

complaint

Mr W's complaint is about the time taken to transfer his self-invested personal (SIPP) from Scottish Equitable plc (trading as Aegon and referred to as such throughout) to a new SIPP provider and the delay in accessing his pension benefits, in particular his pension commencement lump sum (PCLS).

background

I issued a provisional decision on 21 April 2020. I've attached it and it forms part of my decision. In summary I was unable to say Mr W had suffered financial loss as a result of Aegon's handling of the matter and in particular Aegon's failure to pay Mr W's PCLS. I thought the £500 which Aegon had agreed to pay for distress and inconvenience, was fair and reasonable.

Aegon accepted my provisional decision and didn't have anything further to add. Mr W asked me to reconsider. He confirmed his property purchase was already underway by the time he needed to tell Aegon if he didn't consent to the transfer to James Hay. But the point wasn't that he had time to make other arrangements. There wouldn't have been a problem if the transfer had been completed within a reasonable time, even allowing for some delay.

Mr W explained that he didn't know what the build costs for the new house would be. Various site tests were undertaken and a quantity surveyor had been appointed to cost the build options. Mr W requested the PCLS at the end of January 2016 as he wanted to submit a planning application, detailing the house size and construction. The amount of money available directly impacted on that and the timing of the planning application. Mr W needed the PCLS to help fund the project. He needed to know how much he had to spend so the planning application was delayed until June 2016. He'd been told then by all parties that he'd get the PCLS in September 2016.

Focusing on a claim for interest for late payment Mr W calculated he should have received a PCLS of £300,468.83 on 31 March 2016 (that's after making an allowance for the increase in value he gained because the fund stayed invested). Interest at 8% (£24,037.48 a year or £2,003.12 a month) meant total interest of £22,725 was due. Taking into account the investment gain and if another party paid the compensation I'd suggested that left a shortfall of £13,997.83 plus distress and inconvenience. There was a long delay, responsibility for which should be met between the parties involved.

Mr W added that the situation wasn't of his making - it was due to Aegon withdrawing from the SIPP market. Being given the chance to opt out was only slightly better than given no choice at all. If he'd been asked to opt in then that would have given a clear message that he understood and accepted the implications. Opting out required a lot of knowledge about a specialist area.

I'd said that SIPP providers weren't expected to '*second guess*' a mortgagee's requirements, but it was entirely reasonable to expect them to have adequate knowledge of the processes involved and not assume that novation would be acceptable to a lender and that the lender would consent to novating the loan. That demonstrated inadequate knowledge of their specialist fields.

The information provided did say the transfer could take some time and that requesting a PCLS after the transfer process had started would delay the transfer. But that was vague. It

could be assumed the delay might be anything from a few days to a few weeks. Mr W had applied for the PCLS in January 2016 expecting to receive it by the end of March 2016. Aegon had said it usually quoted a timescale of between one and six months. Instead the transfer had taken about seventeen months.

my findings

I've considered all the available evidence and arguments again to decide what's fair and reasonable in the circumstances of this complaint.

I've considered elsewhere the impact of the delayed payment of the PCLS on Mr W's building project. Essentially I said planning permission had been applied for in June 2016 and granted in September 2016. But work hadn't commenced until late November 2017. So it seemed his building project hadn't been delayed by the fact that the PCLS (or the bulk of it at least) wasn't paid until January 2017.

It seems from what Mr W has more recently said that he wanted the certainty and security of the PCLS actually having been paid before deciding on the final design and build options and the costs before submitting a planning application. I can understand why Mr W may have perhaps felt more comfortable in waiting until the PCLS had been paid or was, so he was told, fairly imminent. But I think that was his decision. Building costs are generally only estimates. I think Mr W would have known, as far as possible, the expected cost of the various options. And he knew what his PCLS was likely to be, or he could have asked his adviser for an up to date estimate. I don't think it would be reasonable to say the fact that the PCLS hadn't actually been paid stopped him moving forward with his building project when he knew the amount of the PCLS that was available and which would be paid eventually.

I've also considered Mr W's interest calculations. But they are based on the assumption that he applied for his PCLS in January 2016 and it had been paid in March 2016. I don't think that sort of timescale, given the commercial property held in the SIPP, was realistic. And, as far as Aegon is concerned, it wasn't until Mr W complained in May 2016 that Aegon knew he wanted to access his PCLS. And, by the time Mr W's complaint came to be considered, his insured funds had been transferred to the new SIPP provider. So I can't agree with Mr W that he's entitled to interest for delayed payment from March 2016.

It was unfortunate that it wasn't possible to novate the loan as planned initially. But I don't think that points to a lack of expertise on Aegon's (or the new SIPP provider's) part. They may have considerable experience of dealing with mortgaged commercial properties held in SIPPs. But different lenders' requirements will vary, depending on the particular property and other factors.

As I've acknowledged there was a considerable delay in completing the transfer. But sometimes a transaction will turn out to be particularly complex and take more time than could have been anticipated. But that won't always mean that one or more of the parties involved must have been at fault. Or that all of the delays could have been avoided. From what I've seen by the time Aegon knew Mr W needed his PCLS it was too late for Aegon to do anything much.

my final decision

I uphold the complaint. Scottish Equitable Plc should pay Mr W £500 for the distress and inconvenience he's suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 July 2020.

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Lesley Stead
ombudsman

PROVISIONAL DECISION dated 21 April 2020

complaint

Mr W's complaint is about the time taken to transfer his self-invested personal (SIPP) from Scottish Equitable (trading as Aegon and referred to as such throughout) to a new SIPP provider and the delay in accessing his pension benefits, in particular his pension commencement lump sum (PCLS).

background

Aegon wrote to its SIPP customers in July 2015 to tell them its third party SIPP administrator had decided to withdraw from the SIPP market. Aegon had decided not to find another third party administrator. If the value of the self invested assets held in the SIPP was over £1,000 they'd be transferred to a new SIPP with a new provider. The insured funds (which Aegon administered) would stay with Aegon (unless their value was less than £1,000).

Customers who agreed to the transfer didn't have to do anything. Those who wanted to opt out needed to tell Aegon by 28 September 2015. If it didn't hear by then it would go ahead and begin the transfer of the self invested assets to the new SIPP provider in October 2015.

The information provided said the transfer could take some time. The 'frequently asked questions' (FAQ) section included the following:

"Can I still change the Income I receive or take PCLS (Pension Commencement Lump Sum) from my plan?"

Yes. Please tell us in writing if you want to change the income you receive or take PCLS Changing the income you receive or requesting PCLS from your plan after we start transferring your pension will delay the transfer process".

A property transfer guide was supplied. Amongst other things, it explained the outgoing administrator and the new SIPP provider had 'agreed a streamlined process for property transfers'. Solicitors would be jointly instructed. If there was a mortgage in place, a novation agreement would be used, where possible, to transfer the existing mortgage to the new SIPP provider.

Mr W didn't opt out. His SIPP contained a commercial property so that had to be transferred to the new SIPP. The property was subject to a mortgage. In November 2015 the outgoing administrator asked the mortgagee to commence the novation process of the loan.

Mr W met with his independent financial adviser (IFA) on 20 January 2016. Mr W says accessing his PCLS was discussed and that on 26 January 2016 he asked his IFA to request his PCLS. It's not entirely clear what happened about that. I haven't seen any written request for payment of the PCLS. Mr W said his IFA didn't contact Aegon about paying the PCLS until March 2016. But Mr W's IFA says Aegon or the outgoing administrator told him early on that the PCLS couldn't be paid until the transfer was completed. And Mr W says he couldn't find anyone at Aegon to speak to him over the telephone in January 2016 and he (and his IFA) was told it was the new SIPP provider's responsibility.

In May 2016 Aegon was asked to transfer Mr W's insured funds. The new SIPP provider received the transfer payment (£415,860) on 3 June 2016.

By then Mr W had written (on 23 May 2016) to Aegon's Chief Executive Officer (CEO) about the time it was taking to complete the transfer. Amongst other things Mr W said, since the beginning of the year, he'd wanted to withdraw the maximum PCLS to fund a building project.

Aegon's CEO replied on 20 June 2016. He said he was sorry it was taking much longer than Aegon would have hoped to transfer Mr W's SIPP to the new provider. He said an in specie transfer takes some time. Usually a time scale of between one and six months was quoted. But that could be

considerably longer where, as in Mr W's case, a property was involved. The re-registration of that asset involved multiple parties and legal documentation. Aegon was trying to arrange for that to be completed urgently but, as it involved third parties, its influence was limited. Aegon was waiting for information from the mortgagee. Aegon's CEO noted that Mr W was looking to take the maximum PCLS. But he said Aegon hadn't received any enquiry or request about that. Although sympathetic to Mr W's concerns, he felt Aegon had provided enough notice to allow customers to make alternative arrangements.

Mr W's new SIPP provider paid £249,081 in January 2017. The property transfer completed in March 2017. The new SIPP provider paid the balance of the PCLS - £54,200 - on 16 August 2017.

Mr W referred his complaint to us. One of adjudicators looked into what had happened. He said the transfer wasn't straightforward because of the mortgaged commercial property held in the SIPP and that had caused most of the delays. But the adjudicator didn't think Aegon had handled the matter as well as it could have done. In summary the adjudicator said:

- Mr W was 64 at the time. He was approaching his chosen retirement age. Aegon should have clearly set out expectations before the transfer commenced. Aegon provided details about the process which included a section about in-specie transfers. But Aegon didn't seem to have provided regular updates to Mr W about the transfer.
- Having first contacted Mr W in August 2015 to make him aware of the SIPP transfer, by May 2016 the funds were still yet to be paid into Mr W's new SIPP. It took some 17 months for the transfer to be completed.
- Mr W had said he was looking to access the PCLS in March 2016. The value of the (insured) funds on 31 March 2016, before the transfer to the new SIPP provider was completed was £405,411.55. However, by 3 June 2016, when the transfer was processed it was £415,860.22 – a gain of £10,448.67. So Mr W hadn't suffered any financial loss from when he says the funds should have been available to him until when they were transferred.
- It's difficult to say Aegon should be liable for any loss for the delays caused to Mr W's building project. He'd suffered inconvenience. But it wasn't fair to ask Aegon to compensate Mr W for the monthly rental income when Mr W had said he intended to move into the property.
- Aegon failed to manage the SIPP transfer smoothly and hadn't provided explanations and updates to Mr W. Aegon should pay £500 to Mr W towards the trouble and upset he'd been caused.

Aegon initially wasn't happy to accept the adjudicator's recommendation. It said when the complaint had been resolved (in June 2016) Mr W was aware that the property transfer could take some time to finalise. Aegon didn't uphold the complaint at that stage and so it hadn't made any offer. It didn't agree it had failed to manage the SIPP transfer. It involved a property and that was largely outside Aegon's control. It had explained that the insured funds would remain with Aegon unless it was told otherwise. It wasn't instructed to transfer the insured funds until May 2016. So there'd been no delay. Mr W's selected retirement date was in August 2016. It didn't receive any request for earlier payment of his PCLS.

At the time Mr W had complained, the further delays in the transfer hadn't happened. Aegon hadn't investigated the time taken from June 2016 (when it resolved Mr W's complaint) and March 2017 when the transfer of the property was finally completed.

Aegon added:

- Each property has to have a property co-ordinator who should be actively managing the property. There was reference to the property co-ordinator in various emails. He or she should have been up to speed with what was going on. Mr W would have received a monthly bank statement showing any transactions. He could have contacted Aegon at any time to establish the position. It explained several times that the transfer could be a lengthy process.

- *Aegon was reliant on the mortgagee to novate the loan. Aegon tried hard to move it on but it couldn't impact the process.*
- *Having said the in specie transfer would take some time it wouldn't have helped giving had updates when no progress been made.*
- *There was less than a year to Mr W's selected retirement date when the transfer process started. Aegon didn't know how long it would take, especially as it involved a property. Mr W was able to take his PCLS from the insured part of his fund once it moved to the new provider. He could have accessed that when it was invested with Aegon but no request was made.*
- *If the transfer to the new provider hadn't been necessary and if Mr W had wanted to take the whole lump sum at his selected retirement date, he'd have needed some sort of plan to sell the property.*
- *It wasn't fair to say it should pay £500 for delays that happened later and which were outside its control.*

Mr W didn't accept what the adjudicator had said. He said the whole thing caused him and his wife considerable distress. In November 2015 they'd purchased an old bungalow, intending to demolish it and build a new house. The majority of the build cost was to be paid for by the PCLS which Mr W applied for in January 2016. He was unable to access the major part of it until late January 2017. He couldn't start the work until after then and so there was a delay in completing the build. Mr W said he could have received a monthly rental income of £4,000 for the new house and because of the delay he'd incurred a loss of £30,800. He later said the delay meant he couldn't move into the property as soon as he'd planned and so he and his wife had to stay in rental accommodation longer than they'd budgeted for at a total extra cost of £17,000.

Mr W said his understanding was that if someone was unable to access money that was his, he should get interest at 8% above Bank of England base rate. Mr W said he'd asked for his PCLS (about £305,000) on 26 January 2016. He'd been paid £249,081 on 12 January 2017, 352 days after he'd applied. And a further £54,000 on 16 August 2017, 568 days after applying. It shouldn't take more than 28 days to access his money. Allowing for that and applying interest at 8.5% was £18,793.67 on the first payment and £6,790.68 on the second, in total £25,584.35.

Even taking into account the increase in his fund value and what he'd been offered (by other parties) he'd still lost out. He also queried the increase in the value and whether some of it was income from the property or all a return on investments.

Aegon then said it would agree to the adjudicator's suggested resolution, if Mr W was prepared to accept it. If he didn't and the case was referred to an ombudsman, Aegon relied on its earlier comments. It added that it hadn't appointed a property co-ordinator as that was the customer's responsibility.

We told Mr W that Aegon was now prepared to offer him £500 but he didn't want to accept that. He'd asked his IFA why there'd been a five month delay in requesting drawdown (the PCLS). The IFA had said that he'd been unable to make a formal application for the PCLS until May 2016 - Aegon had said it couldn't take instructions as it was transferring the SIPP to the new provider and was unable to do the appropriate valuations (mainly regarding the property) of the overall pension and so calculate the PCLS. Mr W didn't agree that it was up to him to appoint a property co-ordinator. He said it was Aegon's responsibility and so one hadn't been appointed.

We asked Mr W if his IFA could provide any call notes, emails or letters showing when he'd contacted Aegon. Notes of a meeting between Mr W and his IFA on 20 January 2016 were provided. The IFA said most of his communications with Aegon were verbal and shortly after that meeting. Aegon told him early on that it couldn't pay the PCLS until the transfer was completed. At the same time another pension plan Mr W had was being consolidated into the new SIPP. There was no point in making a formal application to the new SIPP provider until the transfer had been finalised as it wouldn't have been possible to calculate the PCLS. Mr W's IFA set out a summary, with dates, of what had

happened. The IFA's report dated 8 June 2016 refers to the issues with the existing SIPP provider/its administrators.

Mr W said it was misleading for Aegon to say no request was made until June 2016. His IFA had made a verbal request, but was told, until the transfer was complete, no PCLS could be paid. Mr W said he'd been unable to find anyone at Aegon to speak to him about his pension in January 2016 – he was told this was now the new SIPP provider's responsibility. So Aegon had told both him and his IFA that the pension was the new provider's responsibility. If Aegon hadn't decided to transfer its SIPP business a formal application could have been made with the PCLS paid out within a couple of months at worst.

Mr W has said he'd settle for £25,584.35 for not having access to his money and a further £17,000 for the extra rent he'd had to pay. He said he wasn't qualified on how that should be apportioned between the parties he'd complained about.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I sympathise with Mr W that, following Aegon's decision to withdraw from this sector of the market, Mr W had to transfer his SIPP to a new provider. Mr W didn't instigate the transfer and the timing was particularly inconvenient for him given his property purchase and his need to access his PCLS to fund his building project

That said, I recognise that providers are free to make commercial decisions about how to conduct their business. It is sometimes the case that a provider will withdraw a product or decide that it no longer wishes to engage in a particular area of business. In that sort of situation we'd expect the provider to do all it could to ensure any transfer is undertaken with as little as possible inconvenience and disruption to the customer. That should be the case anyway. But I think it's especially important where, as here, the transfer wasn't customer led.

A further issue is that, although the whole process was instigated by Aegon, a number of other parties were involved in the transfer. Mr W has complained not just about Aegon but about the new SIPP provider and the mortgagee of the commercial property held in his SIPP. We've dealt with those complaints under separate references. But we've considered all three complaints together. Mr W is also critical of the solicitors acting for the mortgagee and Mr W's existing SIPP provider. The solicitors aren't strictly within our jurisdiction but I've treated them as agents for the parties they were acting for. I haven't looked separately at the solicitors' part in the matter.

I don't think Aegon would disagree that the transfer took longer than it would have liked – Aegon says it usually quotes a timescale of between one and six months. Here the transfer took about 17 months. I accept the transfer wasn't straightforward. The SIPP held a commercial property subject to a loan. I think it was always likely that would cause some issues. At the outset a relatively simple loan novation was anticipated. But it seems that wasn't possible and a new loan agreement had to be set up.

I don't agree the transfer went ahead without Mr W's agreement or control – Aegon's July 2015 letter explained that Mr W could opt out. I think Aegon gave customers sufficient time – until the end of September 2015 – to do so.

When Aegon wrote to its SIPP customers in July 2015 Mr W's selected retirement date was over a year away. The transfer process wouldn't start until October 2015 but that still gave a reasonable window – some ten months or so – for the process to be completed before Mr W, as things stood, might want to start taking benefits and in particular his PCLS.

But it seems Mr W's plans changed and by the end of January 2016 he was looking to access his PCLS. I understand he'd bought a property in November 2015 which he planned to rebuild and then

let or live in. A property purchase usually takes some time to complete. So I'd assume the purchase was already underway by the time Mr W needed to tell Aegon (by 28 September 2015) if he didn't consent to the transfer. If Mr W knew he'd want his PCLS in the next few months he did have some time to make other arrangements. I appreciate he'd still have needed to transfer but the process would have been more under his control and he could have made sure the new provider he selected (and indeed Aegon) was aware that payment of the PCLS was needed soon.

Mr W says he requested his PCLS on 26 January 2016. I think that was when he asked his IFA if it could be paid. The note of Mr W's meeting with his IFA on 20 January 2016 records that Mr W had bought a new property. The PCLS was mentioned but there's nothing to indicate Mr W had said he needed to access it to fund a building project. Or that he'd instructed his IFA to request it. But, from what Mr W says, it seems by a week or so later he did ask his IFA to request the PCLS.

Mr W says his IFA didn't ask Aegon for it until March 2016. I haven't seen any written request. I think Mr W's IFA may have spoken to the new SIPP provider about it. I accept what Mr W and his IFA say about having been told by Aegon early on that the PCLS couldn't be paid until the transfer was complete. I also accept that Mr W was unable to speak to anyone at Aegon who could deal with the matter and was told it was the new provider's responsibility. So, on the one hand, I can understand why no formal request for payment of the PCLS was made. But without any notes of the telephone calls made (and which might enable the calls to be located and a recording provided) I don't know how many calls were made and when or exactly what was said, including how clear it was made that Mr W needed his PCLS urgently.

Looking at it from Aegon's perspective, Aegon didn't get any formal or written request for payment and it wasn't until Mr W complained in May 2016 that Aegon became aware that the PCLS was urgently required. I also note that the information supplied at the outset, which included the FAQ section, said that if payment of the PCLS was required Aegon should be told in writing.

It's difficult to say Aegon is responsible for the delay in payment of the PCLS if Aegon didn't receive any formal request for payment urgently and so didn't explore any options Mr W may have had. For example, Aegon has said it could have paid the PCLS in part at least from the insured assets which remained with Aegon until early June 2016. Aegon did become aware there was an issue when Mr W complained towards the end of May 2016. But at about the same time Mr W's insured assets had been transferred to the new SIPP provider. So by the time Aegon had looked into the matter and replied (on 20 June 2016) it no longer held any assets out of which it could have paid the PCLS as by then the insured funds had been transferred.

The adjudicator said that even if there was a delay from 31 March 2016 (I think the adjudicator accepted that a request to Aegon had been made then) to 3 June 2016 (when the insured assets were transferred to the new SIPP provider) Mr W hadn't suffered any financial loss as the overall fund value increased. I'd agree that because Mr W's assets were remained invested up until the transfer to the new provider there's no financial loss in investment terms at least. And as the commercial property was transferred in specie its value will have remained the same throughout.

But Mr W's point is that issue is that payment of his PCLS was delayed. He'd earmarked that for a building project which in turn was delayed and that's caused him a financial loss – in terms of lost rental income or extra rent he's had to pay. He suggests because he was kept out of his money he should get interest for late payment. He's used a rate of 8.5% pa. That's bank base rate (say 0.5% throughout the period in question) plus 8% which is the rate used by the courts for judgment debts. But if we award interest for late payment we generally just use 8%. We might use bank base rate in certain circumstances but we wouldn't generally use a combination.

Mr W is claiming interest from 26 January 2016. As I've said I don't think any formal request was made then. So I don't think it would be fair to say Aegon is responsible for any delay between then and when it did become aware there was an issue. By then Aegon no longer held any assets out of which the PCLS (in part at least) could have been paid. Going forwards, I think any claim for interest (or lost rental income or extra rent paid) would have to be made against the new SIPP provider. I've

considered that in looking at Mr W's complaint against that business. I've also considered the overall delay in dealing with Mr W's complaint against the mortgagee of the commercial property held in his SIPP.

Lastly, the property coordinator (or rather the fact that one wasn't appointed) has been mentioned. Aegon has said one should have been appointed but it was up to Mr W to do that. I haven't looked into whose responsibility it was. I'm not convinced, had a property coordinator been in place, that the transfer would have been completed any earlier. Adding another party to those involved already might have complicated matters further.

All in all I can't say Mr W has suffered financial loss as a result of Aegon's handling of the matter and in particular Aegon's failure to pay Mr W's PCLS. I think the sum suggested, £500, for inconvenience, and which Aegon has agreed to pay, is fair and reasonable.

my provisional decision

I uphold the complaint. Scottish Equitable Plc should pay Mr W £500 for the distress and inconvenience he's suffered.

Lesley Stead
ombudsman