DRN-4140279

The complaint

In 2022 Mr D transferred his group pension assets into a Self-Invested Personal Pension ('SIPP') administered by Scottish Equitable Plc trading as Aegon. His case is about the liquidation element of the fund switch, within the SIPP, that he instructed on 11 September 2022. He says Aegon unduly delayed its execution, resulting in less proceeds than would have been achieved with timely execution. He claims compensation for loss of liquidation value and for trouble and inconvenience caused in the case.

What happened

On 11 May 2023 I issued a Provisional Decision ('PD'). I provisionally concluded that the complaint should be upheld.

The PD set out the following summary of events –

"*The chronology of main events, in 2022, is as follows:*

- *6 September – The SIPP account statement confirms that Mr D's pension cash was received in the SIPP on this date. Evidence from the SIPP's bank account shows the funds were cleared on this date. On the same date he instructed the use of most the cash for investments in four funds (the 'four holdings'). The account statement shows the associated purchase requests.*

- *9 September – A contract note for the four holdings shows that trading (to buy them) was conducted on this date. On the same date, Aegon wrote to Mr D to confirm that the transfer of assets into the SIPP was complete. It enclosed the contract note and said its contents showed the investments in the SIPP at the time.*

- *11 September – Aegon received Mr D's instruction for a switch in the SIPP. This involved the sale of the four holdings and reinvestment of all the proceeds in a fifth fund, the Scottish Equitable Cash ARC Pension Fund (the 'SEC' fund).*

- *12 to 15 September – The account statement shows that funding for each of the initial four purchases was executed on different dates during this period.*

- *16 September – Aegon actioned the trades for selling the four holdings. The account statement also shows the purchase request for the SEC fund being logged on this date.*

- *20 September – The sales were based on this date's unit prices. The account statement shows disinvestments of all the four holdings on this date.*

- *21 September – The account statement logs the sale proceeds for one of the four holdings on this date.*

- *22 and 23 September – The account statement shows that on the 22nd the SEC fund* *holding was bought, and on the 23rd funding for the purchase was completed. Also on the 23rd, the statement logs the sale proceeds for another one of the four holdings.*

- *26 September – The account statement logs the sale proceeds for the last two of the four holdings*."

The PD summarised each party's case as follows –

"*Mr D's case is about the timing of the sale of the four holdings and the proceeds generated. He says the terms for switch sales in the SIPP required Aegon to execute them within the next two dealing points after the sale instruction. In his case, he has referred to evidence of dealing points on 12 and 13 September, following his sale request on 11 September. His argument is that had the four holdings been sold on either 12 or 13 September (at the unit prices on these dates) the total proceeds would have been between around £5,000 to £6,000 more than the proceeds achieved on 20 September prices.*

Aegon concedes that the level of its customer service to Mr D, between 23 September and 10 October, was below what it should have been. For this, it has apologised and offered him £500 compensation. However, it disputes his claim about financial loss (and redress). It says execution of the sale instruction (within the next two dealing points) had to be suspended in his case because the initial purchases of the four holdings were yet to be settled until the last purchase funding cleared late on 15 September (and was logged early on 16 September). Starting from 16 September, its argument is that execution (and pricing) of the sale instruction on 20 September was within two dealing points (or two working days) so it acted consistently with the timescale requirement."

Key provisional findings in the PD were –

"*I am aware* [Mr D] *has also expressed dissatisfaction about Aegon's complaint handling. Complaint handling is not a regulated activity. My remit is to determine cases about regulated activities. Sometimes a complaint to a firm and its handling of it might form a part of the overall substantive claim (about a regulated activity) – for example, where mishandling of a complaint added to the substantive problem or, where the problem was ongoing, delayed its resolution. If so, it might be necessary to address a firm's complaint handling as part of the overall case. In Mr D's case, his complaint and Aegon's handling of it happened after the substantive switch events. Those events were not ongoing at the point of complaint. The switch had begun and concluded by the time he submitted his complaint (on 26 September 2022). Aegon's complaint handling is therefore an isolated matter, distinct from the substantive complaint, so I do not address it (or the issues related to it).*"

"*Aegon's argument conflicts with two sets of documentary evidence in this case. First I refer to the submissions Mr D made, as I mentioned in the previous section. He has presented evidence of trading he conducted, in 2023, in three of the funds in the four holdings. This trading did not happen with Aegon. It happened with another firm/provider. Nevertheless, it holds a reasonable level of relevance because it relates to trading in three of the same funds he traded with Aegon in the four holdings. There is evidence of the following –*

- *Holdings in each of the three funds were bought on 14 February 2023, one purchase settled on 17 February and the other two settled on 20 February.*
- *The same holdings were sold the next day (15 February 2023), one sale settled on 20 February and the other two settled on 21 February.*

The conclusion arising from the above is that there was nothing in the workings of the three relevant funds that required the suspension of sales pending settlement of purchases. With reference to Aegon's terms for the SIPP, I have been unable to find any term in which such a *requirement was set out. The resulting suggestion is that the suspension Aegon applied between 11 and 16 September 2022 was a choice, not a requirement. The second set of evidence, which I address next, further supports this conclusion.*

Within the activities in Mr D's Aegon SIPP, there appears to be evidence that Aegon was not required to await settlement of a transaction before executing a separate but linked transaction, and I consider this relevant to what it could and should have done with the instruction on 11 September. The four holdings were sold on 20 September, but their sales were not settled until between 21 and 26 September. Nevertheless, purchase of the SEC fund holding was executed on 22 September and settled on 23 September, both happening when settlement and receipt of proceeds for two of the four sales remained outstanding. Purchase of the SEC fund holding, covered by the total proceeds of the four sales, was successfully completed before around half of those proceeds were received. The transaction was not interrupted or suspended for that reason.

Overall, on balance and for the above reasons, I provisionally find that Aegon's suspension of Mr D's sale instruction between 11 and 16 September 2022 happened without a credible reason; the reason given by Aegon is not supported by the terms for trading in the SIPP and it is a reason that appears to be defeated by relevant evidence of trading conducted within the SIPP and trading conducted within three of the funds in the four holdings; therefore, the suspension was unjustified, the instruction should have been logged on 11 September and executed on either 12 or 13 September."

Both parties were invited to comment on the PD and/or present new evidence in response to it. Mr D confirmed he had no comments. Aegon submitted a response disputing the PD's findings. It mainly said the PD wrongly claims the terms for the SIPP do not support its position; the PD unfairly drew a comparison with another firm's processing of Mr D's trades; and the PD drew a misguided comparison between its processes for the initial transaction to buy the four holdings and the subsequent switch transaction in the SIPP.

The case was then returned to me.

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.

I have reviewed the case and considered the three main submissions made by Aegon (as summarised above). Having done so, I have not been persuaded to depart from the PD's findings and conclusions. I endorse and incorporate those findings and conclusions into this decision. Mr D's complaint is upheld.

In its first main submission, Aegon said –

"*The provisional decision mentions our reason for not processing the trade "is not supported by the terms for trading in the SIPP". However, I refer you to our attached terms and conditions, also sent in our email of 22 December 2022, <u>specifically 7.12.7</u> which addresses this type of scenario:*

"<u>A switch instruction cannot be carried out if there is an outstanding switch</u> from the same investment in progress. The switch <u>will be carried out once the outstanding switch has been completed</u>"" [my emphasis]

"*In* [Mr D's] *case, the money from the transfer-in was in the process of being invested, so the cash was still tied up in pending trades*."

In its third main submission, Aegon said –

"*In your other reason for your provisional decision upholding* [Mr D's] *complaint, you mentioned how the sale of the four funds hadn't completely gone through before the purchase of the Scottish Equitable Cash ARC Pension (SEC) Fund was executed/settled. This, you felt, was evidence that more than one trade could be placed at the same time.*

<u>The transaction you described</u> … <u>was a switch rather than an individual purchase/sale transaction (which is what the investment of the transfer-in cash was)</u>. I would refer you to <u>section 7.12 of our terms and conditions, which outlines how we process switching</u> within a product wrapper. <u>In particular, 7.12.3</u> outlines what we provide regarding pre-funded switching." [my emphasis]

""*We will not wait for cleared sale proceeds to be received into the cash facility of your product wrapper in order to proceed with the purchase transaction, which will otherwise be carried out in accordance with clause 7.11.3". This clause refers to us making a purchase of investments within the next two dealing points – this is what happened, when the purchase was priced on 22/9/22, as per the 'Acquisition of Asset' transaction type*."

There is an apparent contradiction between both submissions. First Aegon says the initial purchase of the four holdings with *the money from the transfer-in* was an 'outstanding switch', which had to be completed before the SEC fund switch transaction could begin (with sale of the four holdings). Then it proceeds to argue that *the investment of the transfer-in cash* (that is, the initial purchase of the four holdings) was an individual purchase/sale transaction, and *not* a switch.

The terms clarify what constituted a switch transaction. Section 7.12.1 says – "*Switching (or a switch transaction) <u>comprises selling an investment and buying another investment</u>, in other words it is one instruction, comprising a sale instruction and a related purchase instruction*." [my emphasis]

As Aegon accepts, in its third submission, the purchase of the four holdings with the transfer-in cash was an isolated purchase transaction. It was not a switch (as defined). It did not involve the sale of a previous investment and purchase of another. It only involved investment of cash transferred into the SIPP. As such, the purchase of the four holdings was not an 'outstanding switch'. Section 7.12.7 is irrelevant. The PD's finding – that Aegon's action in delaying the switch instruction is unsupported by its terms – remains intact.

The same applies to the PD's consideration of how purchase of the SEC fund was executed before the sales of all the four holdings were completed. The finding arising from this also remains intact, despite Aegon's submission. The purchase happened when around half of the money needed to fund it was outstanding from the unsettled sales of two of the four holdings. This stands as evidence that Aegon did not need to await settlement of one transaction before executing a connected other. In other words, it did not need to await settlement of all the initial purchases (of the four holdings) before executing their sales in the switch transaction.

Aegon's second submission appears to have misunderstood the point the PD sought to make. I do not suggest that it should be held to or bound by another firm's practices. As the PD said, the point to note is that evidence of how Mr D traded three of the funds in the four holdings through the other firm establishes that "… *there was nothing in the workings of the three relevant funds that required the suspension of sales pending settlement of purchases*". Focus is on the three funds themselves, not on the other firm's practices.

The sum of the above, and of the facts and findings set out in the PD, is that Aegon's terms do not support its delay in executing the liquidation element of the SEC fund switch; there is evidence from its actions within the switch that shows it could, and ought to, have executed the switch without awaiting settlement of the initial purchases (of the four holdings); and there is evidence from three of the funds in the four holdings confirming that they did not require suspensions of sales pending settlement of earlier purchases. Overall and on balance, these summarise the credible grounds on which Mr D's complaint is upheld.

Putting things right

In deciding what is fair compensation my aim is to put Mr D, as close as possible, in the position he would probably now be in if Aegon did not delay the sale of the four holdings.

The facts of his case show that redress cannot fairly be limited to the calculation of whether (or not) an earlier execution of the sale would have produced higher proceeds, and then awarding the difference (between the actual and hypothetical proceeds) as redress. Evidence shows that the money from selling the four holdings was always intended for reinvestment in the SEC fund, and that it was indeed reinvested in this fund. Further evidence from the SIPP account statement shows that Mr D had the SEC fund holding from 22 September 2022 and up to 4 October 2022 – he instructed its sale the previous day and the sale was settled by 5 October 2022. Thereafter, the statement shows that he held the cash from the sale, then on 19 October 2022 he transferred that cash out of the SIPP.

I am persuaded that redress should capture all the above. It should not be limited to any loss of liquidation value, otherwise it arguably becomes an artificial form of redress. I do not consider it necessary to go beyond October 2022 in considering redress. Mr D retained cash from 5 to 19 October, and whilst there is evidence of his intention to invest wholly in the SEC fund up to 4 October, there is a lack of evidence of what he intended thereafter (especially given his holding of cash until the transfer). As such, I am persuaded that redress should be considered up to 4 October.

There are four aspects to calculating redress and compensation for Mr D. First is consideration of the liquidation proceeds that would have been achieved from an earlier sale of the four holdings, but for the delay; then consideration of the size of an earlier investment in the SEC fund (using all those proceeds); then consideration of how that investment would have performed up to sale on 4 October 2022; and then consideration of compensation to Mr D for the trouble and inconvenience he has been caused in the matter.

For the sake of the associated calculations, I find that –

- The four holdings should have been sold by the second dealing point after Mr D's instruction, so it should have been sold on 13 September 2022.
- Placement of the trade to buy the SEC fund holding should and would have happened on the same date. The relevant switch trading terms for the SIPP essentially says the purchase element of a switch will happen when the sale element has been executed, without having to wait for settlement of the sale.
- Execution of the purchase should and would have happened by the second dealing point/working day thereafter, on 15 September 2022.
- The SEC fund holding is the natural benchmark for calculating redress performance between 15 September 2022 and 4 October 2022 (the end point).

I order Mr D to engage meaningfully and co-operatively with Aegon to provide it with all information and documentation, relevant to its calculation of redress and needed to settle redress, that it does not already have.

To compensate Mr D fairly, I order Aegon to do as follows:

- Calculate the total value for which the four holdings would have been sold if the sale was executed on (and at the prices on) 13 September 2022. The result is 'A'.

- Calculate the total *units* in the SEC fund that Mr D's SIPP invested in on 22 September 2022. The result is 'B'.

- Calculate the total *units* in the SEC fund that Mr D's SIPP would have bought with A on 15 September 2022 (and at the prices on this date). The result is 'C'.

- If B is the same or greater than C, no compensation is due.

- If C is greater than B, compensation is due to Mr D. In this case, Aegon must calculate the difference. Then it must calculate the *total monetary value* of the difference based on the SEC fund's unit prices on 15 September 2022. The result (that is, the total monetary value) is 'D'.

- Calculate how D would have performed from 15 September 2022 to 4 October 2022, using the SEC fund as the performance benchmark between these dates.

- Pay Mr D the monetary equivalent of D plus or minus the calculated performance. The resulting payment is 'E'.

- Pay E to Mr D within 28 days of receiving notice of his acceptance of this decision. If Aegon does not make the payment to him within this period it must pay him E plus interest on E at the rate of 8% simple per year from the date of this decision up to the date the payment is settled/made to him. This is to compensate him for any undue settlement delay by Aegon.

- Pay the compensation into Mr D's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculations to Mr D in a clear and simple format.

- Pay Mr D the £500 compensation for trouble and inconvenience that has been offered to him. Part of the offer appears to relate to aspects of Aegon's complaint handling after the relevant events, which is a matter I have not considered. However, I regard the amount of £500 to be a fair award to compensate him for the trouble and inconvenience the substantive complaint matter caused him at the time and for the trouble subsequently caused to him in trying to resolve it.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr D’s case, the complaint event occurred after 1 April 2019 (it happened in 2022) and the complaint was referred to us after 1 April 2022, so the applicable compensation limit would be £375,000.

My final decision

For the reasons given above, and in the PD, I uphold Mr D’s complaint. I order Scottish Equitable Plc trading as Aegon to calculate and pay him redress and compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 16 June 2023.

Roy Kuku
Ombudsman