minimum formality. Mr A has made a number of submissions and I have read and considered them all, although I may not comment on every one of his arguments in explaining my findings. I understand that my final decision is not the answer that Mr A wants so I appreciate he will be disappointed with it. However, my decision must be based on the available evidence. And I've decided what I think is fair and reasonable, based on weighing the evidence against a balance of probability test.

I will address what I consider to be Mr A's complaint issues as follows:

#### ***Charges***

I'm not minded to uphold this complaint issue.

Mr A set out his original complaint to L&G about, what he described as, "*the high charges you have been charging me for just managing cash*". He complained that the fact sheet for the cash fund didn't state those charges. But the charges he was referring to were the annual management charges for his pension pot. They were consistent, irrespective of the investment choice that Mr A chose to put his pension pot into.

There is no evidence that the charges haven't been applied in line with the terms of Mr A's pension. And that wasn't Mr A's complaint. Mr A considers the charges to be high. But in deciding whether Mr A was treated in a fair and reasonable way, I need to consider whether L&G made Mr A aware of what the charges would be. The charges were explained in monetary value in his statements. Which is fair and in line with regulatory requirements. And L&G have provided us with a copy of a letter that Mr A was sent, dated 2 April 2013, that enclosed the most recent key features for his Stakeholder Pension Plan. I think that it clearly explained the way that charges would affect Mr A's pension pot. It gave the percentages that

would be applied based on the fund value on a daily basis. And illustrations of the effects of the charges.

I think it is reasonable that L&G send Mr A the key features of his policy at certain points. When taking out the plan, obviously, as well as any time that they make changes. And it was a change to the charges that led to the 2013 copy being supplied to Mr A. It isn't unreasonable to expect that consumers should read that and retain it if they wish. L&G aren't required to send out the duplicated information for every statement. So I don't think that L&G have treated Mr A unfairly here.

#### *Mr A's pension pot switch*

I'd like to reassure Mr A that I have weighed this matter very carefully. It is the issue that I consider to be the crux of Mr A's complaint. To be clear, to uphold Mr A's complaint I need to decide that it is more likely than not that he selected the 5-Year Lifestyle Profile, rather than the 10-Year one. As I will explain, with reference to the evidence, I don't think that is the case.

Mr A has provided testimony that he wished to select a 5-Year Lifestyle Profile. This profile would invest 100% in the L&G Global Equity Fixed Weights 60:40 Index Fund until a customer is five years from retirement age. After that it gradually moves from that fund into a mixture of a fixed interest and a cash fund. In August 2021 Mr A was around six years from his intended retirement age. And he has been consistent from the point of making his complaint that he believed that he selected this profile. So, it seems more likely than not that is what he intended.

What I have to decide though, is whether it is more likely than not that Mr A made that choice on L&G's online portal. I understand from his testimony that he says that he did. But he has also explained that he only requested that 70% of his pension pot be placed into the Lifestyle Profile.

L&G have shown us evidence, in the form of a screen shot of an attempt to place 70% into a Lifestyle Profile, that its system shows the user an error message. That message reads, "*a contribution type invested in a Lifestyle Profile cannot be invested in other funds*". I find this evidence of the system functionality to be quite compelling.

Mr A has disputed this fact, suggesting that he doesn't accept that he couldn't have split his pension pot with part in a Lifestyle Profile. He says that nothing in the fund information says that. But in this regard I think Mr A is wrong. I've seen both the 10-Year Lifestyle Profile and 5-Year Lifestyle Profile fact sheets. The explanation of the product definitely implies that their purpose is to manage the investments across a whole pension pot. But the sheets also say, "*If you decide to invest in a Lifestyle Profile please be aware that you can only choose one profile. It's also not possible to invest in any other funds at the same time*".

When weighed against Mr A's testimony I think it's more likely than not that he could not have split his pension pot in the way he thinks he did. Or that he may have tried to do. Which calls his precise recollection into some doubt.

L&G have explained that it has no application for the request as it was done on its online platform. So I can understand that it has been harder for it to provide a satisfactory audit of the request that Mr A made. Here again, I have considered Mr A's testimony. And don't doubt what he recalls. But mistakes can happen. It is the very crux of this complaint. Mr A wants me to decide that the mistake was L&G's, but I cannot discount the possibility that Mr A's online request was for the 10-Year Profile, in error. I highlight again that, in order for me to decide that L&G have done something wrong, I have to consider that it making this

mistake was more likely than Mr A making it.

L&G have shown us and Mr A a spreadsheet that shows time stamped requests. I agree with Mr A that it isn't particularly clear. But L&G have provided us with a reasonable commentary with it that is, I think, quite compelling. It explains firstly that the process is automated. That is, the request made gets automatically applied by the system following the request. And shows that the 10-Year Lifestyle Profile was applied in line with Mr A's position on it (based on the retirement age of 66 he'd changed it to).

On balance, I think the evidence that L&G received an on-line request to switch to the 10-Year Lifestyle Profile is more compelling than the evidence that Mr A placed a request to switch 70% of his pension pot into a 5-Year Lifestyle Profile. So my decision is that it's more likely than not that L&G's online system received the request to move the pension pot into the 10-Year Lifestyle Profile. And, as I've explained, most likely for 100% of the pension pot.

Following Mr A's complaint, L&G identified an error in the way that it subsequently dealt with the switch. It explains that Mr A called to reset his retirement age to 67. It was in fact what Mr A's pension age had been set to previously. Although L&G's system records a change to age 66 prior to the requested fund switch. It was in this process that a mistake occurred. It isn't the mistake that Mr A believed to have happened. But L&G were correct to have identified it and sought to correct it.

The mistake was that, after changing the retirement age back to 67 the pension pot was invested across the correct investment split for the 10-Year Lifestyle Profile rather than being placed in the Profile. It meant that Mr A's pension pot didn't re-align in the correct way when Mr A turned 61. This mistake means that Mr A was treated unfairly. Even though Mr A doesn't fundamentally agree that L&G are correcting for the right problem.

*Did L&G correctly notify Mr A of his fund switch?*

L&G provided Mr A with a copy of a letter dated 28 August 2021 that sets out the Lifestyle Profile that Mr A was placed in and the split of investments. I take this as reasonable evidence that L&G generated and sent Mr A the correct confirmation. I'm unable to say that Mr A received or saw the 2021 letter. But I think that, as it's more likely than not that it was sent to him, L&G did nothing wrong.

I appreciate that Mr A also says that no copy of this letter was included within his online documents. Which L&G accept. But explain that these letters aren't transferred to that format. I don't think that Mr A was disadvantaged by that. Had he accessed the online platform to find that letter, I think it would have been just as easy to look at the investment split for his overall pension pot to see if it was what he expected.

*Have L&G done enough to put things right?*

Where a business has done something wrong, the general approach for our service is to try to put the consumer into (as close as is possible) the position they'd have been but for the mistake.

I think that L&G correctly identified its mistake and adopted what appeared to be a fair approach to rectify that. But they haven't yet done that. I can see that Mr A didn't accept L&G's answer. But the mistake that L&G identified was clear. And wasn't the cause of Mr A's complaint. In failing to rectify that mistake following its loss calculation the impact of its mistake has continued. So I think that it would be fair and reasonable for L&G to adjust for the impact of its mistake up to date.

I understand that Mr A has argued that his fund should be put right as if he'd selected the 5-Year Lifestyle Profile. But, as I've explained, I've decided that Mr A more likely than not requested the 10-Year Lifestyle Profile. So I don't intend to ask L&G to calculate any loss that Mr A may have suffered had it received an instruction to move into the 5-Year Lifestyle Profile instead.

L&G told Mr A in its final response to his complaint how he could place any fund transactions in the future. And I think he was aware from its response that L&G weren't proposing to put Mr A into the 5-Year plan. I've thought about this and have decided that without a clear instruction to move him into that profile L&G weren't in a position to do that. And having looked at all of the correspondence I haven't seen that Mr A clearly asked for that switch to happen.

I can see that Mr A later sought clarification whether he could switch his funds without his complaint being resolved. But, even if Mr A didn't find it clear enough from L&G's response to his complaint I think that email exchanges between the parties in June 2022 made this clear for Mr A. Specifically Mr A was told in an email on 9 June 2022 "*should you wish, you can switch your funds and we can calculate any profit and loss on your plan up until the point you complete your fund change*". Mr A raised further queries which were responded to, reiterating that Mr A could continue to choose the funds he wished.

L&G calculated that, on 14 June 2022, the value of Mr A's pension pot was lower than it would have been if it had been corrected for its mistake. And by that time it ought also to have been clear to Mr A that he could select funds that he wanted. So I don't think that L&G are responsible for any losses beyond 14 June 2022 as a result of fund choices.

But, because Mr A's fund ought to have been higher on 14 June 2022, that loss would have also experienced investment returns from that date onwards.

### **Putting things right**

- 1 L&G must calculate the loss to Mr A's pension pot had it been correctly placed in the 10-Year Lifestyle Profile compared with its actual value on 14 June 2022.
- 2 L&G must also calculate the actual investment return on Mr A's pension pot from 14 June 2022 until the date of my final decision. And then apply that rate of investment return to the loss figure of 14 June 2022 (calculated in step 1).
- 3 L&G must increase the value of Mr A's pension pot\* by the loss on 14 June 2022 (step 1) and the investment performance on that (step 2).

*\* If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mr A has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.*

L&G must also pay Mr A £250 in compensation for the distress and inconvenience that its mistake caused. I think this is fair because the majority of Mr A's distress has been caused by something that I am not holding L&G responsible for. But L&G did make a mistake that may not have come to light but for Mr A's complaint. Whilst the impact of that can be rectified, it left Mr A with uncertainty about what he could do with his pension whilst waiting for L&G to respond. And I think that its initial responses to his complaint points weren't clear enough and caused unnecessary confusion. To be clear, this is a further £150 if L&G's

previous offer of £100 has already been paid.

L&G should provide its calculations for Mr A in a clear format. And L&G must pay the compensation within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this, it must also pay Mr A interest on the compensation from the date of my final decision to the date of payment at 8% a year simple. If L&G considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons given, I uphold Mr A's complaint and direct Legal and General Assurance (Pensions Management) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 September 2023.

Gary Lane  
**Ombudsman**