

The complaint

Mrs B's representative has complained, on her behalf, about a pension sum of £65,000 which was "lost" during the process of transferring it from her self invested personal pension (SIPP) plan with IPS Pension Limited, trading as James Hay Partnership, to Cofunds Limited, trading as Aegon.

The delays in locating her pension funds meant that a significant amount of her pension assets was left in cash until it was transferred to a new SIPP provider in May 2021.

What happened

Mrs B's SIPP provider, James Hay, received an instruction to transfer £65,000 from Mrs B's SIPP to her Aegon General Investment Account (GIA) on 10 December 2020. This was for a further contribution to an existing investment, for which required James Hay was required to countersign. James Hay then sent this payment to Aegon on 16 December 2020. However, Aegon said James Hay hadn't provided the correct forms, and so the payment would be returned on 31 December 2020.

Unfortunately, this didn't happen. Mrs B's representative contacted Aegon in January 2021 and was told the money had been returned to James Hay due to an incorrect reference number. The representative then raised a complaint with James Hay on 22 January 2021 about this missing money.

James Hay contacted Aegon on 26 January 2021 and was told the money had been returned as Aegon had been unable to match the reference number. James Hay then attempted to locate the money on its own systems, as it believed the money had been returned to it.

On 19 February 2021, James Hay received a transfer form, requesting that Mrs B's entire SIPP be transferred to Standard Life. James Hay emailed Mrs B's representative on 26 February 2021 requesting an "instruction to trade" form, in addition to any application forms Aegon may require. However, James Hay used an incorrect email address to contact Mrs B's representative. As a result, this request for information wasn't picked up.

Mrs B's representative then contacted James Hay on 8 March 2021 to enquire about the missing £65,000 and the status of the transfer. These issues were escalated, the correct email address was provided, and the request sent again on 9 March 2021. James Hay's banking team also confirmed that it had investigated and could find no evidence that the £65,000 had been returned to it by Aegon.

The necessary information to continue with the transfer was then sent to James Hay on 12 March 2021. This was then sent to Aegon to move all the funds into the SIPP bank account on 17 March 2021.

James Hay had also contacted Aegon on 16 March 2021 to request evidence that the £65,000 had been returned to it. Aegon said its system didn't show any record of the money being returned, but that it would investigate further. On 17 March 2021, it emailed saying the money had been returned to James Hay on 31 December 2020.

On 26 March 2021, James Hay received £454,383 which was placed into the SIPP bank account. However, as it hadn't yet received the £65,000, it couldn't complete the requested full cash transfer. On 4 April 2021, Aegon then confirmed it had located the £65,000 which was still with it. It explained it had been placed under a different plan number. It confirmed on 12 April 2021 that the £65,000 had been placed into Mrs B's GIA.

Although James Hay had sent the full disinvestment instruction on 17 March 2021, Aegon said a new instruction would be required to disinvest the £65,000. James Hay questioned this and asked if the recent instruction could be used, but Aegon confirmed on 23 April 2021 that the new instruction would be required. However, James Hay didn't let Mrs B's representative know about this requirement until 12 May 2021, when James Hay sent it the application forms.

The completed forms were received on 14 May 2021 and were sent to Aegon on 24 May 2021.

On 25 May 2021, James Hay executed a partial transfer to Standard Life of the £545,089 which was already available. The disinvestment of the remaining amount was completed and £64,998 was received on 1 June 2021. The money was then transferred on 4 June 2021.

Mrs B complained to Aegon and it issued its final response on 28 September 2022. It maintained that it had returned the £65,000 to James Hay on 31 December 2020 and only received it back on 9 April 2021. As a result, it couldn't identify any mistakes that it had made.

As Mrs B wasn't satisfied with the response, the complaint was referred to our service for an independent review.

Aegon has since provided its payment history records, and it appears the money was sent to an account with AJ Bell on 31 December 2020 rather than James Hay. The money was then returned to Aegon on 18 January 2021.

On 31 January 2021, Aegon's technical team had contacted to its "third parties" team to question the returned payment. On 1 February 2021, the technical team added a note to say the payment should be returned, but it still showed AJ Bell's bank details rather than James Hay's. The payment was then returned again on 17 February 2021.

A further request was raised to return the money on 2 March 2021, but again, it used the details for AJ Bell. On 8 March 2021, Mrs B's representative chased James Hay again about the missing £65,000. Its banking team confirmed it had investigated and could find no evidence the £65,000 had been returned to it. On 16 March 2021, James Hay requested evidence from Aegon that the money had been returned. Aegon then reconfirmed to James Hay on 17 March 2021 that the money had been returned to it.

On 24 March 2021, the payment was returned to Aegon again. As set out above, Aegon then confirmed to James Hay in early April 2021 to say that it had located the £65,000. On 9 April 2021, the technical team noted that it could process the payment this time as it had located the wrapper number - and it was added onto the wrapper later that day. Aegon confirmed to James Hay on 12 April 2021 that it had invested the £65,000 into Mrs B's GIA. Since the complaint has been referred to this service, Aegon has again reviewed the complaint and realised that it had provided its complaint handler with incorrect information, and that it confirmed that it hadn't returned the money to James Hay as it had previously said.

The complaint was referred to me, as I'm considering the connected complaint which has been made to James Hay, which also relates to the delays incurred.

At my request, the investigator enquired further of James Hay as to why it was able to partially transfer the SIPP on 25 May 2021, with the £65,000 then being received a few days later, and therefore why it wouldn't have been able to do so earlier in the absence of the £65,000. In response, it's said that it's able to complete partial transfers providing certain requirements are met. And in this instance, as Mrs B's SIPP was "fully crystallised", with numerous tranches, it was able to complete a partial transfer for the full value of one of the tranches.

But it also said that it was unable to initiate a transfer to a new provider, and therefore it was incumbent upon the receiving scheme, customer or their appointed representative to initiate such a transfer – including a partial transfer – as set out in the plan's terms and conditions. The full transfer request which was submitted in February 2021 couldn't be completed as the £65,000 was "missing".

It further confirmed that there was a telephone conversation with Mrs B's representative on 7 May 2021 in which the possibility of a partial transfer was discussed, but James Hay couldn't act on the basis of a phone call. It did then agree to accept the partial transfer instruction via email, and this was received on 12 May 2021, but this wasn't actioned until 25 May 2021.

I issued a provisional decision on the matter on 15 March 2023, in which I set out my reasons for upholding the complaint. The below is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My current view is that there have been errors and delays incurred both by James Hay and Aegon in this matter. And I agree with Mrs B's representative that she shouldn't bear the consequences of the combined effect of these.

I think the primary problem, and the issue from which other problems – albeit not all - stemmed, was the "loss" of the £65,000 by Aegon. Aegon has itself now confirmed that it didn't return these funds to James Hay on 31 December 2020, and that it didn't in fact locate and then invest the funds in the GIA until 12 April 2021.

As such, I think it's clear that Aegon is responsible for some of the delays in the investment of the £65,000. But there were other delays for which I don't think Aegon was responsible, and I'm setting out my view on this below.

The "missing" £65,000 – from 18 December 2020 until reinvestment in the new SIPP Before the £65,000 was "lost", James Hay initially provided the wrong forms, which led to Aegon trying to return the funds on 31 December 2020.

On the basis that the £65,000 was sent to Aegon on 16 December 2020, and it ought reasonably to have been able to invest this in the GIA, had the correct forms been provided, two working days later, there was a total delay in investing the £65,000 from 18 December 2020 up to 12 April 2021, the date that it was invested in the Aegon GIA.

The £65,000 was then returned to James Hay as cash on 25 May 2021. But it should have been invested in the GIA from 18 December 2020 up to 12 April 2021, and been benefitting from whatever investment return was experienced during that time.

Therefore, my view is that, to compensate Mrs B fairly, Aegon should determine whether, had the £65,000 been invested in the GIA from 18 December 2020 up to 12 April 2021, the notional value at that date would have been higher than £65,000.

If it wouldn't have been, there is no overall loss, and so neither James Hay nor Aegon would need to compensate Mrs B for the loss of investment of the £65,000 in the period from 18 December 2020 up to 12 April 2021.

But if the amount as at 12 April 2021 would have been higher, then there was a loss, which then needs to be apportioned between James Hay and Aegon.

Aegon should in that instance determine as to whether there was an increase or decrease in the notional value of the GIA investment for its initial delay period from 18 December up to 31 December 2020, for which I think James Hay is responsible. If there was a notional reduction in value, then the entirety of any loss thereafter up to 12 April 2021 should be borne by Aegon.

If there would have an increase in value for that period, and then there would have been a further increase in the value of the £65,000 investment from 31 December 2020 to 12 April 2021, then James Hay will be responsible for whatever notional increase in value would have been achieved within that initial delay period up to 31 December 2020, with Aegon being responsible for the increase in value thereafter.

And so Aegon should determine how much of the notional increase in value as at 12 April 2021 it would have been responsible for as a result of notional investment for the period from 31 December 2020 to 12 April 2021.

If there was a notional increase in the value of the £65,000 from 18 December 2020 to 31 December 2020 but a subsequent decline in the value from 31 December 2020 to 12 April 2021, then Aegon will bear no responsibility for any of the loss to Mrs B – the entirety of the loss would have been caused by the initial delay period and lie with James Hay.

The amount of gain/loss to Mrs B on the £65,000, and if the latter, what percentage of loss would be attributable to each business, would then have been established as at 12 April 2021. If the amount resulting from notional investment on 16 December 2020 would have been higher, then I'll call this amount value (A).

From this point onwards, Aegon's liability for the delays relating to the "lost" £65,000 ceased, but the effect of its share of the loss on the current value of Mrs B's SIPP persisted (see below).

As set out above, Aegon confirmed on 23 April 2021 that a new instruction would be required to disinvest the £65,000. However, James Hay didn't let Mrs B's representative know about this requirement until 12 May 2021, when James Hay sent it the new application forms.

The completed forms were received on 14 May 2021 and were sent to Aegon on 24 May 2021. James Hay received the disinvested amount on 1 June 2021 and transferred it out to Mrs B's new SIPP on 4 June 2021.

Had James Hay conveyed the need for the new disinvestment instruction to Mrs B's representative on 23 April 2021, it would reasonably have taken, allowing for the intervening weekend, until 27 April 2021 for the forms to be received back by James Hay, and then sent to and received by Aegon the day after – 28 April 2021. Aegon then took six working days to disinvest and transfer the funds across to James Hay, and so James Hay would have received the funds on 6 May 2021. James Hay transferred the funds three working days after it received them, and so they would have been transferred to the new SIPP provider on 11 May 2021.

Aegon should therefore provide James Hay with the value of (A) as established above, with the addition of the actual investment returns it experienced between 12 April 2021 and 6 May 2021.

The redress which would need to be paid by both James Hay and Aegon is their respective share of the total loss to Mrs B as a percentage, which then needs to be applied to the current value of the amount represented by the transfer of the £65,000 into Mrs B's new SIPP.

So for example, if the £65,000 invested since 18 December 2020 would have been worth £68,000 at 12 April 2021, and either Aegon's or James Hay's share of that loss is 70%, and with actual investment returns applied up to when it should have been transferred out on 11 May 2021 (using the disinvestment date of 6 May 2021) taking that amount to £70,000, then it would need to uplift the amount represented by the £65,000 transfer within Mrs B's current SIPP by a factor of 1.054.

But Aegon wasn't responsible for the delay between 11 May 2021 and 4 June 2021, and so a separate calculation should be undertaken to determine the additional effect of the delay incurred solely by James Hay. This would be to compare the loss attributable to Aegon determined by a notional transfer on both 11 May 2021 and 4 June 2021. So in effect, a further calculation as above, but on the basis of the later transfer date of 4 June 2021. If the loss due to the notional earlier transfer on 11 May 2021 is higher, James Hay should pay as a monetary amount, instead of Aegon, whatever the difference is between those two calculations – with Aegon then paying the lower amount.

The effect on Mrs B's SIPP should be neutral, but this will reflect the impact of the loss caused by Aegon up to a notional transfer date of 11 May 2021, whilst not holding it responsible for additional delays incurred by James Hay.

The retention of £454,383 in cash from 26 March 2021 until reinvestment in the new SIPP James Hay was unable to comply with the initial full disinvestment request as it didn't have the "lost" £65,000. As James Hay has confirmed, there was a telephone call on 7 May 2021 in which the possibility of the partial transfer was discussed, but James Hay couldn't act on the basis of a phone call. It did then agree to accept the instruction via email, and this was received on 12 May 2021, but this wasn't actioned until 25 May 2021.

But the full transfer was in any case impacted by the loss, investment, and subsequent disinvestment of the £65,000. As I've said above, Aegon had informed James Hay on 23 April 2021 that, following the relocation and investment of the £65,000, a new disinvestment instruction would be required, but James Hay didn't confirm this to Mrs B's representative until 12 May 2021. The forms were received back from Mrs B's representative two days later on 14 May 2021.

Had the £65,000 been received by James Hay sooner, the whole of the amount could have been transferred together at an earlier stage, with no need for a partial transfer. So for the period from 28 March 2021, which is two days after James Hay received the bulk of the amount to be held in cash, up to 11 May 2021, which is the soonest all of the funds could have been transferred together, I think the responsibility for any loss lies with Aegon. The funds couldn't have been transferred together before this point due to the "loss" of the £65,000.

I appreciate that Aegon may assert that a partial transfer could have occurred before 11 May 2021, which would mitigate its liability for the bulk of the cash remaining uninvested after 26 March 2021. But this was a complicated and confused situation, caused in no small part by the "loss" of the £65,000, and by the need for Mrs B's representative to re-submit a partial transfer request after it became aware that the full transfer request it had previously submitted couldn't be processed by James Hay – directly due to the missing £65,000.

But for the period between 11 May 2021 and the actual date of transfer and reinvestment, I think the responsibility for any loss lies with James Hay. If it hadn't caused delays in notifying Mrs B's representative of the need for a new transfer application form, and had actioned that request promptly, and the disinvestment of the £65,000 had also taken place earlier, a full transfer could have proceeded on 11 May 2021, with no need for the partial transfer.

As such, the same redress principle as that set out above should be applied to the amount which was held in cash from 26 March 2021 onwards, but with Aegon being responsible for the first delay period from 28 March 2021 to 11 May 2021 and then James Hay being responsible for the period from 11 May 2021 to the date of reinvestment in the new SIPP.

If there is a loss attributable to Aegon from either part of the redress calculation as set out above, Aegon should in the first instance pay into Mrs B's SIPP to increase its value by the total amount of the loss and any interest (as set out below). 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 Aegon is unable to pay the total amount into Mrs B's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount 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 Mrs B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age. I assume this to be basic rate. And so, assuming that tax free cash would be taken, the reduction should be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

Additional interest at the rate of 8% simple per year should be added to any loss from the date of any final decision along these lines to settlement if the complaint isn't settled within 60 days of Aegon receiving notification of Mrs B's acceptance.

Income tax may be payable on any interest paid. If Aegon deducts income tax from the interest it should tell Mrs B how much has been taken off. Aegon should give Mrs B a tax deduction certificate in respect of interest if Mrs B asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Mrs B has also unquestionably been significantly inconvenienced and distressed by this

matter. And whilst I appreciate that Aegon isn't responsible for some of the delays, the "loss" of the £65,000 has been a significant contributory and complicating factor in the problems Mrs B has faced here.

I think she will also be extremely frustrated to now learn that, despite Aegon previously having maintained its position that it returned the £65,000 to James Hay in December 2020, with the implications that this had for Mrs B's complaint against that business, it has now conceded that it didn't so after all – and that this has only come to light since the involvement and further questions from this service.

As such, my current view is that Aegon should pay to Mrs B a further £300 in recognition of this."

Mrs B's representative accepted the proposed outcome. James Hay broadly did too, but wished to amend an aspect of my proposed timeline, saying that, once it had received the documentation to send to Aegon on 27 April 2021, it would have taken four working days to do so, and given the bank holiday, this would have been on 4 May 2021. And so, according to the remainder of the proposed timeline, this would mean that the transfer would have occurred on 17 May 2021 rather than 11 May 2021.

Mrs B's representative has accepted that revised timeline.

Aegon also broadly accepted my findings, but pointed out that the instruction which accompanied the transfer of the £65,000 was to invest it in cash within the GIA, and so, it said, there would have been no loss for the time during which it had been "lost".

I therefore asked the investigator to enquire further as to Mrs B's understanding of what would happen with the £65,000 once it was invested in the GIA. Mrs B's representative has said that the money would have been invested in the same way as her existing funds in the GIA – and that there would clearly have been no point in adding further money just for it to sit in cash.

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.

My views on the matter remain broadly the same as those set out in the provisional decision, and for the same reasons. I've noted Aegon's point about the cash investment instruction, but I agree with Mrs B's representative. There clearly would have been no point in adding funds to the account unless Mrs B intended to invest them. And in the absence of any evidence to persuade me otherwise, it seems more likely than not that the £65,000 would have been invested in the same way as Mrs B's existing GIA funds.

I think it was the fact that James Hay firstly issued the wrong forms, and then the subsequent "loss" of the £65,000 by Aegon, which prevented the funds from being invested as intended. And so I don't think the proposed redress methodology needs to be changed, other than as set out below.

Putting things right

As with the provisional decision, my aim is to put Mrs B as closely as possible into the position she would have been, but for the mistakes made by both businesses.

This hasn't been straightforward, and I'm grateful to all parties for their swift communication

on the amendments and outstanding issues which have needed to be addressed.

On the basis of the responses received, my view on the appropriate manner of putting things right remains as outlined in the provisional decision, but with an amended date of 17 May 2021 for the “soonest” date that all the funds could have been transferred to the new provider. Further, the notional investment return on the £65,000 should be calculated on the assumption that Mrs B would have invested in the same funds, and proportions, as already existed within the GIA.

My final decision

My final decision is that I uphold the complaint and direct Cofunds Limited, trading as Aegon, to undertake the above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 28 April 2023.

Philip Miller
Ombudsman