

The complaint

Mr K complains about the service he received from ReAssure Life Limited.

In summary, he says that in August 2021 ReAssure's literature persuaded him to switch his 'medium to high risk' funds within his pension to 'low to minimal risk' funds. However, since the switch his pension has lost around £10,000 in value.

To put things right, he'd like compensation for his financial losses.

What happened

Since 1992, Mr K has been investing in his pension. In November 2018 it was valued at around £67,435, in August 2019 it was valued at approximately £73,990, and in August 2020 it was valued around £71,663.

On 9 August 2021, ReAssure sent Mr K a statement showing, as of 8 August 2021, the value of his pension to be around £82,901. The statement also included the following information:

- Mr K was in his mid-60s. His chosen retirement age was 4 February 2044, when he will be in his mid-80s.
- Estimated guaranteed income the pension could buy if he retired age 65 to 85.
- The fund had grown by around £12,512 over the previous 12 months – including a charge of £1,274.
- Details of 'Pension Wise' – a free and impartial government service designed to help people understand what to do with their pension money, details of 'The Money Advice Service' and a link to ReAssure's website.
- Details of its funds, including its lower cost funds such as mixed investment (pension fund) with a four risk rating (also known as medium).
- Notification that it could refer Mr K to an adviser to help with his pension choices.
- Options to consider before going ahead with his choice.

At the time on 9 August 2021 Mr K's pension was invested into 'Managed' and 'Multi Select' funds. On 17 August 2021, he instructed ReAssure to switch his funds into the following funds:

- 0% on deposit.
- 70% in Corporate Bonds.
- 20% in Mixed Investments.
- 10% in UK and Global Equity Tracker

On 9 August 2022, Mr K was sent a statement showing that, as of 8 August 2022, the value of his pension was £75,231. The letter also confirmed that over the past 12 months his pension fund had fallen in value by around £6,687. The letter made clear that performance of the corporate bond fund was the most significant contributor to the overall fall in value.

On 16 June 2023 ReAssure wrote to Mr K confirming that his pension fund had fallen to approximately £71,052, and that the biggest contributor to the loss was (again) the performance of the corporate bond fund.

On 20 September 2023, Mr K complained to ReAssure that he had only invested into the corporate bond fund since ReAssure's literature, which suggested that over the past few years it was a safer fund.

ReAssure didn't uphold the complaint. In summary it said:

- It has followed normal procedure regarding the fund policy and the fund switch.
- Fund performance isn't something that it can control.
- The fund may increase or decrease in value at any time due to fluctuations in the market.
- The fund information provided within its annual statement is standard correspondence.
- Because it's not regulated to provide financial advice, it can't advise on a fund switch. If Mr K wants advice he can speak to an adviser.
- If he has a fund choice in mind, he could visit the website.

Unhappy with the business's response, in October 2023, Mr K referred his complaint to our service. One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- The Financial Conduct Authority (FCA) Conduct of Business Sourcebooks (COBS), at COBS 4.2.1 states: *"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading"*.
- COBS 4.2.4(1) states that firm should ensure it makes clear that capital is at risk where applicable, which it was in this case.
- COBS 4.2.5 states that a firm shouldn't describe a product's feature as guaranteed if it isn't.
- Information about the corporate bond fund included an undated leaflet which stated:
 - "Corporate Bond Fund (ReAssure risk rating 2 – low risk)
The fund aims to provide investment growth by investing in fixed interest securities, while also providing some protection against investment loss".
- A leaflet dated 19 May 2017, which stated:
 - *"This fund primarily invests in Sterling denominated Corporate Bonds. The majority of the portfolio will be invested in securities that are rated as investment grade. The fund aims to provide investment growth by investing in fixed interest securities while also providing some protections against investment loss"*.
- The Corporate Bond fund held around 92% in 'Bonds', so the statement that the fund 'primarily invests in Sterling denominated Corporate Bonds' was factual.
- In line with COBS 4.2.4(1), the information states that capital is at risk as the fund aims to provide 'some' protection against investment loss.
- In line with COBS 4.2.5, the leaflet doesn't describe the product as guaranteed when it isn't.
- The risk rating, compared to other funds listed on the leaflet which included the Deposit Fund (ReAssure risk rating 1 – minimum risk) and the UK and Global Equity Tracker Fund (ReAssure risk rating 5 – medium/high risk) shows that it was higher risk than the deposit fund but not as risky as the tracker fund, but that some risk was expected.
- The documentation also made clear that the investment would have some protection against investment loss – it doesn't say that there would be no investment loss.

Overall, the risk was explained, and was clear fair and not misleading in light of COBS obligations.

- Even though the loss wasn't what Mr K expected, the documentation made clear that only some protections were afforded. In conclusion the documentation made clear that the corporate bond fund attached some risk.
- ReAssure didn't advise Mr K to take any action, it informed him (in a number of ways) that he could get advice.

Mr K disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he made the following observations:

- Although he accepts the context of some of the investigator's findings he doesn't agree with the conclusion.
- He accepts ReAssure never said that the product was guaranteed. But he doesn't agree that ReAssure made clear that his capital was at risk.
- The investigator added the word 'only' to describe that his investment would be susceptible to investment losses and only 'some protection'. He disagrees that the risk about switching funds was explained in a clear and fair way.
- ReAssure notifying him that he could refer to an adviser isn't relevant to his complaint. He's spoken to ReAssure about his pension options. He's spoken to Pension Wise regarding options available to him including those offered by ReAssure.
- Although he didn't solicit any advice regarding switching his funds, ReAssure did take the opportunity to include their investment products with his pension statement and pension option.
- Although ReAssure didn't directly advise him to invest in their products, its actions constituted advice and should be recognized as such. What was the purpose of sending this information over the years and why include it with his pension statement? It was to encourage him to decide to switch funds.
- The recommendation by ReAssure constitutes financial advice because it was unsolicited and packaged with his pension review.
- In its working group report to the Treasury, in 2017, the FCA concluded 'advice' and 'guidance' were at least confusing in its handbook PERG 17.5.
- Q5.3 states that advice includes: "*something that might be taken expressly or by implication to suggest or influence a course of action*". ReAssure strongly influenced his decision through its actions and promotional literature.
- The risk of switching funds wasn't made clear to him. Although there's some mention of risk in some of the product literature the risk isn't presented or explained in a fair and clear way.
- COBS 4.5.2 (5) explicitly states that information must use "*...a font size used throughout the information provided as well as a layout that ensures that such indication is prominent*".
- COBS 4.12.39 (4) further warns against "*placing the risk warning or risk summary on the bottom of the promotion*". The product literature failed to comply with that.
- The literature dated 19 May 2017 regarding the three investment products offered by ReAssure only included meaningful risk warnings at the foot of each page in a very small font size.
- COBS 4.12.A11 and COBS 4.12.A.36(a) offer a prescribed form of what constitutes a fair and clear risk warning. None of ReAssure's warning complies with this.
- He would never have switched his funds at such a critical time if the risk had been made clear to him.
- Using risk descriptions like 'minimal', 'low', 'medium' or 'some' does not offer an explanation or sufficient understanding of what the risk factors are, hence the FCA guidelines mentioned earlier.

As no agreement has been reached, the matter has been passed to me for review.

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 done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr K says I'm not persuaded that he received any financial advice from ReAssure to switch his funds. Put another way, this was a non-advised execution only decision.

On the face of the evidence, and on balance, I'm persuaded that the documentation provided – which ReAssure was entitled to supply – was clear, fair, and not misleading. I'm satisfied it did not constitute financial advice as suggested by Mr K.

But before I explain why this is the case, I think it's important for me to note I very much recognise Mr K's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr K and ReAssure, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice at the time, but I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

On the face of the evidence, and on balance, I think it's more likely than not that the switch was made on a "direct basis". In other words, the fund switch was completed without financial advice.

I'm satisfied that Mr K decided to switch funds of his own volition – in response to marketing material sent to him alongside his pension statement – therefore I'm unable to consider the "suitability" of the fund switch. I don't agree with Mr K that this marketing material – designed to give information about his options – amounted to financial advice.

I'm mindful Mr K concedes that he wasn't soliciting advice and ReAssure didn't (directly) advise him to switch to or invest in their funds either. I note he says that he spoke to Pension Wise regarding options available to him including those offered by ReAssure. This suggests that Mr K was aware he could get advice elsewhere and wasn't obliged to switch funds simply in response to the information provided. In the circumstances, I'm satisfied that the onus was on him to make sure the fund switch was suitable for his circumstances.

Despite what Mr K says, I'm persuaded that the material documentation in question was clear, fair and not misleading – and in line with the relevant sections of COBS mentioned above – for the same reasons as set out by the investigator.

I'm also satisfied that the information is fair, clear, and not misleading in a way that is appropriate and proportionate considering the means of communication namely literature

accompanying the pension statement. I've seen nothing to suggest that Mr K was told or led to believe that the fund switch was 'guaranteed', 'protected' or 'secure' when it wasn't.

I'm mindful COBS 4.5 related to communicating with retail clients (non-MiFID provisions) and COBS 4.12A relates to the promotion of restricted mass market investments – such as a qualifying crypto asset - which isn't relevant here.

Despite what Mr K says, I wouldn't expect any greater detail as to risk within the documentation provided – I'm mindful that it wasn't a copy of the terms and conditions which are likely to contain greater detail about risk and so on. If this was a key issue for him, and he wanted greater clarification, he ought reasonably to have got in touch with ReAssure regarding this specific issue. The above notwithstanding, I'm satisfied it was made reasonably clear that although there were some protections, there were no guarantees, and that Mr K's capital was at risk.

In the circumstances it's not necessary for Mr K to have signed a document confirming that no advice was given. Generally, I would expect to find a fact find and suitability letter from the business where advice has been given. But in this case their absence is another piece of evidence that persuades me that advice wasn't given, and the documentation provided doesn't constitute financial advice.

I appreciate Mr K will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 November 2024.

Dara Islam
Ombudsman