

The complaint

Mr S complains that Scottish Equitable Plc (trading as Aegon) treated him unfairly and unreasonably in connection with his request to transfer his UK pension to a Qualifying Recognised Overseas Pension Scheme (QROPS). Mr S believes he has incurred an unnecessary tax burden as a result.

What happened

Mr S held a pension with Aegon. He emigrated overseas in 2019 and left his Aegon pension where it was.

On 11 August 2023 Mr S completed a letter of authority (LOA) to enable a pension scheme in the country he now lives in (referred to in this decision as the receiving scheme) to request information about his Aegon pension. The receiving scheme supplied Mr S' overseas address and contact details along with his previous UK address and contact details.

On 17 August 2023, Mr S told Aegon that he'd emigrated and wanted to transfer his pension to an overseas scheme. He said Aegon should have received/would shortly receive a LOA to release information about his pension. He said time was a "*little pressing*" at his end, as he was approaching the four-year deadline to transfer his pension without there being tax implications. The deadline for transfer was 1 November 2023.

It took until around 8 September 2023 for Aegon to release generic information about Mr S' pension. Prior to that, there were various exchanges between Mr S; the receiving scheme and Aegon about the transfer and some of the administrative processes connected with it. For example, Aegon confirmed around 24 August 2023 that it had received the LOA but, it appeared unsigned (Mr S had used a software product to complete it electronically) so it was returned for Mr S to sign again. There were then further issues because Aegon couldn't accept the format that the LOA was submitted in, requiring Mr S to send it as an image file.

Aegon acknowledged Mr S' request for a transfer form on 15 September 2023. But it said it first needed to update his address to the overseas address and that process could take up to five working days.

In another communication sent on 18 September 2023, Aegon said that as Mr S' emails came from an unverified email address, it needed him to provide further identity verification. Aegon explained other ways that Mr S could verify his email address - for instance by calling its contact centre.

Shortly after, Mr S explained to Aegon that he uses two email addresses – one for incoming communications, so that emails can automatically be sorted, and one for outgoing communication. He cited both email addresses used and said that Aegon should assume all correspondence from either email address was from him.

Aegon sent Mr S an overseas pension transfer form by email on 19 September 2023. A note on the form said "*Please complete the relevant sections, then send the form to the receiving scheme to complete. The receiving scheme will then return the form to us*". It included the

postal address for the form to be returned to.

Mr S returned the transfer forms shortly after and the receiving scheme posted the requested information as per Aegon's requirements.

Amongst the information provided was:

- The receiving scheme's details and account number along with confirmation it could accept the transfer in.
- Its HMRC QROPS reference number.
- A completed QROPS member information form for scheme administrators. This showed, amongst other things, that the receiving scheme wasn't an occupational pension scheme (OPS), or an overseas public service scheme.

Mr S signed an acknowledgement indicating that he hadn't been told he could access some or all of the value of his pension before he reached age 55. And he indicated he agreed with other declarations, including that a transfer of funds might not be a recognised transfer and may be treated as an unauthorised payment giving rise to a liability to pay tax in the UK.

Towards the end of September 2023 Aegon confirmed that it had received all of the documents it needed, but then told Mr S it couldn't accept them as it needed a wet signature (it appears this was contrary to what Mr S had been told previously). Mr S signed the forms again.

There were further exchanges between Mr S and Aegon during early October 2023, specifically about him providing further identification for the purposes of Aegon completing anti-money laundering checks. Around this time, Mr S asked Aegon that any and all further information requests were made without delay and concurrently, so that final checks could be completed given that the 1 November 2023 deadline was fast approaching.

Mr S' identity documents were delivered to Aegon on 13 October 2023. It appears that it took about three or four working days to scan the information onto the system.

On 20 October 2023, Aegon sent Mr S a due diligence questionnaire to complete. In an email that accompanied the questionnaire, Aegon said that as a pension provider, it had a duty to look out for early warning signs about whether a pension was being transferred as part of a scam. It said Mr S' responses would help it gather information about the new provider in order to ensure the integrity of the transfer. In line with guidance issued by the Financial Conduct Authority (FCA) and The Pensions Regulator (TPR), it strongly recommended that Mr S seek advice from a UK regulated financial adviser. It also attached a leaflet about pension scams and told Mr S how he could obtain advice from other relevant bodies.

Mr S completed the questionnaire promptly. Amongst the information he provided, he said:

- He had a reasonable understanding of the receiving scheme's investment strategy, particularly as a result of a previous role he worked in.
- He hadn't been promised a specific or guaranteed rate of return.
- He was able to explain the risks associated with the investments and was happy to accept those risks.
- He was aware of the charges in relation to the transfer and/or ongoing charges under the receiving scheme.
- He'd investigated the potential tax charges associated with an overseas transfer and whether they might apply to him.
- He was aware that by transferring his pension overseas, he was no longer covered

by the Financial Services Compensation Scheme (FSCS), so wouldn't be protected if his funds were lost.

- He hadn't received advice within or outside the UK.

Mr S chased Aegon for updates during October 2023. Aegon said the answers to the questionnaire were being reviewed.

Around the end of October/beginning of November 2023, Aegon told Mr S that the due diligence process had raised concerns about potential scam activity. It told him that he'd need to seek MoneyHelper guidance and complete an indemnity and discharge form (referred to throughout the remainder of this decision as discharge form). Aegon made it clear that it couldn't complete the transfer until it had received the MoneyHelper unique reference number and the signed discharge form.

Mr S had concerns about the discharge form. So, he told Aegon that it would need to be amended by either it or himself.

On or around 3 November 2023, Aegon explained to Mr S that it only becomes aware if a discharge form is required once it has reviewed the answers given on the due diligence questionnaire. It added that as it is a legal document, it won't send it out until it knows if it's required. Mr S set out some specific objections about the form, principally that he felt it was in breach of UK Office of Fair Trading laws and FCA conduct rules.

Mr S attended an appointment with MoneyHelper on 7 November 2023. He subsequently sent Aegon the MoneyHelper unique reference number.

Mr S returned a discharge form to Aegon, which was dated and signed on 8 November 2023. He had struck through the following two statements:

- *I hereby indemnify you in respect of any additional tax and/or sanction charges, including any overseas transfer charge that might be levied upon you in relation to the transfer.*
- *I hold you harmless from and against all actions, claims, demands, liabilities, damages, costs, losses or expenses (including without limitation, consequential losses; loss of profit; loss of reputation and all interest, penalties, legal and other professional costs and expenses) from any source, resulting from my decision to proceed with my transfer request.*

And in relation to the two clauses I've referred to above, he annotated the form as follows:

"fall foul of unfair UK contract legislation by creating an unnegotiated imbalance between parties. Aegon have been given opportunities to amend but have declined".

Mr S and the receiving scheme chased things up with Aegon. Aegon confirmed on or around 28 November 2023 that it couldn't accept the amended discharge form from Mr S. That meant it couldn't proceed with the transfer if the discharge form wasn't signed in its original format.

It seems there was further contact between Aegon and Mr S during November and December 2023 and January 2024 concerning the outstanding discharge form.

Mr S complained to Aegon.

In a response dated 2 February 2024, Aegon explained that it required the discharge form to be completed in line with its requirements – not least because advice from its legal

department said the amended document couldn't be accepted. Aegon also said that Mr S' complaint couldn't be resolved until the transfer process was complete. It felt a stalemate had been reached. In the circumstances, it indicated it had no choice but to close the complaint.

Mr S wasn't happy with Aegon's responses, so he complained to the Financial Ombudsman Service. He described Aegon's actions (amongst other things) as "*convoluted, contradictory, confusing*" despite Aegon's own processing times suggesting that transfers typically took 13 working days (or fewer) to complete. Mr S said that despite him continuously flagging with Aegon that he needed the transfer to complete by 1 November 2023 (to avoid a 4.76% asset tax penalty) it refused to transfer his pension unless he signed a discharge form that would indemnify Aegon against any wrongdoing. Mr S also said that Aegon had refused to acknowledge his concerns about signing the document.

The complaint was allocated to one of our Investigators. Having reviewed the documentation, the Investigator said he found nothing to suggest that Aegon's actions (specifically requiring Mr S to seek MoneyHelper guidance) weren't in keeping with the new regulations. Ultimately, he didn't think Aegon's actions had caused Mr S to suffer a loss.

Mr S didn't agree with the Investigator and said there were material deficiencies in his assessment. He added that, given the timings, he'd had no option but to sign, the "*illegal*" disclaimer Aegon had given him. He asked for his complaint to be considered by an Ombudsman. Amongst his comments, Mr S said:

- Aegon's website states that transfers take up to 13 working days to complete. Yet it doesn't say that this only applies once the transfer has been accepted, which can take months.
- The Investigator's assessment relied heavily on Aegon's duties under The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. Mr S accepted the need for the regulatory requirements to be met. But he said alongside that is the need to act promptly and reasonably – as the purpose of both is to drive good outcomes for customers. Mr S thought it extraordinary to accept that the regulations envisaged firms would require 96 days to meet their regulatory obligations (96 days being from the date of the initial transfer request to the completion of the MoneyHelper interview plus 13 working days to action the transfer).

The Investigator provided a follow up response to the comments Mr S made. But, overall, his position remained the same. As no agreement could be reached between Mr S and the Investigator, the matter was passed to me to decide.

My provisional decision

I sent Mr S and Aegon my provisional decision on 19 February 2025. I first set out some context about the regulations and guidance in place at the time of Mr S' transfer request.

I then said " it's not for me to tell a provider like Aegon whether it should or shouldn't complete a transfer request. That's a matter for it to decide taking account of its regulatory and other obligations. In any event, Mr S isn't saying that it was unnecessary or unreasonable for Aegon to carry out due diligence in connection with his transfer request. But he does clearly believe that its requirement to carry out due diligence and act within the regulations, had to go hand in hand with the requirement to act efficiently and promptly".

I then addressed Mr S' complaint having thought about several key questions.

My provisional findings were as follows:

“Did Aegon take an unreasonable amount of time to process Mr S’ transfer request?”

I think Mr S makes a fair point about efficiency and fulfilling a regulatory duty having to go hand in hand. And I don’t think his expectation is necessarily at odds with TPR guidance I referred to earlier. As I mentioned, although there is a statutory deadline to complete transfers within six months, that doesn’t mean that a provider should always take six months when the transfer can be completed much sooner.

I realise Mr S’ initial expectation was that Aegon would complete the transfer within 13 working days. He says the statement on Aegon’s website wasn’t qualified by saying that the timeframe would likely only apply once a transfer has been accepted. And, in the absence of such a qualification, Mr S says he relied on the information he took from Aegon’s website when deciding when to instigate the transfer process. Given the information displayed, Mr S clearly thought there was ample time to complete the transfer process.

I’ve seen the processing times that Mr S is referring to. I note that these are described as “estimated processing times for some of our common processes”. Given that they are estimates, I don’t think there was any guarantee that action would be completed within the respective timeframes. Rather, I imagine they were intended to act as a gauge of how long things might take. As Aegon also mentions the timeframes being estimates for how long some of its “common processes” might take, as far as pension transfers are concerned, I assume the timeframes would more likely apply to straightforward transfers (possibly in the UK). But Mr S’ wasn’t a transfer to another UK pension.

I don’t think it’s reasonable to expect Aegon’s generic guidance on its website to cover every possibility. That includes situations where transfer requests require extra due diligence. However, in the absence of more specific information being available, it does perhaps explain why Mr S was concerned that the transfer hadn’t completed within a few weeks. I have some sympathy with his position here.

And given that in Mr S’ first communications with Aegon he talked about the timing of the transfer being a “little pressing” I think Aegon had an early opportunity to tell him that the statutory deadline for transfers of this kind was six months. I can’t see that it did that. That’s not to say that Aegon shouldn’t still have tried to progress things sooner, but I think it might have helped to manage Mr S’ expectations more appropriately – not least because I think even ‘delays’ of only a few days would have appeared all the more critical to Mr S. In the absence of further information or explanation to the contrary, I think it was reasonable for Mr S to rely on the information he took from Aegon’s website.

In any event, overall, from the first contact Aegon had from Mr S and the receiving scheme in mid-August 2023 to it assessing the transfer request and telling Mr S that he needed to take MoneyHelper guidance, took roughly ten weeks. On the face of it, I don’t think that timescale is excessive.

But given Mr S’ particular complaint, I thought about whether Aegon could have done things more quickly and efficiently. And if I conclude that it could have done, the question I then have to ask is would the transfer likely have gone ahead before 1 November 2023 but for any shortcomings on Aegon’s part.

Based on the evidence I’ve seen, I think there were some administrative steps that could have been taken more diligently. For instance, following Mr S’ contact on 17 August 2023, it took Aegon several days to tell him that it had returned the LOA to the receiving scheme as it wasn’t signed by Mr S. This seems the kind of simple administrative step that could likely

have been taken within a day or so, particularly given the pressing nature of Mr S' transfer request.

Similarly, it appears to have taken Aegon about a week to confirm the email address for Mr S to send the LOA to when there were problems concerning his signature not being visible.

Further, when Mr S submitted the LOA in a different format (PDF), it seems to have taken Aegon about a week or so to tell him that it couldn't accept PDF files, so it needed the form to be sent as an image file. Presumably this explanation could have been given upfront to avoid any delays.

Later on, having asked Mr S for further identity documents, it took about three or four days to scan the response onto the system. And once that action was completed, Aegon then told Mr S he'd need to complete an overseas transfer questionnaire. Arguably, had the information been put on the system sooner, the transfer questionnaire could also have been issued earlier.

Mr S seems to think that Aegon was introducing unnecessary obstacles in what was an otherwise straightforward process. I've thought about this point very carefully. And notwithstanding what I've said about some of the steps potentially being taken a little earlier, overall, I'm not persuaded they were unnecessary or that Aegon was otherwise acting in a disproportionate way. I also don't agree that the process was as straightforward as Mr S seems to think. I say that for a few different reasons.

First, before Aegon could even consider the request to transfer Mr S' pension in the context of the regulations and guidance I mentioned earlier, it first had to make sure it had the required authority to release information. In Mr S' case that process was perhaps more involved than might otherwise be the case. But I'm satisfied these were important steps for Aegon to take nonetheless.

Although Mr S emigrated in 2019, it seems the first Aegon knew about Mr S living overseas was when he and the receiving scheme got in touch about his policy in mid-August 2023. In these circumstances, whilst I can see that the receiving scheme provided Mr S' current overseas address and previous UK address, I think Aegon still needed to satisfy itself that it had a legitimate request for information from a legitimate source and in a format it could accept.

I say that in particular because there's a clause in the terms and conditions of Mr S' policy that say Aegon needs to be made aware of a change in "your residency, tax status, citizenship or domicile".

I imagine this clause is included to ensure, amongst other reasons, that Aegon is writing to its policyholders at the correct address and is therefore safeguarding important information about the policyholder's pension.

So, regardless of the fact that the receiving scheme provided Mr S' current and previous address, in the absence of any prior notification from Mr S that he'd emigrated, I think it was reasonable for Aegon to exercise caution before responding to any requests for information about his pension. Indeed, I can see that Aegon tried to explain things in those terms to Mr S when it said it couldn't act upon a third party's notification of a change of details. It added that once it becomes aware a consumer is no longer at the address held, it's obliged to amend it, or risk being in breach of its duties if it sends information to an address that the consumer no longer lives at.

Mr S suggested that as he also initiated the transfer request through a secure messaging

service, it should have eliminated any doubt as to its authenticity. I appreciate his point. However, whilst I agree that instigating action through a secure messaging service should technically make it more secure, I'm not persuaded it necessarily makes it failsafe. So, in these particular circumstances, notwithstanding that Mr S said he'd signed the LOA digitally, I think it was reasonable for Aegon to return it when it gave the appearance of not having been signed as required. Whilst that naturally added to the time that things took, again, I'm satisfied they were reasonable steps for Aegon to take.

But I think it also meant that, realistically, until Aegon was satisfied that it had the appropriate authority and had updated its systems with Mr S' new contact details, it was probably fairly limited in what it could do as far as the transfer itself was concerned. I think that's an important point to make here, not least because these additional steps clearly ate into the time that was otherwise available to complete the transfer before 1 November 2023.

I can see that there were other complications too. Mr S was corresponding with Aegon from two different email addresses. Again, bearing in mind that Aegon had to protect the integrity of Mr S' pension, I think it made a reasonable request by asking Mr S to verify his email address (it also gave him options about how it could do that). This prompted Mr S to explain to Aegon why he used two different addresses – one for incoming communication and one for outgoing communication. Aegon appears to have been satisfied with Mr S' response, as it issued transfer forms on 19 September 2023.

The instruction on the form said "Please complete the relevant sections, then send the form to the receiving scheme to complete. The receiving scheme will then return the form to us". Aegon included the postal address for the form to be returned to.

I entirely accept that time was of the essence in Mr S' case. So, I can appreciate why he and the receiving scheme would try to speed things up by returning information by email. But given Aegon's specific instruction upfront, I don't think it was unreasonable for it to insist on having documents returned by post. There were then added complications when Aegon said it required a 'wet' signature and additional verification for anti-money laundering purposes. Those things are not unusual in these kinds of situations. But, I don't think the anti-money laundering checks would have been contingent on anything Mr S said in his transfer form, so I can't see why that particular check couldn't have been done sooner. In any event, I appreciate that these additional checks likely caused Mr S frustration.

And I think it was these, amongst other information requests, that likely caused Mr S to ask, in October 2023, that any and all further information requests were sent at once. Again, I think he makes a reasonable point.

However, as far as the due diligence checks are concerned, those won't be the same in every case and it won't always be obvious upfront what additional information or checks are needed. So, whilst I entirely understand why Mr S might consider that the preferred approach in a case like his (where from the outset, Aegon was up against a pressing deadline) was to ask for everything upfront, in general terms, it could have the effect of being inefficient in the long run if information is sought that isn't ultimately necessary. In any event, whilst not Mr S' preferred approach, I don't think there was anything wrong in Aegon asking for information as the process developed.

By around 31 October 2023, Aegon had concluded that Mr S needed to seek MoneyHelper guidance because it identified a risk, given the nature of some of his answers. I've seen nothing persuasive to suggest that Aegon hadn't acted in line with the spirit of the guidance. It also asked Mr S to complete a discharge form. That was around seven working days after Mr S returned his overseas transfer questionnaire. Given the importance of the checks that Aegon had to carry out here, I don't think that timeframe was excessive. It's not clear exactly

what Aegon was concerned about. But given the nature of Mr S' transfer and the fact that seeking MoneyHelper guidance is intended to act as an important safeguard, I can't fairly say it acted unreasonably in asking Mr S to take this step. Not least because where it identifies a potential risk, it's required to act upon it.

In summing up, as I've outlined above, there were things that Aegon could have done differently which would likely have shortened the process. But as I'll now outline when addressing the next part of Mr S' complaint, on balance, I'm not persuaded it would have changed the overall outcome.

Was the discharge form that Aegon required Mr S to sign fair and did Aegon act reasonably when refusing to accept Mr S' amendments?

By 7 November 2023, Mr S had received MoneyHelper guidance. So, in theory, had the discharge form been signed without amendment, it seems likely the transfer could have completed soon after. And whilst not by 1 November 2023 (the four- year anniversary of Mr S' emigration), there would only have been a short delay. From what Mr S has said, it seems likely that would have had the effect of reducing the amount of tax that may now be due.

But Mr S wasn't willing to agree to some of the clauses that were set out in Aegon's discharge form. He referred to them as "borderline illegal". So, that became the major stumbling block between the transfer proceeding and not. And it clearly led to protracted exchanges between Mr S and Aegon. At the very least, Mr S thinks it was unreasonable of Aegon to refuse to accept the signed form with his own amendments added.

I've thought very carefully about all of this.

Noting Mr S' comments about Aegon's actions bordering on illegality, I can see that Aegon involved its legal team, which confirmed that the discharge form had to be completed and returned in its original format. So, it's clear that Aegon went some way to try to ensure that its process and the use of the discharge form was compliant with the relevant regulations etc. I think that was a reasonable action for Aegon to take in the circumstances. It's also apparent that, having received internal guidance, Aegon was confident that it was on safe ground in insisting that Mr S complete the discharge form as it was (rather than with Mr S' amendments included) in order for the transfer to go ahead.

Further, one of the pieces of guidance that Aegon needed to have regard to was "Combating Pension Scams: A Code of Good Practice" produced by The Pension Scams Industry Group (PSIG). This is guidance initiated as early as about 2015 by an industry working group covering both TPR and FCA regulated firms. It set a standard for dealing with transfer requests from UK registered pension schemes. It has been updated over time. It suggests that even if a provider decides that a transfer should be made (having initially identified some concerns) "to minimise the risk of a future complaint or legal challenge to your decision to transfer, you should obtain a suitably robust discharge signed by the member before making the transfer". And it sets out example wording for pension providers to use in their discharge forms. As far as I can tell, as well as protecting the pension providers themselves, the idea here is that by highlighting risks on the discharge form, the member may even change their mind about transferring once they become aware of any concerns the provider has. Or at least they're aware that if they decide to proceed, they do so knowing that it may limit any liability on the provider's part (because they've highlighted the appropriate risks) in the event the pension is lost due to a scam.

I considered this in the context of what happened in Mr S' specific case. Aegon issued the discharge form at the same time as referring Mr S to MoneyHelper for guidance. I accept that until MoneyHelper guidance had been sought, Aegon wouldn't have known for certain

whether it was going to approve the transfer. However, as it's clearly Aegon's policy to issue discharge forms as the PSIG guidance suggests, all that would have happened is that once the MoneyHelper unique reference number had been received, it would have asked Mr S to complete the discharge form at that point. So, I don't think there was anything untoward in it issuing the discharge form when it did.

Also, whether to go ahead with a transfer is clearly predicated on Aegon receiving all of the necessary paperwork/confirmation and an appropriately completed discharge form. This is clearly stated in the versions of the policy terms that Mr S and Aegon sent me. Those say:

"7.1 Where you are transferring your Retiready Pension, on receipt of a valid transfer request from the trustees or scheme administrator to a registered pension scheme or QROPS, Retiready will transfer out your investments from your Retiready Pension, this will involve the sale of all investments. However, we are entitled to delay or refuse any transfer unless we satisfy ourselves that we can make the transfer from a legal and regulatory perspective and have received any discharge that we require.

7.2 We will complete all transfers out as soon as reasonably practical after receipt and acceptance of the relevant paperwork from your new scheme provider and you complying with these Terms and conditions, including providing us with a fully and correctly completed discharge form".

Later on, the contractual terms say the following:

13.3.2 We are not liable to you for any costs, charges, expenses, taxes, levies or other liability of whatever description that have occurred or accrued or have been triggered by us following an instruction from you (or which we, acting in good faith, believe to be from you), or by us exercising our rights under the Terms and conditions of the Service or any particular product wrapper you hold.

13.3.3 You agree to release and indemnify us from, and against, any and all costs, claims, demands, losses, expenses and liabilities suffered by us in acting in reliance on an instruction given by you (or which we, acting in good faith, believe to be given by you).

I don't know if Mr S recalls seeing these clauses in his policy documentation. But even if he hadn't, that wouldn't be enough to cause me to say that Aegon acted unfairly or unreasonably.

I think issuing a robust discharge form is a reasonable action to take. Not least because, as I've suggested above, the form is intended, in part, to act as an additional safeguard, to make sure that the member is fully aware of the potential risks in transferring their pension. And that's something that providers like Aegon have to be on top of. Indeed, If Aegon hadn't been able to demonstrate that it had completed the appropriate due diligence and given suitable warnings, then it may well have been held accountable down the line if Mr S' pension had been lost through a scam.

In any event Mr S isn't complaining about having to complete a discharge form per se. He's complaining about two specific clauses within it. And I can see that those clauses are pretty much lifted word for word from the resource pack included in the PSIG code I've referred to. In other words, they're set out in guidance that Aegon is expected to have regard to and which is otherwise considered reflective of good industry practice.

Mr S is entitled to form his own opinions about the appropriateness or otherwise of the two specific clauses I've mentioned and to decide whether to agree to them or not. But he didn't agree to be bound by them because he thinks the specific clauses mentioned "fall foul of

unfair UK contract legislation by creating an unnegotiated imbalance between parties”.

I've thought about his opinion, but I'm not persuaded that Aegon has done anything wrong here. I'll explain that I make my decisions on the basis of what is fair and reasonable in all the circumstances of the complaint. In doing so I will have regard to the law, but I am not bound by it. So, I'm not required to make a finding on whether or not Aegon's discharge form breaches contract law. However, for the reasons I've already given above, I think it was reasonable for Aegon to insist that Mr S complete the discharge form. And, given that the wording Aegon uses is similar to that suggested in the PSIG code, I don't find it unfair.

Ultimately, it was Mr S' decision not to agree to those specific clauses – despite communications from Aegon explaining that the transfer couldn't go ahead if he didn't. I think Mr S would have known at that point that he may incur a tax penalty as a result. Although I understand that Mr S has since signed the discharge form, it's clear from what he's said that he still doesn't agree with it and signed it because he felt pressured to do so (presumably to allow the transfer to go ahead).

I've already said that I don't think Aegon acted unfairly or unreasonably in asking Mr S to sign the discharge form on the terms it did. And as the transfer didn't go ahead sooner because of the dispute concerning the discharge form, I have to conclude, on balance, that it would likely have done had Mr S been willing to sign the discharge form in its original format, sooner. So, it follows that I can't fairly say that the tax penalty Mr S may be liable for now is as a result of any wrongdoing or unreasonable action on Aegon's part.

Did Aegon deal with Mr S' concerns in a reasonable manner?

Mr S has made further detailed submissions in support of this aspect of his complaint and the manner in which Aegon handled it. I've read his comments very carefully.

It's probably helpful to say here that complaints handling, in its own right, isn't a regulated activity. So, it isn't always something that we can comment on. However, where the points at issue are really about the underlying financial service or the manner in which the business has administered that service, rather than the response to the complaint, this is something we can reach a finding on. And I think that largely applies here.

It's evident that Mr S had some concerns about the time Aegon took to deal with the complaint and that it said it couldn't respond fully until the transfer had gone ahead. I can appreciate that would have been frustrating for him. However, I'm not persuaded that's what's really at the heart of this particular part of his complaint.

It's evident that the resolution Mr S was ultimately seeking was for Aegon to transfer his pension to the QROPS. So, in the absence of that happening, I can appreciate why he might feel that Aegon hadn't dealt with his complaint fairly. And he's referred to what he perceives to be Aegon's unreasonable actions, including that it refused to accept the discharge form with his amendments. He says that Aegon simply continued with its line of not being able to transfer his pension without it.

While I don't think Aegon acted unreasonably in requiring Mr S to sign the discharge form, I have considered whether there was anything else Aegon could reasonably have been expected to do here given Mr S' concerns about specific clauses within it.

Mr S says he explained to Aegon the various scenarios in which he felt it was totally reasonable for it to acknowledge fault and accept that it was liable to pay compensation of an amount that would only be known at a future date. To illustrate his point further, he says things such as if Aegon made a mistake in keying in the sale price of funds, meaning it only

realised a fraction of their value, then it wouldn't be reasonable for Aegon to declare itself free from blame. Mr S says he tried to engage with Aegon about whether his concerns were valid, but it refused to say that it would take responsibility in these kinds of circumstances. And it appears that Mr S effectively tried to negotiate with Aegon in the hope that by taking out specific clauses, it would allow for the kind of situation he described.

I can appreciate Mr S' position here. But, I don't think the discharge form gave Aegon protection from any and all mistakes or wrongdoing in the manner Mr S seems to think. I say that because there's another clause in his policy, which says:

13.3.8 Nothing in these Terms and conditions will exclude or restrict to an extent prohibited by the rules of the FCA, any duty or liability we may have under the regulatory system (as defined by the rules of the FCA). Nothing in these Terms and conditions will exclude any obligations we may have in law.

I think this effectively covers the kind of situation that Mr S was worried about. What Aegon seems to be saying is that, notwithstanding any losses, claims etc that might arise in future (having acted in good faith in line with Mr S' instructions), it was still required to act in line with its regulatory responsibilities and any obligations it had in law. And whilst I doubt Aegon could have given Mr S any kind of cast iron guarantee about how it would respond to any claims, complaints or alleged losses he might raise in the future, it might have been helpful if it had at least reminded Mr S of this clause in the policy. But I don't think there was any obligation for it to do so, not least because Mr S had clearly already received the terms of his policy which mention it.

In any event, it's clear that amending the discharge form wasn't up for negotiation in the way Mr S might have hoped. So, it seems highly unlikely that Aegon was going to amend it despite Mr S' insistence. And, given Mr S' strength of feeling about the discharge form being in breach of contract law, I'm not persuaded he'd have signed it sooner, even if Aegon had reminded him of clause 13.3.8 in the policy terms he already had access to. Further, as I said earlier, he also refused to sign the form in the knowledge that he'd likely incur a tax penalty if the transfer didn't go ahead within a certain amount of time. And Aegon made it clear it couldn't go ahead without a completed discharge form. To my mind, that reinforces Mr S' strength of feeling on the matter.

Mr S says he reluctantly signed the discharge form more recently, even though he fundamentally disagrees with it. I thought about this point very carefully. Arguably, regardless of Aegon's unwillingness to engage with Mr S in the way he hoped or expected, that's an action he could presumably have taken in or around November 2023 if he'd chosen to. Again, whilst I entirely accept that Mr S had his own reasons for refusing to sign the discharge form, I have to keep in mind that it was that which ultimately prevented the transfer from going ahead sooner.

Summary

Taking everything into account, I remain of the opinion that Aegon isn't responsible for the transfer not completing by 1 November 2023 (or soon after) and for any additional tax Mr S may have to pay as a result"

Responses to my provisional decision

Aegon didn't provide any comments in response to the provisional decision.

Mr S sent me a detailed response. I haven't referred to his comments verbatim. But I have summarised them under key headings:

Tax implications in his country of residence

Mr S gave me some additional information about the tax rules and available pension provision in his country of residence. He also provided additional context, in light of those rules, about why he decided to transfer his pension when he did. Specifically:

- As far as advantageous times to transfer a pension are concerned, Mr S suggested that they “*should optimally take place either at the very outset of settlement*” in [new country of residence] if the pension provision is cheaper, or “*immediately prior to any increase in the proportion of transfer to be taxed, the most obvious of which is the 4-year deadline*”. In his specific case, having done his research regarding providers and the fees and structure that were appropriate for his pension, the total cost was still higher than in the UK. So, he said he wanted to have his pension transferred as close to 1 November 2023 (the 4-year deadline) as possible.
- Once the deadline of 1 November 2023 had been missed, the pension transfer is assessed at 4.76% of the assets transferred and added to income for the financial year. This remains a flat imposition for the remainder of the year until 1 November 2024 when the tax assessed would increase to 9.45%. Therefore, Mr S said that immediately signing the discharge form would have had zero effect on the tax due for the balance of the year. I appreciate his clarification here.
- There were no “*economic*” grounds for Mr S to have done anything differently, so the next optimal time to transfer would be just prior to 1 November 2024. Mr S said that given his concerns with the discharge form and there being a complaint outstanding, it was not a risk he was willing to take.
- However, once he received an opinion from our Investigator, Mr S felt the risk of the burden of the increase in tax rate (to 9.45%) was one that he couldn’t bear. So, he signed the discharge form. Aegon then notified him of the discharge of their obligation on 22 October 2024.

Notification of a change of address/document availability

- At least one earlier attempt was made to change his address on Aegon’s system. Mr S didn’t specifically say when that was. But he said Aegon’s systems didn’t accept foreign addresses. He feels this is systematic of Aegon’s approach.
- Mr S again referred to other issues concerning the acceptance of the signed LOA and blank forms not being made available on Aegon’s website.

Contractual terms

- Mr S says that even if Aegon had referred him to clause 13.3.8 of the policy (which I referred to in my provisional decision) his concerns about the discharge form would still have not been alleviated.
- He pointed out that nowhere in the discharge form did it state that Aegon were still bound by the T&Cs of the pension policy. Mr S therefore assumes that the discharge form could only be intended to supersede the T&Cs thus nullifying them of their relevance.
- He thinks it’s of paramount importance that I instruct Aegon to include a paragraph in the discharge form indicating that it remains bound by the T&Cs of the policy, &/or a clause resembling 13.3.8. He seems to be suggesting that any reliance upon the T&Cs of the pension policy needs to be disregarded as it applies to the discharge form. Mr S also thinks my decision must be reconsidered in this light.

Timing of Moneyhelper and Discharge form

- Multiple times in the provisional decision the timing of the request for the MoneyHelper interview and provision of the discharge form is stated as occurring in late October. Mr S points out that this was made on 1 November 2023. Whilst noting that in my provisional decision I said *“Around the end of October/beginning of November 2023, Aegon told Mr S that the due diligence process had raised concerns about potential scam activity. It told him that he’d need to seek MoneyHelper guidance and complete an indemnity and discharge form”*, I nevertheless note Mr S’ point.

Process efficiencies

Mr S says that one small change could have resulted in the tax deadline being achieved. Amongst the reasons he gives here, Mr S says:

- He asked Aegon to look over the transfer form returned by email, whilst the form was being returned by post as required. Also, as his was clearly an overseas transfer, he feels it’s reasonable to expect Aegon would have known a MoneyHelper appointment would be needed before October 2023.
- If the MoneyHelper request had come in October 2023, the transfer could likely have been completed by 1 November 2023. Mr S says this ignores 33 days wasted to deliver a transfer form which could have been supplied without personal information, along with requests for hard copy documents, which needed to be scanned onto the system.
- It wouldn’t have been an undue burden for Aegon to have provided the MoneyHelper questionnaire and discharge form on receipt of or even with the transfer form.

Transfer timeline

- Aegon’s stated timeline for pension transfers is highly misleading.
- Mr S points out that the instruction to transfer was given with 10 weeks to go until the deadline, but he believes it still took more than five times the amount of time suggested in Aegon’s guidance. He maintains that the timeframe should have been more than enough.

Fiduciary duty and three-day business responses

- Mr S argues that he responded by reasonable return to each information request Aegon made (typically overnight UK time). Yet, the systematic three-day business responses to any email by Aegon was not acting in the same prudent manner. He believes that if Aegon acted by return, the tax deadline is very likely to have been met.

Summary

- Mr S vehemently disagrees that Aegon acted fairly and reasonably.
- And once the tax deadline had passed, he believes Aegon introduced further delays and tried to disclaim responsibility for the tax charge being realised.
- In contrast, he says that he complied with all of Aegon’s information requests in a reasonable and timely way.

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'm grateful to Mr S for the detailed response he's given me. In particular, it's been helpful to have his clarification about the tax system in his country of residence and his account of what motivated him to make the transfer request when he did. I appreciate his candour.

Mr S told me that once 1 November 2023 deadline had been reached, the pension transfer is assessed at 4.76% of the assets transferred and is added to income for the financial year. He explained this remains a flat imposition for the remainder of the year until 1 November 2024 when the tax assessed would increase to 9.45%. My understanding of Mr S' point is that once Aegon issued the discharge form, even if he'd signed it immediately (allowing the transfer to go ahead), it would have had "zero" effect on the tax due for the balance of the year. Therefore, Mr S said there were no "economic" grounds for him to have done anything differently and he said the next optimal time to transfer would be just prior to 1 November 2024.

I think this explanation does perhaps explain to some degree why things unfolded in the way that they did. I think it also helps to reinforce why it was so important to Mr S that the transfer happened ahead of 1 November 2023.

Mr S has also gone to great lengths to explain to me that he acted reasonably throughout the transfer process. It might help to explain that being even-handed in my consideration of any complaint referred to me of course means I also have to take account of the consumer's actions.

And whilst I've thought very carefully about everything Mr S said in response to my provisional decision, I'm not intending to address each and every point that he has made. Instead, I'll focus on those issues that I believe go to the heart of Mr S' complaint and the reasons for my decision.

In particular, I don't think I need to say too much about the timeliness of Mr S' responses (I will touch on the *nature* of certain responses shortly though). I say that because it's evident Mr S responded in a timely way to any information requests Aegon made of him. And I said as much in the background section of this decision. For example, I said "*Shortly after, Mr S explained to Aegon that he uses two email addresses...*" and elsewhere I said "*Mr S completed the questionnaire promptly*". I think that sets the scene in terms of how quickly Mr S responded to Aegon's communication.

I also don't feel I need to go into a lot of additional detail about how quickly (or not) Aegon took certain steps within the transfer process. I've already said in my provisional decision that Aegon could have completed certain steps much more diligently. And whilst, for the reasons I set out in my provisional decision I don't agree with some of the points Mr S made (such as due diligence being completed concurrently rather than consecutively), again, I do agree that there were certain things Aegon could have done more swiftly.

Regardless of the reasons, the fact remains that the transfer process was instigated in mid-August 2023 – about ten weeks ahead of the 1 November 2023 tax penalty deadline. And the key question I have to return to is whether, on balance, the transfer is likely to have completed by 1 November 2023, had it not been for any delays or shortcomings on Aegon's part. I understand why Mr S firmly believes it would have gone ahead had it not been for what he considers to be Aegon's delays and poor handling of things. And, in turn, given his position, I can see why he might think Aegon is responsible for the tax liability that became due.

However, for the reasons I'll now explain, I remain of the opinion that even if things had happened more quickly, the transfer wouldn't have happened by 1 November 2023. That means I can't fairly say Aegon is responsible for the tax liability that became due. I know that will be further disappointing news for Mr S. So, I hope the reasons I've set out help to clearly explain why I've reached this decision.

As I explained in my provisional decision, Aegon asked Mr S to complete a discharge form because it was a key part of the due diligence process. And, as I also mentioned, it was clearly also something that the policy T&Cs required of Mr S upon transferring his pension. So, regardless of when it happened, as far as I'm aware, Mr S would always have been required to complete Aegon's discharge form.

But Mr S was fundamentally opposed to completing Aegon's discharge form in the format presented to him. And he went to great lengths to tell Aegon why he was unwilling to sign it unless amended, including that he felt it was illegal and in breach of UK Contract law. In turn, as I said in my provisional decision, Aegon made it clear that amending the discharge form wasn't up for negotiation in the way Mr S might have hoped. So, even if the transfer process had progressed more quickly, it seems to me that all would have happened is that the discharge form would have been issued earlier and Mr S would still have refused to sign it because he was fundamentally opposed to it. Given what happened, on balance, it seems more likely that he'd have argued it was unfair and in breach of contract law and Aegon would still have told him it couldn't be amended. Dealing with a dispute would undoubtedly have taken up a considerable amount of time - as it eventually did - and so it seems likely that the 1 November 2023 deadline still would have been missed.

My opinion here is further strengthened by some of what Mr S said in response to my provisional decision. I mentioned in that decision that there's a clause in Mr S' policy, which suggests that Aegon wasn't protected from any and all liability in the way that Mr S seemed to think. So, I said that whilst there was no requirement for Aegon to remind Mr S of that clause (and Mr S already had access to the policy terms in any event), it might have been helpful for it to do so in light of Mr S' concerns about the discharge form. That said, given Mr S' strength of feeling about the matter, I also said I wasn't persuaded he'd have signed the discharge form any sooner, even if Aegon had reminded him of clause 13.3.8 in his policy terms.

Mr S has essentially agreed with the point I made here. He said that even if Aegon had pointed out this particular term in his policy, his concerns about the discharge form would still have not been alleviated. I think this again shows Mr S' strength of feeling. Therefore, again, even if things had progressed sooner and Aegon had sent the discharge form earlier, I think the position would have been the same. I think Mr S would still have refused to sign it and the transfer wouldn't have completed by 1 November 2023.

Mr S has indicated that any change of heart he had since about signing the discharge form isn't because he now accepts its terms. Rather, once our Investigator indicated that the complaint wouldn't be upheld, he said he couldn't take the risk of the tax liability increasing even further if the transfer wasn't completed by 1 November 2024. I think that adds further weight to Mr S' strength of feeling about signing the discharge form. And as the transfer completing was predicated on an appropriately completed discharge form being received, it follows that I find it unlikely the transfer would have gone ahead by 1 November 2023, but for any shortcomings on Aegon's part. In turn, again, I can't fairly say therefore that Aegon is responsible for the tax that became due.

A further point Mr S made is that in the absence of any reference to his policy T&Cs in the discharge form, it must be assumed that it could only be intended to supersede those terms, thus nullifying them of their relevance. Indeed, he believes I now need to instruct Aegon to

include a paragraph in the discharge form indicating that it remains bound by the T&Cs of the policy, &/or a clause resembling 13.3.8 that I mentioned in my provisional decision. In the absence of such an amendment, he seems to be suggesting that any reliance upon the T&Cs of the pension policy needs to be disregarded as it applies to the discharge form. And, as a result, that my decision must be reconsidered in this light.

Again, I thought very carefully about the points made here. But, I don't agree with Mr S. Aegon has to take account of a range of factors when demonstrating that it acted fairly and reasonably overall. Those include its regulatory responsibilities, what's considered to be good industry practice and any other relevant policies or guidance. Those would include any terms it sets out upfront such as those mentioned in the T&Cs of the policy. The fact that it didn't include a particular policy condition in a discharge form, wouldn't, as a matter of course, cause me to say that the form was in some way deficient, or that the policy terms shouldn't apply.

And again, even if I did agree with the point Mr S makes here, it's still unlikely that I'd say Aegon did something wrong when asking Mr S to sign the discharge form on the terms it did. As I said in my provisional decision, not only is the issuing of a discharge form something that Aegon is expected to do (even if it wasn't a term in Mr S' policy) as part of good industry practice, the wording is pretty much lifted word for word from that guidance. And it's the precise wording that Mr S was and is fundamentally opposed to.

For completeness, given other comments Mr S made, I'll add that our role is not to police the pensions industry. Instead, I look at whether a business like Aegon treated a consumer fairly in all the circumstances of the individual complaint. And, while it is open to me to comment if I found a particular policy term or clause fundamentally unfair or unreasonable, generally, I don't have the power to instruct firms to make systemic or procedural changes. That would be a regulatory function which would be outside of my remit.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 April 2025.

Amanda Scott
Ombudsman