

The complaint

Mr A complains that ReAssure Limited is responsible for the mis-sale of a personal pension plan to him in 1998.

What happened

The sale of the pension plan was made by another firm. But the responsibility for Mr A's pension plan, and the sale, has passed to ReAssure. So it is ReAssure that needs to deal with Mr A's complaint. In this decision, for ease, I will simply refer to the selling firm as ReAssure throughout.

Mr A was previously a member of an occupational pension scheme that was administered by ReAssure. Mr A left his employer in 1997 and his new employer did not offer a pension scheme. So Mr A approached ReAssure to seek its assistance in making future savings for his retirement.

Mr A had a number of meetings with an advisor from ReAssure. Following those meetings Mr A started to make contributions to a new personal pension plan. His contributions were shared between a managed fund and a with-profits fund.

Mr A has raised a number of concerns with ReAssure about the way in which the new pension plan was sold, whether it was appropriate for his circumstances, and its operation over past 25 years. In this decision I am only dealing with what happened when the pension plan was sold. I will consider the basis of that sale, and whether the pension plan was appropriate for Mr A's needs at that time. But I won't be considering what has happened since, including the investment performance of Mr A's pension savings. Issues arising from matters after the pension plan had been opened will be dealt with in a separate complaint.

Mr A's complaint has been assessed by one of our investigators. He thought that, on balance, it was likely that ReAssure had provided a recommendation to Mr A about starting the new personal pension and making regular contributions. But he didn't think that advice had been inappropriate. Whilst he accepted that Mr A had found the investment performance to be disappointing, he didn't think that was something that could have been reasonably foreseen at the time the advice was given. And he didn't think that the inflexibility of the part of Mr A's pension savings invested into the with-profits arrangement would have caused Mr A to make a different decision had it been better explained at the outset. So he didn't think Mr A's complaint should be upheld.

Mr A didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr A and by ReAssure. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr A met with ReAssure about his pension around 25 years ago. The regulatory regime was very different at that time, and my consideration of what happened must be based on the reasonable expectations of that time. As an example Mr A has raised as part of his complaint whether ReAssure has complied with the regulator's expectations of with-profits funds as set out in chapter 20 of the code of business sourcebook ("COBS"). But those regulations were only introduced in 2007 and didn't apply retrospectively. So they shouldn't form any part of my analysis of what happened, or should reasonably have happened, when Mr A took the pension plan in 1998.

As might be expected for a sale that took place so long ago, there is very little information about the discussions that were held with Mr A about his needs and circumstances. And I am also very mindful that over such an extended period of time even the most careful of memories can, and do, fade. It seems to me that, entirely understandably, some parts of Mr A's complaint have been influenced by the benefit of hindsight, comparing investment returns from the plan he holds with ReAssure to those from other pension plans he holds. So whilst I will of course take Mr A's recollections into consideration, I must also be guided by what I think was most likely to have formed the basis of his discussions with ReAssure at the time.

ReAssure met with Mr A on a number of occasions in the lead up to him starting the pension plan. As Mr A appears to have had little experience in pension matters at that time I think it unlikely that those meetings would have been solely for the purposes of executing his instructions. I think it more likely that ReAssure would have gathered information about Mr A's circumstances and then provided him with advice, or a recommendation, about how he might meet his need to make future pension savings. So I think that ReAssure was responsible for ensuring that its recommendation was appropriate for Mr A's circumstances.

The advisor that met with Mr A was what was known as a "tied" advisor. That meant they could only recommend products offered by ReAssure. They couldn't actively recommend any other products from any other product providers.

However, a tied adviser was required to follow rules set by the regulator who had adopted rules previously set in 1988 by the regulator at that time - LAUTRO (the Life Assurance and Unit Trust Regulatory Organisation). The LAUTRO Code said advisers should maintain high standards of integrity and fair dealing, exercise due skill, care and diligence in providing any services, and generally take proper account of the interests of investors. It added that businesses should give the consumer all information relevant to their dealings with the representative in question.

It seems clear to me that Mr A could reasonably have been considered to have a need to make pension savings. He had left his employer and so was no longer eligible to be a

member of the occupational pension scheme it provided. And his new employer didn't offer a similar arrangement. So it was prudent that he approached ReAssure for advice. And I haven't seen anything to make me think that the recommendation ReAssure gave to Mr A, to open a new pension plan, was inappropriate.

It appears that the advice Mr A was given was to invest half of his pension contributions into a managed fund, and the other half into a with-profits fund. Mr A is particularly concerned that the with-profits fund was not appropriate for his stated needs and circumstances at that time. He says that he told ReAssure that he wanted to be able to change his pension investments if his circumstances changed in the future. And he says he wanted to be flexible with his future retirement date.

As I explained earlier, I need to view the advice that was given to Mr A in light of good industry practice and the relevant regulations of the time. The investment landscape was very different at that time. As an example, the regulator requires firms to provide illustrations to consumers of possible investments returns. There were no prescribed rates in January 1998. Around that time firms were free to choose representative illustrations. But shortly after the advice was given to Mr A, any illustrations were required to use returns ranging from a lower estimate of 8.5% per annum to a higher rate of 13% per annum. Currently those rates would be quoted as being 2% and 8% per annum.

With profits funds were seen as being a good fit to the liabilities and investment profile required for pension investments. They had historically produced consistent and strong returns, with their built-in smoothing offering a degree of stability to the value of pension savings. And Mr A's with profits investments were unitised so the fund behaved in a similar way to other unitised investment funds, except that generally the price was guaranteed not to fall below what had been originally paid for the investment if it was held until retirement.

More recently with-profits funds have seen bonus rates fall markedly from the performance they enjoyed in the 1980s and 1990s. Many funds were invested in shares, so when the stock markets fell in the early part of the 2000s the guarantees that had been built up in earlier years needed to be supported by changes to make use of investments in gilts and bonds that reduced the potential for future growth. And at times market value reductions have been applied to pension investments being taken, or transferred, early to ensure that consumers only receive a fair share of the value of the fund when they decide to cash in their investment.

But many of the problems I've described above could not have been reasonably foreseen when ReAssure gave its advice to Mr A. At that time it would have been possible for Mr A to alter the way in which his pension savings were invested, and it would have been unlikely that he wouldn't have received the full value of any with-profits investments he held. And for similar reasons, given the expectation that investments would continue to grow, I don't think that the possibility of a change in Mr A's retirement date would have caused concerns at that time.

I appreciate that my decision will be disappointing for Mr A. With the benefit of hindsight he has shown that other investment approaches might have resulted in his pension savings having a higher value as he approaches retirement. But I haven't seen anything that would make me think that the advice ReAssure gave to Mr A in 1998 was not appropriate. The way in which his pension contributions were invested would have been considered suitable for a relatively cautious investor, and was likely to have been reasonably thought to provide an appropriate level of return over Mr A's working life. And I don't think that any concerns would have reasonably been held over a lack of flexibility in those investments should Mr A's circumstances have unexpectedly changed.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against ReAssure Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 November 2023.

Paul Reilly
Ombudsman