DRN-4377264

The complaint

Mr N complains that Legal and General Assurance Society Limited (L&G) didn't manage the funds within his personal pension plan appropriately after he agreed to leave it invested for a further five years after his original selected retirement date (SRD). He said the "lifestyle profile" into which his funds were invested didn't provide the lower risk he expected and as a result he's suffered a significant financial loss to his plan. He also complains that L&G didn't subsequently provide important information to him which may have helped him take alternative action to better preserve the plan's value.

What happened

Mr N held a "section 32" buyout personal pension policy with L&G which was set up following the buyout of his occupational pension scheme (OPS) benefits by the scheme trustees in 2017 when it was wound up. The original SRD of his plan was his 65th birthday on 22 January 2021 and the funds were invested into an "alternative lifestyle strategy" which I understand was the default fund selected by the OPS trustees. The transferred payment was £192,258.07.

Prior to the SRD L&G issued an "*it's time to choose for your future*" booklet which set out the options available to Mr N. As L&G didn't hear back from him it extended his SRD by five years and continued with investment on the same basis as previously – as set out in its terms and conditions. The retirement pack noted the plan value as £241,431.87.

In 2022 Mr N received a statement from L&G which noted the value of his plan had fallen by over £18,000, so he complained about the management of his pension funds. He then received another report in June 2022 which showed a further fall and the (the first) projection of what he might receive at retirement. He noted this was the first report of that nature he'd received in 17 months. In November 2022 he made a formal complaint stating that, following his decision to defer his SRD, L&G hadn't "*met any reasonable expectation for managing his plan….and failed to properly report performance over a critical period*.". He said he'd suffered a financial loss – around £73,000 at that time - and significant stress and anxiety over the matter.

L&G didn't uphold the complaint making the following points in response.

- While it was sorry for the fall in the value of Mr N's pension fund it thought this was due to the recent volatility in world markets and not something it was able to fully control. It said the value of Mr N's pension hadn't been guaranteed in any case.

- It couldn't provide Mr N with advice about the investment of his funds and had simply invested his money according to the instructions it had been given. It wasn't allowed to move his funds – which it thought was Mr N's responsibility if he wanted to make any changes to his investment strategy.
- Being invested within the lifestyle profile didn't mean that there was *no* risk to his funds – which would continue to fluctuate according to market conditions. His funds were simply moved to generally accepted lower risk ones as he approached his retirement date. As he hadn't contacted L&G following the issuing of his retirement

options pack it had extended the retirement date and investment strategy accordingly.

Following further communication Mr N remained unhappy so he bought his complaint to us where one of our investigators looked into it. He didn't uphold the complaint – making the following points in support of his assessment:

- L&G didn't know of Mr N's circumstances when the plan was taken out following the trustee's buyout. Therefore it wasn't able to determine the suitability of the plan for Mr N. it hadn't undertaken to provide advice or the management of Mr N's particular plan on an individual basis.
- The "lifestyle" strategy involved progressively reducing exposure to traditional higher risk funds in favour of traditional lower risk rated funds. This was carried out by moving funds into more "fixed interest" assets and away from equities. L&G made it clear what funds would be used and when and how the process would unfold.
- The falls that were experienced in fixed interest funds were as a result of market factors which L&G wasn't responsible for, although he accepted the falls in value would have been distressing for Mr N and other investors holding such assets.
- He thought the reference to "*periodically reviewing funds to ensure ongoing suitability"* from L&G's policy booklet was referring to the generic suitability of lifestyling not individual suitability.
- L&G's role was primarily to follow the investment instructions it was provided with at inception and if that involved the lifestyle profile then it had to follow the terms of that lifestyling and apply the correct switches of funds at the relevant time points.
- He accepted that L&G hadn't updated Mr N's SRD in the February 2022 statement, and this prevented a future illustration of benefits. But he didn't think this had led to a financial loss.
- The performance of the lifestyle funds was comparable to other benchmarks which would suggest there hadn't been any mismanagement of the funds.
- He didn't think L&G had made any errors or acted unfairly but had carried out its duties in managing the funds as it said it would.

Mr N didn't agree. Principally he said that L&G's failure to provide him with a projection of benefits at his new SRD within the February 2022 statement prevented him from taking corrective actions to stem any further significant losses to his funds. He thought that failure led directly to his losses. He also said that L&G's "*how is my pension pot invested*" booklet – which he received before his original SRD - and stated, "*currently your selected retirement age is 65. You can choose a different age, but we may change how your money is invested to reflect this. The earlier you choose to access your pension pot, the less opportunity there will be for it to grow",* persuaded him that the investment would be adjusted to suit his new SRD.

The investigator thought that L&G's policy booklet was clear in stating how it would manage Mr N's plan for the extended five years after his first SRD.

He also explained that, while he accepted L&G should have provided an updated projection of benefits at the new SRD in the statement of February 2022, he didn't think that would have provided the detail of information Mr N expected concerning "*predictions of the funds he was invested in*". He noted that the future projections were regulatory requirements but simply projected current values forward using prescriptive growth rates set out by the regulator.

Another investigator confirmed that he was of the same opinion so Mr N asked for his complaint to be referred to an ombudsman reiterating his complaint was about L&G's

performance in mismanaging his pension after he deferred his SRD and in not providing critical information which would have alerted him to the likely future (poor) performance of his lifestyle profile funds.

So the complaint has been passed to me to review.

As of 20 June 2023 Mr N's plan was valued at £182,488.10.

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.

And having done so I've reached the same conclusion as the investigator. I know this outcome will disappoint Mr N and I have some sympathy for his position here having suffered a significant loss in his pension fund. I've seen from his submissions how strongly he feels about his belief that L&G neither managed his pension appropriately when he extended his SRD, nor provided him with what he felt was critical information in the first annual statement he received following the SRD deferment.

But I don't think L&G acted unfairly here so I'll explain my reasons.

Mr N has told us that he accepts he was presented with the options available to him when he was approaching his original SRD. He accepts that he made the choice to leave his pension where it was as the brochure he received at the time "*gave me the comfort that the investment would be managed to be relevant to my adjusted retirement age".* Mr N also told us that he isn't complaining about the overall investment performance of the funds involved here – although we wouldn't usually uphold a complaint on the basis of investment performance unless it could be shown that the recommendation was unsuitable. And that situation doesn't apply here as L&G didn't give Mr N any advice as it wasn't mandated to do so.

So my decision concentrates on Mr N's remaining and core complaint points about what happened after his original SRD and the mistakes he believes L&G made after that point to cause his financial loss. I've also looked at Mr N's assertion that L&G failed to provide critical information (and provided an incorrect SRD) in the subsequent statements he received – which he said weren't issued on time – and didn't allow him to make decisions which may have reduced his losses.

<u>What happened following Mr N's original SRD?</u>

Mr N's pension plan was set up through L&G by the trustees of his OPS when the scheme was closed in 2017. The default fund, which the trustees agreed to be used, was L&G's "alternative lifestyle strategy". I've been provided with a copy of the fund factsheet for that strategy which was always available to Mr N following his investment.
The fact sheet set out the aims of the fund which were, "*five years from your retirement date, we will start to gradually move 75% of your savings into a fixed interest fund that aims to provide some protection against changes in the cost of buying an annuity at retirement.*

When you are three years from your retirement date, we will also start to gradually move 25% of your savings into a cash deposit fund that aims to reduce the impact of any sudden falls in the value of your savings as you approach retirement. Automatic switching will stop when you are 12 months from your retirement date.

The aims of this lifestyle profile have been agreed by the Trustees of the (OPS). Please note this does not necessarily mean that this lifestyle profile is suitable for you and your circumstances. It's important to be aware that there are other investment options available to you. This strategy may not be suitable if you don't take pension benefits as intended once you reach your retirement date. It's also important to review your investment strategy on a regular basis, both before and after your retirement date, to ensure that the funds in which your pension pot is invested remain suitable for your needs."

Mr N was automatically invested into this default strategy – although he was able to choose his own funds if he preferred and he could have switched from it at any time. And as he was only around four years from his SRD the gradual switching began straight away so that by the time of his SRD, he was invested around 75% into the Long Gilt fund and 25% in cash.

I think it's worth noting here that a lifestyle strategy is generally accepted as the default investment for a provider seeking to manage investment risks as a pension plan holder's retirement age approaches. This is done by gradually moving investments out of equity type assets into cash and fixed interest assets like Gilts over a number of years. These investments, generally, exhibit lower volatility than equity assets over the long term. However, these strategies don't eliminate risk and in certain situations fixed interest investments can fall in value sharply, as was unfortunately the case here.

So when Mr N approached his original SRD and received his pre-retirement pack he decided to defer taking the benefits. Within the pack L&G set out the conditions for leaving his plan where it was. The brochure said it would "*continue to manage your money in the same way we have been, unless instructed otherwise. You can tell us when you would like to access your pot or, if we do not hear from you, we will automatically extend your retirement age by five years. You can still access your pot in this period."* It went on to confirm that Mr N was "*invested in one of our lifestyle profiles. These Lifestyle Profiles base their investment approach on our chosen retirement age: they move your money into investments that are considered less risky as you approach retirement, which helps to protect your money as you get nearer to accessing it".*

It's important to note that L&G weren't providing Mr N with advice about his arrangements. And I think the information set out in the retirement pack is clear on what L&G's role was and how the arrangement worked. Put simply it would continue with the lifestyle profile strategy – which by that time had invested Mr N's money between the Long Gilt fund and cash – unless he provided an alternative investment choice – which he didn't.

While L&G's original terms and conditions set out the broad aims of lifestyling, the lifestyling profile sheet – which set out the specific aims of the fund that was used – and had been agreed by the OPS trustees – gave no guarantees or assurances about the performance of the fund. It confirmed that lifestyling might not be suitable for every member's situation and it also noted that lifestyling would consist of gradual switching into fixed interest funds – such as gilts here, which aimed to provide *some protection,* but which obviously wasn't a guarantee that investment losses couldn't occur.

This was also supported by the usual generic warning about investments which stated that, *"the value of investments can go down as well as up. This is particularly important if you're approaching your selected retirement date. Lifestyle profiles aren't risk free. They're made up of several funds, each of which has its own level of risk. You can find out more about those risks in our fund factsheets. You can access them from your scheme website or at (L&G's website).* So while Mr N might, understandably, have concluded that his funds were better protected L&G didn't make any such guarantees and clearly warned that investment losses could still happen and that there might be other funds which better suited him and his circumstances.

But the retirement pack also contained other statements to support this message. One of them was that "*it's important to review your ongoing contributions, if you are still making them, on a regular basis against your plans for your pension savings. You should also think about what your pension savings are invested in considering the level of risk you are willing to take. You need to consider whether you are saving enough and how your pension savings will keep up with the cost of living (inflation).*" This didn't tell Mr N what he should do but alerted him to that fact that he ought to consider getting advice and also that L&G was unable to make any investment changes or decisions for him. The "*important information*" section of the pack also supported this idea noting that, "*Leaving money invested: Any money that you leave invested could go up or down in value. Please keep this in mind when considering your options. You should review your retirement plans regularly to make sure your pot is invested in the most suitable way.*"

So as Mr N went past his original SRD, I'm satisfied that L&G set out clearly how it would continue to invest his funds and provided a number of warnings that the performance of the funds wasn't guaranteed and that he should his review his plan to ensure that the funds were, or remained suitable for him throughout. There was also guidance about seeking financial advice and links to the other funds that Mr N might consider more suitable at that time. I don't think L&G mislead Mr N in any way about how it would manage his plan or that it could provide any advice - so the responsibility for the ongoing suitability of his retirement funds lay with him. And I haven't seen any evidence that L&G either guaranteed the performance of its funds or suggested that they would be protected from losing value.

The inference of the aims of the lifestyling profile was that it would reduce Mr N's exposure to more historically volatile assets in favour of traditionally lower volatile ones. The use of fixed interest investments to do this is generally accepted as appropriate leading up to retirement but as I said previously it doesn't eliminate risk.

Mr N has made a number of references to L&G's statements that it would *manage* his funds and periodically review them to ensure they were suitable. But I think this applies to corporate decisions where funds simply aren't appropriate within the range of what L&G offered. There's no evidence to suggest the Long Gilt fund in particular was no longer fit for L&G's purpose – simply that the prevailing market conditions meant it fell in value. And L&G had no authority to either tell Mr N he should switch funds or to make such a switch independently on his behalf. I'm satisfied that it made him aware of the possibility that he could himself switch funds if he was unhappy with how his plan was invested.

I haven't seen any evidence that L&G mismanaged the fund although it's unfortunate how significantly Mr N's particular plan fell in value, and I can understand how upset and disappointed he would have been by that outcome. But I don't think L&G had done anything wrong in the way it managed the lifestyling profile and I haven't seen any evidence that L&G didn't follow the investment strategy set out for the profile. The underlying funds themselves appear to have achieved similar returns to the appropriate benchmark indices, indicating that they didn't perform any worse than comparable funds.

The omission of "critical information" within the annual statements

Mr N also says that L&G didn't update his new SRD or provide interim pension statements in a timely manner. He says that when he did receive a statement the SRD was wrong meaning that it didn't provide a projection of his benefits to the correct SRD. He says had this projection been provided it would have given him valuable information about the future performance of the funds and allowed him to make alternative investment decisions to better preserve his remaining capital. He thinks this was "*gross misadministration*" and instrumental in the further investment losses he suffered.

I've seen a copy of the statement Mr N received that was dated 21 February 2022. I note this statement was sent around a year after Mr N had his SRD extended so I don't agree that this was untimely on L&G's behalf. I note that regular statements were sent in the following years so there's no evidence that L&G either didn't send statements or that they were late. L&G has a regulatory requirement to send out annual pension statements and I can see that it met this requirement. But Mr N is right to say that the first statement from February 2022 still showed his retirement date of 22 January 2021. This was clearly an administrative error from L&G which therefore meant that instead of including an illustration of benefits at his new SRD it included information to suggest he needed to make plans around the options for drawing (or leaving) his benefits.

But it did also include a valuation of his plan, which showed an investment loss over the year of £8,558.10 and confirmed the two funds he was invested in and the percentage of investment in each. It also provided a link to Mr N's online account so that he could review the charges that had been applied and look at example illustrations of how these had affected the plan. It was also noted that fund fact sheets were available online. So although L&G had incorrectly noted the SRD and failed to provide projections, I think Mr N has demonstrated in his submissions that he was aware of this error so I would have expected him to contact L&G in the first instance to ask for the SRD to be corrected and for projections to be issued.

Mr N has told us that he regarded this missing information as critical when evaluating what alternative investments decisions he might need to make, and the statement did say, "*you should regularly review your investment strategy to ensure it's still suitable for you. You can find more information, the fund (s) available and where they are invested, including the asset classes, companies and industry sectors, in the fund factsheets available online through Manage Your Account or your scheme website".*

So although the statements did contain an incorrect SRD and lacked an appropriate projection, I think L&G provided sufficient further information for Mr N to be able to contact it and inform it of the errors, which could then have been corrected – especially as Mr N regarded the information as essential in trying to preserve his plan's value. In addition I think that when Mr N received the first statement, which showed a fall in the value of his plan, he ought to have been alerted to the fact that any mitigation of his position would be his responsibility or at least an indication that he should seek advice.

The first report did cover a years' worth of activity and when Mr N complained he was advised that he could switch funds if he was unhappy. I know Mr N has said that he didn't think it was his role to take over the management of his plan, but I think it was his responsibility as L&G had no mandate to give advice or move his funds independently. The fund managers didn't make any changes to the lifestyling strategy as noted in the fund fact sheets, so it was for Mr N to switch funds if he so wished.

But I've also gone on to consider how the situation might have been different with the inclusion of correct projections within the statement. Mr N has said that "*while I accept an Illustration is not a prediction of existing funds' expected growth rates, the projected values do use specific asset class growth rates and are a very important tool for investors to base decisions on."*

But I don't think the projections would have provided any significant information to help Mr N with his decisions and I think the valuation which showed a loss of just under £9,000 should have been enough for him to consider his alternatives. I say that because within the first correct statement he received dated 24 June 2022, there was section headed "*your projections: what your pension might be worth at retirement in today's terms (buying power).*"

This set out the basis on which the projections were calculated. The assumptions that were used were noted as:

"*Growth Rates and Inflation*

- *The projection takes into account an estimate of the effect of inflation, as measured by the Retail Prices Index.*
  We've assumed an inflation rate of 2.5% each year.

- *Fund Growth Rate Assumptions - the table below shows the yearly growth rate(s), after taking into account the effect of inflation that we've assumed in your projections:*

  Cash 3 -1.5%
  Over 15 Year Gilts Index 3 -1.5%

When a negative (-) sign is shown in front of a growth rate, it means that the assumed return on the investment will not keep pace with inflation. In other words, the buying power of your fund will decrease."

So I don't think the projection information would have given Mr N any further insight or understanding of what might actually happen to his lifestyle strategy investments – in particular the Long Gilt fund. It was based on assumptions that were generic and prescriptive in nature, issued by the regulator, with an allowance made for an assumed rate of inflation – none of which I think would have helped to confirm what the *actual* longer term performance might be for that fund.

The information about underlying performance and past performance would have been available through the fund fact sheets and other relevant documents and this would have provided Mr N with more relevant information about the issues with the fund and the reasons behind that. So I don't think the inclusion of projections within the first statement – which I think was provided in a timely manner – would have supported Mr N's claim that it was critical in his decision making process.

Summary

As I said previously it's very unfortunate that Mr N's plan fell as significantly as it did in value, but this was because of external factors that weren't L&G's responsibility or which it could control. And I don't think this means that the funds were unsuitable as use for lifestyling profiling and should have been replaced or even switched into different funds, but simply that the unfortunate timing of the increased volatility had the effect that it did on Mr N's pension plan.

The fund fact sheet supported this claim as it underlined that, "*the timing of the switches is automatic and happens at fixed times. They don't take market conditions into account…the aim of the lifestyling profile may not match the way you intend to use your pension pot or reflect your attitude to risk.*

Of course Mr N has said that he expected L&G's lifestyling to reduce the risk to his fund and income in retirement and he trusted it to carry out that goal without having to self-manage the funds. But I think the fund fact sheet – which is the most accurate depiction of what the profile set out to do, didn't provide such assurances and should have alerted Mr N to the prospect that it might not be – or remain suitable for him throughout the term of his plan.

And, while the first annual statement Mr N received did contain some inaccuracies and missing information, I don’t think that had any meaningful effect on what actions Mr N could have taken at the time to mitigate his losses. I don’t think L&G has acted unfairly here and I don’t think its responsible for the investment losses, unfortunate as they are, that Mr N suffered.

My final decision

For the reasons that I’ve given I don’t uphold Mr N’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 2 February 2024.

Keith Lawrence
Ombudsman