

The complaint

Mrs P has complained about Scottish Equitable Plc trading as AEGON Scottish Equitable (“Aegon”) as she feels it didn’t carry out the necessary due diligence when she transferred her pension.

Mrs P is represented by a claims management company; however for ease I’ll refer to Mrs P throughout my decision.

What happened

Mrs P held a personal pension with Aegon. In 2014, she says:

- she was approached by a business called One Consultancy Limited, who offered her a free review of her pension
- One Consultancy recommended that she transfer her pension to the Genwick Retirement Benefit Scheme, which was administered by Deuten Services Limited
- One Consultancy said her Aegon pension wasn’t performing well and that she could get better returns with Genwick.

On 28 October 2014 Deuten sent the relevant documentation to Aegon for it to transfer Mrs P’s pension. On 30 October 2014 Aegon wrote to Mrs P asking her to provide various information and to confirm that she wished to proceed with the transfer. Enclosed with the letter was a leaflet from The Pensions Regulator (the “Scorpion leaflet”), which the letter said outlined the possible risks associated with transferring the pension.

Mrs P wrote to Aegon on 18 November 2014 providing the information. She also said she hadn’t received any advice and wasn’t going to get any; and she confirmed her wish to proceed with the transfer. Aegon started the process, and it transferred Mrs P’s pension funds on 26 November 2014. The funds were then placed in various investments, which Mrs P says are now illiquid and have no value.

In February 2020 Mrs P complained to Aegon. Her complaint centred on the fact that she didn’t think Aegon had carried out suitable due diligence into Genwick before allowing the transfer to proceed. She felt Aegon should have identified warning signs from The Pensions Regulator’s guidance; and should have contacted her to establish her understanding of the proposed scheme and what advice she’d received.

Aegon said its initial due diligence checks revealed concerns that The Pensions Regulator had identified as “higher risk”, so it asked its financial crime team to carry out further checks. The financial crime team said they’d recently carried out further checks following another consumer’s transfer request – which included it receiving letters from the receiving scheme’s solicitor and accountant explaining why transfers to Genwick should proceed. Following this, the letter dated 30 October 2014 was sent to Mrs P. So it felt it had done the necessary due diligence, and that Mrs P had decided to proceed with the transfer despite the warnings contained in the Scorpion leaflet.

Our investigator didn't think the complaint should be upheld. This was because he felt Aegon had made the necessary checks into Genwick and had sufficiently warned Mrs P of the risks. Mrs P disagreed with our investigator. She said, amongst other things:

- there were clear warning signs that ought to have caused Aegon concern
- had risk warnings been provided she would have been better equipped to make an informed choice about the transfer
- it was inappropriate for Aegon to rely on the fact that Genwick had an HMRC registration certificate as HMRC carried out minimal checks as to the legitimacy of pension schemes
- she didn't receive the Scorpion leaflet and Aegon has no evidence to show it was provided; had she received it she would have thought further about the risks
- Aegon was aware of the involvement of third parties, so it should have been concerned about Mrs P telling it that she'd not received regulated advice.

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.

Much of Mrs P's argument centres on the various warning signs, the actions Aegon should have taken to identify them, and that the signs ought to have caused Aegon concern. I don't think the outcome of this complaint turns on precisely how many warning signs Aegon could or should have identified. I say this because Aegon has already effectively admitted that it had identified some warning signs – hence why it initially referred the transfer request to its financial crime team, and then wrote to Mrs P on 30 October 2014. In my view, this case turns on whether having noted the warning signs Aegon took sufficient action to warn Mrs P about the potential risks.

What rules or guidance was Aegon expected to follow at the time of the transfer?

In February 2013 a campaign (known as the Scorpion campaign) was launched and The Pensions Regulator issued guidance. In summary, the campaign provided an 'action pack' that highlighted various warning signs present in a number of examples. These warning signs included the consumer being cold called, their money being transferred overseas and incentives being given to transfer pensions. The action pack suggested that transferring schemes "look out for" these signs. And where they had concerns they were encouraged to consider delaying the transfer or seeking legal advice.

The action pack provided a checklist that transferring schemes *could* use *if* they had concerns. This left some ambiguity as to whether they were expected to conduct in-depth enquiries in every case, but some of this was resolved by the fact that The Pensions Regulator expected transferring schemes to send the Scorpion leaflet to consumers at the same time as the transfer quotation.

The Scorpion campaign was rebranded in July 2014. The guidance set out a range of things a business *could* do in cases where it had identified that there were potential warning signs of pension liberation or scams:

- contacting the consumer to establish their understanding of the type of scheme they're transferring to
- sending the Scorpion leaflet
- phoning, writing to or emailing the consumer to help answer some of the questions in the checklist
- directing the consumer to Action Fraud or to The Pensions Advisory Service.

Sitting alongside this were various principles and rules issued by the financial services regulator – such as treating customers fairly and acting in their best interests.

With all this in mind, I think the minimum a transferring scheme needed to do in cases where it had identified that there were potential warning signs of pension liberation or scams was:

- write to or phone the consumer directly (ie not a third party) explaining that there are risks in the transfer
- include the Scorpion leaflet if one hadn't been sent directly with the transfer quote
- not immediately proceed with the transfer – in order to allow the consumer time to reflect on the letter and insert.

To avoid any doubt, there has never been a requirement for transferring schemes to definitively assess whether pension liberation or a scam is taking place, or if the transfer and underlying investments are suitable for the consumer.

Were Aegon's actions sufficient?

The only real action Aegon took in terms of communicating with Mrs P was the letter it sent on 30 October 2014, which said:

- Aegon had the right and duty to carry out checks on pension schemes
- these checks could delay the transfer and it might not be able to transfer the pension
- but it would consider any supporting documentation Mrs P provided, including:
 - details of the receiving scheme's trustees
 - details of the financial adviser who gave the advice (including their Financial Conduct Authority authorisation number)
 - copies of any letters, emails, brochures or other marketing materials she'd received that provide information about the scheme and its charges
- if Mrs P still wanted to transfer her pension, it needed her to confirm it in writing.

The letter also enclosed the Scorpion leaflet.

I don't think this letter was in line with how The Pensions Regulator expected a "warning" to be delivered. I say this because the letter didn't say there were risks with the transfer that Aegon had identified. In effect, it couldn't do that because Aegon was still asking Mrs P for information in this letter so that it could complete its due diligence and then decide to what extent it needed to warn Mrs P further.

However, I think the overall content of the letter – particularly reference to the Scorpion leaflet and the risks the leaflet highlighted – was suggestive enough that there were risks involved. In any event, I think if Aegon's letter had been more explicit its messaging most likely would have been along the same lines as the Scorpion leaflet. And Mrs P continued with the transfer despite knowing the risks outlined in the leaflet and what to look out for eg being approached out of the blue, being offered a free review of her pension. So if Aegon had set out warnings – either in the 30 October 2014 letter or in a later one after Mrs P had provided the information asked for – I think it's most likely that Mrs P would have continued with the transfer anyway.

I've noted Mrs P's comment in response to our investigator that she never received the Scorpion leaflet. I think it's most likely that one was enclosed with the letter. I say this because, contrary to what she's now told our investigator, when she complained to Aegon the accompanying letter said "Throughout the transfer process, there was no direct contact

between [Mrs P] and Aegon about the transfer save of a letter from Aegon dated 30 October 2014 *which simply enclosed a copy of the Scorpion warning*" (my emphasis). This suggests to me that the Scorpion leaflet was enclosed with the letter.

I'm not persuaded that Aegon would routinely not have enclosed a leaflet it said it was enclosing. But even if Mrs P didn't receive the leaflet, I think this is something she ought to have raised with Aegon at the time. I say this because Aegon's letter put her on notice that a leaflet from The Pensions Regulator was supposed to have been enclosed, and the importance of the leaflet was implied given it set out "the possible risks associated with transferring your pension". So if one wasn't enclosed I think Mrs P should have contacted Aegon at the time to ask for one to be sent.

Mrs P has argued that Aegon should have been concerned once she'd told it that she'd not received any regulated advice. Much like the issue with the Scorpion leaflet, Mrs P has been inconsistent in respect of whether she received any advice – prior to the transfer she confirmed she hadn't received any; but when she complained she said she received a recommendation that she should transfer her pension to Genwick. In any event, having already sent Mrs P the Scorpion leaflet and having effectively been told that despite the warnings in the leaflet Mrs P wanted to continue with the transfer, I don't think Aegon needed to press her further.

There has to come a point where Aegon simply has to process the transfer as requested and I think that point had been reached in this case. I don't think Aegon "raised the white flag" as soon as Mrs P responded and simply proceeded with the transfer – it had information on its file from professionals such as Genwick's solicitor and accountant that the Genwick scheme had a valid trust deed and rules, it could admit non-employees, it was correctly registered with HMRC and the trustee seemed qualified to operate it. So I don't think Aegon had a legitimate reason to delay the transfer further or refuse it.

In respect of Aegon processing the transfer, I'm satisfied that it wasn't done immediately and that Mrs P was given sufficient time to consider the Scorpion leaflet and Aegon's letter.

Summary

For the reasons outlined above, I conclude that Aegon took sufficient action to warn Mrs P about the potential risks of her proposed transfer. But, in any event, even if it didn't, I think Mrs P most likely would have transferred anyway.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 March 2022.

Paul Daniel

Ombudsman