

## The complaint

Mr B has complained that the advice he was given by Thornton & Baines Independent Financial Advisers Limited ('T&B') to transfer his pension benefits in 2017 was unsuitable.

Mr B's complaint has been brought on his behalf by a professional representative.

## What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

*"Mr B met an adviser from T&B in 2017. The adviser produced a report in May 2017 stating that Mr B was concerned that he would have insufficient income to retire when he wanted to at age 55. It was recorded that he held a personal pension plan with ReAssure and wanted to review how best to utilise these benefits. Mr B was also a member of his employer's occupational pension scheme ('OPS') at this time. The adviser recommended that Mr B move his ReAssure benefits to a self-invested personal pension ('SIPP') with Cofunds (which was later renamed as an Aegon SIPP) and invest in a portfolio of holdings.*

*In September 2023 Mr B's representative complained about the advice provided to switch benefits from ReAssure to the Aegon SIPP. It said that Mr B had no knowledge of the pensions market and no previous investment experience, a low attitude to risk ('ATR') and a low capacity for loss. The representative stated that the investments recommended in the SIPP were unsuitable for Mr B, taking into account that he was not a sophisticated investor. It also commented that the risks and costs related to switching to the SIPP were not explained to Mr B. The representative asked that Mr B be placed in the financial position he would have been in if the switch to the SIPP had not taken place.*

*In response T&B stated that SIPPs are not exclusively for sophisticated investors, and that it had recommended taking the policy out based on Mr B's financial situation and investment objectives. It said that it had met Mr B regularly since the SIPP was arranged to ensure that the policy remained suitable for him.*

*T&B said that charges relating to the SIPP had been made clear to Mr B. It also said that it had explained there was the possibility that the funds would perform less well than if left in the original plan because they were being moved to lower risk assets, based on Mr B's objectives. T&B suggested Mr B might have brought his complaint outside the required time limits.*

*Dissatisfied with T&B's response, Mr B brought a complaint to this service.*

*Our investigator upheld the complaint. In terms of T&B's suggestion that the complaint might have been brought too late, the investigator concluded that it had not. In terms of the merits of the complaint, his view was that T&B had failed to adequately explore the possibility of transferring the ReAssure benefits to Mr B's OPS.*

*In addition, the investigator said that the comparison of costs between retaining the benefits with ReAssure and switching them to the Aegon SIPP had not been made clear to Mr B. Taking into account initial and ongoing adviser costs, the investigator considered the SIPP was the more expensive option, but this had not been adequately explained to Mr B. Had it been, bearing in mind that Mr B was seeking to protect his pension fund whilst growing it in line with his low ATR, and was looking to retire soon, the investigator said that Mr B was unlikely to have chosen to move the funds to the SIPP.*

*The investigator's view was that if given suitable advice, Mr B would have chosen to transfer his fund from ReAssure because he'd indicated he wanted to do so, but it was unclear whether that would have been to his OPS or a different pension plan. He proposed that T&B should carry out a redress calculation assuming the amount switched from ReAssure had been invested in a mix of two benchmarks that represented a consumer prepared to take a small level of risk to achieve their investment objectives.*

*T&B did not agree with the investigator's findings. It commented that a key requirement for Mr B was to receive ongoing financial advice without having to pay fees directly. As it was not possible for an advice fee to be paid directly from the sum transferred if the ReAssure fund had been switched to Mr B's OPS, T&B suggested it would have been negligent for it to have recommended such a switch. That's because it said Mr B had no means to pay for the financial advice he would have needed if he'd switched the funds to the OPS.*

*T&B described Mr B as being "desperate" to access financial advice about his pension benefits. It said to leave Mr B invested in his existing ReAssure fund, which it gave a risk rating of 7 out of 10, would also have been negligent, in light of its rating of Mr B's ATR as 3 out of 10. T&B said the switch to the SIPP provided Mr B with an investment with an appropriate level of risk, and also made it possible for it to ensure it received payment for the advice it gave via the deduction it was able to make from the sum transferred to the SIPP. It suggested that the only other option it had was to decline to assist Mr B.*

*T&B highlighted wording in the fact find document produced by its adviser in relation to his meeting with Mr B in May 2017, where it was recorded that Mr B had said "I need help" and that he wanted to be told what to do in relation to his finances. It said there was a need to provide Mr B with ongoing comprehensive financial advice. T&B said that to ensure the ongoing suitability of the SIPP, it had had eight separate meetings with Mr B between 2020 and 2023, and it had concluded the SIPP remained appropriate. It also commented that emails from 2020 showing Mr B was concerned about the SIPP's performance meant the complaint should be time barred.*

*In terms of the costs relating to the switch to the SIPP, T&B believed that the investigator's findings were not correct. It said that for the SIPP there was an Aegon platform fee of 0.29%pa plus an ongoing charges figure (OCF) of 0.74%pa which included the annual management charge (AMC). The total annual charge for the SIPP was therefore 1.03%, and there was also the initial adviser charge of 4.95%. Although its client agreement with Mr B allowed for a fee of 0.95%pa of the portfolio value to be paid after four years to cover ongoing reviews, T&B said it had not in fact charged this. Spreading the initial charge of 4.95% over ten years, it stated that a total annual charge of about 1.52% under the SIPP was substantially lower than the charge quoted by the investigator, and was more competitive than the 1.79%pa charge made under the ReAssure plan.*

*When recommending the SIPP portfolio, T&B said it had made it clear that due to its lower risk, it was likely to underperform the existing fund Mr B was invested in with ReAssure. It commented that the 4.95% initial fee covered ongoing financial planning and advice services indefinitely, with there being no additional cost. For the seven years after the switch to the SIPP, T&B said that it arranged more than one financial review a year, monitoring and*

*rebalancing the SIPP and providing ongoing advice, together with monthly statements. It stated this became more important to Mr B once he'd been made redundant, and it said that if he'd only been invested in his OPS, Mr B would have lost the ability to receive ongoing financial advice that he had with the SIPP.*

*T&B reiterated comments it had previously made that Mr B had brought his complaint under pressure from his representative. It stated that its advice to switch to the SIPP addressed Mr B's needs in terms of providing him with an investment consistent with his cautious ATR, and meant he was no longer exposed to unsuitably excessive risk, as had been the case under the ReAssure plan. It also said that it had met Mr B's objectives by providing ongoing advice, and by ensuring he was able to pay for advice through the deduction of a fee from the sum transferred from ReAssure.*

*Mr B's representative agreed with the redress recommendation proposed by the investigator.*

*Our investigator's view of the complaint remained the same and it was confirmed that the case would be passed for review by an ombudsman.*

*T&B made further submissions, reiterating its view that the complaint is time barred, and on the merits suggesting the investigator had misunderstood illustrative growth rates for the SIPP provided to Mr B at the time of the pension switch. Referring to the estimated projected real growth rate (ie the growth rate above inflation) that it had provided Mr B for his SIPP portfolio of 0.71%pa, it highlighted that this projection was purely illustrative. T&B said that the purpose of the illustration was to show the impact of charges, not to guarantee future returns. It said it was not reasonable to assess advice by solely looking at hypothetical projections, without looking at all the other elements which led to the advice being given.*

*T&B reiterated that the OCF quoted at the time of the switch included the AMC, and that the total annual charge for the SIPP was about 1.52% (including the initial adviser charge spread over a ten year term). It said this was more cost effective than the 1.79%pa charge applicable to the existing ReAssure fund. It suggested that the investigator may have reached inappropriate conclusions about the suitability of the 2017 advice because of an incorrect assessment of the SIPP's charges.*

*T&B said that in 2017 it was seeking to place Mr B in an investment with a risk profile of 3 out of 10, with the existing ReAssure fund clearly being unsuitable for him. It said it also provided Mr B with ongoing advice that he explicitly requested, and that he could not have obtained this from his OPS without having to separately pay for that advice, which he did not want to do. T&B commented that any advice available from the OPS would likely have been restricted to a limited number of standardised portfolios, whereas it could provide independent advice that took into account Mr B's specific needs. It also highlighted again that it had not made a charge for the seven years of ongoing advice it provided.*

### ***What I've provisionally 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.*

*At outset I need to consider whether Mr B brought his complaint to this service in time, bearing in mind T&B's comments that it should be time barred.*

### ***Our powers to consider this complaint***

*The Dispute Resolution (DISP) rules in the Financial Conduct Authority's (FCA) handbook outline the extent of this service's powers to consider complaints.*

*DISP 2.8.2R states that – where a business doesn't agree – I can't look into a complaint if it was made more than six years after the event complained of, or if later, more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint. An exception to this is where I conclude that the failure to comply with the time limits is the result of exceptional circumstances.*

*Mr B's representative's letter to T&B complaining about the 2017 advice was dated 27 September 2023. T&B has indicated that it does not consent to us looking at this complaint if it has been brought too late.*

*Mr B complained to T&B more than six years after he received the advice to switch his ReAssure benefits to the SIPP. I therefore need to consider whether Mr B complained within three years of the date when he became aware, or ought reasonably to have become aware, that he had cause for complaint.*

*T&B stated in its January 2024 response to Mr B's complaint that he'd been receiving monthly statements about the SIPP since 2017, and had been in a number of review meetings. It said this meant that he should reasonably have been aware of the SIPP's performance. Whilst I agree that the statements and meetings meant Mr B was aware of the SIPP's value, I don't consider that this would have led Mr B to conclude that he had cause to complain about the advice he'd received in 2017 to take out the SIPP. A reduction in a policy's value would not necessarily lead an investor to think that the advice given to take out the policy was inappropriate, particularly when they'd been told that values could go up and down.*

*In T&B's January 2024 letter, it commented that there was an "absence of any dissatisfaction noted" from Mr B until recently. However, in its recent submissions, it has said that comments Mr B made in 2020 show that he was concerned about the SIPP's performance at that time, meaning this complaint should be time barred, as it was brought more than three years after that.*

*Having considered T&B's comments on this matter, and the further evidence it has forwarded, my view is that this does not demonstrate that Mr B was aware in 2020, or ought reasonably to have been aware at that time, that he had cause to complain about the 2017 advice. It was recorded that Mr B "does not want to see any further loss or if there is then as little as possible." It seems to me that Mr B was disappointed to have seen the value of his SIPP go down, but I don't consider it's been evidenced that he was dissatisfied in 2020 with the advice he'd received to switch to the SIPP, which is what Mr B has now complained about. And in my view, the disappointing performance of the SIPP in 2020 should not reasonably have led Mr B to consider he had cause to complain at that time about the 2017 switch advice.*

*In conclusion on this matter, I do not consider it's been shown that Mr B knew, or ought reasonably to have known, more than three years before he raised his complaint with T&B in 2023, that he had cause for complaint about the 2017 advice provided to switch his pension benefits to the SIPP. My view therefore is that Mr B brought his complaint within the time limits set out in the DISP rules, and that I am therefore able to investigate the complaint brought by Mr B about the 2017 advice.*

*I note that T&B has said Mr B has brought his complaint under pressure from his representative. However Mr B has confirmed that he consents to bringing this complaint, and I therefore have no reason not to consider it.*

*My current view of Mr B's complaint*

*When Mr B first met with T&B on 4 May 2017, the adviser produced notes of their meeting on a fact find. It was recorded that Mr B wished to review his pension, that he wanted to “get the best pension”, and he wanted to know if his ReAssure fund could be moved to his OPS or elsewhere. Mr B was employed, earning just over £24,000 a year, and had outgoings of £1,200 a month. He had £10,000 in a savings account. Mr B’s ReAssure fund was worth just under £32,000, and he said that he was looking to achieve growth on it of 2-4%.*

*In answer to the question “Which of your existing savings and investments are you distasteful [sic] with?”, it stated “ReAssure – I don’t know them”. It was said that Mr B asked that T&B tell him what to do, and that he was worried “they’ll charge me”. It’s not clear to me which entity ‘they’ was referring to. I would agree with T&B that this does not appear to have been referring to T&B, and on balance it seems reasonable to me to conclude that Mr B had general concerns about his capacity to pay for advice. The fact find stated that Mr B would like any charges due to be paid from the product itself, rather than directly by Mr B.*

*I note that Mr B’s agreed priority was recorded as being a pension transfer. Although, as explained above, it seems that Mr B had asked T&B about whether he could move his ReAssure fund to his OPS or another plan, the information on the fact find suggests to me that Mr B did not approach T&B settled on the idea that he’d decided to transfer his ReAssure benefits. Instead it seems to me, based on the information shown above, that Mr B was simply unsure about what to do with his ReAssure plan, and felt that he might need to take some action with it. He was clearly interested in receiving advice about what actions to take, if any, with the ReAssure plan that might be suitable for him.*

*In terms of Mr B’s ATR, the document stated that he didn’t want a lot of risks, but also recorded that he had said “I don’t want to take any risks”. Responding to questions about his ATR, Mr B said that he disagreed that he was willing to risk a percentage of income to get a good return, he was generally more concerned about possible losses than probable gains, and would rather know that he was getting a guaranteed rate of return than be uncertain about his investments. He agreed that he took lower financial risks than the average person.” Overall my view is that the evidence from the fact find indicates Mr B was willing to take only a small amount of risk with his investments. It was also recorded that Mr B didn’t have any understanding or knowledge of investing.*

*The adviser said on the fact find that Mr B could invest for the long term, categorised as being for ten years or more. But it was also recorded that Mr B wanted to retire, and that he was “feeling old. I don’t want to work anymore.” He wanted to take action so that he could retire. In my view, reading the comments attributed to Mr B on the fact find, it was clear that Mr B was looking to retire in the short term. And I note that Mr B did withdraw a tax free sum from the SIPP in 2020, around three years after switching his funds to it.*

*Further to this, on 8 May 2017 T&B issued a letter to Mr B that said he was concerned that he would have insufficient income to retire at age 55. It continued: “You feel strongly that you would like to be able to retire at this age as you are finding it increasingly difficult to continue to work.” Mr B’s 55<sup>th</sup> birthday was within 18 months of the date that T&B were providing him with advice. With Mr B aiming to attempt to retire by age 55, my view is that when considering what advice to give about the ReAssure plan, T&B needed to be mindful that Mr B might be seeking to access his pension fund soon.*

*The adviser sent another letter to Mr B on 17 May 2017 that said he’d been assessed as having an ATR of 3 out of 10 (with 1 being the lowest). It summarised that this meant Mr B’s “willingness to accept risk is low. While you are likely to be concerned with the prospect of losses, the prospect of higher returns is also of interest.” The adviser proposed that investments should be mainly lower and medium risk such as cash, bonds and UK*

commercial property “with a small proportion of higher-risk investments such as UK and overseas shares.”

T&B's letter to Mr B dated 26 May 2017 confirmed its recommendations. It said that Mr B felt strongly that he'd like to retire at age 55 because he was finding it increasingly difficult to work. T&B advised transferring the ReAssure funds to a Cofunds SIPP, into a portfolio of investments rated as being risk level 3. The reasons for the advice were given in a planning report dated 23 May 2017.

This report compared the ReAssure plan to the proposed SIPP. It stated that the ReAssure policy was very expensive with annual charges of 1.79%pa, and when considering the internal funds available to it, which it said totalled 95. T&B also said that there was no drawdown facility available under the plan, unlike the SIPP. In terms of the ReAssure Managed Accumulator fund which the plan was invested in, T&B stated that this had a risk rating of 7 out of 10, and it described this as being higher medium risk and “widely out of line” with Mr B's risk profile. It commented that based on an independent ratings agency, the ReAssure fund's performance was below average to its peer group.

T&B advised Mr B that the equity exposure of his pension fund should be lowered by moving to more cautious assets such as fixed interest holdings. It said that the range of funds available within the ReAssure plan was “extremely limited”, and as a result it recommended moving to a new provider. Transferring to Mr B's OPS was discounted on the basis that T&B's fees could not be paid from the pension fund. A stakeholder plan was discounted because T&B also said this only offered a limited range of funds. It compared a number of SIPP platforms and concluded Cofunds was suitable for Mr B to switch to, noting the number of funds it offered, its level of service and its flexibility. T&B said it would offer Mr B three review meetings each year.

A central reason for T&B advising Mr B to move his benefits to the SIPP was because it said that the fund he was invested in within ReAssure had too high a level of risk for him. T&B also said that the ReAssure policy was expensive, and that it had no drawdown facility. I will return to the cost of the ReAssure policy later, but in terms of the lack of a drawdown option, my view is that that would not be sufficient reason to advise switching funds into the SIPP. That's because if Mr B wanted to use a drawdown arrangement when he began to take benefits from his fund, he would have been able to switch to a policy with drawdown options at the time he needed them. It does not seem to me that there was any compelling need for Mr B to switch to a policy with drawdown available when he met the adviser in 2017, before he had reached the age when he could start to use drawdown options.

As I explained above, I consider the evidence shows that in 2017, Mr B was willing to take a small amount of risk with his investments. T&B described the ReAssure Managed Accumulator fund which Mr B was invested in as being higher medium risk. It has forwarded a factsheet for the fund dated May 2017 which shows approximately 65% investment in UK and overseas equities, and around 20% investment in fixed interest assets. Overall I would agree with T&B that the ReAssure Managed fund Mr B was invested in was not consistent with his ATR. I also note T&B found this fund was underperforming its peers.

In my view, due to the ReAssure Managed fund being inconsistent with Mr B's ATR, there was a need to consider whether Mr B's pension benefits should be moved away from this particular fund. T&B recommended switching to the SIPP. However I'm mindful that, as I explained above, when he met the adviser Mr B was looking to retire in the short term, with his aim being to do this by his 55<sup>th</sup> birthday.

The advice T&B gave to switch to the SIPP resulted in an advice fee being paid to T&B of 4.95% of the switched fund, or £1,667.21. That amount was deducted from the switched

*fund of just under £34,000. If Mr B was to achieve his stated aim of attempting to retire at age 55, the SIPP had less than 18 months investment to build his pension fund. To better what would have been accrued if the funds stayed with ReAssure, the SIPP needed to grow by enough to recoup the advice fee deducted at the time of the switch, and then provide additional growth on top of that.*

*With Mr B's SIPP holdings being chosen by T&B to suit a low risk investor, in my view the likelihood of achieving this level of improved growth compared to the ReAssure plan was reduced. T&B arranged the SIPP portfolio with mostly fixed interest assets, plus some cash and property, and the target was for it to have around a quarter invested in equities. Not only did the low risk SIPP holdings limit the growth potential, the length of time until Mr B was aiming to start taking money out of the SIPP once he reached age 55 was also comparatively short. In my view, the SIPP did not have a realistic chance of growing quickly enough over Mr B's intended investment term to overcome the costs of the advice deducted from the funds. On balance therefore I do not consider it was reasonable for T&B to recommend that Mr B switch his benefits to the SIPP in 2017.*

*I agree that it was appropriate for T&B to assess whether Mr B should remain in the ReAssure Managed fund, in light of its risk profile. One option was to consider transferring the ReAssure funds to Mr B's OPS. I note T&B's comments that such a transfer would not allow it to deduct its advice fee from the funds, or take ongoing fees for continuing to assess suitability. In my view, the primary objective was to ensure Mr B received suitable advice, and how that advice was to be paid for was more of a secondary issue.*

*That aside, I have considered what advice it was reasonable for T&B to give Mr B based on the objectives he had in 2017. T&B described the ReAssure fund range as being extremely limited. However, it said that ReAssure offered 95 funds, all of which were internal. The SIPP had in excess of 3,000 funds available, and so it is clear that it had a great deal of choice. But, in light of his objective to retire in the short term, in my view it is doubtful that when he met the adviser in 2017, Mr B had a compelling need for access to a very high number of investment funds.*

*In addition, 95 was not a small number of funds to choose from. And on balance it seems to me more likely than not that within that offering of 95 funds, there were some which had an asset mix suitable for Mr B's ATR. In the circumstances, my view is that when recommending what Mr B should do with his ReAssure policy in 2017, T&B should reasonably have advised him to retain his policy but move into a ReAssure fund with a lower risk profile than the Managed fund. I appreciate that T&B found the ReAssure plan in 2017 to have higher charges than were applicable under the SIPP. But with the limited time in which Mr B was to remain invested before seeking to realise his pension benefits, on balance I consider it was reasonable for T&B to advise that he retain the ReAssure policy.*

*My view is that an element of the advice T&B gave in 2017 was reasonable, in that it was appropriate to assess whether the ReAssure Managed fund was suitable for Mr B. I consider that T&B should reasonably have then advised Mr B to move to a lower risk ReAssure fund. In these circumstances, T&B would have provided advice to Mr B, but it seems to me that it would not have been an option for it to have deducted its advice fee from the pension fund, in the way that it did when the switch to the SIPP occurred.*

*Based on its client agreement, there were several stages to the service T&B offered. Stage 1 was an initial, fee-free discussion, where information was gathered. Stage 2 included recommendations for "an asset allocation model that matches your risk profile". This cost £595. I understand that if a client went on to stage 3 and agreed to take out a new product, paying for that advice via a percentage of the investment business arranged, the stage 2 £595 fee would form part of the new product arrangement fee.*

*It seems to me that the need Mr B had in 2017 was for his ReAssure fund to have its risk exposure reduced. If T&B had advised Mr B to move to a lower risk ReAssure fund, as I consider it would have been reasonable for it to have done, it is fair that T&B would have been able to charge for that advice. In the circumstances, my view is that when assessing whether the advice T&B actually gave Mr B caused him a financial loss, it is reasonable that any loss identified can then be offset by an amount to represent the cost of advice T&B would have charged for advising Mr B to retain the ReAssure policy but move to a different ReAssure fund. On balance I consider it fair to assume that advice cost to be £595. I have explained below how that impacts the calculation of loss.*

*I acknowledge what T&B has said about Mr B not wanting to pay advice fees directly, and instead seeking to pay fees from his pension fund. My redress proposal assumes that Mr B would have been able to pay a £595 fee. However, this fee is significantly lower than the advice fee which was actually paid of around £1,600. On balance, taking into account Mr B's recorded level of income and outgoings, my view is that he would reasonably have been able to pay a £595 fee out of his own resources.*

*T&B has commented that it provided Mr B with ongoing reviews of his SIPP without charging him for these reviews, including after he was made redundant. These reviews were the result of Mr B signing up to T&B's 'model member's service'. But it seems to me that if Mr B had not taken out the SIPP, and had instead only been advised to lower his risk exposure via the fund he was invested in under the ReAssure policy, it is unlikely he would have been signed up to the model member's service. Consequently I do not consider it reasonable for the compensation calculation to take into account any advice costs aside from the £595 fee mentioned above."*

## **Responses to my provisional decision**

On Mr B's behalf his representative accepted my provisional findings. However it asked for any compensation due to be paid directly to Mr B, rather than into his SIPP. It said it was requesting this because Mr B had lost faith in T&B, and in the financial services sector in general, as a result of the events which are the subject matter of this complaint. The representative suggested that if compensation is paid into the SIPP, Mr B will need to seek advice to move the money elsewhere, costing him money and causing him anxiety.

T&B responded that had Mr B's benefits remained with ReAssure in a lower risk fund, in addition to incurring an advice fee of £595 relating to that change, when later accessing pension benefits, Mr B would likely have incurred an additional fee of 4.95% of the fund value for advice about this. T&B said that its decision to recommend a switch to the SIPP "was made precisely to avoid such compounded fees."

In terms of the ReAssure plan, T&B stated that ReAssure largely manages legacy policies inherited from other providers. It said that of its 95 funds: "*the practical reality was that only 39 funds were available to new business, with just 15 genuinely accessible for new investments. Of these, only 10 met a medium risk or lower categorisation – and of those, 5 were closed to new business.*" T&B commented that it would have been extremely challenging to construct a portfolio with ReAssure that was consistent with Mr B's ATR. It also suggested that due to the nature of the business that ReAssure operates, it does not offer "*dynamic, actively managed*" investment options. T&B said that consequently, transferring away from ReAssure was necessary and in Mr B's best interests.

T&B commented that it was not realistic for Mr B's pension pot to produce an income to cover his monthly outgoings at age 55 due to its size. It highlighted that the 2017 fact find recorded that Mr B had an investment horizon of 10 years or more, and that during a 2022



review meeting, Mr B had indicated that he anticipated retiring in about 5 years. T&B said that this was why it had recommended a long term strategy, and it highlighted that Mr B's crystallised funds remain actively invested in his SIPP. T&B provided figures showing the current performance of the SIPP.

### **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 note T&B's comments that it recommended the switch to the SIPP partly because it wanted to avoid Mr B having to pay extra advice fees. However, if benefits had remained with ReAssure, in my view there's no certainty that Mr B would have needed to incur further advice fees when later accessing his pension funds. I therefore don't consider that recommending the transfer of benefits could reasonably be justified on the basis that there was a possibility that Mr B might incur further advice fees at a later date, when it's not clear that he would have incurred such fees.

T&B has provided further comments about the funds it says would have been available to Mr B if he'd left his pension with ReAssure and looked to change its investment. Although it has said that only 15 funds were 'genuinely accessible' to new investments, it's not clear to me whether, by retaining money with ReAssure but simply choosing a different fund, this would be categorised as a 'new investment'. I have thought carefully about T&B's further comments in this regard, but overall my view remains that it's likely there would have been a suitable fund amongst those accessible to Mr B under his ReAssure plan that better fitted his ATR.

With regard to the length of time that it was likely the benefits would be invested when the advice to switch was given in 2017, I acknowledge T&B's comments that Mr B's pension fund was comparatively limited in size, making it more difficult for him to use it to cover his expenses. But I remain satisfied that in 2017 Mr B was looking to retire in the short term, based on his recorded comments that he did not want to work anymore, and was seeking to retire at age 55. And taking into account what I said in my provisional decision about the costs of the advice charged to Mr B, and the level of growth in the SIPP that was required to surmount those costs, I still consider that it was not reasonable to recommend the switch in 2017, taking into account the likely term the funds would be invested.

In terms of Mr B's representative's request that any compensation due be paid to him directly rather than into the SIPP, as I explained in my provisional decision, my view is that T&B should not have recommended moving the funds to the SIPP because it was unlikely it would grow quickly enough to overcome the costs associated with the switch. But I do consider T&B appropriately identified the ReAssure Managed fund as being too high risk for him. In my view, the underlying portfolio of holdings in the SIPP that T&B advised Mr B to move into were reasonable, based on his ATR.

This being the case, I do not consider it would be unreasonable if any compensation due is paid directly into the SIPP. Whilst I note the representative's comments about Mr B's loss of confidence in financial services, my view on balance is that the underlying investments in the SIPP are appropriate for Mr B. That said, it is up to the parties if they wish to agree that any compensation due is paid directly to Mr B.

### **Putting things right**

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I consider that Mr B would have kept his pension fund with ReAssure, but moved it to a different fund with a lower risk profile. It's not possible to say exactly which ReAssure fund would have been suitable for Mr B's ATR. I'm satisfied that what I've set out below is a fair and reasonable way in which to determine whether T&B's advice has caused Mr B a financial loss.

### What must T&B do?

To compensate Mr B fairly, T&B must:

- Compare the performance of Mr B's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value*, T&B can then deduct from the fair value an amount of £595, representing an estimated cost for advising Mr B to move his investment within ReAssure to a lower risk fund. If this results in a positive figure, this is the financial loss and compensation is payable.

- T&B should also add any interest set out below to the compensation payable.
- If there is a loss, T&B should pay into Mr B's SIPP to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the SIPP if it would conflict with any existing protection or allowance.
- If T&B is unable to pay the compensation into Mr B's SIPP, 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 Mr B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B 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%.

Income tax may be payable on any interest paid. If T&B deducts income tax from the interest, it should tell Mr B how much has been taken off. T&B should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Cofunds/ Aegon SIPP	Still exists and liquid	For half the investment: FTSE UK Private Investors	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled

		Income Total Return Index; for the other half: average rate from fixed rate bonds			within 28 days of the business receiving the complainant's acceptance)
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### **Actual value**

This means the actual amount payable from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, T&B should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if T&B totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr B wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

My final decision is that I uphold this complaint and require Thornton & Baines Independent Financial Advisers Limited to pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2025.

John Swain  
**Ombudsman**