

## Ombudsman's Determination

Applicant	Dr R
Scheme	ReAssure Personal Pension Plan ( <b>the Plan</b> )
Respondents	ReAssure Limited ( <b>ReAssure</b> )

## Outcome

1. Dr R's complaint is upheld and to put matters right ReAssure shall comply with the directions set out in paragraph 101 below.

## Complaint summary

2. Dr R's complaint is that ReAssure incorrectly classed her contributions as employee contributions. As a result, a number of contributions attracted tax relief and investment growth that she was not entitled to.
3. Dr R has also complained that ReAssure transferred the Plan to another pension provider before it had corrected her contribution history.
4. She has said that due to the level of service she received from ReAssure she has suffered distress and inconvenience and is seeking an appropriate level of award.

## Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
6. Dr R is a member of the Plan, a defined contribution pension arrangement, formerly administered by HSBC Life (UK) Limited (**HSBC**). She paid contributions into the Plan as and when she was able to.
7. Dr R is the director of a limited company, as such, she could either:
  - use the proceeds from her company to pay into the Plan as an employer contribution. By doing so, Dr R could save on corporation tax, and she would be exempt from paying National Insurance on the pension contributions made; or
  - she could pay herself an equivalent salary from the proceeds of her company and make a corresponding 'employee' contribution into the Plan. Employee

contributions can receive up to 20% tax relief, as long as the total contributions are not greater than £40,000 or the employee's annual income, whichever is lower. The tax relief is then claimed by the administrator, added on top of the employee contribution and paid into the Plan.

8. On 23 November 2011, Dr R made a net payment of £25,000 into the Plan as an employee contribution. However, HSBC incorrectly classed it as an employer contribution.
9. On 26 July 2012, Dr R wrote to HSBC, on her companies headed paper, to make a gross payment into the Plan of £50,000. She said the amount would be transferred from her business account and paid into the Plan as an employer contribution.
10. On 7 August 2012, HSBC received the £50,000 employer contribution.
11. In 2014, HSBC made the decision to sell its UK pensions business to ReAssure.
12. On 2 December 2014, Dr R wrote to HSBC, on her companies headed paper, to confirm that she had paid £30,000 into the Plan via three separate payments. She said that each payment should be treated as an employer contribution.
13. On 9 December 2014, HSBC responded to Dr R and confirmed that it had received three sets of employer contributions of £10,000 on 20, 21 and 24 November 2014. A total of £30,000 had been applied to the Plan as an employer contribution.
14. On 26 August 2015, Dr R wrote to HSBC, on her companies headed paper, and said that she was going to pay an employer contribution of £40,000, into the Plan. This would be over four separate payments of £10,000 on 26, 27, 28, 29 August 2015.
15. On 29 August 2015, HSBC had received a total of £40,000 from Dr R and it was applied to the Plan as an employer contribution.
16. On the same day, the sale of HSBC's UK pension business to ReAssure was approved and the Plan was transferred to ReAssure.
17. On 27 October 2015, ReAssure wrote to Dr R and confirmed that the transfer of her benefits from HSBC to itself, was now complete.
18. In May 2016, Dr R telephoned ReAssure and said that she wanted to make an additional contribution via a single contribution top up policy (**the top up policy**). Additionally, she asked ReAssure to send her a unit statement for the Plan.
19. On 5 May 2016, ReAssure sent Dr R a unit statement for the Plan as of 5 May 2016. The statement explained that she had 112,388.4961 units with a fund value of £183,418.03.
20. On 26 May 2016, ReAssure wrote to Dr R about the top up policy and explained that it would run alongside the Plan. When it received a contribution payment, ReAssure would apply it to the top up policy effective from the date of the cheque, or the date it was received by an online bank transfer.

21. On 11 June 2016, Dr R wrote to ReAssure, on her companies headed paper, and said that she intended to pay an employer contribution of £40,000, into the Plan, over four separate payments on 11, 12, 13 and 14 June 2016.
22. On 10 August 2016, ReAssure wrote to Dr R and explained that it could not apply the £40,000 contribution payment, received on 14 June 2016, to the Plan. This was because it would need to setup the top up policy, to run alongside the Plan. So, she needed to complete and return the enclosed declaration forms to make this possible.
23. On 3 October 2016, ReAssure wrote to Dr R because it had not received a response to its letter of 10 August 2016. So, it had refunded the £40,000 contribution to her bank account.
24. On the same day, Dr R telephoned ReAssure about the refunded £40,000 contribution. Dr R returned the signed and completed declaration forms to enable the setup of the top up policy. She explained that:-
  - She called ReAssure, in May 2016, and she was not informed that she would be required to complete any forms in order to pay the £40,000 employer contribution into the Plan.
  - She originally paid the £40,000 employer contribution in June 2016. So, it had taken ReAssure nearly two months to confirm that it required forms to be completed in order to set up the top up policy and apply the £40,000 contribution to it.
  - She had already declared the £40,000 contribution in her company's annual tax statement to Her Majesty's Revenue and Customs (**HMRC**).
  - She was assured during a previous telephone conversation with ReAssure that if she repaid the £40,000 contribution, it would be backdated to 14 June 2016, under the top up policy. So, it should confirm if this was still the case.
25. On 9 October 2016, ReAssure sent Dr R a cheque for £100, in recognition of the inconvenience caused to her by its handling of setting up the top up policy.
26. On 10 October 2016, ReAssure said that once Dr R had repaid the £40,000 employer contribution, it would apply it to the top up policy. The contribution would then be backdated to the 14 June 2016, when she originally paid it.
27. On 12 October 2016, Dr R re-paid the £40,000 contribution to ReAssure in two separate instalments of £20,000. She telephoned ReAssure and asked it to confirm if it had received both payments. However, ReAssure said that it had only received one payment of £20,000.
28. In response, Dr R submitted a formal complaint about the service she had received from ReAssure in the previous months and because it was unable to locate one of the two £20,000 payments that she made on 12 October 2016.

29. On 19 October 2016, ReAssure responded to Dr R's complaint and said that:-
- Following a review of its banking records it had in fact received both of the £20,000 contributions payments. A total of £40,000 had been applied to the top up policy, backdated to 14 June 2016.
  - It understood that she had reported the 14 June 2016 employer contribution to HMRC. If HMRC had any queries about the contributions, she should use this letter to explain the circumstances behind the contribution payments.
  - It understood that she had already been offered £100 for the difficulty she had suffered in setting up the top up policy, and for incorrectly refunding the £40,000 employer contribution. It offered her an additional £100 in recognition of the continued errors.
30. On 12 December 2016, ReAssure sent Dr R a unit statement for the Plan as of 12 December 2016. The statement explained that she had 112,388.4961 units with a fund value of £206,659.96.
31. On 30 September 2017, Dr R paid £30,000 into the top up policy as an employer contribution. However, ReAssure incorrectly applied it as an employee contribution.
32. On 20 November 2017, Dr R paid £15,000 into the top up policy as an employer contribution. However, ReAssure incorrectly applied it as an employee contribution.
33. In February 2018, ReAssure sent Dr A a contribution history statement for the top up policy. It said that she had made the following payments:
- on 14 June 2016, an employee contribution of £40,000 was received;
  - on 17 October 2017, an employee contribution of £30,000 was received; and
  - on 20 November 2017, an employee contribution of £15,000 was received.
34. On 19 February 2018, Dr A responded to ReAssure and explained that:
- She had paid all of the contributions as employer contributions, not employee contributions, so they should not have attracted any tax relief;
  - she had written to ReAssure on her companies headed paper and paid the contributions via her business account. So, it should have been aware that these were employer contributions; and
  - she had declared each contribution payment to HMRC as an employer contribution, not an employee contribution.
35. On 13 March 2018, Dr R telephoned ReAssure to discuss her contribution history to ensure it was correct. She provided it with a detailed history of whether, or not, each contribution should be classed as an employee or employer contribution. In response,

ReAssure confirmed that it would review the information provided and respond to her accordingly.

36. On 14 March 2018, ReAssure wrote to Dr A and confirmed that it agreed with the contribution history she had provided for the Plan and the top up policy. However, ReAssure's letter did not confirm whether it had taken any steps to amend the incorrectly classed contributions, or whether it had contacted HMRC about the incorrectly claimed tax relief. At this time, Dr R says she believed that ReAssure had corrected all of the incorrect contributions and that the Plan and the top up policy were now correct.
37. On 5 December 2018, Dr R paid a £20,000 employee contribution into the top up policy, via an online bank transfer.
38. In early January 2019, Dr R contacted ReAssure and asked for a full list of the funds available to her under the top up policy as she wished to split the £20,000 paid in December 2018 between a new set of funds. In response, ReAssure provided Dr R with a list of funds available under the top up policy.
39. On 21 February 2019, Dr R telephoned ReAssure because she believed that she had been provided with a list of fund choices that were not available to her.
40. On 5 March 2019, ReAssure responded to Dr R and apologised for the provision of incorrect fund choices. It provided her with the correct information and said that when it had received her fund choices, it would compare the current unit prices, for the chosen funds, with an earlier date of 5 December 2018. This was to ensure she had not suffered a financial loss by being provided with incorrect information. Additionally, in recognition of the errors it would send her a £50 gift card.
41. On 10 March 2019, Dr R provided ReAssure with a list of the funds she wished for the 5 December 2018 contribution to be split between.
42. In April 2019, Dr R contacted ReAssure and requested a contribution history statement for the Plan.
43. On 15 April 2019, ReAssure responded to Dr R and explained that it could not provide the Plan's contribution history. This was because no contributions had been paid into the Plan in the last two years.
44. On 25 April 2019, ReAssure wrote to Dr R about the £20,000 contribution that she had paid into the top up policy on 5 December 2018. It explained that:-
  - It had applied the £20,000 contribution to the top up policy with an effective date of 5 December 2018, split between her chosen funds.
  - She had not been disadvantaged by the provision of the incorrect fund choices, because the contribution had been invested as of 5 December 2018.

45. In early May 2019, Dr R appointed an Independent Financial Adviser (**IFA**) to help her transfer the Plan and the top up policy to AJ Bell. She says she took this step because of the numerous errors that she had encountered with ReAssure
46. In May 2019, Dr R contacted ReAssure to enquire about the contributions she had paid into the Plan. She requested a contribution history statement for the Plan.
47. On 10 May 2019, ReAssure sent Dr A a contribution history statement for the Plan. It explained that it had only received two contributions since the Plan was established, these were:
  - an employer contribution of £25,000, received on 23 November 2011; and
  - an employee contribution of £40,000, received on 29 August 2015.
48. On 21 May 2019, Dr R contacted ReAssure and explained that a number of contributions were missing from the Plan. The statement indicated that she had only paid two contributions, when, in fact, she had paid four contributions into the Plan.
49. She provided ReAssure with a schedule detailing when she paid each contribution into the Plan and top up policy. Additionally, the table detailed whether each payment was an employee, or employer contribution.
50. On the same day, ReAssure telephoned Dr R to discuss her contribution history. During the telephone conversation, it was discovered that a number of Dr R's contributions were missing. Additionally, a number of contributions had been incorrectly classed as either employee or employer contributions in both the Plan and the top up policy.
51. In response, Dr R said that she did not want to proceed with a transfer until ReAssure had amended both the Plan and the top up policy. She asked ReAssure to provide:
  - a schedule of contributions for both the Plan and the top up policy;
  - a schedule of contributions following any and all corrections once applied; and
  - a current fund value for both the Plan and the top up policy once any corrections and missing contributions had been applied.
52. On 21 May 2019, AJ Bell submitted a transfer request via an online transfer system, Origo.
53. On 23 May 2019, ReAssure wrote to Dr R and confirmed that it had transferred the Plan's value of £232,947.63, to AJ Bell.
54. On 28 May 2019, Dr R submitted a formal complaint to ReAssure about the management of her contribution payments between the Plan and the top up policy. She also complained that ReAssure had transferred the Plan before it had undertaken any action to correct the Plan's contribution history.

55. On the same day, ReAssure telephoned Dr R and said that it had located all of the missing contributions for the Plan and the top up policy. The missing contributions would be re-applied to the Plan once it was received back from AJ Bell. Additionally, it had re-applied the missing contributions to the top up policy as at the dates she had originally paid them in.
56. In response, Dr R said that while all of the contributions were accounted for in the Plan, a number of them had been incorrectly classed as employee contributions. This had attracted tax relief that she was not entitled to. Further, a number of the top up policies contributions had been incorrectly classed and needed to be amended. Once both the Plan and the top up policy had been corrected she could then transfer her benefits to another provider.
57. On 30 May 2019, after corresponding with both AJ Bell and the IFA, the Plan's value was repaid to ReAssure. It was then reinvested as at the date of the original transfer, to ensure Dr R had not suffered a financial loss and all of the missing contributions were re-applied as at the dates they were originally paid.
58. On 18, 24 and 27 June 2019, Dr R and the IFA contacted ReAssure to follow up on when the corrections to the contributions would be complete.
59. On 3 July 2019, ReAssure wrote to Dr R and confirmed that it had reapplied a contribution of £40,000, received on 14 June 2016, as an employer contribution instead of an employee contribution. It was still reviewing other contributions she had queried, so it could not issue a unit statement at present.
60. On 12 July 2019, ReAssure responded to Dr R's complaint from 28 May 2019, and explained that:-
  - It understood that she was unhappy that it transferred the Plan to AJ Bell despite her instructions not to until the Plan's contribution history was corrected.
  - It provided a summary of the discrepancies found within her contribution history for the Plan and the top up policy (**see appendix**).
  - AJ Bell had submitted a request through the Origo transfer service. It was standard industry practice for a receiving scheme to request a transfer without the member completing a "Payment Release Form".
  - It accepted that it was aware of the contribution discrepancies, so, it should have ensured the contributions were amended before the transfer took place.
  - It had located all of the missing contributions paid into the Plan and the top up policy. Each contribution was applied as of the date it was received.
  - One contribution paid into the Plan, and three contributions paid into the top up policy were incorrectly treated as employee contributions instead of employer contributions. These contributions had attracted tax relief that Dr R was not entitled to.

- It would inform HMRC that the amended contributions were employer contributions so that its records matched Dr R's tax returns.
- Once it had applied all of the necessary corrections it would calculate whether she had suffered a financial loss. If she had, it would cover the shortfall.
- It would provide her with a corrected statement for each of the incorrectly classed contributions.
- It offered Dr R £175 in recognition of the distress and inconvenience she had suffered as a result of its errors.

61. On 23 July 2019, ReAssure wrote to Dr R and confirmed that any incorrectly classed employee contributions had been amended to employer contributions. However, a contribution paid on 23 March 2018, was correctly classed as an employee contribution. It provided the following table:

<b>Date of Contribution</b>	<b>Gross Contribution</b>	<b>Net Contribution</b>
23rd November 2011	£25,000.00	£25,000.00
31st July 2012	£50,000.00	£50,000.00
20th November 2014	£10,000.00	£10,000.00
21st November 2014	£10,000.00	£10,000.00
24th November 2014	£10,000.00	£10,000.00
29th August 2015	£40,000.00	£40,000.00
14th June 2016	£40,000.00	£40,000.00
20th November 2017	£15,000.00	£15,000.00
23rd March 2018	£12,500.00	£10,000.00
Total	£212,500.00	£210,000.00

62. On 25 July 2019, ReAssure wrote to the IFA and confirmed that the Plan had been reinstated. As of 24 July 2019, the Plan's value was £229,328.69.
63. On 18 September 2019, Dr R telephoned ReAssure because she had not received any revised contribution statements for the incorrectly classed contributions for the Plan or the top up policy. ReAssure apologised for the oversight and said that it would provide the statements as soon as possible.
64. On 3 October 2019, ReAssure wrote to Dr R and apologised that it had not sent her the revised contribution statements. It provided her with:-
- Revised statements for the contribution's payments received on 29 August 2015, 14 June 2016, 20 November 2017 and 28 March 2018.
  - It had initially sent revised unit/contributions statements, for the top up policy, to the IFA. Additionally, it was in the process of calculating a unit statement for the Plan.



- In recognition of the time taken to provide the revised statements it increased its offer of £175 to £250 for the delays she had experienced.
65. On 10 October 2019, ReAssure sent Dr R a unit statement for the Plan. It said that, as of 8 October 2019, the Plan's fund value was £227,718.03 and the unit holdings were 105,964.6508.
  66. On 15 October 2019, Dr R telephoned ReAssure because the unit statement for the Plan had decreased by 6,423.8453 units without explanation. She said that ReAssure should send her a breakdown of the contributions that were used when calculating the unit statement for the Plan.
  67. On 27 November 2019, ReAssure wrote to Dr R and explained that, initially a payment made on 29 August 2015, was incorrectly classed as an employee contribution attracting tax relief. Following the corrections to the Plan the payment was amended to an employer contribution and the tax relief was removed. As a result of the correction, the unit holdings decreased by 6,423.8453 units.
  68. In early May 2021, ReAssure sent Dr R a statement for the top up policy which said that the top up policy fund value was £75,830.59.
  69. On 18 May 2021, Dr R wrote to ReAssure because, previously, she had been informed that the fund value for the top up policy was nearer to £150,000. She said that ReAssure should provide her with a breakdown of the contributions paid into the top up policy.
  70. On 8 April 2021, ReAssure responded to Dr R and apologised for the incorrect statement. It provided her with a manually calculated statement for the top up policy that said her fund value, as of 7 April 2021, was £170,988.18.
  71. In October 2019, Dr R contacted the Pensions Ombudsman (**TPO**) to investigate her complaint against ReAssure regarding its management of the Plan and the top up policy.
  72. Dr R has said that she has been unable to claim or transfer her benefits because she is unsure whether either of the Plan or the top up policy values are correct.
  73. During the course of TPO's investigation it was discovered that a number of Dr R's contributions in both the Plan and the top up policy were still incorrectly classed as employee contributions when they should have been employer contributions. This was despite ReAssure's assurances, in 2019, that it had amended any incorrectly classed contributions.
  74. Since 2019, TPO has requested corrections to be made, and the matter resolved but despite saying it would resolve the issue ReAssure has not yet made the necessary amendments.

## **Adjudicator's Opinion**

75. Dr R's complaint was considered by one of our Adjudicator's who concluded that further action was required by ReAssure. This was because ReAssure failed to apply a number of corrections to Dr R's contributions when it said that it had in 2019. The Adjudicator's findings are summarised in paragraphs 76 to 84 below.
76. Over the course of 10 years ReAssure incorrectly classed a number of payments as employee contributions instead of employer contributions. Consequently, the contributions attracted tax relief and investment growth to which Dr R was not entitled.
77. ReAssure was also unable to locate several contributions that Dr R paid into the Plan and the top up policy. However, after reviewing the matter the Adjudicator was satisfied that ReAssure had located and applied any missing contributions that Dr R had paid into the Plan and the top up policy.
78. The Adjudicator stated that had ReAssure reviewed the payments more closely, it would have been apparent that these were employer contributions, not employee contributions. Furthermore, if ReAssure was ever unsure of how Dr R's contributions should have been applied, it would have been considered good practice for it to have contacted her to query this. Had ReAssure done so, it is likely that a number, if not all of Dr R's contributions would have been correctly classed.
79. Since the Adjudicator's investigation, ReAssure discovered that, despite its previous assurances, it has not in fact corrected any of the incorrectly classed contributions. A number of contributions were still showing as employee contributions instead of employer contributions. Specifically, contributions paid on 29 August 2015, 14 June 2016, 20 November 2017 and 5 December 2018, are still incorrect.
80. During ReAssure's communications with Dr R it said that a contribution paid into the Plan on 23 November 2011, was incorrectly classed as an employer contribution when it should have been an employee contribution. Given that ReAssure failed to amend the incorrectly classed contributions between 2015 and 2018, it is unclear whether, or not, the contribution paid on 23 November 2011, was actually corrected.
81. The Adjudicator believed that ReAssure had not taken any steps to correct the Plan or the top up policy apart from locating a number of missing contributions. So, ReAssure had failed to return Dr R to the correct position had it not been for the maladministration. This will have undoubtedly exacerbated Dr R's distress and inconvenience.
82. Dr R specifically informed ReAssure that, until all of her incorrectly classed contributions were corrected, a transfer to AJ Bell should be suspended. By transferring the Plan to AJ Bell, against Dr R's wishes, and before any corrective work had been undertaken on the contributions, ReAssure's actions amounted to maladministration.

83. The Adjudicator stated that ReAssure’s maladministration materially affected Dr R as it dated back over a period of 10 years. ReAssure had therefore missed a number of opportunities to resolve this matter both over the past 10 years and more recently, despite a number of attempts by TPO and Dr R to have her benefits corrected; which at present remains unresolved. This has affected Dr R’s retirement plans as she is unable to transfer her benefits to another provider because she is unsure whether her contribution history is correct. Nor is she able to claim her benefits should she wish to do so, as she has no confidence that the Plan and top up policy values are correct.
84. During the Adjudicator’s investigation, a number of information requests were made to ReAssure in order to fully understand Dr R’s position within the Plan and the top up policy. On a number of occasions ReAssure were extremely slow to respond to the Adjudicator’s information requests and in some cases no response was received. This amounts to further poor administration and will only have acted to compound the distress and inconvenience Dr R has already suffered due to ReAssure’s errors.
85. Dr R accepted the Adjudicator’s Opinion, in part, but asked for the complaint to be passed to me to consider. I agree with the Adjudicator’s Opinion and note the additional points raised by Dr R. In summary Dr R has said:-
- The value of the top up policy was overstated as several contributions were incorrectly invested attracting tax relief and investment growth to which she was not entitled. Consequently, she believed that the top up policy was performing better than it actually was. had she known the correct value, she would have made several fund switches to achieve increased investment growth.
  - She had incurred a tax charge of £14,728.12, which she paid on 4 May 2021. This was a result of going over the annual allowance of £40,000<sup>1</sup> for tax year 2017/18. She claims this was due to the tax relief the incorrectly classed contributions attracted between tax years 2017/18.
  - The award for non-financial injustice did not reflect the distress and inconvenience she had suffered over the past 10 years due to ReAssure’s maladministration. It should be increased to reflect more adequately what she had suffered.
86. Dr R provided a schedule of contributions for both the Plan and the top up policy. This was forwarded to ReAssure, to use as a template when making any corrections to her contributions in either the Plan or the top up policy:

**The Plan contribution schedule**

Date of Contribution	Gross Contribution	Net Contribution	Comment Gross/Net
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<sup>1</sup> The annual allowance is the maximum amount of pension savings an individual can make each year with the benefit of tax relief. This includes pension contributions made by the individual, their employer or a 3<sup>rd</sup> party.

23-Nov-11	£25,000	N/A	Paid as gross
31-Jul-12	£50,000	N/A	Paid as gross
20-Nov-14	£10,000	N/A	Paid as gross
21-Nov-14	£10,000	N/A	Paid as gross
24-Nov-14	£10,000	N/A	Paid as gross
29-Aug-15	£40,000	N/A	Paid as gross
Total contributions	£145,000		

### The top up policy contribution schedule

Date of Contribution	Gross Contribution	Net Contribution	Comment Gross/Net
14-Jun-16	£40,000	£40,000	Paid as gross
30-Sep-17	£30,000	£30,000	Paid as gross
20-Nov-17	£15,000	£15,000	Paid as gross
23-Mar-18	£12,500	£10,000	Paid as net
05-Dec-18	£25,000	£20,000	Paid as net
Total contributions	£122,500		

87. Prior to the Adjudicator issuing his Opinion, ReAssure had agreed that several of Dr R contributions remained incorrectly classified despite assurances, in 2019, that they had been corrected. However, despite a significant number of attempts by the Adjudicator to contact ReAssure between July 2022 and October 2022, ReAssure did not respond to, or provide any comments on the Adjudicator's Opinion.

### Ombudsman's decision

88. Dr R's complaint concerns ReAssure's continued mishandling of her contribution payments in both the Plan and the top up policy. This has led to a degree of uncertainty for Dr R on whether the Plan and the top up policy's contribution history, and value, is correct.
89. On 18 May 2022, during the Adjudicator's investigation, ReAssure confirmed that four contributions paid between 2015 and 2018 were still incorrectly classed as employee contributions instead of employer. This was despite a number of assurances, in 2019, that Dr R's contribution history had been amended. Consequently, these contributions have attracted tax relief and investment growth to which Dr R is not entitled and remains in both the Plan and the top up policy. This has had a substantial impact on Dr R's understanding of her current financial position with regard to her retirement benefits.
90. I find that there is no dispute that the errors identified and ReAssure's actions amount to multiple acts of maladministration. As maladministration has occurred, the normal course of action would be to put Dr R back into the position she would have been in had the errors not occurred. Dr R has provided detailed contribution history schedules for both the Plan and the top up policy. The schedules were forwarded to ReAssure

to ensure that any amendments were made in accordance with Dr R's initial instructions over the previous 10 years.

91. Since May 2022, ReAssure has failed to provide confirmation that it has successfully amended Dr R's contributions, or when it is likely to do so. Nor has ReAssure confirmed what steps have been taken, so far, to put Dr R back into the correct position regarding the removal of any incorrectly applied tax relief and investment growth. So, I am unable to determine the correct financial position for Dr R's Plan.
92. I appreciate amending several incorrectly classed contributions dating back more than five years ago is a complex task. However, it has now been more than six months since ReAssure discovered that no corrective actions had been undertaken in 2019 and I note, despite several chases by my Office, it appears little further progress has been made to resolve this issue.
93. I find that it has taken ReAssure an unreasonable amount of time to correct Dr R's contribution history. This will have certainly impacted the options available to Dr R in regard to her retirement benefits. In particular, until the necessary corrections have been made, Dr R is unable to either transfer her benefits to another pension scheme or claim her benefits, should she wish to do so. This will have undoubtedly added to any distress and inconvenience that Dr R has suffered over the years due to ReAssure actions, or inaction.
94. Dr R submits that, because the value of top up policy was overstated, she has been unable to effectively manage the top up policy. Had she known the correct value of the top up policy, less the tax relief and investment growth, she said that she would have made different investment choices in an attempt to generate greater investment growth. While I appreciate the view that Dr R has taken on her ability to manage the top up policy, the option to manage and amend her investment options was always available to her regardless of the fund value or ReAssure's errors. Her decision not to make any fund switches is not something for which ReAssure can be held accountable.
95. Dr R has provided evidence that, in May 2021, she paid a tax charge of £14,728.12 to HMRC. She has explained that following a self-assessment, in 2019, HMRC said that she had gone over the annual allowance limit for tax year 2017/18. Dr R paid three separate contributions into the top up policy in tax year 2017/18. ReAssure has already confirmed that the contribution paid on 20 November 2017 was incorrectly treated as an employee contribution and attracted tax relief.
96. Given that ReAssure, has yet to correct Dr R's contribution history it is unlikely that any rectification has been undertaken to remove any tax relief that she is not entitled to. Also, it appears unlikely that ReAssure has updated HMRC on the current situation. This will certainly have unduly affected her tax status over a number of tax years.
97. It is possible that once ReAssure has amended the contributions, removed the tax relief and updated HMRC Dr R could receive a tax rebate. However, until ReAssure

has completed the retrospective corrections it is unclear what Dr R's correct and current tax position should be. I find that this would have further compounded any distress and inconvenience she has already suffered.

98. Having reviewed the matter in detail it is evident that ReAssure's maladministration has stretched back over a number of years. This has resulted in severe consequences for Dr R and her ability to plan for her impending retirement has been impeded. This has been further exacerbated by ReAssure's continued inability to resolve the issue in a timely manner.
99. I appreciate that ReAssure has said that it is taking steps to return Dr R to her correct position. However, despite multiple requests for information on ReAssure's progress in the matter, it has been unacceptably slow to act or communicate effectively with my Office. It is for this reason that I agree with the Adjudicator that the non-financial injustice Dr R has suffered is exceptional and the award for distress and inconvenience should reflect this.
100. I uphold Dr R's complaint.

## **Directions**

101. Within 28 days of the date of this Determination, ReAssure shall:-

- (i) Review the schedules provided by Dr R and correct any contribution that has been incorrectly classed as either employee or employer contribution. If ReAssure disagrees with Dr R's schedules it should liaise with her further;
- (ii) Following any amendments to any incorrectly classed contributions, appropriate amendments should be made by adding, or removing, any tax relief/investment growth in accordance with how the contributions should have been classed;
- (iii) Inform HMRC of what corrective actions have been made so that HMRC's records align with Dr R's tax returns. ReAssure should also meet any reasonable costs that might arise as a result of this;
- (iv) Produce a schedule which confirms each of the contributions that Dr R has paid into the Plan and the top up policy. This schedule should detail whether a contribution has been classed as, either an employee or an employer contribution;
- (v) Provide the schedule and a detailed explanation of the corrective actions made to the Plan and top up policy to Dr R so she can ensure that she is confident that both are correct;
- (vi) Pay Dr R, in addition to the £500 already paid, £2,500 in recognition of the exceptional distress and inconvenience caused; and
- (vii) If ReAssure fail to provide the information above within 28 days, then it shall pay Dr R an additional payment of £200 for each further week of delay.

CAS-40374-Q1Q2

**Anthony Arter**

Pensions Ombudsman  
27 October 2022

## Appendix

### “Your complaint

I understand that you're unhappy we transferred your policy to AJ Bell without your consent and whilst your premium history was incorrect. You've raised the following discrepancies with respect to your single premiums:

- In tax year 2011/12 you paid £25,000 which HSBC invested as gross, when £25,000 should have been the net figure as you'd made an employee contribution.
- We've said £50,000 paid on 15 December 2012 is missing. This should have been an employer contribution.
- We've said £10,000 paid on 20 November 2014, 21 November 2014 and 24 November 2014 is missing. This should have been an employer contribution.
- In tax year 2015/2016 you paid \$40,000 which we have treated as an employee contribution, when it should have been gross as it was an employer contribution.
- The contributions of £40,000 paid on 14 June 2016 and £15,000 paid on 20 November 2017 have been treated as employee contributions when they were employer contributions.
- We've said £10,000 paid in the 2017/2018 tax year is missing. This should have been an employee contribution.”