

The complaint

Mr M complains Scottish Equitable Plc trading as Aegon delayed the transfer of his investment. This caused Mr M to be out of the market for longer than he anticipated, and he feels he has suffered a financial loss as a result.

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity I repeat it here.

Mr M holds a pension with Aegon.

On 5 October 2022, Aegon received a transfer request via the Origo pension transfer system, to transfer his existing pension to Hargreaves Lansdown. The transfer was not completed until 31 October 2022 and received by Hargreaves Lansdown on 3 November 2022.

Aegon explained its normal business standard is to process this type of transfer request within 10 working days from the day after the date it receives the request. In this case there was an unforeseen error with Aegon's Origo system integration. This error meant Aegon had to request its IT department to cancel the original request and create a new one, this ensured the transfer funds were not sent twice.

Aegon confirmed the transfer value of the plan was taken as of 7 October 2022. On 28 October, it created a new transfer request. It prioritised this new request and transferred the funds to Hargreaves Lansdown on 31 October, which were received on 3 November 2022. Aegon accepted Mr M had called them numerous times to request an update on the transfer, but he was given misleading information including various incorrect dates of when the transfer would be completed.

Aegon apologised and offered Mr M £500 by way of compensation for the delay. But it didn't accept that it had caused a further financial loss because when the transfer completed Mr M did not invest in the way, he had detailed to them. He altered his investment model and also chose to drip feed his investment into the market over a period between mid-November and mid December 2022.

Mr M explained his instruction to Hargreaves Lansdown was the transfer funds were to be applied to his investment wrapper as cash, so he could choose his own investment model. Mr M told this service he is an experienced investor, he had a watchlist in place and anticipated he would be out of the market for around 2 weeks, but the delay meant this was extended to four weeks. He says as the entry point into the market was delayed, he has incurred potential losses. Mr M says this is because the units he was intending to invest in had increased in price by the time the transfer funds had been received and the potential long-term gains from the investments were impacted.

As Aegon didn't uphold this part of his complaint, Mr M brought his complaint to this service. An investigator looked into things for Mr M. He found that:

- Hargreaves Lansdowne instructed Aegon to arrange the transfer on 5 October 2022.
- The expected completion date for this transfer request was 17 October 2022.
- Had it not been for Aegon's system error, Hargreaves Lansdowne would've received the funds 3 days later on 20 October 2022.
- The investigator didn't agree that 10 working days were appropriate given the advantages of the online Origo Options platform.
- Although the funds were received by Hargreaves Lansdowne on 3 November 2022, Mr M didn't invest all his funds at this time - he waited for more favorable market position due to the delay. But the investigator didn't agree Aegon could be held responsible for this as a potential loss.
- In the investigators view a fair period of compensation would be from 20 October 2022 to 3 November 2022. Using the FTSE UK Private Investors Income Total Return Index as a comparison benchmark.

Mr M accepted the investigators findings in part, albeit he felt Aegon had "got off lightly" in the circumstances. But he didn't feel £200 fairly reflected the level of trouble and upset caused.

Aegon did not accept the investigators view. It said it gave Mr M a number of opportunities to submit an investment plan for a price comparison but he failed to do so and so it offered £500 as a fair and reasonable redress. It also questioned the period of the redress calculation and why it had been calculated on the whole amount of the investment as Mr M didn't invest the whole investment amount once the transfer was complete. It also wanted clarification on the reason why the benchmark was used a comparative – it said the funds that were invested in should be used in preference.

In my provisional findings I said I had independently reached a similar conclusion to that our investigator but my redress calculation differs and so I issued a provisional decision to allow both parties the opportunity to make any further submissions they wish me to consider before issuing my final decision.

Firstly, I'm in agreement with our investigator with regard to the period of when the transfer should have been completed and when it was actually received by Hargreaves Lansdowne. I said I had considered Aegon's objections to the timescales used to calculate the redress suggested in the investigators view. It said it was more likely that the transfer would have taken ten days but given the advantage of the Origo system (when it's working as it should) I said I was persuaded the completion should have taken less than ten days and then the funds received within three days. Hargreaves Lansdowne has confirmed the funds were in the account on 3 November, so I think calculating any potential loss should be between 20 October 2022 and 3 November 2023. This allows for ten days for both completion and the funds being received.

I then looked at the contention about what Mr M's investment model was or wasn't and how it is possible, if at all to calculate any potential loss. Aegon said it had requested an investment model and Mr M said it had a watchlist which then changed due to the changing market conditions.

Mr M provided some evidence of what his intentions were and sufficient to show that there is little doubt here, that he fully intended to transfer his funds away from Aegon into cash in the first instance and then to make his own investment decisions and he intended to do so upon receipt of the funds. I said this was evident from the number of phone calls he made chasing

up the transfer, some of which I listened to and there is clear intent on Mr M's part to undertake investment of the full transfer. Mr M testified to being an experienced investor and I said I thought this was borne out by the actions he took.

Rather than sit and wait he actively watched the market and when the transfer was delayed on multiple occasions, he affectively mitigated his own losses by changing his investment strategy and was drip feeding his investment into the market. I said I didn't think he could be criticised for doing so, but conversely it isn't possible to calculate what any consequential losses may or may not have been, precisely because of the action Mr M took. I explained in order to do so, one would need to unwind all the investments and then carry out a detailed reconciliation on the costs on given dates and I said I didn't find that pragmatic or reasonable.

I also explained the changing watchlist and subsequent investments were also the very reason why a benchmark is used as a comparative index. It isn't possible to say precisely what investments Mr M would have made and so the benchmark is used a fair comparative for both parties.

So, I said I found it fair and reasonable that Aegon compare the performance of Mr M's investment with that of the benchmark shown in the table below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

I went onto say that I'm persuaded that the redress for trouble and upset should be increased. I say this because Mr M chased up this transfer multiple times and was given misleading and incorrect dates for when the transfer would complete. Not only did this lead to a great deal of worry about what was going on, but it also led him to keep amending his investment strategy in the hope of executing his transaction at the most optimal moment. Accordingly, I increased the award.

I then set out how Aegon should put matters right.

Mr M accepted my provisional findings.

Aegon took issue with a number of points. In summary it said:

- It was confused about the timescale; it took from the provisional decision that the transfer should have been completed within 3 days but that didn't fit with the timescales mentioned from 20 October. It asked for clarification
- It points to another decision, on another separate and unrelated complaint, where a short delay in the transfer was not deemed sufficient to warrant compensation
- It is concerned Mr M has been, essentially, able to choose exactly how the FOS redress is calculated and that this may have been done with prior knowledge of market performance on those dates and this would be unfair
- It asks the redress is recalculated accordingly.

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 have reached the same decision, but I will clarify the areas where there may be confusion or where my provisional decision may have been unclear.

I have summarised this complaint in less detail than both parties have done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here which is that Mr M feels that the delay in transferring his pension caused him a financial loss and potential future losses.

In deciding this complaint, I have taken account of the submissions that have been made by Mr M and by Aegon including those submitted by Aegon following my provisional findings. 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 have happened. When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to consider relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

At the outset 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.

Neither party has challenged what I consider to be the crux of this complaint – that being that the transfer was delayed but the parties are still not able to agree on how to put things right and so it falls to me to consider what is fair and reasonable in the circumstances of this complaint.

Firstly, with regard to other decisions reached in separate unrelated cases. Aegon will be aware that this service operates independently and impartially, and I have reached my decision based upon the merits of this case and no other.

Aegon said it was confused by what it saw as different timescales set out in provisional decision and indeed those in the view of the investigator and asked for clarification. In its final response letter Aegon said it would normally expect a transfer to complete within 10 working days of a request being made. It confirmed Hargreaves Lansdowne requested the transfer on it valued the plan on 5 October and so using its own standard service level of 10 working days plus one day, it would have completed the transfer request and sent the funds on 20 October, meaning the funds would have been received within 3 working days making the 25 October for receipt by Hargreaves Lansdowne.

I considered Aegon's submission. I'm sorry if my wording confused Aegon and so I have sought to clarify matters. I took into account that this was a cash transfer and not an in-specie transfer. I would expect such a transfer to be affected very quickly on the Origo system under normal conditions. Indeed, when Aegon identified its error, it managed to prioritise the transfer, which saw it processed within 2 working days and over a weekend. So, in establishing a fair and reasonable timescale, as the investigator said I don't think Aegon can hang its hat on ten days being the usual time frame for a transfer such as this. But I did agree that once completed it would take 3 days for the funds to be received by

Hargreaves Lansdowne. I'm sorry if my wording confused Aegon and so I have sought to clarify matters.

I can't say for certain what would have happened but give the swift transfer Aegon was ultimately able to achieve and finding a middle ground between that and the ten days Aegon suggested as standard service levels, I'm satisfied that ten days for the whole process including the receipt of funds feels fair and reasonable and I haven't seen a compelling argument from Aegon to persuade me otherwise. For that reason, I remain of the view that had the transfer gone according to plan, the funds should have been received on 20th October 2022, and this is the starting point for the redress calculation I have directed Aegon to carry out.

With regard to Aegon's concern that Mr M has been, essentially, able to choose exactly how the FOS redress is calculated and that this may have been done with prior knowledge of market performance on those dates and this would be unfair. I have seen anything in the evidence to suggest how this could be possible. Mr M had made a number of suggestions to Aegon about how this complaint could and should be resolved by his own estimations. None of these involved a benchmark nor is there any certainty of a loss.

Mr M also submitted that Aegon may well have come off lightly, in his view. He said this because he feels there may well be consequential losses but as I explained in order to establish that, one would need to unwind all the investments and then carry out a detailed reconciliation on the costs on given dates and I remain of the view that this isn't a pragmatic or reasonable approach.

It follows that I have reached the same conclusions as my earlier provisional decision.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr M as close as possible to the position he would probably now be in if he had the transfer been received by Hargreaves Lansdown on 20 October 2022.

I think Mr M would have invested differently. It is not possible to say precisely what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr Ms' circumstances and objectives when he invested.

What should Aegon do?

To compensate Mr M fairly it should:

- Compare the performance of Mr M' investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- Aegon should also add any interest set out below to the compensation payable.
- If there is a loss, Aegon should pay into Mr M' 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. You shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Aegon is unable to pay the compensation into Mr Ms' 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 to 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.
- It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so 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 Aegon or Mr M dispute that this is a reasonable assumption, you 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.
- In addition, Aegon should pay Mr M £500 for the inconvenience caused in having to chase the transfer multiple times and continually alter his investment model in response to changing market conditions which followed the transfer delay.
- Provide the details of the calculation to Mr M in a clear, simple format.

Portfolio name	Status	Benchmark	From (start date)	To (end date)	Additional interest
Hargreaves Lansdowne SIPP	(still exists and liquid)	FTSE UK Private Investors Income Total Return Index	20 October 2022	3 November 2022	8% per annum simple from date of final decision if Aegon does not settle within 28 days of receipt of Mr M's acceptance

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr M wanted Income with some growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017,

the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.

My final decision

For the reasons I have given I uphold this complaint and direct Scottish Equitable Plc trading as Aegon to carry out the redress as detailed in the Putting Things Right section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 November 2023.

Wendy Steele
Ombudsman