

The complaint

Mr S complains that Scottish Equitable Plc (trading as Aegon) wrongly refused his request to transfer his pension policy to a UK Self-Invested Personal Pension (SIPP) on the basis that Mr S had been offered a financial incentive to transfer.

What happened

On 27 August 2025 the SIPP provider sent Aegon a transfer request through Origo Options, a paperless transfer system. The SIPP provider said it was expecting to receive a transfer for the amount of £37,353 and that the transfer wasn't being arranged via a financial adviser.

Aegon has provided evidence of it checking a due diligence spreadsheet in response to the request. The destination SIPP provider was on its own 'Amber' list, meaning it hadn't carried out sufficient due diligence to be able to confidently wave through transfers to that provider. So it needed further information from Mr S in order to progress things.

Aegon wrote to Mr S on 29 August. It enclosed a leaflet about pension scams produced by the Pensions Regulator (TPR) and a due diligence questionnaire for him to complete. Mr S signed this questionnaire on 2 September alongside answers which included:

- His motive for transferring was to grow his pension further with a switching bonus and also take better control of the new SIPP in a modern 'app' which he would find easier to deal with.
- In answer to the question *"Have you been offered any cash payment, commission or loan from the receiving scheme, administrators or third party, as a result of transferring your pension?"*, Mr S responded *"Yes...Just a 3% switching bonus"*.

After the SIPP provider chased Aegon on 5 September, Aegon evidently received Mr S's questionnaire on 8 September. It wrote to Mr S on 10 September explaining that it had applied a red flag because of the incentive he'd been offered, as a result of following the Pension Scams Industry Group (PSIG) Code of Good Practice. It said that this led it to suspect that he might be the victim of a pension scam, and recommended that he took regulated financial advice before requesting a transfer in future.

Mr S complained, arguing that not all incentives should be treated as red flags in this context, because it had resulted in him losing his statutory right to transfer his pension and that was excessive. Aegon's position didn't change, so he referred his complaint to the Financial Ombudsman Service where it was considered by one of our Investigators.

They explained that since November 2021 pension providers like Aegon had been subject to the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 ("the Regulations"). The Regulations were made by Parliament to better protect pension scheme members from the threat of scams. Alongside supporting guidance issued by the Pensions Regulator (TPR), they required Aegon to identify - amongst other things - if any red flags applied to Mr S's transfer request.

Our Investigator was satisfied that the amount Mr S was being offered by his SIPP provider was consistent with the definition of an incentive in the Regulations, and so Aegon acted appropriately to red flag his transfer. That resulted in the removal of his statutory transfer right. However they also noted that TPR's supporting guidance encourages transferring schemes (in a non-binding way) to consider granting a discretionary transfer, where there was no statutory right but the risk of a pension scam seemed low.

Mr S had a contractual right to transfer-out under the rules of his policy, separate to any statutory right. However, the wording of this clause referred to Aegon being able to refuse a transfer unless it was satisfied it could make it from a legal and regulatory perspective. Having taken this into account, the Investigator wasn't persuaded that Aegon acted unfairly by declining to exercise discretion to transfer Mr S's funds in this case.

Mr S didn't agree with the Investigator, giving the following reasons:

- The Department for Work and Pensions (DWP)'s formal review of the Regulations in June 2023 stated *"The incentives flag is incorrectly blocking transfers due to the different interpretation of the flag by some providers."*
- The Regulations were intended to stop scams. Treating a *"3% marketing bonus from a multi-billion dollar regulated app as the equivalent of a "boilershop" scam inducement is a failure of proportionality"*. If Aegon had concerns about an incentive, an amber flag (requiring Mr S to attend an appointment with the government's free MoneyHelper service) should have been raised.
- The FCA's Consumer Duty obliges Aegon to avoid "foreseeable harm" and to act in "good faith." It is causing him direct financial harm by trapping £40,000 in an unwanted product and preventing him from accessing superior investment growth in his chosen investment strategy.
- He seeks compensation for this financial loss as well as for distress and inconvenience. £250–£500 would be in line with previous awards this service has made for unfair application of the Regulations.
- The Ombudsman is required to decide what's fair and reasonable. The removal of the statutory right doesn't legally prohibit Aegon from making a discretionary transfer. It should do that in this case, otherwise it's acting in an unfair and anti-competitive manner.

As agreement couldn't be reached, the complaint was referred 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.

Aegon's conduct has been determined by the Regulations which it is subject to when considering Mr S's transfer request. They have been UK law since November 2021 and they establish whether Mr S retains the statutory right to transfer his pension, a right originally set out under Part 4ZA, Chapter 1 of the Pension Schemes Act 1993. The relevant parts of the Regulations are as follows:

8.— The Second Condition: transfers into all other receiving schemes

...

(5) *There is a red flag present where the trustees or managers of the transferring scheme decide that— ...*

(c) *the member has been offered an incentive to make the transfer;*

(6) *In this regulation—
“incentive”—*

(a) *includes an offer of one or more free pension reviews, access to some or all of the member’s pension savings before they attain normal minimum pension age, a savings advance or cashback from their pension savings; and*

(b) *does not include an incentive to make the transfer offered by the trustees or managers of the transferring scheme, or by the member’s employer where that employer is a sponsoring employer of the transferring scheme, whether that incentive is provided directly by the trustees, managers or sponsoring employer, or by a person they have authorised to provide it;”*

Earlier on in the Regulations the standard of proof for applying this red flag was set out:

6.— Standards of proof, relevant evidence or information, and timing for decisions regarding satisfaction of the conditions

...

(3) *Where the trustees or managers of the transferring scheme...make a request for evidence or information from the member in accordance with regulation 10(1) or (3)—*

(a) *in order to reach a decision that— ...*

(ii) *any of the red flags in regulation 8(5), or any of the amber flags in regulation 9(3) to (5), is present, they must decide whether they have reason to believe that it is present;...*

(4) *In paragraph (3)(a)(ii), “reason to believe” means that there is a reasonable foundation for the belief, on the basis of all of the evidence and information available.*

(5) *For the purposes of paragraph (4), “all of the evidence and information available” to the trustees or managers of the transferring scheme means not only evidence or information provided by the member in a formal response to a request made...but also other relevant evidence or information, including in particular—*

(a) *any information provided by the member or another party to the transfer other than in such a response;*

(b) *the fact of a general or specific omission of evidence or information from that formal response;*
or

(c) *any evidence or information obtained by the trustees or managers of the transferring scheme, including in the course of carrying out their duties in relation to that, or another, pension scheme.”*

In Mr S’s case, the incentive was paid as a sum the SIPP provider made available for investment in a General Investment Account (GIA) running alongside the SIPP. I’ve also taken into account that, according to what I can see from the current version of the campaign at least, there may have been a period of delay that Mr S had to wait before receiving the incentive, during which time his SIPP had to remain with that provider.

Evidently Mr S wasn’t being offered a free pension review or a direct withdrawal of money from his pension. But the amount the SIPP provider would credit to his GIA was described on its website at the time as a ‘cashback’. There didn’t seem to be a restriction on Mr S then withdrawing that sum (as cash) once it had been credited, so it would be difficult to argue that the cashback was being financed from profits the provider would make from this and other GIAs set up as a result of the promotion. Not least because the charges it would apply to the funds would only be a small fraction annually of the amounts added, and take some time to accumulate.

Instead, I think it’s plainly arguable that the SIPP’s participating in the promotion were financing the payment of the incentive – specifically the profits the provider expected to make from the charges it applied to the SIPP’s both before and after the cashback was paid. If there was any doubt on this, the amount of the incentive was expressed as being 3% of the amount Mr S transferred, thereby directly linking it to the sum invested in his SIPP specifically. In terms of the transfer from Aegon alone, that would amount to £1,121 – and this would conceivably be recovered by the provider from the charges it made from his SIPP over the expected future term of the investment. To conclude otherwise would mean that the

promotion wouldn't have been sustainable as part of the provider's business.

As a result, I think it's reasonable to conclude that Mr S was getting a "*cashback from their pension savings*", meeting the definition of an incentive in the Regulations. As I've said it wasn't a direct withdrawal from the pension, which was covered elsewhere in that definition. But it was being funded indirectly from his pension in the sense that the future value of the pension would likely have been larger if the SIPP provider hadn't needed to recover it through more charges that it would otherwise have needed to charge. I don't think the fact that this money from the pension ended up in another investment changes the way this is defined as an incentive for the purposes of the Regulations.

Even if I'm wrong on that, the use of the word 'includes' in the definition of 'incentive' signals that the explanations given were only examples. My interpretation of Mr S indirectly accessing cash out of the future returns on his pension does bear some similarities with how some pension scams operate – irrespective of whether this transfer is a scam (and I note Mr S's well-made comments about the FCA regulated status of the SIPP provider here). It's also plainly consistent with the intent of the Regulations in my view to treat what Mr S terms as a 3% bonus (but which the provider itself referred to as a cashback) as an incentive. That's to some extent also supported by TPR's guidance, which says (with my **emphasis**):

*"You may decide that this flag is present **if the member was incentivised to make the transfer**. The regulations provide examples of what is and is not an "incentive" for the purpose of the regulations. These examples are non-exhaustive lists, and where a particular incentive is not included in either of these lists, we expect trustees to assess whether the type of incentive offered is one **which indicates there is a heightened risk that the transfer might lead to a member being scammed**. As the examples are not exhaustive, it is important that you keep up to date with current and evolving scam tactics and consider industry good practice. You may be faced with other examples of incentives being offered. **Some could be considered normal industry practices**. After carrying out due diligence you may consider the transfer is at a low risk of a scam and, where your scheme rules allow, you may consider granting a discretionary transfer."*

This allows me to draw several conclusions. Firstly, I don't think the TPR guidance is entirely consistent on whether it's the risk of an incentive leading to a scam, or just that the scheme member has been incentivised to transfer in the first place, that triggers the red flag. The former was added in July 2022, but reference to the latter still remains as part of the guidance. The rest of TPR's comments do plainly state that some incentives might be considered normal industry practice. I'm aware that these revisions were added in an attempt to address concerns about low-scale incentives that weren't likely to be scams, however the Regulations themselves haven't been changed.

In the event of a conflict between what the guidance and the Regulations expect Aegon to do to determine whether Mr S has lost his statutory right, I couldn't reasonably fault it for following the Regulations – as these are binding on Aegon as opposed to providing non-binding guidance. I reach this conclusion noting that in any case, the guidance provides an alternative means of Aegon permitting transfers on a discretionary basis where it *does* consider these are at low risk of a scam.

Before I consider whether Aegon should have made a discretionary transfer here, I will also address the fact that under the Regulations it needed to have a reasonable foundation for the belief that the red flag applied, on the basis of all of the evidence and information available. That evidence didn't just amount to what Mr S wrote on his questionnaire, but arguably what it had learned from its experience of transfer requests to the same scheme.

As both parties know and have referred to, one of my colleagues has already determined a similar complaint against Aegon about a transfer to the same scheme involving a similar

incentive offer. That transfer request happened before Mr S's. Both cashback amounts were calculated as a proportion of the amount invested in the SIPP, and both complainants' answers to Aegon's questionnaire indicate that they were incentivised to make the transfer by the cashback amount. (I'm unaware of how many other such requests Aegon may have received but potentially not all of them would have resulted in a complaint.)

Mr S now says that the cashback wasn't his main reason for transferring – but it featured in the explanation he provided to Aegon at the time, which I find more persuasive. And I don't consider £1,121 (plus any other amounts Mr S was getting from other transfers) to be an insignificant amount. I'm not aware of, and nor does Aegon appear to have been given, any explanation of why this type of incentive should be considered a normal practice. Indeed if it was a widespread practice and given Aegon's approach, I would expect to have seen comparable examples of it refusing transfers to other providers in the market for this reason.

Taking all of this into account, I'm satisfied that as far as the Regulations are concerned, Aegon did have a reasonable foundation for the belief that the cashback offer was incentivising Mr S to transfer, and as a result the red flag applied. I can't reasonably say this was a wrongful application of the Regulations, which don't allow for the 'proportionality' Mr S argues for or provide for an amber rather than a red flag to be raised in this situation. And I have to correct Mr S that DWP's June 2023 review of the regulations *didn't* say that some providers were incorrectly blocking transfers: it summarised feedback from other parts of the industry, who thought those providers were. It explained:

“Were there any unintended consequences? Feedback from a proportion of the pensions industry suggests there are issues with the practical application of certain provisions in the regulations, namely the incentives red flag and the overseas investments amber flags. ... TPR has since updated its guidance to help address these issues.

***Conclusions** Whilst the original policy intent remains appropriate, feedback from the pensions industry suggests the incentives and overseas investments flags are the main concerns with the application of the regulations. DWP will therefore conduct further work with the pensions industry and the Pensions Regulator to consider if changes could be implemented to the regulations to improve the pension transfer experience, without undermining the policy intent.”*

To my knowledge that further work hasn't yet concluded, and for the reasons I've already explained above I don't think the clarifications TPR made to its guidance in 2022 (to which DWP refers here) would make it unreasonable for Aegon to deny Mr S his *statutory* transfer right in the circumstances of this case.

I think the remainder of Mr S's points come down to whether Aegon should have been expected to make a *discretionary* (rather than contractual) transfer if – as Mr S considers is the case – his transfer request was seen to be at low risk of a scam. The relevant part of the scheme rules for Mr S's pension (“Section 8 – Transfers out”) state, with my **emphasis**:

“Where you are transferring your SIPP, on receipt of a valid transfer request from the trustees or scheme administrator of a registered pension scheme or QROPS, Aegon will transfer out your investments from your SIPP, this will involve the sale of all investments unless the transfer is by way of a direct transfer or re-registration of 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.”

So, Aegon's discretion to make a transfer under the terms and conditions of the policy refers back, in general, to the law governing transfers. The particular Regulations affecting Mr S's

statutory right in this case post-date the Aegon scheme rules, but the rules were clearly forward-looking in nature. I think it's reasonable to take into account the purpose of the Regulations in deciding whether Aegon should be satisfied enough to exercise its discretion in favour or making the transfer under the scheme rules.

The issue at play in Mr S's case – an incentive offered by his receiving scheme – was identified under the Regulations as one of the features of potential pension scams. Immediate access to pension funds (other than via legitimate payments that are authorised by HMRC) was commonly exploited by scammers and, in response to greater scrutiny, often disguised as something else – for example, a 'cashback' amount.

The consequences of this could potentially be devastating, not only because of the funds lost in the scam but also the fact that they would be treated as an unauthorised payment by HMRC and attract tax charges of at least 40%, plus a further sanction charge on the scheme itself. The reason such payments are deemed unauthorised is that they circumvent the usual basis of payments to a pension scheme member being subject to income tax (in excess of the tax-free cash allowance).

Mr S argues the fact that his SIPP provider is FCA regulated meant it's unlikely to be participating in a scam. I have no reason to doubt that is the case, but the tax rules governing which payments from a pension scheme are and aren't authorised are complex. I think Aegon was entitled to be cautious in exercising discretion about making this transfer, because even where a scam isn't taking place the size of the incentive could at least be considered to be testing the limits of the tax rules – and therefore something of a 'grey area'.

To explain this further, HMRC sets out in its Pension Tax Manual¹ which payments to a scheme member are authorised (essentially recognised forms of pension and lump sum). The default position is then that all other payments would be deemed unauthorised, but HMRC clarifies² that certain other payments can be treated as 'scheme administration member payments' to avoid this. Those include, for example, payment of commission to a financial adviser on standard commercial terms – even where that is then rebated by the adviser back to the member.

It's not immediately clear that cashback paid to Mr S by the pension provider itself, rather than (say) commission to a financial adviser that may then be rebated to him, formally comes within the definitions HMRC has said can be treated as an authorised payment. Both payments operate in a similar way in that there is an upfront payment which is indirectly covered through the future charging structure on the pension pot. But only the payment via a financial adviser is specifically clarified under the tax rules.

I say all of this accepting that the incentive amount of 3% in this case is not dissimilar to what a financial adviser may receive. And none of this is to say that the proposed incentive *would* ultimately be deemed an unauthorised payment; that's a matter the receiving pension scheme would need to determine for itself, and it may have very good grounds for believing that it would not be.

To be clear, the Financial Ombudsman Service isn't a tax authority and I'm not deciding what payments are authorised or not under the tax rules. Importantly, nor is Prudential – but it is reasonable for it to be alert to the risks that incentives pose to the scheme member. It stands to reason that there could be a theoretical upper limit on the size of the incentive before it started to attract further attention. Not least because of other provisions in the tax

¹ <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm060000>

² <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm143000>

manual about so-called 'value shifting'³ of funds outside the pension arrangement. And it puts Prudential in a difficult position if it has to decide where that limit should be.

As this is a grey area I can see why Aegon would be cautious about making a discretionary decision to allow Mr S's transfer under a set of rules that require it to be satisfied from a legal and regulatory perspective. There is at least a possibility that it might be exposing members receiving incentives (to a lesser or greater extent) to adverse tax consequences. That risk is a common feature with pension scams, and I think it's understandable that the presence of the incentive in this case might take granting the transfer beyond Aegon's risk appetite – even though it is to an FCA-regulated provider and there may be no other signs of a scam.

I agree that the guidance from TPR, which Aegon needed to take into account alongside the Regulations, encouraged a less black-and-white approach to assessing incentives – at least those that might be regarded as “normal industry practices”. But the guidance doesn't specify what normal industry practices would be. As I've said above, my impression is that such incentives aren't particularly common, potentially because of how they are likely to be perceived in light of the Regulations, HMRC's pension tax manual, or both. That inevitably and not unreasonably, in my view, puts a greater degree of scrutiny on a provider who is offering them.

Comparisons might be made with the incentives offered to switch bank accounts, but these are typically for sums of several hundred pounds, rather than amounts that could run here into the thousands depending on the pension fund size transferred. I think that gives context for what TPR might have been referring to as normal practices. I'm also aware that some other providers may have a more relaxed approach to making transfers to a receiving scheme that offers an incentive, but the rules of each scheme will differ. Aegon had a right to refuse the transfer under the terms of Mr S's policy in situations where it had concerns about the legal and regulatory position – which was the case here. It isn't my role to dictate how Aegon should exercise its discretion, providing it is doing so reasonably.

I acknowledge Mr S's comments about the Consumer Duty, but as the Investigator has already said this doesn't require firms to act in a way that is incompatible with any legal or regulatory requirements. For the reasons I've explained above, I'm not persuaded Aegon has acted unreasonably in declining to exercise discretion to transfer Mr S's policy.

There isn't enough evidence to say that Aegon was acting in an anti-competitive manner given that the purpose of the Regulations and guidance was to prevent scams and the perceived, if not actual, risks involved in incentives that I've set out above. It is for each provider to weigh up what is expected of them in TPR's guidance and their broader regulatory responsibilities under the FCA's principles and rules, of which the Consumer Duty is only one. These also include conducting business with due skill, care and diligence, paying due regard to the interests of customers and treating them fairly. I wouldn't expect each provider to balance these identically. It's understandable that some transferring providers might decide to take a more cautious approach than others.

The previous awards by our service that Mr S refers to were in situations where a transfer had been unreasonably delayed or an unreasonable decision was reached. Having considered the timeline in this case, Aegon reached a decision that I consider was a reasonable exercise of discretion, even if other providers might have reached a different decision. And it communicated this to Mr S and the receiving scheme promptly.

³ <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm133700>

My final decision

I do not uphold Mr S's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2026.

Gideon Moore
Ombudsman