DRN-3249092

The complaint

Mr H complains that Scottish Equitable Plc, trading as Aegon, delayed a transfer from a Group Personal Pension (GPP) he held with it, to a Self Invested Personal Pension (SIPP), he had also set up with Aegon.

As a result of the delays Mr H says he was out of a rising market for '*a considerable and unnecessary amount of time'*. In order to put matters right Mr H wants Aegon to compensate him for any investment loss he has suffered as a result of avoidable delays on its part.

What happened

Mr H holds a GPP with Aegon. I understand that, following a recommendation by his financial adviser, Mr H decided to transfer 75% of the funds held in his GPP, around £732,000, to a SIPP, also held with Aegon.

A completed transfer form was submitted to Aegon on 27 October 2020. The money from Mr H's GPP was received into the SIPP on 10 November 2020 and it was invested shortly afterwards.

Mr H complained to Aegon about the length of time it had taken to complete the transfer. He said he felt that it should have been possible for the transfer to have been completed and his funds invested by no later than 3 November 2020.

Aegon did not uphold Mr H's complaint. It said its internal service level agreement allowed up to ten working days for processing a transfer request and a further three to five working days for funds to clear. As Mr H's money had been transferred within these timescales it said it didn't think it had unduly delayed the transfer to his SIPP.

Mr H was not satisfied with Aegon's response and referred his complaint to this service. He said; *'…there were numerous delays which took place and I was out the market (a rising market) for a considerable and unnecessary amount of time and thus suffered financial detriment ... They hide behind an SLA which I have not signed up to, know nothing about …This simply allows Aegon to make as many errors as they like as long as they are within their purported 10 day SLA.'*

Having considered Mr H's complaint, our investigator said they felt Aegon had delayed the transfer. They noted that as the transfer Mr H had requested was over £250,000 Aegon had carried out additional checks before processing the request. Our investigator said they felt this was reasonable.

But they noted there was a delay in carrying out these additional checks. In particular, Aegon said that when Mr H's transfer request was reviewed by a more senior member of staff on 2 November 2020, the checker was unable to authorise the transfer payment. Aegon said this was because there was an 'outside trigger' on the policy that needed to be removed before the transfer could be authorised. It later came to light that the 'trigger' was caused because the monthly charge for Mr H's GPP fell due on 1 November 2020. Aegon said this had prevented the transfer being authorised as it would not have been possible for an accurate transfer value to be calculated.

Aegon said the trigger was removed on 4 November 2020, and the additional checks were then carried out on 5 November 2020. Our investigator noted that this delayed the transfer of Mr H's funds by 3 working days.

In order to put matters right, they said that Aegon should calculate whether Mr H had lost out financially as a result of this delay. If Mr H had lost out, they said Aegon should put Mr H in the position he would have been in, if his fund transfer had not been delayed.

Aegon did not accept our investigator's view. It said, it had *'…a service standard in place for completing transfers out … this timescale (of 10 working days) was met. Our payment authorisation check identified a trigger to collect the monthly charge, which became due the day after the item of work was passed to checking. I don't believe this represents an error on Aegon's part, rather unfortunate timing. And it also didn't prevent the transfer out from being completed within our normal timescale. With this in mind, we're unable to agree with your view and I would be grateful if this could be referred to an ombudsman for a further review.*

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 have reached the same view as our investigator. I'll explain why.

Aegon's position is that because the transfer of Mr H's funds from his GPP to his SIPP was completed within its 'normal timescale', it shouldn't have to compensate Mr H for any delays in the transfer process.

It is not in dispute that the transfer request was made on 27 October 2020. Mr H's funds were sold on 29 October 2020, and a BACS transfer of funds to the SIPP was approved on 5 November 2020. The funds were received and allocated to Mr H's SIPP on 10 November 2020 and invested shortly afterwards.

What is in dispute is whether Aegon should compensate Mr H for any loss he has suffered as a result of the delay it caused as, despite the delay in approving the transfer, it was still completed within Aegon's 'normal timescale'.

The industry regulator says that businesses must treat their customers fairly and act with due skill, care and diligence. It is not the case that if a business meets an internal 'service level agreement' it must have met the requirement to treat its customer fairly.

It appears that, in this instance, Aegon's processes did not adequately take account of the requirement to treat Mr H fairly. I don't think it was fair for it to have delayed processing Mr H's transfer request, simply because of the way its own internal processes had been set up.

Aegon says that it couldn't process the transfer request and take a monthly fee at the same time. It appears this was due to its own internal processes, rather than any regulatory or legal requirement.

It is unclear to me why it took Aegon three working days to address the internal 'trigger' and I note that Aegon confirmed to this service that;

The trigger was resolved without IT input, it wasn't a stuck trigger rather just an OS trigger that hadn't cleared.

So, Aegon's earlier claim to this service, that it '*needed to fix (the trigger) before completing the transfer'* was incorrect.

By failing to establish what the 'trigger' was that was preventing the approval of Mr H's transfer request from being approved on 2 November 2020, I think Aegon failed to treat Mr H fairly. I don't think there was any legitimate reason for Aegon to delay approving the transfer. It appears it was simply that its own internal processes had raised a 'trigger'.

In reaching this view I have taken into account that Mr H was moving a substantial amount of money and, not unsurprisingly, wanted the transfer to be processed without delay.

If Aegon was unable to over-ride its internal processes on 2 November 2020 and approve the transfer due to the 'trigger', I think it should have taken steps at that time to establish the cause of the trigger and to have checked whether it needed to wait for its IT department to remove the trigger, before the transfer request could be approved. I don't think it would have been particularly onerous for Aegon to establish that the cause of the trigger was a monthly fee and to have found a work-around to its internal process, rather than delaying the transfer of Mr H's money for three days.

Having carefully considered this matter I don't think Aegon treated Mr H fairly when it delayed the transfer of his money by three working days, due to what it has referred to as '*rather unfortunate timing'*, regardless of any internal service level agreement it might have.

Putting things right

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if Aegon had not delayed his transfer by three working days.

I think Mr H would have invested in the same way and I'm satisfied that what I've set out below is fair and reasonable in the circumstances of this complaint.

What must Aegon do?

To compensate Mr H fairly, Aegon must:

- Compare the performance of Mr H's investment with that of the 'benchmark' shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value, there is a loss and compensation is payable.

- Aegon should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Aegon is unable to pay the total amount into Mr H's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Aegon deducts income tax from the interest it should tell Mr H how much has been taken off. Aegon should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ARC SIPP	Still exists and liquid	Actual investments bought on earlier transfer date and assuming all subsequent switches were made on the same date	3 working days earlier than actual date of initial investments	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the ARC SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Aegon totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr H's transfer to the ARC SIPP would have taken place 3 working days earlier if Aegon had not caused an unnecessary delay. The delay resulted in Mr H being out of the market for 3 working days.

My final decision

I uphold the complaint. My decision is that Scottish Equitable plc (trading as Aegon) should pay the amount calculated as set out above.

Scottish Equitable plc, trading as Aegon, should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 September 2022.

Suzannah Stuart
Ombudsman