

complaint

Mr L complains that Scottish Equitable Plc, trading as Aegon (Aegon) caused delays in transferring his self-invested personal pension (SIPP). He says it caused him to suffer a loss of potential investment returns whilst the cash part of his SIPP was disinvested.

background

Mr L had two SIPPs with Aegon. One of these was an uncrystallised SIPP and the other was a drawdown SIPP. Mr L was unable to use Aegon's online platform to make transactions in his SIPP because it wasn't compatible with his computer.

He decided to transfer these SIPP's to a new SIPP provider and in November 2018 notified Aegon of this fact and provided them with authority to release information to the acquiring scheme (AS).

AS wrote to Aegon in December 2018 requesting a valuation of Mr L's holdings within his SIPPs, in order to begin the transfer process. Mr L wanted an in-specie transfer of his funds. But some of the funds held in his Aegon SIPP were funds that AS couldn't hold within Mr L's new SIPP. On 21 December 2018 Mr L instructed Aegon to move those funds to cash so that the transfer could go ahead.

On 3 January 2019 Aegon confirmed to Mr L that the sell down to cash had been triggered on the funds he'd requested. And on 4 January AS emailed Aegon requesting the re-registration of the remaining investments in Mr L's SIPPs.

Mr L made further trades in both of his Aegon SIPP's in January and February, whilst the re-registration of investments was pending.

The re-registration of the investments was completed by 18 March 2019 for his uncrystallised SIPP. The re-registrations on his drawdown SIPP went through on 8 February 2019, 18 February 2019 and a final transfer on 12 April 2019. The transfer of residual cash in both SIPPs was completed on 9 April 2019. Mr L was unhappy with the amount of time the transfer took and complained to Aegon about the delays in completing it.

Aegon responded to Mr L's complaint. They acknowledged that they received the request to transfer Mr L's SIPP's by re-registration on 20 December 2018 and didn't process that request until 9 January 2019. They explained that the delay was due to the volume of work over the festive period but that they should have done better. And apologised for the delay. They explained the delays in completing the overall transfer were due to the changes in the fund values caused by the purchasing of additional investments whilst the transfer was in process. They explained they had an agreed execution date with AS of 8 February 2019. But the additional units that weren't part of the agreed re-registration remained in the SIPPs. Which was found when they completed their reconciliations at the end of March 2019. This meant a new re-registration date had to be agreed for the remainder of the units held. They said they weren't responsible for the delays caused by the changes in the units that were held.

Mr L wasn't happy with this explanation and brought his complaint to us. He said that he ended up having disinvested cash in his SIPPs and had lost out on potential investment returns on that cash because of the time it took to complete the transfer. He complained that he was prevented from making further transactions on the SIPP platforms, so he couldn't

mitigate those losses. He was unhappy with the communication he had from Aegon. He believed they were responsible for causing delays in the transfer. And said they owed him dividends for the extra period his investments were with them and the return of charges when his SIPP's only had the residual cash in them.

Our investigator considered Mr L's concerns and thought it should be upheld. He considered that Aegon were responsible for delays that meant that the transfer took longer than it should have. He thought Aegon should have been proactive in seeking confirmation that the re-registrations had completed. He said that the delays caused at the end in transferring the residual cash caused Mr L a potential loss in investment returns.

Aegon didn't agree with our investigator's view. They didn't agree that chasing fund managers would have affected the timescales. They explained that their processes required proof of the stock transfer. And that had to be in the form of the monthly transaction statements that fund managers had to provide. They considered that a timescale of two months was reasonable. Because Aegon didn't agree with the investigator's view this case has been referred for an ombudsman's decision.

I issued a provisional decision to let both sides know my thoughts on this case and give them the opportunity to reply.

In my provisional decision I explained why I was minded to uphold Mr L's complaint. I agreed that some of the delays had been caused by Mr L's decision to continue to make trades after the request had been made to transfer in specie. But I didn't agree it was reasonable to delay the transfer of the residual cash for so long after the transfer occurred.

Mr L had no further comment to make following my provisional decision. Aegon responded by explaining again that the transfer of residual cash in the SIPP had to be transferred after other assets, according to legislation and the HMRC Pensions Tax Manual. They explained that they had a procedure that they followed for all re-registrations. And said that if they were to chase all re-registrations for each transfer it would prove to be logistically complex and unfeasible. Aegon said that Mr L's transfer was not unusual in having so much disinvested cash to be transferred.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. For the following reasons, I'm upholding Mr L's complaint.

Transfers that are made in-specie involve the re-registration of the holding of investment funds or shares between one platform provider and another. This provides an alternative to selling down funds to cash, transferring that cash and then re-investing it within the new platform. Transferring in this way prevents the need to disinvest assets held – which would make no investment returns whilst held as cash. The starting presumption when requesting a transfer like this would be that the consumer is satisfied with the investments that they already have and want them transferred as they are.

The re-registration process required Aegon to send a valuation of the assets to AS, which AS then needed to process and accept. Aegon then had to instruct fund managers to initiate the process and agree transfer dates. And Aegon are right when they say that the transfer of cash holdings in the SIPP's would happen after the re-registration of investments held. This is normal practice.

The crux of Mr L's complaint is that this process took longer than it should have done. Which meant that he had a large amount of disinvested cash in his drawdown SIPP for longer than necessary causing him a potential loss in investment returns. The timescale of SIPP to SIPP re-registration isn't dictated by the regulator. It varies, case to case, with two to three months not being unusual. Aegon have said that they thought a timescale of two months was reasonable. But Mr L instigated this transfer in December 2018 and it wasn't completed until the end of April 2019. So on the face of it, this transfer was slow.

Mr L was transferring two SIPPs and both ended up being treated slightly differently. So I'll consider each in turn:

Drawdown SIPP

On 21 December 2018 Mr L contacted Aegon to instruct them to sell his investments in six funds that AS couldn't accept by re-registration. Mr L sent a further email on 28 December – three working days later – to request acknowledgement of his request of 21 December. A further three working days passed before Aegon acknowledged the request on 3 January 2019 to confirm that they had triggered the sell downs on the six funds Mr L had requested. Aegon acknowledged this delay and said that their standards are such that they should have triggered the sell down by 27 December 2018.

Our investigator looked into whether the delay in the sale of these funds affected their value. This showed that the overall value of the funds increased between 27 December 2018 and 3 January 2019. So I don't think this delay caused Mr L a financial loss.

Aegon weren't instructed to re-invest the cash prior to processing the transfer request from AS. The potential loss in this case comes about from the fact that Mr L then held disinvested cash in his drawdown SIPP until the re-registration process completed. But the fact that Mr L ended up with that amount of disinvested cash wasn't Aegon's fault. It wasn't their responsibility to advise Mr L on alternative ways to make the transfer. They were given specific instructions and followed those. They would only be responsible for any losses caused by the cash being disinvested, if they caused unreasonable delays that made the process take longer than it should have.

On 7 January 2019 Aegon received the request from AS to re-register the funds in the drawdown SIPP. This confirmed the request already made by Mr L to sell down the six funds in his drawdown SIPP and provided AS's acceptance of the remaining investments for re-registration. Aegon have explained that they responded to this with a valuation of the funds to be re-registered on 14 January 2019. They needn't have done that at that point. But I can also see that the second valuation, taken at values on 11 January 2019 included different information than their first valuation. The cash held had increased because of the sell down of funds. But Mr L had at that point also purchased additional investments which showed in that valuation. So the second valuation served to capture some of the changes Mr L had made in the investments held in the SIPP. Although Aegon had caused unnecessary delay in asking for acceptance they already had, it wouldn't have delayed the re-registration because the valuation had changed anyway.

Aegon had receipt of acceptance of the second valuation by 23 January 2019. But at this point the valuation was again out of date. AS phoned Aegon on 25 January 2019 to inform them Mr L had purchased more stock, so a new valuation was needed again. Emails between Aegon and AS indicate that Aegon sent a stock transfer request on 4 February

2019. The re-registration for the equities happened on 8 February and for the investment fund on 18 February. I'm satisfied that the re-registrations in this SIPP weren't delayed by Aegon's actions.

Aegon explain that they didn't have confirmation from the fund manager for the re-registered investment fund until the end of March 2019 though. And say their processes didn't allow them to transfer the residual cash until they'd received that. They've explained that was why the transfer of cash didn't happen until 9 April 2019. Even though there were further investments – which Mr L had purchased on 4 February 2019 – that ended up having to be processed after the cash was transferred.

I think it would have been reasonable of Aegon to check with their stock broker and the fund manager for confirmation that the transfer had gone ahead as planned. They knew roughly what the re-registration dates should have been. I think it's reasonable to expect that they should be seeking confirmation of the transfer within a week of the anticipated transfer date. Had they done that they would have been able to receive written confirmation in an acceptable format without waiting for the monthly fund manager reports – which they knew were reporting a month in arrears.

I'm aware that Aegon have explained that chasing for confirmation of transfers is not the procedure that they follow. Which I don't doubt. But I have to consider not just whether Aegon treated this transfer in line with their normal procedure. I have to decide whether the way they treated the transfer was fair and reasonable. And I don't think it was. Their procedure allowed them to ignore requests from AS to transfer the cash, when AS were telling Aegon that they had the re-registered assets.

If Aegon had proactively sought confirmation of the re-registrations completing, I think they could then have processed the cash transfer within a further week at the latest. So allowing for two weeks from the re-registration they were waiting for – which I think could have been on 18 February 2019 – I think it would have been possible for Aegon to have processed the transfer of the £54,475.86 by 4 March 2019 rather than 9 April 2019. So I think that they are responsible for any losses Mr L may have incurred by that cash being disinvested in that period.

Uncrystallised SIPP

Aegon received a request from AS on 20 December 2018 to re-register the investments held in Mr L's SIPPs. Aegon responded to that request with a valuation on 9 January 2019. This was eleven working days. Even allowing for the festive period it was an unreasonable delay, which Aegon have acknowledged and apologised for in their complaint response.

There is confusion over when AS accepted the valuation for this SIPP. Aegon have shown correspondence which indicates that they had the correct acceptance for this SIPP on 20 February 2019. But there's also an email from 4 February where AS state, "*the client is transferring two accounts to us*", and quoted the correct account numbers for both. AS were able to accept all assets in this SIPP as re-registrations. Instead of addressing this on 4 February 2019 when they could have, Aegon responded by saying "*can we agree just for [drawdown account] at the moment and I'll come back with new dates for the clients other plan*". I think it should have been clear by at least 4 February 2019 that AS were accepting the valuation on this SIPP too, so should have been addressed then. AS had to chase Aegon later only to be told on 20 February 2019 that Aegon didn't think they had acceptance. AS emailed their acceptance the same day.

Aegon should have told AS on 4 February that they needed acceptance if they didn't have it. Had they done that it's more likely than not they would have had confirmed acceptance to act upon by 4 February 2019 rather than 20 February 2019.

Mr L made transactions within this SIPP on 18 January 2019 and 22 January 2019 as well as on 4 February 2019. Each one of these transactions would have changed the balance of investments held in the SIPP. Which would have rendered the accepted valuation incorrect. And Aegon are right when they say that this would have interfered with the re-registration going through as planned.

If Aegon had acceptance for this SIPP by 4 February 2019, they could have instructed the fund managers and stockbroker by 7 February. As it was, Aegon say they were unaware of the changed asset position in the SIPP until 26 February 2019. But I think that they should have been on top of the process. For the same reasons I explained regarding the drawdown SIPP, I think they should have been checking by 14 February that the re-registration they were processing had completed. And would have found out then that there were assets in the SIPP not accounted for in the accepted valuation.

It took Aegon a day to provide new valuations for AS, so this should have been achieved by 15 February 2019. So I think that Aegon should have been instructing Fund Managers and stockbrokers to re-register any remaining funds by 19 February 2019.

The transfer of equities occurred on 13 March 2019 and 18 March 2019 for the final fund. More than two weeks from acceptance to re-registration. Aegon haven't said when the fund managers and stock-brokers requests were sent. And they aren't responsible for the time it took third parties to perform their role. But even allowing two weeks for an electronic re-registration would mean that the final fund could have been re-registered 5 March 2019.

The last step of the transfer was to move the residual cash. And Aegon say they were waiting for the monthly returns from fund managers before transferring it. But transfer dates were agreed with AS. So Aegon knew when the transfers were supposed to be happening. I think that they should have been checking within a week of that date to make sure that they had processed correctly. They had a duty to Mr L to ensure their part in the transfer process was timely. Following on from what I think would have been a fair timeline, Aegon should have established by 12 March 2019 that the re-registrations were complete. So the £1,570.33 residual cash in the uncrystallised SIPP should have transferred by 15 March 2019 instead of 9 April 2019.

Other issues

I understand that part of Mr L's complaint was that he was blocked from making transactions within his SIPP, so he was unable to re-invest his cash to mitigate his losses. But the purpose of the in-specie transfer is to move funds as they are. So trading shouldn't have been necessary. Therefore it was reasonable to block that. The block wasn't placed on trading until the valuation was accepted, which allowed certain transactions to take place. And the block was also removed temporarily when request was made to process the transfer, which allowed further transactions to happen. I understand Mr L's frustration that he had disinvested cash that he couldn't invest as he wished. But I don't think the fact that a block was placed on his trading platform was wrong.

I've considered whether Aegon should have informed Mr L not to make transactions while the transfer was happening in this way. But I don't think it was their responsibility. They were not providing advice, but merely acting on his instructions. I've seen that Mr L says he was told he could continue trading. But Aegon have no record of a phone call where this took place. And Mr L told them he was transferring because he couldn't access their platform to make trades. So I can't say it's more likely than not, that Mr L was told that he could continue to make trades.

Aegon have explained that dividends may continue to be paid into the SIPP for up to three years, and what their process is to deal with that. I think this is a consequence of the transfer and it's reasonable that Aegon periodically transfer residual cash when this happens. Their SIPP platforms have to remain open until this ceases and any charges applied on these platform are explained within the product terms. I think that the way they are treating this is fair and reasonable.

The charges incurred on the Aegon SIPPs regarding stockbroker fees have all been correctly and fairly applied, relating to the transactions that Mr L undertook. The platform applies its annual charge monthly in arrears, and that charge is a percentage of the value held in the SIPP. And as I think the transfers should have occurred earlier than they did. I think that Mr L has also ended up over paying his annual charge on each SIPP.

Putting things right

I understand that Mr L will be disappointed to see that I don't agree with his view of the extent of Aegon's responsibility for delays. But I can only hold Aegon responsible for the delays I think they caused. I also have to consider whether those delays stopped things happening sooner.

My aim is that Mr L should be put as closely as possible into the position he'd be in if the delays hadn't occurred.

It's not possible to say *precisely* what Mr L would have invested that money in if he'd had access to it when he could have. I say that because it's clear Mr L actively manages his investments on a regular basis and was likely to choose different funds than those he eventually invested in. But I'm satisfied that what I've set out below is fair and reasonable given Mr L's circumstances and objectives when he invested.

To compensate Mr L fairly, Aegon must:

- Calculate the potential investment return (A) on the crystallised SIPP's residual cash

from 4 March 2019 to 9 April 2019 using *FTSE UK Private Investors Income Total Return Index* as a benchmark.

- Calculate the potential investment return (B) on the uncrystallised SIPP's residual cash from 15 March 2019 to 9 April 2019 using the *FTSE UK Private Investors Income Total Return Index* as a benchmark.
- Calculate the overpayment of fees in April 2019 (C) due to residual cash being held in the SIPP for longer than it should have.
- Aegon should add the potential investment growth on the above loss (A+B+C), using the *FTSE UK Private Investors Income Total Return Index* as a benchmark from 9 April 2019 until the date of my final decision. This will represent the overall loss in Mr L's SIPP value from the delays.
- Aegon should add 8% per year simple interest to the compensation from the date of decision to the date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance).
- Aegon should pay into Mr L's pension plan to increase its value by the amount of the compensation and any interest.
- If Aegon is unable to pay the compensation into Mr L's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid – the *notional* allowance should be calculated using Mr L's actual or expected marginal rate of tax at his selected retirement age.
- I acknowledge that Aegon have already sent Mr L a hamper as an apology. I additionally direct that Aegon pay Mr L £150 for the trouble and upset caused by the delays that they caused through this transfer.

Income tax may be payable on any interest paid. If Aegon deducts income tax from the interest, it should tell Mr L how much has been taken off. Aegon should give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I'm unable to say now what investments Mr L would've made had Aegon transferred the money on the dates I think they should have.
- Mr L wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of potential investment growth given Mr L's circumstances and investment choices.

my final decision

For the above reasons, I uphold Mr L's complaint.

I direct Scottish Equitable Plc to pay Mr L compensation in the manner I have set out under '*putting things right*' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 July 2021.

Gary Lane
ombudsman