

The complaint

Mr T has complained about a transfer of his Scottish Equitable Plc trading as AEGON personal pension to a multi-member occupational pension scheme in December 2014. Mr T's pension fund was subsequently used to invest in Dolphin Capital and AIGO UK Residential Property Fund loan note. The investment now appears to have little value. Mr T says he has lost out financially as a result.

Mr T says AEGON failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr T says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if AEGON had acted as it should have done.

What happened

On 9 August 2014 Mr T signed a letter of authority allowing Only Consultancy Ltd to obtain details, and transfer documents, in relation to his pension. On 14 September 2014 Only Consultancy emailed AEGON, enclosing Mr T's letter of authority and its information request. AEGON sent Only Consultancy Ltd the requested information on 6 October 2014. Only Consultancy was not regulated to provide pensions advice.

Mr T explains that Only Consultancy recommended that he transfer his AEGON personal pension to the Genwick Retirement Benefits Scheme (GRB). GRB was an occupational pension scheme that had been registered with HMRC on 23 March 2013 and was administered by Deuten Services Limited (Deuten).

Mr T says he was attracted by the improved investment returns – in the region of 10% - that he explains he was being promised.

On 23 October 2014, Mr T signed documents to become a member of the GRB scheme. The investment options selected on the application form were: 49% in Dolphin GmbH and 51% in AIGO UK Residential Property Fund Loan Note.

On 7 November 2014 Mr T's transfer papers were received by AEGON. These were sent in by Deuten Services Ltd. Included were: AEGON's transfer confirmation form (signed by Mr T on 23 October 2014); a letter of authority for Deuten (signed by Mr T on 23 October 2014); confirmation of HMRC registration for GRB since 23 March 2013.

On 7 November 2014 AEGON wrote directly to Mr T explaining that it had received a transfer request from Deuten. It explained that it had a duty to carry out checks on the scheme which could delay his transfer. It provided him with a copy of the leaflet from The Pensions Regulator about possible risks of transferring. It explained that it wouldn't transfer without receiving his written confirmation within 21 days.

Mr T's pension was transferred on 9 December 2014. His transfer value was around £92,000. He was 47 years old at the time of the transfer.

Mr T's transferred fund was invested in loan notes in both Dolphin Capital and AIGO UK. Both were unregulated investments speculating in overseas property. Both investment types were illiquid and subsequently have failed. Liquidators were appointed to act as the trustees of GRB in September 2019 and Dalriada were subsequently appointed as new trustees to GRB on 25 August 2020.

In July 2020, Mr T complained to AEGON via a claims management company (CMC). Briefly, his argument is that AEGON ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: GRB was newly registered, there wasn't a genuine employment link to the scheme, the transfer followed high pressure sales techniques, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

AEGON didn't uphold the complaint. It said that it conducted due diligence on GRB. It received copies of the GRB Trust Deed and Rules and considered them to be in order. It received GRB's pension scheme tax reference certificate and checked the details with HMRC showing the scheme had been certified on 23 March 2013 (more than 19 months before the transfer request. It wrote to Mr T providing a copy of the Scorpion leaflet (referred to later). It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

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.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment AEGON was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and a member may also have a right to transfer under the terms of the contract). This came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age.
- On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.
- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SIPP’s and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.
- AEGON was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:
 - Principle 2 – A firm must conduct its business with due skill, care and diligence;
 - Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
 - Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
 - COBS 2.1.1R (the client’s best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it’s the update to that guidance on 24 July 2014 that’s most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for: being told that a pension could access cash before age 55; being approached out of the blue; being offered upfront cash; being offered a free pension review or one off investment opportunities.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA’s endorsement of the Scorpion guidance was relatively informal: it didn’t take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute “confirmed industry guidance”, as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn’t necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member’s statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance’s specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator’s Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don’t think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr T explains that he was cold called and offered a free pension review. And that it was the suggestion of improved investment returns that persuaded him to transfer. There is evidence that Mr T had provided his authority for Only Consultancy Ltd to obtain information about his AEGON pension. Only Consultancy Ltd wasn't a regulated firm.

I've seen no evidence of any other party involved in the process of advising Mr T about this pension transfer. And I consider that it is unlikely that Mr T would have conceived of this transfer without it being recommended to him. I say that because GRB was an occupational scheme that was very unlikely to have advertised or marketed itself to retail customers. And he didn't work for the sponsoring employer. In short, I can't see how he would have been aware of GRB as a potential pension scheme to transfer to but for the intervention of a third party. And I'm persuaded that third party was, more likely than not, Only Consultancy Ltd.

What did AEGON do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Mr T explains that AEGON wrote to him on 7 November 2013 and provided him with a copy of the Scorpion warning. And I have seen a copy of that letter. So I am satisfied that AEGON sent this directly to Mr T in response to the transfer request it received.

That Scorpion insert would have warned Mr T of four things to look out for that I referred to earlier. Of those, I think two ought to have appeared relevant to his circumstance: being approached out of the blue and being offered a free 'pension review' or 'one-off' investment opportunities.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action *if* it was apparent their customer might be at risk. That's because, even though the Scorpion Action Pack provided a check list, it didn't expect businesses to go to the check list for all transfer requests. It provided initial warning signs, and I think that good practice for businesses would have meant turning to the check list where it was aware of the existence of certain warnings.

AEGON had information that GRB had been established as an occupational pension scheme for just over 19 months. I don't consider that this ought reasonably to have been considered as a recently established scheme by that stage. So I don't think that AEGON ought to have been considering that as a warning sign that meant enhanced due diligence was needed.

AEGON have shown us that it had other information about GRB that it obtained in 2013 as part of the due diligence it conducted in response to a different customer's transfer request. As a result of that enquiry it had correspondence with GRB's solicitor who provided the Trust deed and rules. The solicitor highlighted those parts that it said evidenced that trustees would not make unauthorised payments. And also that the rules allowed GRB trustees to accept members that were not employed by the sponsoring company. AEGON had additionally obtained evidence from a chartered accountant on behalf of the sponsoring

company declaring that the company was an actively trading company. Given this, I don't think that AEGON ought to have considered the receiving scheme to be a potential scam at that stage.

I think that it's also fair and reasonable to take into account the fact that, instead of processing the transfer request that it received from Deuten, AEGON instead wrote to Mr T. The Scorpion insert it sent him was intended to provide him with information to highlight risks. And AEGON didn't go ahead with the transfer until it had written confirmation from Mr T, on 18 November 2014, that he understood who he was transferring to and wanted to proceed. This would have been after he had time to consider the Scorpion insert he was sent. I think this was a reasonable step for AEGON to take.

Overall, I'm not persuaded that AEGON should have considered that Mr T was transferring to a scheme that was going to lead to his being a victim of a pension scam based on the information that it had. I appreciate that Mr T was most likely being advised by a party not regulated to do so. But AEGON would not have known that at the initial assessment stage. It had a request for pension information from Only Consultancy. But a firm does not need to be regulated to request information with a consumer's authority. AEGON wouldn't have known whether that firm was also advising on the transfer without having had cause to contact Mr T to ask. And I'm not persuaded that AEGON had a reason to go through the types of questions covered in the checklist which may have revealed that.

Similarly, AEGON were not aware of the intended investments in the GRB scheme. And without a reason to ask this question would not have learnt of the existence of this warning sign either.

Summary

I understand that Mr T has suffered a considerable loss and I am sorry for that. But I don't think that it's fair or reasonable in this case to decide that AEGON did anything that was wrong which led to that loss. As I have explained, I think that AEGON was responsible for providing certain basic information to Mr T. Which it did when it sent him the Scorpion insert. And it also had to be alert to the existence of any warning signs and then look into the transfer further if it identified any. In this case, I don't think that any of the warning signs, that it needed to be alert to, were present. So it isn't unreasonable that AEGON didn't use the checklist, or something similar, to scrutinise Mr T's transfer further.

My final decision

For the reasons given above I am not upholding Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 September 2024.

Gary Lane
Ombudsman