

The complaint

Mr S complains that he has suffered financially because of actions taken by Legal and General Assurance Society Limited (Legal and General) in relation to his pension.

What happened

Mr S held a stakeholder pension with Legal and General which was invested in several funds. Legal and General say that Mr S contacted them by telephone on 11 May 2023 to ask questions about his options.

Mr S says he wanted to inform Legal and General that he intended to transfer part of his pension to a third party. He says that this was because some of the funds were not performing. Specifically, Mr S asked Legal and General if he would be able to transfer certain funds from his pension whilst leaving others untouched. Legal and General say they confirmed this was possible provided the request was received via the Origo system and the specific funds were mentioned in the request.

Following this conversation, Mr S transferred some of the units in his pension to a 'Cash Fund' as he says he could not actually transfer them to cash.

Legal and General say they received the partial transfer request via Origo on 22 May 2023 but that no specific divestment instructions were included in this request although it did make reference to a cash transfer. Legal and General took the approach that, without specific instructions on which funds to sell, they would sell units proportionally across the pension in order to make this cash transfer.

Mr S was unhappy that units in funds other than his Cash Fund had been sold against his will and complained to Legal and General in November 2023. Legal and General said that without specific instructions on which funds to sell, they were not authorised to take any other action and didn't uphold his complaint.

Mr S then brought his complaint to us.

Our Investigator's view was that:

- The Origo record requested a cash transfer but didn't include specific instructions that told Legal and General what investments to sell
- There isn't enough to fairly conclude that Legal and General should've known Mr S only wanted the Cash G17 fund to be sold
- It was reasonable for Legal and General not to assume Mr S only wanted the Cash fund sold.
- Without specific instructions, Legal and General hadn't acted unfairly in following its usual process for the sale of funds.

Mr S didn't agree and so the matter has been passed to me for a 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.

Having done so, I have reached the same conclusion as our Investigator and will not be upholding the complaint.

Legal and General's position is that they are only able to transfer specific funds if these funds are identified in the transfer request. In the absence of any such request, their approach is to comply with their usual policy which requires them to sell units proportionately across the whole fund.

It appears that there were indeed no specific instructions included with the transfer request and the question appears to be therefore whether or not it was reasonable for Legal and General to take this approach or whether they should have had regard to Mr S's intentions based on his telephone call and the decision to move units into a cash fund just before he sent the transfer request.

Mr S has said that, following the telephone call of 11 May, he understood that the payment needed to be in cash and therefore moved units into a cash fund to enable the payment to be made. Mr S has said that he was not able to transfer these units to cash and that a cash fund was "the closest he could get" to having cash in his pension. Mr S says it was his understanding that Legal and General would be aware that these were the funds he wished to be sold and the cash from this sale subsequently transferred because this was a cash fund and the units had been sold immediately prior to the transfer request.

A recording or transcript of the telephone call of 11 May 2023 is not available to confirm what was discussed and we can't be sure if there was any specific mention by either Mr S or Legal and General of any action Mr S should or shouldn't take including with respect to the cash fund. We therefore don't know if Mr S took the steps he did because of what he was told by Legal and General or of his own accord. In any case, there is nothing persuasive to show that any incorrect information was given to Mr S or that he was misled by Legal and General in relation to the transfer generally.

Mr S has also said that there was no option for him to include any specific instructions on the Origo request and so wasn't able to provide confirmation this way of the units he wanted to be sold so that the cash amount could be paid.

Legal and General have confirmed that Mr S was aware of the need to provide them with divestment instructions and that Mr S had told them he had completed a divestment instructions form. It appears however that this was sent to the party receiving the transfer rather than Legal and General and it was not passed to Legal and General subsequently. It is not clear why Mr S did this but I have not seen any evidence that suggests he was told to do this by either Legal and General or the receiving party. I will assume therefore that this was a simple mistake. Altogether, I think it is fair to conclude that Legal and General did not receive any formal written instructions advising them which funds to transfer.

On the question of whether or not Mr S's actions immediately prior to sending the transfer request were enough to tell Legal and General what his wishes were, I don't think this would be reasonable. The responsibilities of Legal and General in this case mean they should only take actions like selling or transferring funds if they are certain this is in line with a customer's wishes. Following the telephone call and the transfer of units to a cash fund, it is possible Legal and General expected to receive instructions detailing that Mr S wished to transfer certain funds only. However, I would not expect them to act on this alone since a

customer is free to change their mind and my view is that Legal and General should only ever act upon clear, sufficiently detailed instructions.

Mr S has repeatedly said that it was obvious that the cash fund should have been transferred because this was fundamentally cash, Legal and General have confirmed that the cash fund was a fund like the others in Mr S's pension and would have to be sold before cash could be transferred. It is reasonable therefore that this fund was treated in the same way as the other funds in the account.

Mr S has queried why Legal and General didn't contact him after receiving the transfer request to confirm what he wanted to do. Whilst Mr S may consider that it would have been fairly simple for them to do this, Legal and General have said that it wouldn't have the capacity to take this approach for every transfer request and I agree that this wouldn't be proportionate. My view is that it was reasonable for Legal and General to rely on the information in the transfer request and to take their usual approach to selling funds without specific divestment instructions.

Altogether, whilst I appreciate that this has been very frustrating for Mr S, I can't agree that Legal and General has acted unfairly here. An apparent oversight with the divestment instructions has contributed to the confusion however, my view is that Legal and General could not have reasonably been expected to take any other action in this matter.

My final decision

For the reasons explained above, I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 November 2024.

Rana Chatterjee
Ombudsman