

The complaint

Mr T says ReAssure Limited is responsible for failing to inform him that his pension contributions would cease when he reached 55 and that his funds would be switched from a with-profits to a deposit based fund. He says this means he's lost out on investment growth.

What happened

Mr T opened a with-profits personal pension with Legal and General (L&G) in 1992. The retirement age for the plan was set at age 55. He made some lump sum payments, but mostly he made regular contributions until January 2017. These ceased when he reached his selected retirement age. At this point Mr T's fund was moved into a special deposit fund.

It's important context that during part of the period in question in this case that the transfer of the traditional insurance-based savings, pensions, life and with profits policies of Legal & General to ReAssure Limited was taking place. The proposal had been underway for a few years before being finalised in the High Court with an effective legal transfer date of 7 September 2020.

From this point ReAssure took on responsibility for the policies it took on, including paying future benefits and servicing customers. Mr T's pension policy was covered by the agreement and that's why ReAssure has been dealing with his complaint. So for simplicity I'll only refer to it throughout this decision.

ReAssure has confirmed Mr T's pension fund of around £57,600 was switched to Old Mutual Wealth (OMW) on 9 September 2020. Mr T says that around this time he called ReAssure to ask why when he had reached the age of 55 it had stopped taking pension contributions. He also asked why his pension had been moved to a cash deposit, inhibiting the growth of his fund. He said he didn't believe he'd been informed about these changes, nor was there any relevant communication up to the point of his switch to OMW.

Mr T wasn't satisfied with ReAssure's response and on 1 March 2021 he complained. He thought it failed to answer his questions. It responded on 13 March 2021 noting that he'd taken the benefits from his pension. It said because his plan was now terminated it was unable to supply him with any information about it. ReAssure sent Mr T another letter on 27 April apologising for the delay in responding to his enquiry and offering £100 for the inconvenience it had caused. But it didn't add any further substantive information.

Mr T approached this Service on 18 May 2021. He told us:

"...[ReAssure] have handled my complaint badly, my questions have not been answered and I have little faith they know what they are doing. As the policy was only surrendered last year surely they have an obligation to still hold my data and answer my questions as to how and when they informed me the contributions would stop and the product transferred. As I have continued to work my option would have been to continue contributing and keep it where it was performing well but I do not think I was given the option to do so and no-one seems to be able to provide me with evidence that this happened."

ReAssure said it had looked into Mr T's concerns and responded appropriately. It said his pension plan had been administered in line with terms and conditions. The policy was written to age 55 and as the benefits weren't taken they were deferred. It said Mr T hadn't queried why his payments had ceased in 2017 and that subsequent documentation he received noted that he was no longer invested in with-profits.

An Investigator considered Mr T's case and concluded it should be upheld. He thought ReAssure should've sent him information in the run up to his pension maturing setting out his options.

ReAssure disagreed. It restated its position about the terms and conditions of Mr T's policy. It said he should've noticed that his premiums had been stopped. It also said all correspondence sent had noted his retirement date. With regard to the 'wake-up' letters it said it wasn't able to produce a copy of the letter it believes would've been sent.

As both parties couldn't agree to the findings and conclusions of the Investigator, Mr T's complaint was been passed to me to review afresh. I issued my provisional decision in October. As neither party provided any new evidence or arguments I see no reason to depart from my initial findings and conclusions.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr T's complaint. I'll explain why.

I've considered the extensive regulation around transactions like those performed by ReAssure for Mr T. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. As such, I need to have regard to them in deciding Mr T's complaint.

In August 2001, the Association of British Insurers (ABI) issued its Statement of Good Practice on Pension Maturities. It came into effect in January 2002. The Statement

introduced the concept of the 'wake up' letter and the 'follow up' letter – both are reminder letters sent to customers ahead of retirement.

ReAssure has argued that Mr T should've been aware of the terms and conditions of his policy, for example that contributions would end when he reached the age of 55. Presumably he received these in 1992 when he took out his pension plan. I don't think it's a reasonable expectation that he would've been well appraised of the detail some 25 years later.

ReAssure has a stronger argument when it refers to the correspondence Mr T received more recently. It says this had been clear that his retirement age was 55. I agree that the policy information sent to his financial adviser in 2013 and the bonus statement in May 2016 both note a retirement date of 10 February 2017. Nevertheless, there's nothing in these documents to inform Mr T about the action that needed to be taken at his selected retirement age.

There's a further bonus statement dated May 2017 which notes his retirement date and confirms the value of his with-profit holdings as at January 2017. But there's nothing to indicate his contributions had ceased or that his pot had been switched away from with-profits. It's arguable this statement would've actually provided reassurance to him that his money was still invested in that fund.

The requirement for firms to send wake-up and follow up letters to customers is clear. These matters are provided for in regulations set by the Financial Conduct Authority at COBS 19.4. This sets out what firms need to include in their letters. They should provide a customer with information about the pension 'pot' they've built up with the provider and set out the options they have in order to help them make decisions about their income in retirement.

I understand the administrative arrangements for Mr T's pension may've been complicated by the transfer of business between L&G and ReAssure. But such changes will provide for proper due diligence and the avoidance of harm to customers. And obviously none of this is a matter for Mr T to concern himself about.

ReAssure told this Service in its last submission regarding the wake-up and follow-up letters that L&G hadn't said that one wasn't issued. But it hadn't been able to search the archive because it hadn't been able to provide insufficient information to do this.

On this basis, ReAssure hasn't done enough to satisfy me that the letters it was required to have issued by regulation were sent. And the correspondence it points to with Mr T which it has been able to share does not meet the obligations it had in terms of what information he should've received.

ReAssure said Mr T should've become aware that the contributions he had been making until January 2017 had stopped. The net contribution being paid out of his bank account was £92 per month. Having reviewed statements from the account covering the period in question, I'd note that it was a joint account with a high volume of similar sized transactions each month. The account had a variable healthy balance.

Overall, I'm not persuaded that Mr T should've been aware of the changes made to his pension when he reached the age of 55. I think ReAssure's failing with regard to the issue of the letters it was required to send to inform him about his longstanding policy and options was the most telling factor in this case.

ReAssure has however provided evidence that a policy schedule sent to Mr T on 17 December 2019 showed regular pension contributions had been set at £0.00 and his pot invested in a special deposit fund. I agree with the Investigator's finding that it is at this point

it would've been reasonable to have expected him to have become aware of the changes to his policy and contacted ReAssure to find out what had happened.

Putting things right

I'm upholding Mr T's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold ReAssure Limited responsible for.

Mr T has told us that as he continued to work past his 55th birthday, his favoured approach at the time he should've been informed of his options would've been to have continued making contributions and kept his pension where it was. I understand the Investigator confirmed with ReAssure that Mr T did have the option to extend the term of his with-profits plan. So, I will work the redress on this basis.

As an aside, if this hadn't been the case then for the purposes of this decision, my assumption is that Mr T would've switched his pension earlier to a provider like OMW, investing in a similar product and portfolio of investments, such as he ended up with in September 2020.

Mr T has confirmed he is willing to pay the missed monthly contributions of £92 net as a lump sum. These missed contributions started in February 2017 and the last contribution would have been December 2019 - 35 contributions. So, as part of the outcome proposed here, he will need to evidence to ReAssure Limited that he has paid £3220 into his current pension plan.

ReAssure Limited should then calculate what investment growth was lost as a result of the switch of his accumulated fund - including the missed premiums between 10 February 2017 and December 2019 - from the with-profits to the special deposit fund. If there's a loss, then it's fair to revalue this using the special deposit fund as a benchmark between 20 December 2019 and 8 September 2020.

Taking the total loss sum calculated, ReAssure Limited should assume this would've been transferred with the rest of Mr T's pension fund to OMW on 9 September 2020, where he was recommended to take a moderate to adventurous level of risk. ReAssure Limited should find the evidenced average return for Mr T's portfolio between 9 September and the point of calculation, and then increase its loss calculation accordingly.

If there is a loss, ReAssure Limited should pay into Mr T's current pension plan, to increase its value by the amount of the compensation and any interest. Its 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 ReAssure Limited isn't able to pay the compensation into Mr T's pension plan, it should pay the amount direct to him. But had it been possible to pay into the plan, it would've 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 T won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he'd 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%.

ReAssure should provide the details of the calculations to Mr T in a clear, simple format.

When I'm considering a complaint like Mr T's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of ReAssure's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

ReAssure Limited caused Mr T inconvenience in getting to the bottom of what happened with his pension arrangements. And it failed to meet its regulatory obligations to him. In recognition of this it should pay him a further £200 (Mr T has already received £100).

My final decision

For the reasons I've already set out, I'm upholding Mr T's complaint. I require ReAssure Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 December 2022.

Kevin Williamson
Ombudsman