DRN-4321361

The complaint

Mrs K complains that ReAssure Limited (ReAssure) unfairly merged two s32 Buyout Plans resulting in it benefitting from compensation that had been paid into one of the plans under the Pensions Review rather than her. She wants to receive the benefit of the compensation payment.

What happened

Mrs K s32 plan was originally with Legal & General (L&G). She took her benefits by purchasing an annuity with L&G in 2019. ReAssure is now responsible for the original plan and the annuity arising from it. But to make this decision easier to follow I will refer to both L&G and ReAssure.

A s32 is a plan used to receive transfers from defined benefit (or final salary) occupational pension schemes. When Mrs K transferred to the s32 in 1992 her pension benefits included a Guaranteed Minimum Pension (GMP) that arose from being contracted out of the State Earnings Pension Scheme (SERPS). There were complex rules about how much the GMP was and when it could be paid. In accepting the s32 transfer the pension provider guaranteed to pay at least the GMP at the original retirement date of the occupational pension scheme. Even if the future value of the s32 wasn't high enough to meet the cost of buying an annuity. At the time annuity rates were much higher than they are today. And expected future investment returns were higher than have generally been achieved.

Due to concerns about poor advice to transfer occupational pensions offering guaranteed benefits to personal plans with no or few guarantees, the then regulator – the Securities Investment Board (SIB) initiated an industry wide pension review in 1994. This ran for many years. Mrs K wasn't advised to transfer by L&G but by another firm which appears to have gone into administration. In 2003 compensation of £2,905.19 was paid by the Financial Services Compensation Scheme (FSCS) in respect of the advice Mrs K had received to transfer her pension. The compensation was paid into a new policy with L&G. Mrs K received separate annual statements about each plan thereafter.

When Mrs K took her benefits in 2019, L&G said the value of the plan wasn't enough to provide the required GMP of £722.64 per year, but it would honour the guarantee to pay this amount. ReAssure took over the administration of the policies and in July 2022 she asked it about the second plan which had been valued at £8,486.69. After some delay it was confirmed that the second plan had been added to the first, with the combined value still below the cost of securing the GMP. Mrs K didn't think this was fair as L&G had benefitted from the compensation rather than her.

Mrs K complained and there was confusion over whether L&G or ReAssure was responsible for the complaint. So, Mrs K referred her complaint to our service.

Our investigator made enquiries with both L&G and ReAssure. Both initially said the other was responsible. In the end ReAssure provided two final responses. In August 2022 it said that following the pension review compensation had been calculated in line with the regulators guidance and offered and accepted by Mrs K in 2003. It said the pension review

was intended as a one-off exercise, based on assumptions at the time and didn't provide for ongoing evaluation. The compensation was paid into the new policy and was fair. It said, unfortunately, the assumptions used in the review hadn't *"mirrored reality".*

Mrs K queried this. ReAssure said it didn't hold any information about the setting up of the annuity in 2019, so it couldn't comment as to whether this had been set up correctly. But it apologised for the delay in logging and responding to her complaint and sent a cheque for £150 to Mrs K in respect of this.

Our investigator now considered the complaint and made further enquiries with both L&G and ReAssure. Having done so he didn't uphold the complaint.

Our investigator said the second policy was a sub policy to the first with the same rules and guarantees but was only set up because the original policy wasn't able to accept a further payment. He said when the compensation was paid investment returns were expected to be higher than was actually achieved. And had returns been better the policy might have provided benefits over the GMP like tax-free cash and further pension income. But the guarantee had still been honoured. He said, whilst he could see Mrs K's point of view, amalgamating the policies had been fair.

He said our service wasn't able to consider how ReAssure had handled her complaint so he couldn't comment on the delay or the compensation of £150 it had paid. But he directed Mrs K to information on compensation on our website.

Mrs K didn't agree. She said her husband had also been advised to transfer to a s32 with a different pension provider. He'd also received compensation under the pension review which was paid into a separate policy and had subsequently received the GMP from the original policy and other benefits from the second one.

Our investigator said our service could only consider the circumstances of Mrs K's complaint and couldn't consider other providers policies as the terms and conditions could be different with many other variables.

Mrs K made a number of points:

1. It was irrelevant the GMP was underfunded, as when the s32 was set up L&G was in competition with other pension providers and had accepted the risk. And any loss L&G had suffered on the GMP was balanced out by gains it made on other policies. She said at the time of the transfer the illustration showed an estimated total pension of £3,930.00 per year and the GMP was only £722.64.
2. Amalgamating the policies was wrong, if L&G's investment strategy had failed it should accept it and not take the compensation to improve its profit.
3. She said the blame lies with L&G rather than ReAssure and L&G should answer the complaint. And it was an easy excuse to say there was no other option but to add the compensation to the underfunded policy. And L&G or ReAssure could make good by paying the £8,486.69 the second policy was worth.
4. She disputed the two policies had the same rules because the second was inferior, which she'd complained about to L&G in 2007.
5. She said there was too much sympathy for L&G's position rather than hers.
6. She didn't expect our service to hold L&G accountable for not performing as expected, but L&G had to accept there would be times when it wins and when it loses and effectively stealing compensation from a policy holder to shore up poor investment returns was *"disgusting"* and she *"was very surprised at you condoning this practice."*

As Mrs K 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.

Having done so I am not upholding the complaint.

I know my decision will disappoint Mrs K, so I'll explain why I have come to it.

The role of our service is to impartially consider complaints and decide what is fair and reasonable in the circumstances. I've taken account of all the points made by Mrs K and do understand her arguments. However, the purpose of the compensation paid in 2003 was to try to put right the shortcomings of the advice given to Mrs K in 1992. And it didn't offer any further guarantees over what had originally been in place.

The pension review was, as ReAssure has said, a one-off exercise. It used factors and assumptions that were considered reasonable at the time about future investment returns and interest rates that would impact the cost of providing pension benefits. These assumptions weren't made by L&G or ReAssure but by the financial regulator. Unfortunately, what has happened has been quite different from what was assumed.

Investment returns have generally been lower than expected. Interest rates and therefore annuity rates at the time Mrs K took her benefits were much lower than had been expected. Falling annuity rates in particular have significantly increased the cost of providing pension benefits. Usually, it wasn't possible for a s32 to receive more than one transfer payment. So, it was quite common for a new linked plan to be set up to receive any compensation arising from the pension review.

Unfortunately, there are very few records available from the time, although Mrs K has provided some documents from 2007. As she has said, these do indicate the terms and conditions relating to guaranteed with profit bonus rates are different. She says she complained about this in 2007. I don't have details of that. But if she wasn't happy with how L&G answered her complaint then, she should have been provided with rights to refer her complaint to our service. But she needed to do so within six months, and due to the rules about how we are able to consider complaints it is too late for me to do so now.

However, the documents themselves do help explain the situation. And I can see why Mrs K thinks they show the policies are separate rather than linked. But a s32 Buy Out plan (to give the full title) can only arise from a pension transfer and the separate documents referring to each policy refers to the older policy as a *"Buy out plan"* and the newer policy as a *"Buy Out Plan".* So, I think this does confirm the policies are linked, with the newer plan supplementing the funds of the first plan, as intended by the pension review, so they were amalgamated from outset.

In terms of the different guarantees applying to bonus rates shown in these documents, it was the case by 2003 that L&G, in common with virtually all other pension providers had reduced with profits bonus rates compared to 1992. This was broadly for the same reasons set out above – falling investment returns and the expectation that future returns would be lower. But it was still widely considered that any guaranteed bonus rate element quoted was likely to be quite a small part of the overall return expected. So, had the guaranteed bonus rate been the same on the sub policy, I think it is still very unlikely the combined value would have exceeded the cost of the GMP.

I understand Mrs K's argument that as L&G took this bet on in 1992 it should stick with it. But the redress payment was only made to bolster the s32 with the intention it might provide the same benefits as the original occupational pension scheme would have provided. This wasn't guaranteed and unfortunately, it hasn't proved to be the case for factors outside L&G's and ReAssure's control. And the annuity that has been arranged appears to provide the underlying guarantee that at least the GMP would be paid. This is what was promised at outset.

So, whilst I sympathise with Mrs K and understand her point of view as the minimum guarantee has been met, she hasn't been treated unfairly and it wouldn't be reasonable for me to tell to ReAssure to pay her the value of the sub policy. So, I can't uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 17 October 2023.

Nigel Bracken
Ombudsman