

The complaint

Mr H has complained about the actions of Scottish Equitable Plc trading as Aegon (“Aegon”) during the transfer of his Self-Invested Personal Pension (SIPP) and Flexi-access Drawdown policy to another pension provider. In processing the transfer Aegon applied an ‘amber flag’ due to concerns about the proposed investments within Mr H’s receiving scheme. Mr H doesn’t think the flag was applied fairly and it led to a delay in him transferring his pension.

What happened

On 29 July 2024, a transfer request was submitted to Aegon via the Origo Options platform for Mr H to transfer his pension to Seccl Custody. In response to this Aegon sent Mr H a due diligence questionnaire to complete which he did and returned it to Aegon on 7 August 2024 by email.

On 14 August 2024 Aegon emailed Mr H informing him that under Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (the Transfer Regulations) it had a duty to look for early warning signs of whether a pension is being transferred as part of a pension scam. It explained that it had to conduct due diligence in accordance with the Transfer Regulations and follow the principles outlined in the Combating Pension Scams: A Code of Good Practice. And in doing so for Mr H’s transfer it had identified concerns and so had applied an “amber flag” – specifically amber flag 3: *High-Risk or unregulated investments are included in the scheme*. This meant under the legislation Mr H was required to make an appointment with MoneyHelper to discuss his proposed transfer and to obtain further guidance.

Aegon also recommended that Mr H seek independent regulated advice before proceeding with the transfer. And made it clear that if he didn’t want to take any regulated advice, he was to complete and sign the indemnity declaration that he had been sent which confirmed he was aware of the risks involved and wish to proceed with the transfer without taking advice. Aegon also explained that while he had every right to not provide the information requested or proceed with the MoneyHelper guidance but if he failed to do so Aegon would not be able to proceed with the transfer.

On 15 August 2024, Mr H emailed Aegon saying that he understood the need to undertake due diligence, but he had completed a due diligence questionnaire which explained where the funds were to be invested in his receiving scheme. Further emails were sent between Aegon and Mr H on 15 August, as Mr H was trying to establish more details and clarity about the reason the amber flag had been applied as he didn’t think it had been applied correctly. Aegon also sent Mr H a link to obtain a MoneyHelper appointment and Mr H confirmed that the earliest he could arrange an appointment was for the 24 September 2024.

On 21 August 2024 Aegon repeated the same information to Mr H that it had told him on 14 August. Mr H called Aegon on the same day about the email he had received, asking for further information. Aegon responded by email on the same day again explaining that the investments he will be making in the receiving scheme are classed as a high level of risk due to them being overseas.

On 22 August 2024, Mr H emailed Aegon saying that its reasons for applying the amber flag did not hold up to scrutiny because Aegon had not had sight of the investment funds. Furthermore, he didn't think an overseas investment should be arbitrarily given an amber flag. Mr H also said that Aegon had failed in its due diligence as it hadn't asked where the funds were being invested. He requested for Aegon to review the transfer again as a matter of urgency.

In regard to the proposed investments, he attached the planned recommended portfolio which provided full details of the intended investments and assets.

On 28 August 2024, Aegon responded to Mr H asking him what investments he planned on investing in the receiving scheme. However, Mr H had already provided Aegon with this information.

On 6 September 2024 Aegon told Mr H that it had started the transfer process without the need for him to have a MoneyHelper appointment. It also said that it had started to sell down Mr H's funds on 4 September, which would take between 5 and 7 working days. Once the funds have been sold Aegon would complete the transfer to Seccl Custody. Aegon also said it would complete a price comparison calculation to establish if Mr H had suffered any financial loss due to the delays in processing the transfer.

On 9 September 2024 Aegon transferred around £400,000 to SECCL Custody. The transfer proceeded without a MoneyHelper appointment and the amber Flag was retracted by Aegon after receiving further investment information.

Mr H complained to Aegon about the delays in the transfer. When Aegon investigated the complaint it concluded that a price comparison wasn't necessary as it was satisfied with the process it carried out and the fact the amber flag had been applied and a MoneyHelper appointment was required based on the initial information.

Aegon also paid Mr H £200 for distress and convenience, but it wasn't made clear to Mr H what this payment was for. Aegon has confirmed to our Service that this payment was because it made an error by requesting investment information from Mr H on 28 August which it had already been provided with.

Unhappy with the outcome Aegon had reached Mr H complained to our Service. He remained of the view that Aegon's initial refusal to transfer the funds and it applying the amber flag was unfair. He was also unhappy with the explanation Aegon had provided regarding the amber flag. He also felt he had been impacted financially as his funds had been dis-invested into cash in preparation for the transfer - once he realised a MoneyHelper appointment was required, which would take a number of weeks he re-invested the funds in the short term.

To put things right Mr H set out that he wanted Aegon to:

- Complete a price comparison calculation to establish financial loss;
- Explain clearly how it came to use the amber flag based on the information it had received at the time; and
- Review the level of compensation paid at the time.

The complaint was assessed by one of our investigators who was of the view that Aegon was only conducting its due diligence when it applied the amber flag – something it was required to do under the regulations. He also felt that the £200 Aegon had offered and paid to Mr H was sufficient to recognise the impact Aegon's actions had had on him.

However he did feel that Aegon had caused unnecessary delays during part of the transfer process.

He explained that despite Aegon receiving further details about Mr H's investment on 22 August, it asked for investment information again on 28 August (six days later). And after this point Aegon told Mr H it would progress the transfer on 6 September (nine days later). And then subsequently transferred on 9 September (three days later). So it was these actions he felt delayed the process unnecessarily.

He found that it took Aegon eighteen days after receiving the final required information about the transfer, which was Mr H's investment information (22 August), to process the transfer (without the need for a MoneyHelper appointment). He felt this was unreasonable partly because Aegon requested the same investment information from Mr H which it had already received, so it wasn't necessary. Furthermore, he felt that whilst Aegon had to wait for its due diligence team to make a decision, upon receipt of the detailed investment information and explanation from Mr H (on 22 August) Aegon could have still reasonably made a decision and transferred within ten days - taking into consideration that it could take between five and seven working days for funds to be disinvested to cash.

So overall he felt that Aegon could have transferred by 1 September 2024 at the latest, thereby causing a delay of eight days.

Therefore, he directed Aegon to compare the actual transfer value to the value that would've been transferred had the transfer been completed on 1 September 2024 - (the date Aegon could have transferred on had it not been for its delays). And also calculate any potential growth Mr H had lost out on by the transfer being delayed.

Aegon agreed with the assessment and confirmed it would complete the loss calculation as directed.

Mr H however didn't agree with the assessment and made the following comments:

- Aegon had applied the amber flag arbitrarily without first seeking further information. At the point Aegon had discovered the scheme was not on The Pensions Regulator's (TPR) list of authorised master trusts it should have undertaken further investigation, but instead it made up "spurious" reasons to apply the amber flag with no supporting information or evidence of its rationale for applying it.
- The timescales allowed by the investigator for Aegon to react are very generous. And unreasonable.
- The level of compensation is at the bottom end of the guidance of this Service. The distress and inconvenience was considerable. The level of time spent trying to communicate with Aegon was considerable. MoneyHelper was overwhelmed by the number of referrals. His fund were out of the market so considerable time was spent with his IFA to re-invest in a short terms solution with Aegon. This also happened during Mr H's holiday with his family which impacted his holiday and caused him to incur considerable roaming charges.

As no agreement could be reached the complaint has been passed to me to decide.

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've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

The regulations and guidance in place at the time of Mr H's transfer request

Over time, there have been renewed expectations placed on pension providers like Aegon to carefully consider any transfer requests they receive in the wake of increasing pension scams. Indeed, if a provider is found not to have exercised due care and attention when approving a transfer, they could well be held responsible for any losses the member suffered.

TPR and other bodies have developed guidance, the purpose of which is to highlight factors that might indicate a member's pension is at risk of a scam. Those include the Code of Good Practice "Combating Pension Scams" produced by the Pensions Scams Industry Group (PSIG). The Code is voluntary and is intended for use by providers and others by suggesting the type of due diligence to follow when considering a transfer request.

More recently The Pensions Schemes Act 2021 was introduced along with The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. Those gave providers additional responsibilities to ensure that certain conditions were met in order for a transfer to go ahead. Where a statutory right to transfer exists, businesses are generally expected to complete the process within six months where possible.

In practical terms providers like Aegon were expected to respond if they thought there were risk factors present when considering a transfer request. Any additional steps taken were expected to be reasonable and proportionate and were intended to act as an important safeguard to the member.

In addition to the above, Aegon had other obligations in line with the FCA Principles (PRIN) and the Conduct of Business Sourcebook (COBS). Those include, but are not limited to, Principle 2, which says "*a firm must conduct its business with due skill; care and diligence*".

It's against that backdrop that I've considered Aegon's actions.

In light of the information above about the legislation and the due diligence incumbent on providers of pensions schemes transferring in my view I don't think Aegon acted wrongly in applying an amber flag to Mr H's transfer request. Aegon has provided this Service with the information why it felt this was necessary at the time. This information is commercially sensitive and so I am obliged to adhere to Aegon's wishes for it not be shared but reviewing it, it seems reasonable to me that Aegon acted with caution. The legislation states it must do this and it's important to remember that ultimately Aegon was acting in Mr H's best interest and trying to protect him. Referring Mr H to MoneyHelper was part of this as dictated by the legislations so I see nothing wrong in Aegon doing.

Once Aegon received further information about the intended investments and the new scheme its concerns were allayed and it then proceeded with the transfer.

I appreciate the amber flag quoted to Mr H didn't seem to tie in with the investments he was planning to make. Nevertheless, Aegon was fulfilling its obligations under the regulations. So in response to Mr H's view that Aegon applied the flag arbitrarily I don't agree.

In terms of the delays as the investigator set out in his assessment the unreasonable delay seems to have been due to Aegon asking for information that it already had in late August 2024 and not acting at pace when it had received all the information it required. This shouldn't have happened meaning that the transfer should have completed on 1 September 2024. I agree with the investigator's findings on this point and while Mr H feels the timeframes allowed for Aegon are generous I don't agree. It's important that we treat all parties to the complaint in a fair and reasonable manner. And I don't think deciding that Aegon should have acted quicker than the investigator set out would be reasonable nor practical for Aegon.

Turning now to the Mr H's point that he was out of the market for a time and so should be compensated for this. I have seen that his adviser placed an online request on 26 June 2024 to move part of his holding in his uncrystallised SIPP across to the drawdown wrapper. As part of this process the adviser chose to sell down some funds to cash. However, Aegon didn't receive the instruction to transfer until 29 July 2024. Mr H took his tax-free cash from some of the cash proceeds and the remainder was moved into the drawdown for the eventual completion of the transfer. As already mentioned, Aegon was obliged to carry out due diligence so there was no certainty that the transfer would happen immediately. The IFA should have known this. But it seems it was Mr H and his adviser's choice to sell down the funds into cash before even submitting the request to transfer and seemingly to keep the funds in cash over the process which they should have known wouldn't happen immediately after request. I therefore am satisfied that any loss Mr H may have suffered because of this isn't the responsibility of Aegon to make up.

In terms of the payment Aegon has made to Mr H of £200 in my view this sufficiently recognises the impact this situation has had on him. I appreciate it has taken some time for him to raise and pursue the complaint but ultimately making the complaint was his choice. So any time spent in doing so isn't what such a payment is there to recognise. Also while I know this was a frustrating situation for Mr H, I can't see how he was severely inconvenienced – which he would need to be to warrant a higher award – he managed to continue with his daily life and activities and hasn't given indication that this affected his health. The £200 is for the errors made by Aegon and given the errors were requesting information it already had and not acting quicker once it had received all of the information required, I am satisfied that £200 fully reflects this.

Putting things right

As above, but for the delays caused, Mr H's transfer would've completed on 1 September 2024. Therefore, Aegon should calculate whether a loss has been caused by its actions.

Aegon should take the figure which should've been transferred on 1 September 2024 and confirm with Mr H's new provider what the value of that transfer value would have been worth as at the date of the actual transfer. To do this it should assume Mr H would have invested it into the assets he eventually did. Aegon should compare this figure with Mr H's actual transfer value. If it is larger, Mr H has suffered a loss that should be compensated. If the figure is lower, there is no loss – Mr H has gained from being invested with Aegon for the period of the delay rather than with the new provider.

If once the calculations are complete there is no loss, then there is nothing to pay. But if a loss has been suffered then this amount should be paid into Mr H's pension plan with his

new provider. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

My final decision

My final decision is that I uphold this complaint. I direct Scottish Equitable Plc trading as Aegon to calculate and pay redress to Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2025.

Ayshea Khan
Ombudsman