

The complaint

Mr M complains that London & Colonial Services Limited trading as London & Colonial (London & Colonial) took too long to transfer his pension plan to another provider. During the delay the price of the new investments he wished to make increased causing him a loss. He wants compensation for his losses and the inconvenience caused.

What happened

Mr M is represented in his complaint by his financial adviser ('Q'). Mr M wanted to transfer part of his plan from London & Colonial to another provider, Aegon. Q was advising him on this and says it instructed Aegon to contact London & Colonial via an electronic transfer platform called Origo on 18 September 2020. And request that London & Colonial realise all liquid assets and then transfer the funds to Mr M's plan with Aegon.

Q says with no updates it chased London & Colonial. It has provided an email from London & Colonial dated 7 October 2020, where it says it no longer uses Origo and can't accept transfer requests on it. Q emailed London & Colonial on 3 November 2020 querying whether transfer requests had been received by it for several clients including Mr M. Q has also provided an email of the same day from London & Colonial to Aegon saying it would require paper transfer out forms to be completed. On 5 November 2020, Q emailed Aegon saying:

"We submitted this case 3 months ago and only now do L&C ... send you back the forms required now they don't have Origo".

On 9 November 2020 London & Colonial responded to Q's email of 3 November 2020 to advise a transfer request for Mr M had not been received. Paper transfer applications were then completed for Mr M, which London & Colonial says it received on 27 November 2020. Q says it chased progress in January 2021. London & Colonial transferred the funds to Aegon on 11 February 2021.

Q complained to London & Colonial on Mr M's behalf about the delay. It accepted there had been delays for which it apologised. It said once it received the transfer request it should have been completed within twelve working days. It said it would reimburse the full transfer out fee of £186 direct to Mr M as compensation and asked for his bank details.

Q referred Mr M's complaint to our service. In a submission accompanying this Mr M said London & Colonial's offer of £186 compensation took no account of either his or Q's time in sorting out the problem and bringing the complaint. He said had the transfer been made in September 2020, when requested, the new investments purchased by Aegon would have been at a much lower price. He said had London & Colonial completed the transfer in 30 working days (from 18 September 2020) he would have been £2,006.31 better off compared to when Aegon actually purchased the investments on 16 February 2021.

Our investigator looked into Mr M's complaint and she decided to uphold it. She asked London & Colonial when it stopped using Origo and if it had advised customers about this. It said it stopped using Origo on 16 July 2020 and hadn't advised customers, as it

wasn't required to. It said it wouldn't have been aware of any request made through Origo after then. It also said the process for an Origo, or paper-based transfer was the same. Our investigator said it was important for customers to know how to action transfers. And had Q and Mr M known that paper forms were required they would have gone down that route initially so the transfer could proceed as soon as possible, so this had caused several weeks delay.

She said London & Colonial should take account of any financial loss Mr M had suffered as a result of the delays as well as refunding the £186 fee. She said it should conduct a loss calculation from the date Q was informed transfers weren't accepted by Origo, 7 October 2020.

London & Colonial disagreed and made a number of points:

- the assumption that the main contributing factor in the delays was it not telling Mr M, Q and Aegon that it no longer used Origo was "*wholly incorrect and unreasonable*".
- it had ceased using Origo in July 2020 and said it was Aegon's responsibility to inform Q/Mr M that the transfer couldn't be processed through Origo. As Aegon would be aware that London & Colonial was not a party using the system and would have received a "*bounce back notification*".
- it accepted it had caused a delay in not processing the transfer "*in a timely manner*" after it received the paper application on 27 November 2020, but it wasn't responsible for delays before that.
- it said once it received the paper application it should have made the transfer by 10 December 2020, and the loss calculation should be from this date to 11 February 2021 when it transferred the funds to Aegon, not from 7 October 2020 suggested by our investigator.

As London & Colonial doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 12 October 2022; I explained the reasons why I was planning to uphold the complaint. I said:

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'm planning to uphold the complaint, but think the loss calculation should be based on a different time frame than proposed by our investigator.

I think London & Colonial caused delays, and I think it should carry out a calculation to establish if this caused a loss for Mr M. But at this stage I don't think it's fair to say it was responsible for any delays before 27 November 2020. I'll explain why.

Our investigator thought it fair that London & Colonial should make it clear how it processed transfers. And as it had confirmed to Q it no longer used Origo by email on 7 October 2020 it was fair that London & Colonial be responsible for any delays after that.

However, it is the receiving arrangement that initiates a transfer request rather than the holding or ceding arrangement. I think establishing the ceding schemes requirements is a normal part of that. So, I don't think it is necessarily fair to hold the ceding arrangement responsible for delays before it has received a valid transfer request. I also thought the evidence provided by both Q and London & Colonial was incomplete. So, I asked both, and Aegon as the receiving scheme, for further information.

Origo is a data exchange system which reduces the paperwork required to complete a transfer between one pension provider to another. Many, but not all, pension providers use it and there is no requirement that it be used. London & Colonial says it stopped using the system around two months before Q says it emailed Aegon the transfer authority signed by Mr M and asked that this be submitted via Origo.

It wasn't clear to me how such a request could have been made if London & Colonial were no longer party to the system and hadn't been for two months. So, I asked Aegon to confirm when the Origo request had been made and whether this was successful or rejected.

Aegon said as the receiving scheme it "would initiate any Origo request" and having checked its files it said it:

"can't find any evidence we requested a transfer in by Origo.

And:

"In this case, the only prompting we received was the Transfer Authority form we received on 23/11/20, which prompted us to send a transfer request to the ceding provider by email on the 27/11/20".

It isn't clear why an Origo request wasn't attempted and I think further consideration of this is outside the scope of this complaint about London & Colonial.

It is the receiving scheme which initiates a transfer, this involves contacting the ceding scheme. If there was no instruction to make an Origo request the transfer wasn't initiated until documents were emailed to London & Colonial on 27 November 2020, I don't think it is reasonable to hold London & Colonial for what happened before then.

I haven't seen any evidence that queries were raised with either London & Colonial or Aegon about Mr M's transfer before 3 November 2020. London & Colonial responded to this request for an update on 9 November 2020, so within a few working days, confirming it hadn't received a transfer request for Mr M.

Q has provided redacted extracts of earlier emails between it and London & Colonial and between Aegon and London & Colonial. But it isn't clear these relate to Mr M. The email from London & Colonial to Q of 7 October 2020 advising it no longer uses Origo doesn't identify Mr M, although there would be no reason to redact it if it did. And Aegon says that the email to it from London & Colonial dated 3 November 2020 appears to be about another customer.

So, taking this evidence together I don't think it is fair to hold London & Colonial for any delays before 27 November 2020. However, I do think there were avoidable delays after it received the application.

London & Colonial has said its timeframe to realise the investments (held with an external third party) and then complete the transfer to Aegon should have been ten working days. I think this is a reasonable timeframe.

London & Colonial accepts it didn't meet this and is responsible for the delays until it did transfer the funds to Aegon on 11 February 2021, which became available for investment three working days later on 16 February 2021. London & Colonial has apologised for the delay, which it says was due to staff shortages and backlogs due to Covid working from home requirements.

I think it's reasonable that the transfer should have been completed by 10 December 2020 (within 10 working days after receiving the request on 27 November). Had it, it would have been available for re-investment three working days later, the 15 December 2020. So, around two months before it was actually re-invested. This delay may have caused Mr M an investment loss. If it has, then it is fair that he should be compensated for this, to put him back in the position he would have been in had the delays not occurred.

Putting things right

I think London & Colonial should undertake a calculation to establish what Mr M's transfer value would have been on 10 December 2020.

London & Colonial should then calculate what this transfer value would be worth had the transfer completed and then been reinvested by Aegon on 15 December 2020 in the same investments as the actual transfer value was. It should compare this value to the actual value of the Aegon SIPP when the complaint is settled.

Allowance should be made to take account of any contributions paid into the Aegon plan or benefits taken from it since the date of transfer.

If there is a loss, London & Colonial should pay into Mr M's Aegon pension plan to increase its value by the amount of the compensation. 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 London & Colonial is unable to pay the compensation into Mr M'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 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 M won't be able to reclaim any of the reduction after compensation is paid.

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

If Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal 20%. However, if Mr M 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%.

If either London & Colonial or Mr M dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

London & Colonial should provide details of the calculation to Mr M in a clear and simple format.

London & Colonial has already offered to pay Mr M £186 in compensation for the delay, this being its normal transfer out administration fee. I think this is fair compensation for the inconvenience caused in the circumstances of this complaint.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Q didn't respond to my provisional decision.

London & Colonial said it accepted my provisional decision and that it had begun work on the loss calculations.

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've decided to uphold the complaint.

I haven't seen any evidence to suggest that a transfer application was made to London & Colonial before Aegon forwarded its application forms by email on 27 November 2020. So, London & Colonial isn't responsible for any delays before then. But I think it did cause delays in processing the transfer once it had received the application.

I think London & Colonial's estimated timeframe to process a transfer of this type of ten working days is a reasonable one. It accepts it didn't meet this and caused a delay of around two months before funds were transferred to Aegon and available for re-investment. This may have resulted in an investment loss for Mr M and if so, it's fair that London & Colonial should put him back in the position he should have been in.

Putting things right

London & Colonial should undertake a calculation to establish what Mr M's transfer value would have been on 10 December 2020 when the transfer should have been completed.

London & Colonial should then calculate what this transfer value would be worth had the transfer completed and then been reinvested by Aegon on 15 December 2020 in the same investments as the actual transfer value was. It should compare this value to the actual value of the Aegon SIPP at the date of this final decision.

Allowance should be made to take account of any contributions paid into the Aegon plan or benefits taken from it since the date of transfer.

If there is a loss, London & Colonial should pay into Mr M's Aegon pension plan to increase its value by the amount of the compensation. 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.

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If Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal 20%. However, if Mr M 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%.

London & Colonial should provide details of the calculation to Mr M in a clear and simple format.

London & Colonial should pay the £186 compensation for the delay it has already offered, which I think is fair in the circumstances of this complaint.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against London & Colonial Services Limited.

I direct London & Colonial Services Limited to undertake the loss calculation set out above and pay any compensation due.

I direct London & Colonial to pay Mr M the £186 compensation for the delay it has already offered if it hasn't already done so. I think this is fair compensation for the inconvenience caused in the circumstances of this complaint.

London & Colonial Services Limited must pay compensation for any loss within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If London & Colonial Services Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell how much it's taken off. It should also give a certificate showing this if Mr M asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 December 2022.

Nigel Bracken
Ombudsman