

The complaint

X complains that Legal & General Assurance Society Limited (L&G) delayed the transfer of his pension fund, provided incorrect information and mismanaged his investments. He wants compensation for the losses he says were incurred and the distress and inconvenience caused.

What happened

X had two pension plans with L&G and wanted to transfer both to Royal London along with a pension held with Aviva. He was being advised by his independent financial adviser (IFA) about this during 2021/2022. Transfer requests were made on Oigo system on 24 February 2023, with the Aviva and one L&G plan transferred promptly. The other L&G plan was a Buyout policy (the plan) arising from an earlier transfer of an occupational pension scheme and didn't complete until August 2023. X says the delay was due to L&G failing to provide information and making requests for irrelevant documentation causing distress and inconvenience. He also says the value of the plan fell during the period causing him losses.

L&G had written to X in December 2022, saying it was making changes to the default lifestyle investment fund his plans held. Where the investment mix would be changed from February 2023, as fewer people were now buying annuities. It said no action was required unless he wanted to choose alternative funds beforehand.

When it received the Origo requests, L&G emailed X and the IFA on 6 March 2023 querying the Protected Tax-Free Cash (PTFC) amount available under the plan, which might enable more than the usual maximum of 25% of the fund to be paid as tax free cash. It also informed Royal London about this via Origo. On 8 March 2023 X called L&G and the PTFC matter was discussed with it providing information about the historical amount in April 2006, which he said he didn't understand, but that he would speak to his IFA.

The IFA emailed L&G on 9 March 2023 querying the PTFC amount. It replied on 15 March that it could only calculate this if X was over 55 (he was) and requested a retirement /claim quote. But it could provide the historical information and a link to HMRC's online calculator to enable this to be calculated by the IFA. On 23 March the IFA chased a reply to its email of 9 March, with L&G replying on 29 March 2023 with the same information sent previously.

On 6 April 2023 the IFA emailed L&G's claims department asking for the PTFC to be calculated. L&G required a Maturity Pack to be completed to generate this, and it issued this directly X on 12 April 2023, but didn't say why it was required. On 2 May 2023 L&G updated Origo that it was still waiting to hear back from X about the PTFC. On 11 May 2023 the IFA emailed L&G saying the transfer couldn't proceed without the current PTFC figure being confirmed. L&G reissued the email sent on 15 March 2023 about requesting a retirement quote. The IFA requested this again from L&G claims, who sent another maturity pack to X on 23 May 2023, without replying to the IFA. The IFA chased L&G's transfer team on 26 May 2023, who asked claims to issue a further maturity pack to the IFA, but again no explanation of why it was needed was provided.

Through June 2023 the IFA called L&G for updated valuations and on 12 July 2023 L&G updated its notes that the transfer couldn't proceed unless X confirmed he was happy to lose any PTFC. On 17 July X confirmed he wanted to proceed, and a complaint was logged. On 21 July L&G emailed him to confirm whether he wished to transfer or claim on the plan. On 24 July 2023 it said it needed information about a Pension Sharing Order (PSO) before the transfer could proceed. X says he was about to leave on holiday, so having to search for documents from 2008 not relevant to the plan caused him inconvenience. The transfer was completed on 16 August 2023.

X sent a letter of complaint on 23 August 2023. He referred to the delays and said he'd made "*reasonable*" requests about the PTFC, but not even an estimate was provided. He queried the fall in his fund value from 2022, and why funds had been placed into a "*vulnerable sector*" with no changes made until Spring 2023. He said the Government had bailed out pension companies in the Autumn of 2022, and asked what support had been "*offered to clients who'd lost thousands?*"

L&G accepted the complaint about the delay. It said its handling of the PTFC matter had been "*extremely poor*", as it hadn't explained its process. It said it didn't routinely provide PTFC calculations because the figures could change "*significantly*". But it said it had provided information to the IFA and it was usual for advisers to carry out the calculations. It said X's plan invested in a Lifestyle fund with a large holding in Gilts, which was the default fund agreed when his plan was set up and full details were provided at the time. It said it was his responsibility to review his investments and make changes as necessary, which it couldn't do without instructions from him. It said only certain defined benefit pension schemes were "*bailed out*" by the Government in 2022, not plans like his. It said if X had been asked if he wanted to proceed regardless of the PTFC, the transfer should have been processed on 10 March 2023. But it said the value then was actually £886.77 lower, so no loss had been incurred. It did however offer X £200 by way of apology.

X disagreed. He made a number of points asking about interim valuations between March and August 2023. He said the valuation figure given for March 2023 of around £53,106 was "*vastly out of sync with what was expected*" of around £55,248. He said the investment switches should have been made far sooner. He said the costs of this investment switch wouldn't have been incurred had the transfer been processed as it should. He said there had been no consideration of any interest return between March and August 2023. And the risks of his investment weren't clear even to "*financers who to had rely on the BoE to bail them out*", so how was a layperson to have known? He also made points about the "*non-existent*" PSO and the inconvenience this had caused and asked that the records he'd provided be destroyed. He said L&G still hadn't provided the PTFC figure had he retained the pension.

L&G said it had considered the general timeline rather than specific dates, but on 28 March 2023 it had confirmed a value of £52,528.25, but this fluctuated daily. It said the switches relating to the changes in the lifestyle fund were placed at the "*appropriate time*" taking into account market movements. It said it hadn't charged for this, but any transaction costs were reflected in the fund prices. It said as his fund remained invested between March and August 2023, interest didn't need to be considered. It said the documentation about the funds made clear the risk involved and it had provided details about Pension Wise and recommended investors took financial advice in statements and documents sent to him. It said, as it had explained, it wasn't able to provide the PTFC figure as this was subject to change.

X referred his complaint to our service and our investigator looked into it, and she upheld it in part.

Our investigator said L&G had caused delays, and the timelines provided by both it and the IFA were broadly the same. She said 10 March 2023 was a reasonable date for the transfer

to have been completed, and there was no evidence showing the higher £55,248 valuation, X had mentioned. And as fund values fluctuated there was no reason to doubt the value provided by L&G for 10 March 2023, which was lower than the August 2023 value, so paying interest wasn't necessary. But she said L&G should calculate if the new investment with Royal London had performed better over that period, and if so, it should pay the difference into his new plan. She said it wasn't clear why L&G thought there might be a PSO in place, other than that X had been divorced. She said the query therefore wasn't unreasonable, but L&G should have done this sooner. She said it might have caused inconvenience but hadn't caused any financial loss. She said L&G should confirm it had removed this information from its records.

Our investigator said X had chosen or been advised to invest in the lifestyle fund when his plan started, but L&G offered alternative options which he could have chosen at any time. She said the default lifestyle fund held would gradually move investments into cash and Gilts, and once interest rates rose after 2020, Gilts had fallen sharply. With X's fund falling from around £73,600 in April 2021 to £53,992 in August 2023, but it was his responsibility to review the funds. She said L&G had made a commercial decision to change the default fund and had given notice. And whilst X might think, particularly with hindsight, it should have acted sooner, she wouldn't expect a business to make snap decisions in response to potentially shorter-term market volatility. And she said X had confirmed he'd paused transferring the plan himself during this volatile period. She said the £200 already offered by L&G for the distress and inconvenience caused, should be increased by £100 to give £300 in total.

L&G accepted our investigators view. But X disagreed, making a number of points. Including that the failure to provide the PTFC had meant his IFA couldn't proceed and £100 compensation should be paid for this, and it should be considered whether this had caused a loss. He said L&G had contacted the IFA over the PSO but should have spoken to him first instead. And he questioned why L&G continued to refer to it *"in reply to the complaint when they knew there wasn't one?"* And it had failed to confirm these documents had been destroyed. He said a further £100 compensation should be paid over issues around the PSO.

X said, *"some 18 months or so before I intended to retire, I observed that the value of the investments in gilts was likely to decline as interest rates started to rise"*, and with hindsight he'd been proved correct. He said if he could see that, why had L&G failed to act until it was too late and then *"accepted a government bailout"*. He said the ombudsman should award a proportion of the bailout L&G received to him. And he provided a confirmation statement from Royal London dated 9 March 2023 which showed the expected transfer value to be made of £55,248.

Our investigator said the document from Royal London only showed an expectation and might have been estimated or out of date and that L&G had shown evidence from its system that 10 March 2023 valuation was correct. She said £300 compensation for distress and inconvenience in total was fair under the circumstances.

As X doesn't agree it has come to me to decide.

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.

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of the complaint. Having done so I am upholding the complaint in part.

I've taken account of all the points X has made in his comments to both L&G and our service. In this decision I've addressed what I consider to be the main issues. I understand how strongly he feels about what has happened and in upholding his complaint my intention is to put him back in the position he should have been in but for the errors L&G did make. I think it did, as it accepts, cause some delay in the transfer of the plan, but I don't think it is at fault in respect of the other points X has raised. I'll explain why.

Changes to the default investment fund

L&G wasn't providing X with advice and that's an important consideration here. It provided and administered the pension arrangement, and it hadn't recommended the investment funds held. Instead, X or any financial adviser involved were responsible for selecting the investment funds and also whether these continued to be appropriate given his objectives. Evidence shows that for his other L&G plan (which transferred without delay) the investment fund had been selected by an adviser acting for his employer as a default choice for those who didn't want to make their own investment decisions. It appears that this was the same Lifestyle profile X's Buyout plan invested in. So, he'd been provided with information about this and its objectives on more than one occasion.

Lifestyle investment strategies are a common default choice, initially aimed at those looking to take their pension benefits in the form of an annuity. That meant over a period of years before the intended retirement age, investment in assets like shares would progressively reduce with more invested into Gilts and cash. The idea being this better matched any movement in annuity rates and more certainty over the level of income that could be provided. As X is aware this approach didn't mean the capital value couldn't fall.

But L&G could only change his investments without explicit instructions from him or his adviser in very limited circumstances, like the changes it announced in December 2022 and planned to implement in February 2023. This changed the basis of the default fund choice to one which would not automatically switch investments to target any particular type of pension benefit. X still had the option to choose from a range of investments, that might better suit his objectives, as L&G's letter from December 2022 made clear. These alternatives included retaining the same Multi-Asset/ Over 15 Year Gilts 10 Year Lifestyle Profile, he then held.

L&G explained why it was making this change. This wasn't because Gilts had (and as X says he predicted) fallen in value and become a poor or risky investment. But because with fewer people buying annuities, it no longer considered it to be a suitable default choice across its customer base. For customers some years from their intended retirement date that meant the change might have been minimal in terms of the underlying assets then held. For those like X, at or already past the original intended retirement age, and already entirely invested in cash and Gilts, the change would be more significant. Perhaps L&G might have acted sooner over this, but as it wasn't its role to provide investment advice, I don't think it has treated him unfairly here.

Any decisions X may have made to defer transferring or changing his investments before the transfer requests were actually submitted, were similarly not L&G's responsibility. X has said he was aware of the operation of the Gilt market and the relationship with interest rates, around 18 months before he was considering taking his benefits, so around April 2021. It therefore isn't reasonable to expect L&G to compensate him for losses he was aware could be, and he seemingly expected to be, suffered in an investment he chose to continue to hold.

Economists take different views on the extent that pension providers like L&G directly benefited from the Bank of England's (the Bank) intervention into the Gilt market in late 2022. The arguments are complex, but my understanding is the Bank acted to create liquidity and therefore support prices in the Gilt market. On that basis as an indirect investor in Gilts, through the funds he held, it would seem that X did benefit from any bailout that occurred at the time.

The Pension Sharing Order Request

I can see that this has caused X considerable distress. But I don't think it is unusual for pension providers to seek confirmation of these details. As the presence of one would place legal responsibilities on the pension provider. Transfer applications normally ask if any PSO is in place, and it may have been that L&G held a previous record of X having been divorced. And whilst I appreciate the late request caused further frustration it doesn't appear to have particularly delayed the transfer and the loss calculation I'm asking L&G to undertake will take account of this.

In terms of L&G continuing to refer to the issue, I think it had to do so, as X was raising the matter himself in his communications around the complaint. There is certainly no need for L&G to retain any records in relation to this. And if it hasn't already done so it should confirm it has either destroyed or returned the documents to X. In the circumstances I don't think awarding further compensation for distress and inconvenience over this specific issue is fair.

Protected Tax Free Cash

I think this caused unnecessary confusion. As it accepts L&G should have clarified why it was sending X and then the IFA maturity packs. That said whilst PTFC is fairly complex in calculation terms (although free calculators are readily available) the concept itself is a simple and commonly encountered feature with Buyout plans. And X was being professionally advised. By 8 March 2023 he knew L&G didn't normally calculate this and said he would speak to the IFA. The IFA was advised the same and provided with the necessary details to run the calculation. And it appears emails from L&G went astray which weren't followed up for some weeks.

And from the timeline the IFA has provided, it seems it subsequently did run the calculation:

"14.06.2023 Simply Biz use Aegon software to calculate that there is no PTFC."

So, it looks like there was an opportunity on both sides to clear this issue up earlier than it was. However, as L&G accepts it could have clarified things and been in a position to execute the transfer sooner. It has proposed the 10 March 2023 as being the date it could have transferred, which in the circumstances, I think is fair. In terms of knowing what the PTFC calculation actually was, it seems X should speak to his IFA, although it appears there was no advantage over the default 25% of the fund value otherwise applying. In the circumstances I don't think awarding further compensation for distress and inconvenience over this specific issue is fair.

The transfer delays and fund value used

I've already touched on this above. L&G accepts it caused delays and that the effective transfer date should have been 10 March 2023. I think that's fair. It needed to clarify the PTFC matter before actioning the transfer and spoke to X about this on 8 March 2023. Had it made things clearer, then a day or two for him to take advice and decide seems fair.

What the policy values were before then aren't relevant. The figures on the form X provided would be before or at the latest the day the transfer paperwork was completed with Royal London, presumably sometime in February 2023 given the date of the Origo request. And the value of X's funds with L&G fluctuated on a daily basis. And it has shown evidence of the value on 10 March 2023 from its system that I have no reason to doubt.

What is relevant is the policy value when L&G actually processed the transfer, and this was higher than it was on 10 March 2023. That doesn't mean X hasn't suffered a loss overall because the new investment with Royal London might have performed better over this period. And if it did then I think it's fair that L&G should pay the difference into X's new plan. I'll set out how I think that should be done below.

I think X has been caused distress and inconvenience by what has happened and in the circumstances of the complaint I think a total of £300 compensation should be paid by L&G for this. This is in keeping with what our service would award in similar circumstances.

Putting things right

My aim in awarding compensation is to put X as closely back into the position he should have been in but for the errors made.

What must L&G do

L&G must carry out a loss assessment on whether X would have gained if the transferred funds were invested with Royal London sooner.

- L&G should calculate the value of the fund had it been invested with Royal London on 10 March 2023 to what the value would have been by 21 August 2023. It should base this on £53,106.03 - this being the value X would have transferred but for the delay.
- It should compare that value with the value that was actually transferred. If the value is higher then it should compensate X with the difference. If the value is lower then there's no loss.
- If there is a loss, L&G should pay into X'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. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If L&G is unable to pay the compensation into X's pension plan, it should pay that amount direct 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 X won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using X's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that X is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if X 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%.

- If either L&G or X dispute that this is a reasonable assumption, you must let us know as soon as possible so that the assumption can be clarified and X receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- Provide the details of the calculation to X in a clear, simple format.
- Pay X £300 for the distress and inconvenience caused to him. If L&G has already paid the £200 it originally offered, it only needs to pay the difference.
- L&G should destroy and or return any documents X has provided regarding his divorce and confirm the same.

My final decision

My final decision is that I uphold the complaint against Legal & General Assurance Society Limited.

I direct Legal & General Assurance Society Limited to calculate and pay the redress set out above and to destroy and return X's documents as stated.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 8 October 2024.

Nigel Bracken
Ombudsman