DRN-4214913

The complaint

Mr C complains that Chevening Financial Ltd failed to provide him with appropriate assistance in the transfer of his pension savings to a new provider.

What happened

Mr C's complaint relates to the transfer of his pension savings from Virgin to Aegon. Chevening provided Mr C with advice before the transfer took place, and then managed the transfer activity on his behalf. The transfer took far longer than Mr C thinks was reasonable.

Mr C has made complaints about the actions of all three regulated firms involved in this transfer, Chevening, Aegon, and Virgin. I have carefully considered the actions of each firm and, I think the responsibility for the delay is shared between all three. I am issuing separate decisions on the complaints made by Mr C against Aegon and Virgin that largely mirror my findings here. So for that reason, and for clarity, I have chosen to name all three firms in this decision.

I issued provisional decisions on this complaint, and the complaints against Aegon and Virgin, earlier this month. In those decisions I explained why thought that Chevening shared responsibility with Aegon for the first part of the delay to the transfer. And so I set out what I thought Chevening needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

> *Chevening provided Mr C with advice about the transfer of his pension savings in November 2019. Its advice was to combine two separate pensions, one of which was held with Virgin, into a single new plan to be held with Aegon. As part of that advice, Chevening recommended that Mr C should modify his investment approach to reduce the equity exposure, and so the risk, in his pension investments. Mr C agreed with Chevening's recommendation and agreed for the transfers to take place.*
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> *When Chevening first asked Virgin for information about Mr C's pension savings, Virgin also sent the firm a form that it said would need to be completed should any transfer go ahead. Virgin did not offer transfers via the automated Origo Options system used by some other pension providers. But Chevening didn't ask Mr C to complete the transfer authorisation form provided by Virgin. Instead it asked Mr C to complete a form provided by the new receiving scheme, Aegon.*
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> *Chevening sent Mr C's transfer request to Aegon on 30 January 2020, and Aegon sent the form on to Virgin on 12 February. Virgin confirmed receipt of Mr C's instruction five days later. But on 21 February Virgin sent a letter to Aegon saying that it had rejected the transfer instruction. But the reasons Virgin provided were not entirely clear – it told Aegon that it needed any Letter of Authority to contain Mr C's full postal address.*
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> *On 3 March, Mr C asked Chevening to provide him with an update on his transfer from Virgin. He noted that the transfer of his pension benefits from the other scheme,*

that had been requested at the same time, had completed a few weeks earlier. Chevening asked Aegon for an update, and following a series of phone calls between the three firms, the reason for Virgin's rejection of the transfer request was identified. The form that Aegon had used to make the request did not contain Mr C's full postal address. Mr C provided an updated application form on 5 March that was received by Virgin on 9 March.

Virgin still failed to process Mr C's transfer request. On 9 April Virgin advised Chevening that Mr C needed to complete its own application form, rather than that provided by Aegon. Mr C completed that form and sent it to Virgin. Mr C's transfer was completed on 21 April.

When Virgin looked at Mr C's complaint it concluded that the form he had sent in on 9 March was sufficient for it to complete his transfer. So it looked at whether Mr C had lost out as a result of the delay between when the transfer should have completed based on the receipt of that form (13 March) to its actual completion date (21 April). It concluded that Mr C hadn't lost out but paid him some compensation for his inconvenience.

But Mr C still considered that there had been a delay caused by the use of the wrong authorisation form, and due to the time it had taken for that problem to be identified. So he asked that we consider whether any of the parties were responsible for that part of the delay (between 21 February and 13 March).

Chevening didn't agree that it had any responsibility for the delay. But, as a gesture of goodwill, it offered to refund the fee it had charged Mr C for its advice amounting to £2,912.89. Mr C didn't accept that offer and asked that we consider his complaint.

As I have explained earlier, there are three regulated businesses involved in the matters that underpin Mr C's complaint. In this decision I am only considering the actions, and responsibilities, of Chevening. And my directions will only relate to that firm. But I will naturally need to reflect on the actions of the other two firms. As I have said, I am issuing separate provisional decisions against Virgin and Aegon for their parts in the delay.

Virgin has already agreed that it should have been in a position to complete Mr C's pension transfer when it received the updated application form containing his address in early March. So in this decision I need to consider the delay that occurred between the transfer application initially being sent to Virgin on 21 February, and the point at which the updated form was received.

I think the basic facts around that delay are not disputed by Mr C or Chevening. Virgin sent Chevening the forms that it said needed to be completed by Mr C to authorise the transfer when it provided information to Chevening about the pension plan in November 2019. I accept that was some time before the transfer actually took place, and that Virgin's request wasn't entirely in line with what Chevening might have experienced with other firms when requesting a transfer. But I think the request Virgin made was reasonable, and set out clearly.

Details of the information Virgin required wasn't provided to Mr C, or to Aegon. So it was entirely Chevening's responsibility to ask Mr C to complete the relevant forms that had been sent, or at the very least to ensure that the application form Aegon used contained all the information that Virgin needed. That wasn't done, and so the initial cause of the delay appears to me to be due to the failings of Chevening.

Virgin received the transfer instruction from Aegon on 17 February. But four days later Virgin responded to Aegon. It said that it couldn't accept a letter of authority giving permission to access information about Mr C's pension plan unless the letter of authority contained specific details including the consumer's full address. But Aegon hadn't sent a letter of authority into Virgin – that had been sent by Chevening the previous October. So it seems there might have been some confusion about what Virgin had sent, and a delay was caused to Mr C's transfer.

But Aegon initially failed to act on the letter Virgin had sent. It seems that it wasn't until Mr C chased Chevening for a progress update on his transfer in early March that any further actions were taken. At that point there were discussions between Chevening, Aegon, and Virgin. From those discussions it became apparent that Virgin actually required Mr C's address to be submitted as part of the transfer application – and that was what its message was actually referring to, rather than the erroneous reference to a letter of authority.

Once that missing information had been established, Mr C, Chevening, and Aegon acted quickly to provide the required information to Virgin. But that additional time can only be considered to be as a result of the wrong form being used in the first place. But as I said earlier, Virgin has agreed that it held all that it needed in early March, and that Mr C's transfer should have been completed around 13 March. So I think it is at this point that my consideration of the delay, in respect of this complaint, should end.

As I have explained, I think there are two parties at fault for the delay Mr C experienced between 21 February and 13 March. Chevening failed to provide Mr C with the levels of assistance I think he had reason to expect. It had been made aware of the information Virgin required from Mr C in order to authorise a transfer. It failed to make either Mr C or Aegon aware of those information requirements, or ensure that Mr C's transfer authority was compliant. And I think that Aegon failed to act on the letter it was sent when Mr C's application was rejected. Although that letter might not have been as clear as it might have been, it still fell to Aegon to understand what was being requested. So I think that Chevening and Aegon should share the cost of any compensation that is due to Mr C for the delays between 21 February and 13 March.

Chevening has reasonably pointed out that Virgin's acceptance of responsibility for the delay after 13 March is on the basis that its own form wasn't actually required for the transfer to be authorised – it has said it could have acted on the information that Aegon provided shortly before that date. So Chevening says that clearly means that its failure to ensure Mr C used the Virgin application form didn't cause the delay. But I think that is missing the point. Although Mr C might not have needed to use the actual application form, he was required to provide all the information that it contained. And that is a failure for which Chevening needs to take responsibility.

I have thought carefully about how the cost of the compensation between 21 February and 13 March should be shared. Chevening has said that it doesn't think it should be liable for more than 7 working days of any delay. But I don't share that conclusion. I have looked carefully at the timeline that applies, and think that the responsibility should be divided as follows;

- *Chevening - 21 February to 26 February (5 days). Had the correct form been used to make the transfer application it would have been processed by Virgin within 5 days of receipt. So the time taken for a rejection to be sent to Aegon was due to a failure by Chevening.*

- *Aegon – 26 February to 4 March (7 days). This was the time taken to act on the rejection by Virgin of Mr C's transfer request. That delay was the responsibility of Aegon.*

- *Chevening - 4 March to 13 March (9 days). This was the additional time required for the completion and submission of new transfer instructions in a form ultimately agreed as being acceptable to Virgin. As before had the correct information been provided at the outset this delay would not have occurred so is the responsibility of Chevening.*

The initial analysis performed by Virgin of the losses experienced by Mr C suggest that overall, between 21 February and 13 March, the value of Mr C's pension savings fell. And that their value then recovered a little in the period to 21 April. So Virgin has said that its delay, from 13 March onwards, didn't cause any loss to Mr C. And I agree with that analysis.

But, within that period as I've noted above, Mr C's pension savings actually experienced an increase in their value. So Mr C would be unduly compensated if I simply looked at the fall in the value of his pension savings between 21 February and 13 March. So I will allow Chevening, and Aegon, to proportionately reduce the compensation they need to pay to Mr C by the later gain. But, I do not intend to apportion the loss any further between the three earlier periods. As I explain below I think the overall loss between 21 February and 13 March should be calculated, and then apportioned between Aegon and Chevening as set out above.

I have noted that, as a gesture of goodwill, Chevening has offered to refund the fee Mr C paid for the advice it provided to him. Since the impact of the redress I am intending to direct will be to place Mr C in the position he would have been had nothing gone wrong, I am not minded that the advice fee needs to be refunded to him. So it will be up to Chevening to decide whether or not to maintain its gesture of goodwill when my final decision has been issued.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr C has said that he largely agrees with my findings, but has some concerns over the complexity of the calculation the three businesses will need to perform in order to put things right. He says that he would like to be able to check and verify the calculation against his own records. And he has pointed out a typographical error in the compensation that I said I would direct Chevening to pay. I will correct that error below.

Chevening has sent us some further information. Although I am only summarising here what it has said, I want to confirm that I have read, and carefully considered, the entire response.

Chevening has said that it agrees with the broad thrust of my provisional findings, and partially with the redress I have asked it to pay to Mr C. But there are some specific points that it says it wants to raise in its response.

It says that Virgin received the revised instruction on 9 March. So it thinks it is at that point that its liability should end, rather than 13 March when Virgin says it should have processed the instruction. And it says that it actually sent the original request to Aegon on 30 January. So it thinks that had both Aegon and Virgin acted differently at various points its original oversight would have had a lower impact. It provided some examples of other delays that I will discuss later in this decision.

Chevening noted that I said it originally told Mr C that it didn't consider it had any responsibility for the delay. It doesn't feel that statement accurately reflects its position and thinks it would have been more appropriate for me to say that, while acknowledging the oversight in not using Virgins form initially, Chevening did not agree that this single oversight was a material factor in the eventual delay, when measured alongside the inaction and incorrect actions of Aegon and Virgin.

Chevening also noted the typographical error in my redress calculations that was pointed out by Mr C. And it said that it thought it would be right that I should also take into account the likelihood that Mr C's pension investments would have fallen in value (although it accepts by not as much) if the transfer had been completed earlier. It says that potential fall should also be accounted for in my redress directions.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr C and by Chevening. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And again I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the response that we have received from Chevening to my provisional findings. And I've also taken account of the responses that Aegon and Virgin have provided to my findings on the other complaints. Having done so I'm not minded that I should change the way in which I think the responsibility for the delay should be apportioned. But I would like to provide some additional reasoning in the light of Chevening's comments.

I explained in my provisional decision why I thought the time taken to process the revised application was the responsibility of Chevening. When the original transfer was sent to Virgin it was reasonably allowed a period of time to action that request. Had the correct form been used, the transfer would have proceeded at that point. But instead the rejection letter was sent to Aegon. So the additional processing by Virgin, when it received the second transfer application was entirely as a result of insufficient information being sent on the original application – and therefore the responsibility of Chevening.

I have looked at the other examples of delays that Chevening provided. A transfer of this nature will take some time given the multiple parties involved, and particularly considering that Virgin does not use the automated Origo Options system, meaning all requests need to be submitted using paper forms. I explained to Aegon that I thought the initial time taken to send Mr C's application to Virgin was at the extremes of what I might consider reasonable. And it was for that reason that I thought Aegon should have responded more promptly to the letter of rejection it received. But on balance I'm not persuaded there were any delays, other than those I have noted in my provisional decision, that had a material, and unreasonable, impact on Mr C's transfer request.

The redress I set out was intended to take account of the investment returns (or more likely losses) that Mr C would have experienced in the period that the transfer was delayed. So I have made a small amendment to my directions below to make that more clear. And I thank Mr C and Chevening for highlighting the typographical error in the redress directions – I have also amended that below.

So I remain of the opinion that responsibility for the delay to the transfer of Mr C's pension benefits, that took place between 21 February and 13 March should be shared between Aegon and Chevening in the ratio of 1:2. It follows that Chevening should now pay Mr C the compensation I set out in my provisional decision, and repeated below for clarity (with the correction as noted above).

Putting things right

Chevening should request information from Virgin to determine the value of Mr C's pension savings that would have been transferred had his request been completed when the authorisation form was first submitted to Virgin. I understand that date to be 21 February 2020. That value should be compared to the amount being used by Virgin to calculate the compensation it might have needed to pay for the later delay – I understand the relevant date to be 13 March 2020.

If that shows the value on 21 February would have been higher than that on 13 March then Mr C has lost out as a result of the delay. As set out previously that delay amounts to 21 days, of which 14 are the responsibility of Chevening. So Chevening is responsible for two thirds of the compensation that is due to Mr C.

But Chevening should also request information from Virgin to determine the value of Mr C's pension savings when they were ultimately transferred. I understand that will be greater than the notional value as at 13 March. Chevening may deduct two thirds of that gain from the compensation that is due to Mr C.

The value of that compensation should then be used to calculate a final compensation value by adding or subtracting notional returns based on the investment performance of Mr C's overall pension savings (from information provided by Aegon) as if they had been invested in the same way as they have been, from the date the transfer should have concluded, on 21 February 2020, to the date of any final decision along these lines. For clarity that means Chevening should also account for any gains or losses the transferred pension savings would have experienced during the delay period if the transfer had happened earlier.

The compensation should be paid into Mr C's pension plan. 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 Chevening is unable to pay the total amount into Mr C'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 total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age. I think that it's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr C 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%.

Chevening should provide Mr C with a clear and easily understood statement of its calculations showing the method it has used to assess the compensation he is due.

My final decision

My final decision is that I uphold Mr C's complaint and direct Chevening Financial Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 July 2023.

Paul Reilly
Ombudsman