DRN-3610671

The complaint

Mr H complains that Scottish Equitable Plc (trading as Aegon) sold his investments and transferred his pension to Interactive Investor Services Limited (IISL) without him instructing it to do so. He says he has lost out financially as a result.

What happened

Mr H wanted to move away from Aegon to a different provider. On 3 September 2020, Aegon received Mr H's transfer application to make an in-specie transfer to IISL Had an in-specie transfer been possible, Mr H's investments would not have been sold, instead they would have been re-registered with the new pension provider.

In late September 2020, Aegon emailed the administrator Barnett Waddingham (BW). It said *"Unfortunately, on this type of plan it is not possible to proceed with an in-specie transfer. Please confirm if you are happy to proceed on a cash transfer basis".*

On 15 November 2020, IISL wrote to Aegon saying *"the client has contacted us to tell us they will be advising Aegon to liquidate funds and to transfer over as cash. Please can Aegon advise if they have done this?"*. Aegon responded saying that it had not had a response about a cash transfer.

Mr H said he decided he still wanted to transfer his pension away from Aegon. But that he intended to manage the timing of the sale of his investments, to get the best unit prices. On 7 January 2021 Mr H instructed Aegon to sell down his shares in one particular investment fund. Mr H said this fund represented around 40% of the total value of his pension fund. This money was then held in cash in Mr H's pension fund. Mr H did not instruct Aegon to sell down any of the other investments in his pension fund or proceed with the transfer.

Mr H told IISL that some of his investments in his pension fund had been sold and that the remainder would be sold in due course.

BW emailed Aegon on 18 January 2021. This email stated *"Can Aegon please provide us with an update on the progress of this cash transfer? We have been advised that the client has sold some of the assets and that Aegon will sell the rest for them".*

Following this, on 20 January 2021, Aegon sold down all the remaining investments within Mr H's pension fund.

On 22 February 2021 Aegon wrote to IISL to confirm that an amount of around £654,000,000 had been paid into IISL's nominated bank account in respect of Mr H's pension fund.

Mr H complained to Aegon because he said he had not instructed it to sell down the rest of his investments. Aegon did not uphold his complaint. It took the view that it had acted appropriately, because it had been instructed, through BW, to sell the balance of Mr H's investments and transfer it to IISL.

Mr H referred his complaint to our service. Our investigator looked into it and recommended it was upheld. The investigator concluded that it was not in dispute that Mr H did not personally instruct Aegon to sell the remainder of his investments. It was also not in dispute that Aegon had acted upon BW's email of 18 January 2021, which our investigator acknowledged was not well worded. However, the investigator concluded that the email from BW was not sufficiently clear to amount to a clear instruction to sell down Mr H's remaining investments and to process a cash transfer to a new plan provided by IISL. Our investigator took the view that Aegon should have checked with Mr H before selling down his investments and proceeding with the transfer.

The investigator set out a methodology for establishing whether Mr H had lost out financially as a result of Aegon's actions, and, if so, how compensation should be calculated. He also acknowledged that Aegon had agreed to pay Mr H £500 in total for the trouble and upset it had caused processing his switch and for the transfer delay.

Aegon made detailed representations in response to our investigator's recommendation, all of which I have read. I have summarised these here:

- Aegon was instructed to transfer Mr H's pension fund on 3 September 2020. It was not instructed to switch it. The difference being that a transfer involves moving the pension to a new provider and closing down the Aegon plan. A switch involves the movement of funds from one fund to another within the plan, not moving to a new provider.
- On 28 September 2020 Aegon responded to an in-specie transfer request from BW and told them this was not possible. It asked them to confirm if they wanted to proceed on a cash transfer basis instead.
- IISL contacted Aegon on 15 November 2020 to say that Mr H had informed it that he would be advising Aegon to liquidate the funds and to transfer in cash.
- The later instruction received from Mr H was a switch instruction to transfer one of his funds into cash.
- The 18 January 2021 email from BW was a response to Aegon's 28 September 2020 email, which asked if they were happy to proceed on a cash transfer basis as an in-specie transfer was not possible. BW's email provided clear instruction to sell the remaining assets. It was reasonable for Aegon to process the transfer given the instruction received from BW.
- Mr H and his advisers did not inform Aegon that he wanted to put the transfer request on hold, nor did it ask for a partial transfer. Aegon has to comply with regulatory requirements to complete transfers in a timely way.
- The notional date used by which the remaining investments would have been disinvested needs to be justified.

Mr H's complaint comes to me for a decision.

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.

Mr H instructed Aegon to transfer his pension to IISL in-specie. Aegon was not able to fulfil that instruction. As it was unable to fulfil that instruction, Aegon asked Mr H, through the administrator, whether he wanted to proceed with a cash transfer.

Aegon did not receive a response or any further instructions about the transfer before Mr H instructed Aegon to switch one of his invested funds into cash, in early January 2021. I note, as Aegon asks me to, the difference between this instruction to switch funds within his Aegon pension plan and his earlier transfer instruction. So, I think it ought to have been reasonably clear to Aegon from this intervening switch event, that Mr H was not asking it to proceed with a cash transfer, just to switch one of his funds into cash.

It was clear from IISL's November 2020 email, that IISL believed Mr H was taking responsibility for providing instructions on any cash transfer to Aegon.

It is accepted that Mr H didn't personally instruct Aegon to cash in his funds or make the transfer. In my view Mr H's September 2020 transfer instruction had already been overridden by January 2021, when BW wrote to Aegon. Firstly, by the intervening completed switch, secondly because Aegon had said it could not fulfil his clear written instruction to transfer in specie and thirdly because Mr H had not said he wanted to proceed with a cash transfer. In my view, Aegon was not acting under Mr H's original in-specie transfer instruction or any direct authority provided by Mr H to sell down his investments and transfer his fund to IISL. In terms of completing any transfer in a timely way, until Mr H provided a clear and unequivocal request to transfer his pension fund in cash, rather than in-specie, timeliness did not become an issue.

I have gone on to consider whether it was reasonable for Aegon to proceed on the basis that BW was indirectly instructing Aegon to cash in Mr H's funds and transfer his pension based on their 18 January 2021 email. I've looked carefully at the wording of this email. Like our investigator, I think the wording could have been clearer. It wasn't clear, so, in my view that made it even more important that without direct instruction from Mr H, this email should not have been treated as providing authority, without further clarification. I do not consider that Aegon acted reasonably in responding in the way it did. Given the lack of clarity and not having heard directly from Mr H, I think it would have been fair and reasonable to check before Aegon took the action it did, to sell down Mr H's investments and transfer his pension fund.

I therefore consider that Aegon did something wrong and that Mr H may have lost out financially due Aegon's actions. I think it likely at some point Mr H would have transferred to a new provider, probably IISL, given that was his intention in September 2020 and he cashed in a sizeable part of his pension fund, seemingly to prepare to transfer.

I accept what Mr H has said about him trying to sell his other investments when prices were at their optimum. However, having already disinvested, I'm told around 40% of his fund, I think he would have wanted to proceed with the transfer as soon as markets allowed. Our investigator selected a notional sale date of 30 April 2021, for the remaining investments. This was selected to notionally give Mr H a few months to sell. I consider this to be a fair approach taken by our investigator. I see no reason to change this notional date by which all investments would likely have been sold.

I have gone on to consider, as Aegon asks me to, the usual timescales involved in processing transfers. It said that its pricing is usually one day behind. Therefore if it had received an instruction to encash and transfer the full fund on 30 April 2021, then the full fund would have been valued at "date of receipt plus 2 working days" (5 May 2021) *and* *‘then transferred within 10 working days from the date of request, so by 17 May 2021’.* Aegon said funds would take 3 to 5 working days to reach IISP, before investments could be made. I accept what Aegon has said about the usual processing timescales for processing transfer requests.

I have also considered whether as a means of mitigating his loss, it would have been reasonable to expect Mr H to cancel the transfer. An option Aegon suggests Mr H should have pursued. I don’t think I can fairly hold it against Mr H that he did not seek to undo Aegon’s actions and reinstate his plan with Aegon. Prior to these events, Mr H was already dissatisfied enough with the service offered by Aegon that he had taken active steps to move his pension fund away. I think it likely that the circumstances outlined here, would have increased that level of dis-satisfaction further. So, this doesn’t change my view.

Aegon’s offered to pay Mr H £500 for the trouble and upset caused by its shortcomings in relation to the switch and the transfer. This has already been paid to Mr H, I understand. I consider this to be a fair and reasonable response in relation to Mr H’s trouble and upset. So, I make no further award in respect of his non-financial loss. However, I do consider that Aegon needs to do more, to address any financial loss that Mr H may have.

So, overall, I uphold Mr H’s complaint and order Aegon to put matters right as set out below.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr H as close as possible to the position he would probably now be in had the investmentst not been sold without authority and instead been sold at a time of his choosing.

I can’t say exactly when Mr H would have sold the remaining investments in his Aegon pension fund. However, as he was keen to move away from Aegon, I think he would likely have done this as soon as practical, particularly as he had already cashed in a sizeable part of his fund and was holding this in cash.

Like our investigator, I think it is reasonable to use a notional date of 30 April 2021 as the date by which Mr H likely would have sold down the remainder of his investments. This would have given Mr H a few months to cash in all his investments.

Therefore, to compensate Mr H fairly. Aegon should:

- Compare the encashment values of the investments sold on 20 February 2021 with what the encashment value would have been had Mr H instructed Aegon to encash the remainder of his investments on 30 April 2021, with these being valued on 5 May 2021.

- Based on a 30 April 2021 encashment instruction, funds would have been sent to the new provider on or around 17 May 2021 (taking into account the bank holiday) and received by IISL ready to invest in Mr H’s chosen investments by 20 May 2021.

- When calculating whether Mr H has lost out Aegon should assume that the same delays between monies being available and investments being made as actually occurred. Also, if not all of Mr H’s monies within the IISL SIPP were invested, Aegon should work out proportionately what proportion of Mr H’s funds were invested in each investment and calculate any loss using these assumptions.

- The investments made in the ISIL SIPP should be re-modelled based on this hypothetical later investment date, and any losses at that time brought up to date based on the performance in the underlying investments.
- If there is a loss, Aegon should pay into Mr H's pension plan, to increase its value by the amount of the compensation and any interest. This payment should allow for the effect of charges and any available tax relief. Aegon shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Aegon are unable to pay the compensation into Mr H's pension plan, Aegon 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 compensation 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%.

Aegon shall provide the details of the calculation to Mr H in a clear and simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
IISL SIPP	Still exists and liquid	Actual underlying investments	Amended transfer date based on investment encashment instruction on 30 April 2021 valued as at 5 May 2021	Date of settlement	

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 actual underlying investments made. 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 Mr H's pension 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 total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

I have chosen this method of compensation because

- Mr H wanted capital growth and was willing to accept some investment risk.
- The above solution takes into account that the encashment values of the investments held within the Aegon pension would have changed between 20 February 2021 and 5 May 2021, but also that the prices of the subsequent investments made within the IISL pension would also have changed between the dates they were actually made and the hypothetical later date Mr H would have made them.

My final decision

I uphold this complaint and order Scottish Equitable Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 November 2022

Kim Parsons
Ombudsman