

## **The complaint**

Mr J complains that Scottish Equitable Plc trading as Aegon didn't do enough due diligence when processing his transfer from his existing pensions to the Incartus Investment Pension Scheme in 2015.

Incartus invested in a series of loans which were subsequently used to invest into a portfolio of UK based property and a number of oil and gas projects in the United States. New trustees were appointed to the scheme due to concerns by the Pensions Regulator in 2017. Their attempts to recoup investors' pensions monies back from Incartus has been unsuccessful to date.

## **What happened**

Mr J had two pension policies with Aegon. He says he was cold called by an adviser (Mr S) who told him his firm was regulated. He has since become aware this isn't the case. Mr S advised Mr J to transfer his pensions to Incartus, so that he could get better returns. Incartus was an occupational pension scheme. He said he was told he would receive returns of between 8-10% a year.

Aegon received a transfer request in April 2015. They had some concerns about the transfer as Incartus had only been registered for around a year and had opened multiple schemes under the same name which they considered unusual. So they sent Mr J some warning letters about pension scams in July and September 2015. They included an FCA fact sheet from the Financial Conduct Authority (FCA). After Mr J signed the necessary discharge forms the transfers completed in August and September 2015.

Mr J complained to Aegon in 2021 who rejected the complaint. One of our investigators then considered the complaint and upheld it. Aegon disagreed and asked for an ombudsman's decision.

I reviewed the complaint and issued provisional findings in which I explained that I didn't think it was fair and reasonable to uphold Mr J's complaint against Aegon.

His representatives disagreed and provided additional comments which I have considered in full.

## **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.

### Relevant rules and guidance

The investigator set out in detail the relevant rules and guidance in place at the time of the transfer and how they would apply. Both Aegon and Mr J's representatives are very familiar with this and so I'm not going to repeat this here again in detail. However, in short I consider the Principles of Business (PRIN), COBS 2.1.1 R, the Scorpion guidance in the version of

2015 and the PSIG Code of Practice 2015 to be relevant for this complaint.

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 rights. I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance or PSIG 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. I consider this is a reasonable expectation of personal pension providers dealing with transfer requests bearing in mind their duties under the regulator's Principles and COBS 2.1.1R.

### Provisional findings

In my provisional findings I said:

I need to decide whether Aegon did enough in terms of their due diligence when processing the transfer. And if they didn't, whether without their failures I think Mr J's investment losses could have been prevented.

Aegon did have some information about the transfer. They had checked the HMRC registration of Incartus and Mr J had confirmed in writing that he wasn't intending to access his pension before the age of 55 and that he hadn't received any cash incentive. Nonetheless, I do agree with the investigator that in line with the guidance available in 2015 Aegon should have contacted Mr J and made further enquiries about the transfer. This could have been over the phone or in writing.

If they had done so, *it's possible* they would have found out that Mr J had been cold called and that he had been recommended to transfer his pension to the Incartus pension scheme by an unregulated adviser (Mr S) with the promise of guaranteed returns and I would have expected to Aegon to provide Mr J with specific warnings in this case. However, I note that Mr J said he fully trusted the adviser and he had told him he might receive scam warnings from Aegon which he should ignore as they were only trying to keep his business to keep collecting fees. Mr S told Mr J to divert any questions or correspondence he might receive from Aegon to him in order to respond and advise on next steps. So I think it's likely Mr S would have influenced any responses to Aegon to make sure the transfer would go ahead, for example saying Mr J had received regulated advice or that he hadn't been cold called or promised guaranteed returns. Mr J said Mr S told him everything he needed to hear to go ahead and I think this is what would have happened if Aegon had contacted him.

Even if I'm wrong on this and Aegon had learned the truth about the transfer and provided warnings I still think Mr J likely would have proceeded. I agree that with this information Aegon should have let Mr J know that the adviser he was dealing with wasn't regulated to provide him with pension advice and that cold calls and the promise of guaranteed returns were warning signs of a scam. Of course I can't be certain how exactly he would have reacted if those more specific warnings had been given. And whilst I'm sure in hindsight he might now think this would have made a difference, I need to decide on the balance of probabilities what he likely would have done at the time. In my view, the best indication of how he might have reacted to warnings from Aegon is his actual response to the warnings he did receive at the time from them.

Aegon sent Mr J letters in July and September 2015 which included pension scams warnings from the FCA and urged him to carefully read them if he had been cold called (which he was). These clearly warned about:

- cold calls and free pension reviews and that such offers should be ignored
- advisers who had customers best interest in mind were unlikely to cold call and pension advice wasn't free
- most companies who made these offers weren't authorised
- consumers often ended up in unregulated investments which were high risk and consumers could lose all their pension

The FCA leaflet explained how to check that any adviser was properly regulated and that if anything went wrong with the investment or the consumer dealt with an unauthorised adviser they would unlikely have protections from the Financial Ombudsman Service or the Financial Compensation Scheme.

So Mr J already had received clear warnings about cold calls, only trusting regulated advisers and how to check the adviser was regulated. And he was given warnings about what the consequences would be if he relied on such unregulated advice. None of this changed Mr J's mind about the transfer. I acknowledge that the information he received mentioned transfers to SSASs and SIPPs. And the Incartus scheme was neither of the two. However, I think the general warnings about what to look out for and who not to trust should have resonated nonetheless.

So even if Aegon had done everything they should have, I think Mr J more likely than not would still have transferred and suffered losses to his pension. For these reasons my provisional decision is that I won't be asking Aegon to compensate Mr J for any losses.

### **Response to my provisional findings**

Mr J's representatives disagreed with my findings. In summary they made the following key points:

- The FCA alert discusses risks about transfers to SIPPs and SSASs. Incartus was an occupational scheme (OPS), so any warnings wouldn't have seem relevant to Mr J.

General warnings about cold calls and unregulated advice, while important, would have not resonated in the absence of explicit guidance concerning OPS transfers. Aegon's lack of tailored warnings was insufficient to address the unique risks of Mr J's transfer.

- Aegon should have directly engaged with Mr J which would have identified clear red flags.
- The points about Mr S's influence are acknowledged but Aegon should have still warned Mr J about the explicit dangers of transferring to an OPS and the involvement of an unregulated adviser.
- If Aegon had provided personalised and specific warnings about Mr J's transfer including that Mr S was unregulated it's likely he would have reconsidered the transfer.

### **My findings**

I've already considered all the points raised by the representatives in my provisional findings. I acknowledged that Aegon should have contacted Mr J and asked more questions. I'm still unsure whether they would have found out everything about the transfer (e.g. the cold call, being advised by an unregulated party) as I think there is a strong possibility Mr S might have influenced any of Mr J's answers. I want to stress at this point that Aegon didn't have to call Mr J. Questions could have been posed to him -and actually were recommended by PSIG to be- in writing.

I also acknowledged that if Aegon had found out the real circumstances of the transfer they ought to have warned Mr J about the red flags they discovered and that these warnings would have been more specific than the letter Mr J did receive.

I did also consider that the FCA fact sheet Mr J received warned about transfers to SIPP's and SSAS and Incartus was neither of the two. However, I remain satisfied that the warnings about cold calls and that such callers usually weren't authorised should have resonated nonetheless. I disagree that just because his receiving scheme was a different kind of scheme, these warnings would reasonably have felt unimportant or irrelevant. The warnings about the consequences of following such offers like having no regulatory protection and losing all your pension were strong enough in my view to be concerning for Mr J. He had also been given information how to check his adviser was regulated which he didn't do.

I understand Mr J's representatives think he would have reconsidered the transfer if more tailored warnings had been given. However, the fact that he did ignore strong warnings that should have resonated in my view-even if they were slightly more generic and not matching every aspect of his transfer in every detail-gives the most likely indication of how he would have reacted to similar warnings.

I remain of the view that Mr J likely still would have gone ahead if Aegon had acted as they should have done.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 5 March 2025.

Nina Walter  
**Ombudsman**