DRN-3291828

The complaint

Mr and Mrs C complain about the service received from AEGON Investment Solutions Ltd trading as Aegon, referred to as "the business" or "Aegon".

In short, Mr C says he and Mrs C are unhappy about the following:

- Aegon makes a profit no matter what happens with the investment, but he takes all the risk.
- Despite asking Aegon to transfer units in-specie, from one account to another (within Aegon), it refused. Instead, the process involved selling units, and then using the cash to buy units. This is time wasting, and risky, due to the fluctuations in the unit price.
- Aegon initially said/suggested that HMRC had forced it to sell shares. But he spoke to HMRC and it informed him that it didn't have a preference as to how firms arranged such transfers, so long as the market value is used to calculate tax. Aegon has since changed its position regarding what it had initially told him.
- His financial adviser informed him that the industry regulator, the Financial Conduct Authority (the FCA) has directed Aegon and other firms to use the same financial software, to stop forcing customers to convert their holdings into cash, before transferring to another account. This shows that the FCA agrees with his complaint against Aegon.
- Although Aegon told him that it's impossible to arrange zero risk transfers between accounts – he's got the evidence to show that this isn't the case.
- After his mother died in 2019, the business refused to let him transfer the units without first turning it into cash. The funds were held in cash for 13 days and resulted in him losing around £1,000.
- In 2020, he was able to transfer investments in-specie from his family consultancy company which was being closed down. But in 2021, Aegon again refused to allow him to transfer units between his investments without converting to cash. Following advice from his financial adviser, he was able to minimize the risk by using funds from his savings to buy units and selling the first lot of units to replace the cash in his savings in due course. The IFA bore some of the risks and agreed to cover any losses incurred.
- Finally, he's unhappy that when he spoke to Aegon about the points above, Aegon logged it as a complaint from the outset rather than discussing matters further.

To put things right, Mr C would like Aegon to transfer his units as instructed, rather than sell the units and use cash to purchase more units. He'd also like compensation for his losses.

What happened

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- It's not our role to scrutinise a business' operational procedures or processes, that's

the role of the FCA.

- We consider whether or not the business has behaved reasonably. If the business has made a mistake, we can ask it to put things right including replacing any financial loss caused by the error.
- The terms and conditions in this make clear:
    - *"We will allow re-registrations of allowable investments into all product wrappers. Investments that are re-registered remain invested in the market".*
- Mr C's complaint involves a number of accounts with Aegon:
    - He held two Aegon Retirement Choice (ARC) SIPPs, a Stocks and Shares Individual Savings Account (ISA), a General Investment Account (GIA), and an ARC flexi-access drawdown account.
    - Mrs C held an ISA, a SIPP and a joint GIA.
    - Mr C's late mother previously held a GIA, an ISA, and a family (company) GIA.
- Aegon explained that it can't transfer in-specie between GIAs and ISAs, because of the differences in tax for these positions. For example, GIAs are liable to Capital Gains Tax (CGT) whilst ISAs are not, so the investor would need to sell the holdings in the GIA, and settle any outstanding tax liability, before transferring to the ISA.
- Aegon explained that the same also applied to transfers between SIPPs and GIAs. It explained that Mr C took tax-free cash from his SIPP and transferred the remaining balance to his drawdown account, and then re-invested in the GIA. Because 25% of the SIPP was settled tax free, and income tax was due on the drawdown – as well as the GIA being liable for CGT – it wasn't possible to make an in-specie transfer.
- Aegon was able to transfer in-specie from Mr C's company GIA to the joint GIA held jointly with another. Because both accounts were GIA, and there were no tax complications.
- Aegon explained that it was unable to transfer his share of his late mother's GIA because the funds had been paid into the executor's account. It's then for the executors to decide how the funds are settled.
- Taking the above into account, he's unable to say that Aegon treated Mr C and Mrs C unfairly.
- Based on what Mr C says, it seems that HMRC don't have an issue with businesses that convert holdings into cash first. Despite what Aegon might've said to Mr C to begin with, it has since corrected its position, after his chat with HMRC was brought to its attention.
- Aegon would've transferred in-specie if it could, it would've been simpler to do so. But in the examples given by Mr C, and for the reasons set out above, it couldn't.

There's been much correspondence between Mr C and the investigator. In short, Mr C disagreed with the investigator's view and asked for an ombudsman's decision. He also provided further evidence following discussions with his financial adviser which he believes proves that Aegon could transfer units in-specie but refused to do so. In summary, he said:

- He doesn't think that Aegon is being honest about things.
- From the historic Net Asset Value (NAV) curve it seems a customer is likely (in some cases twice as likely) to lose units, rather than to gain units. And regardless, Aegon still takes its fees.
- Aegon's refusal to carry out instructions to simply transfer units forces unwanted risk on the customer. Aegon's actions are also against FCA principles relating to customers' interests and conflict of interest, therefore Aegon has a responsibility to put things right.
- Aegon's argument that GIA transfers need to be cashed, to enable tax to be settled, is deliberately misleading – there has been no tax due on his GIA to ISA transfer. It's normal for customers to be advised to stay below the CGT threshold.

- Aegon's argument regarding the SIPP to GIA transfer is also nonsense because he deliberately keeps below the tax thresholds. Last year Aegon applied an emergency tax code rather than liaising with HMRC to confirm that he had no PAYE income in the year. So instead, he had to contact HMRC to sort matters. He doesn't think that 100% of the units need to be cashed and he'd like the investigator to ask Aegon why it thinks this is a reasonable approach.
- A tax of 10% was/is payable on all amounts above their personal CGT thresholds, despite that Aegon transferred units in-specie. So, this proves that even when tax is due in-specie transfers can be done – Aegon is telling lies.
- There was no tax payable on his mother's estate for which he was an executor. Instead Aegon insisted that all units were sold. He would like the investigator to ask what gives Aegon the right to bully legally appointed executors and cause them to lose units.
- He doesn't believe that our service doesn't have the power to interfere with Aegon's business decisions. If it were true, there'd be no point to our service. It's our job to ensure that Aegon's response to his request are 100% compatible.

The investigator having considered the additional points wasn't persuaded to change his mind. In short, he said:

- It's true that our service has no power to interfere with a business' operational procedure, or 'business decisions', that's the role of the FCA. So, he can't tell Aegon how to transfer units.
- Ultimately, GIAs, SIPPs, and ISAs are taxed differently. Despite what Mr C says about keeping his taxes below the threshold this wouldn't be the case for everyone – it's not unreasonable for the business to treat Mr C the same as other customers. In the circumstances, it's a matter for Aegon how it conducts the transfers.
- Aegon has made clear that in the case of death, it can only make in-specie transfers for spouses or civil partners. In other words, it can't make an in-specie transfer between a mother and her son.
- Any issue Mr C has with the practice of selling units he should take up with the industry regulator. He's unable to safely say that Aegon has made any error with the transfer.

Mr C reiterated that the FCA can't respond to individual customer complaints and that it was our job to look into the way Aegon chose to transfer accounts. He also raised issues to do with the list of transactions he's seen – he feels Aegon is creating a transaction history that hasn't taken place. Despite refusing to make in-specie transfers Aegon seems to be doing it anyway.

Aegon made the following key observations:

- Having checked the document supplied by Mr C with his commentary, it confirmed that it wasn't a document that it supplied but appears to have been downloaded by Mr C's adviser.
- There appears to be an error that led to the summary being produced with the 'Notes' column giving the impression that £40,000 had been re-registered. It will look into why this happened but doesn't accept that this has given Mr C the impression that it had carried out a re-registration from his joint GIA to his and his wife's ISAs.
- Mr C said that this information was requested to help with his 2019/20 tax returns, but the transaction took place in 2018/19 – and Mr C and his adviser would've been aware that this was being done as a 'sell down' in the GIA, and transfer of cash to the ISA. This doesn't have a bearing on Mr C's claim about losses.

The investigator having considered all the additional points wasn't persuaded to change his mind. In short, he said:

- He agrees that the summary from the website is unclear. However, he can see that when the transfer took place, it was made clear that Aegon was transferring the holdings into cash, before putting the funds into the two ISAs which Mr C would've been aware of at the time.
- Overall, he doesn't agree that Aegon treated Mr C unfairly.

Mr C remains unhappy and reiterated his wish to refer the matter to an ombudsman. In short, he made the following points:

- The document in question was 'produced' by Aegon because his IFA downloaded it from its website. Aegon's arguing because it didn't get a chance to 'craft' the document.
- Why is the investigator simply allowing Aegon to say that its document is wrong? It's likely the computer is right and Aegon is trying to re-write history in an effort to mislead the ombudsman.
- What he's saying – and what the document shows – suggests that Aegon is transferring in-specie.
- Further evidence from March 2022 shows that despite no tax being due Aegon still forced him to take the risky route via cash transfer.
- During a number of transactions, cash was used to purchase units on his behalf over multiple dates – in a different ratio to his normal 'half plus two quarter spread' – he doesn't know why this was done.
- Due to the NVA of the units, he's lost over £500. Something needs to be done about this 'financial abuse'.
- He was also charged £75 this year – he suspects it'll be somewhere in the terms and conditions. But Aegon has charged him £75 for watching £520.94 worth of units being taken away from his investment and pension portfolio.
- He wonders whether the £75 was a discretionary punishment for his complaint to our service.

As no agreement has been reached the matter has been passed to me for 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, on balance I agree with the investigator's conclusion for much the same reasons. The most pertinent points have been covered by the investigator in his view, leaving little for me to comment upon. I don't uphold this complaint.

On the face of the evidence, and on balance, despite what Mr C says, I'm unable to safely say that Aegon behaved unreasonably by not transferring units between accounts as requested by Mr C.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr C's strength of feeling about this matter. He and his financial adviser have provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope Mr C won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr C, and Aegon, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

Despite what Mr C says, I'm unable to safely say that the business did anything wrong by selling units and using the cash to purchase new units – rather than transferring units directly from one account to another, as instructed (and preferred) by him.

Whether (or not) it was 'technically' possible to simply transfer units between *all* accounts – perhaps using a different computer system – doesn't mean that the business has done anything wrong by not doing so, even if it might be 'more efficient' and/or less risky. Despite what Mr C says, it isn't wrong or unreasonable because there's a reason for the business' method.

Even if Aegon had/has a discretion about what transfer method it used, it's not for me to tell the business how to exercise that discretion. In the circumstances, and on balance, I'm unable to safely say that the business behaved unreasonably.

I note by converting units to cash, the business locks in the value of the units from any adverse market movements. Nevertheless, I appreciate it can also mean that less units can get re-purchased using the cash if the value of the units goes up. However, a financial business isn't responsible for market movements, and that's why I don't think it's responsible for the financial loss claimed by Mr C.

I appreciate what Mr C says about 'historic trends', but past performance isn't a guarantee of future performance. Notwithstanding the mechanism by which the funds were/are transferred, I don't agree with Mr C that a customer is 'forced' to do anything that they don't want to do, or haven't agreed to do, in order to achieve their objective of transferring funds. For the reasons already explained above, regardless of the merits of an alternative method of transfer, I can't say that the method employed by Aegon was wrong, or that it was deliberately done to place customers at risk of losing out.

It's a matter for Aegon – in the reasonable exercise of its legitimate commercial judgement – how it runs its affairs. As I explained above, it's not generally for us to tell Aegon how to run its business. Despite what Mr C says, that's not the point of our service.

I also note that the HMRC has no preference or issues with businesses that convert units into cash before transferring, as long as the tax is paid. Based on what Aegon says, it's seems that it's the difference in tax that is the principle reason behind why it can't (or won't) transfer between the different accounts.

For example, I note Aegon says that GIAs are liable to CGT whilst ISAs are not, so the investor would need to sell the holdings in the GIA, and settle any outstanding tax liability, before transferring to the ISA. I note this assumes that there might be a tax liability and I accept that not all investors will have a such tax liability, but that of itself isn't a reason to treat those that don't any different.

I note what Mr C says about operating under the tax bracket, but the general principle applies to all customers, regardless of whether or not they have a tax liability. So, in the circumstances, and on balance, I don't agree with Mr C that 'the tax reason' is a nonsense.

I note what Mr C says about recent transfers he made in 2021 – from his SIPP pension to GIA, and separately from GIA to ISA – and that on both these occasions the business refused to transfer the units in-specie – the above explains why his was the case.

The above notwithstanding, I'm aware Aegon says that's it's possible to transfer units in-specie in some instances – for example GIA to GIA accounts in Mr C's name – and where it has been possible it has done so. I've seen nothing to suggest that this wasn't the case. However, I appreciate that this might explain why Mr C thinks that Aegon transfers units when it wants to, but not when it is instructed to do so.

If Aegon is told to do something different going forward, it doesn't mean that compensation is automatically due, because in my opinion it hasn't done anything wrong. On balance I'm satisfied that the business operated in a way that it was entitled to at the time, so hasn't done anything wrong, even if it decides to do things differently in future.

I appreciate what Mr C says about the busines not transferring shares inherited from his mother's estate. I note the business explained that was because the shares weren't his – he didn't (automatically) own them – they had to go to his late mother's estate. Unless the situation involved a spouse or a civil partner – where transfer in-specie can be possible – I know that going through the estate, even for parent and child, is a common industry practice.

I note what Mr C says about the delay in selling the units and transferring cash only to buy shares again, but in this instance the business had to follow procedure – it doesn't mean the business has behaved unreasonably, regardless of whether or not any tax was due. It wouldn't be for Aegon to second guess the tax position of a deceased customer's estate in any case. And, with Mr C as an executor – entitled to a share of the estate – it was all the more reason to do things correctly.

On the face of the evidence, and on balance, I don't think Aegon has done anything wrong by treating Mr C's correspondence as a complaint and issuing an FRL dealing with his main points. Evidently Mr C is and was unhappy with Aegon not transferring units in-specie between all accounts.

I also don't think the business has done anything wrong by refusing to set aside its FRL. Once an FRL has been issued, for the purposes of jurisdiction, the clock starts ticking.

A financial business is obliged to provide a final response to a customer within eight weeks and offer referral rights to our service in the event that the customer is unhappy with the business' response. Or if the business is unable to provide an FRL within eight weeks, it's obliged to provide referral rights to our service.

Providing the FRL meets the criteria, a customer will have up to six months within which to refer the complaint to our service. Whether or not a customer continues to engage with the business during this period is immaterial as the six-month time limit still stands. And once a complaint has been referred to our service, it's usually the case that the parties will correspond through us.

Despite what Mr C says, a business is entitled to take a fee for providing the advice and or platform to invest. This is part of the agreement that a customer is made aware of and agrees to before they can proceed. There's no material relationship between that and the investment risk that an investor is willing to take to achieve their financial objective.

Despite what Mr C says, Aegon is paid, and is entitled to be paid, for providing a service which is the cost of business. Mr C is the investor, who will enjoy the benefits or any positive returns and not the business which is only providing a service.

I'm mindful of what Mr C says about the charge recently applied to his transfer. Despite what he says, I'm unable to agree that it's a 'penalty' imposed on him for complaining to our service. I've asked the business to provide Mr C with an explanation. If there is a discrepancy it can look into it in due course – as matters stand it's not a reason for me to uphold this complaint.

I appreciate what Mr C says about the FCA but reporting a matter to the FCA is a means of it gathering information against a business and being able to decide whether (or not) to act. I appreciate it won't deal with the matter as a complaint from Mr C but that's not a reason for him not to notify the FCA of the issue.

I appreciate Mr C will be thoroughly unhappy that I've reached the same conclusion as the investigator. On the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 8 November 2022.

Dara Islam
Ombudsman