

Ombudsman's Determination

Applicant	Ms Y
Scheme	AEGON Self Invested Personal Pension Scheme (the SIPP)
Respondents	AEGON

Outcome

1. I do not uphold Ms Y's complaint and no further action is required by AEGON.

Complaint summary

2. Ms Y's complaint is about a withdrawal she made from the SIPP after having transferred in funds from an Aviva personal pension plan. Ms Y says she understood the withdrawal would be tax-free but AEGON deducted tax before paying the withdrawn funds to her.
3. As a result of the withdrawal, Ms Y's future contributions have been limited by the Money Purchase Annual Allowance (**MPAA**).
4. Ms Y has also complained about the length of time it took AEGON to complete the transfer and pay the withdrawn funds to her.

Background information, including submissions from the parties

5. In November 2017, a few weeks before Ms Y's 55th birthday, her employer set up the SIPP on her behalf with AEGON.
6. AEGON supplied a "Confirmation of Application" information pack to Ms Y following the creation of the SIPP. This offered general information, including a confirmation that, as the SIPP had been provided by her employer, AEGON had not offered any advice.
7. A 94-page Terms and Conditions brochure (**the Ts & Cs**) describing the SIPP and other pension services offered by AEGON was also included with the information pack. Within Part 1, Section C, specific SIPP information was provided, including information about transfers in and out, withdrawing an Uncrystallised Pension Funds Lump Sum (**UFPLS**) or a pension commencement lump sum (**PCLS**), making contributions, investment in the default fund and other relevant SIPP information.

8. Part 3 of the Ts & Cs was headed “Basic Scheme Information for the SIPP” and provided generic information such as tax relief on contributions, the Annual Allowance for contributions, the implications of the MPAA, taking benefits, drawdown pension and other relevant information.
9. The pack also contained a Key Facts illustration, dated 23 November 2017, confirming the following:-
 - The name and address of Ms Y’s financial adviser.
 - That employer contributions would equate to 26% of Ms Y’s annual salary of £51,120.96.
 - That Ms Y was also permitted to contribute to the SIPP if she wished to do so.
 - The contribution limits, the annual allowance and the fact that contributions could be restricted by the MPAA.
10. In 2018, Ms Y took advice from her current employer’s pension advisers on her options regarding an existing Aviva personal pension (**the Aviva Plan**). Ms Y states they told her that she could transfer the Aviva Plan into the SIPP and, after the transfer was complete, she could make a tax-free withdrawal from the SIPP of a similar amount to the value of the Aviva Plan.
11. On 15 October 2018, Ms Y emailed AEGON’s Retiready Team (**Retiready**) saying she wanted to transfer funds in from the Aviva Plan and then withdraw funds to pay for planned renovation work on her property, as she intended to sell it and downsize to a smaller property.
12. Retiready replied on 23 October 2018 and directed Ms Y to their online service where she could complete her application to transfer in funds from the Aviva Plan. They told her what information she needed to supply in order to complete her application and confirmed AEGON would then contact Aviva to arrange the transfer.
13. Retiready also told Ms Y that she would have three withdrawal options if she wanted to take benefits from the SIPP, as follows:-
 - Take a full withdrawal.
 - Take a partial lump sum, the first 25% of which would be paid tax free. Under this second option, the balance of the lump sum withdrawal would be taxable.
 - Take 25% of her SIPP value as a tax free lump sum, then convert the balance of the fund into a drawdown pension. However, the total value after the transfer in of the Aviva funds would have to be £20,000 or above in order to select this option.
14. A link to Retiready’s “retirement income planner/taking all as cash lump sum” was also provided. The home page of the planner contained a paragraph recommending

that customers take advice or guidance and directed them to Pension Wise, the Government's free and impartial advice service. The paragraph also stated:-

“Accessing your pension savings is one of the most important financial decisions you'll ever make...You will have no cancellation rights...Once we pay you, the transaction can't be reversed, and you can't pay the money back to us. As a result, it's really important to fully understand the potential risks...”

15. On 14 November 2018, Ms Y emailed Retiready to say she had completed the application form in order to transfer in her funds from the Aviva Plan. AEGON requested the transfer of funds from Aviva on the same day.
16. On 28 November 2018, Aviva instructed its bank to transfer the Aviva Plan's value of £8,639.59 to AEGON. However, when the funds arrived at AEGON, they had not been clearly identified by the bank, so AEGON returned them to Aviva.
17. On 17 January 2019, Ms Y contacted Retiready to enquire why the funds from the Aviva Plan had not yet been received. She said she had hoped to make a withdrawal of 25% and asked how the transfer could be “chased up”. Retiready confirmed it had requested the funds and had prompted Aviva again that day to expedite matters.
18. The funds were re-sent by Aviva on 18 January 2019 but were not received by AEGON until 24 January 2019. AEGON placed the funds into Ms Y's SIPP that day.
19. On 1 February 2019, Ms Y again contacted Retiready to ask for help in withdrawing 25% of the SIPP's current fund value using the online service.
20. On 4 February 2019, Retiready replied to Ms Y, saying AEGON had a designated team called AEGON Assist, who could move the SIPP funds into flexi-drawdown, which would allow them to pay out her tax free cash and move the balance into a separate pot, a process which could take up to six weeks. Retiready said AEGON Assist would provide Ms Y with a quote when she contacted them and would pay the tax free cash to her once all “requirements were met”.
21. Ms Y responded and said that she had understood the funds would be available for withdrawal upon receipt into the SIPP. She had already incurred the expense that the withdrawal of funds was intended to cover and she asked for the process to be expedited further.
22. On 7 February 2019, Retiready responded, apologising for any miscommunication. It set out her options again as follows:-
 - Move to flexi-access drawdown. This option required a consultation with AEGON Assist, following which Ms Y would have to complete a form which would be contained in the welcome pack AEGON would send her. The timeframe for this option could be two to four weeks.
 - Take a full or partial UFPLS, of which 25% would be tax free with the balance of 75% being taxed at Ms Y's personal rate, which could be subject to emergency tax

if AEGON did not have Ms Y's tax code. An UFPLS withdrawal could be arranged online, with the process usually taking around 11 business days. An UFPLS withdrawal would trigger the MPAA, which would affect Ms Y's ability to contribute to the SIPP in future. Links were supplied for Ms Y to obtain further information on both the MPAA and the various withdrawal methods available to her.

23. Ms Y responded that she had been advised she could transfer the Aviva Plan into the SIPP, then take a tax free withdrawal of up to 25% of the resultant fund. She said if she had known the impact upon her pension, she would have cashed in her Aviva Plan and paid any tax due, rather than transfer it to the SIPP

24. On 11 February 2019, Retiready responded as follows:-

- The flexi-access drawdown seemed to be the option Ms Y was describing. It offered the opportunity to take the 25% tax free cash while the remainder would be moved into drawdown until Ms Y wanted to withdraw funds.
- A link was supplied which provided further information. Ms Y would have to contact AEGON Assist to arrange this option.

25. On 4 March 2019, Ms Y replied that the information provided was still unclear to her, but she did not wish to move her current and future savings anywhere else, and the need to do this had not been made clear to her before she transferred her Aviva Plan into the SIPP. She said cash was needed as she was about to put her flat on the market. As a result, she thought there was no alternative but to withdraw a sum equal to the transfer value of the Aviva Plan and pay the tax due on it.

26. Retiready responded by return, providing a link to the online withdrawal form where Ms Y could arrange for a full encashment. It said the first 25% would be tax free and the remainder would be taxed as income. Payment would take 10-12 working days.

27. Ms Y responded, saying:-

- She did not want to cash in her entire plan.
- She had only ever wanted to withdraw the 25% tax free cash and then leave the remainder intact and in the same place as before the withdrawal.
- However, as Retiready had said this could not be done, then she wanted to withdraw just the fund value of the Aviva Plan that had been transferred in previously and would pay the required tax. She needed matters to be arranged as quickly as possible.

28. Retiready responded to confirm Ms Y could use the same withdrawal form link previously provided to make either a full or a partial withdrawal, reminding her that the first 25% would be tax free while the remainder would be taxed as income. It offered assistance from the helpdesk number if she needed help completing the form.

29. Further correspondence ensued regarding points on which Ms Y needed clarification while completing the withdrawal form. Ms Y submitted the completed UFPLS form to AEGON on 31 May 2019.
30. On 13 June 2019, AEGON informed Ms Y that her UFPLS of £8,000 had been paid into her account, net of tax.
31. Ms Y responded immediately that she was expecting her withdrawal to be tax free on the basis that she had been told she could remove 25% of the fund tax free per annum. The fund was worth £32,000 so the tax free element should be £8,000. She said again that she could simply have encashed the Aviva Plan and paid the tax on it rather than transferring it into the SIPP.
32. On 19 June 2019, AEGON responded to Ms Y and confirmed she had taken an UFPLS of £8,000, of which the first 25% was tax free and the balance of £6,000 was taxed.
33. Ms Y responded that this was not what she had requested. She was willing to return the funds and wait for the matter to be resolved.
34. On 26 June 2019, AEGON sent Ms Y an email saying:-
 - On her original request form, Ms Y had clearly stated she wanted to withdraw £8,000, before tax.
 - The form clearly stated that 25% would be tax free with the balance taxed as pension income.
 - The risk warning page had been fully completed by Ms Y, who had also signed and dated the form, suggesting she had fully understood the option she was taking. A copy of this section of the form was attached to the email for Ms Y's information.
35. Ms Y responded and disputed AEGON's assertions, saying:-
 - She had sent multiple emails clearly explaining her intention to take 25% as a tax free lump sum to which, as previously informed, she was entitled.
 - The fact that the wording on the form said "before tax" was moot as she had continually stated throughout the process that it was the tax free withdrawal she wanted to take.
 - She had transferred in the Aviva Plan to enable her to take a withdrawal in this way. Had she wanted to pay tax, she could simply have encashed the Aviva Plan and paid any tax due, which would have avoided the lengthy wait for the cash.
 - She disputed what AEGON was saying, citing the long email exchange between her and Retiready and also with AEGON. She found the form difficult to complete, not user friendly, and the information required to complete it was not easily

obtainable. As a result, she had to revert to Retiready continually for further advice during the process.

- She had tried to stop the money being put into her account by responding immediately to the email sent to her about the tax deducted from the withdrawal. The delay in receiving a response meant the money was transferred to her account. She had not touched the money, despite the need to obtain the cash, meaning she was now in financial difficulty.
- She said that “clearly” the wrong form had been used, and she could not understand why so many people [from AEGON and Retiready] were involved with her in such a big email chain but who failed to spot this error.

36. On 29 June 2019, AEGON confirmed it had set up a complaint on her behalf and on 4 July 2019 one of its complaints officers telephoned Ms Y to explain that her complaint would not be upheld.

37. Ms Y emailed AEGON on 4 July 2019 to say she was very unhappy at this outcome and asked for written confirmation so that she could take the matter further. She also asked how the remaining balance of her account and any future contributions would be treated.

38. AEGON sent an email to Ms Y on 4 July 2019 which summarised her complaint and explained why it was not being upheld as follows:-

- AEGON had provided clear information on how Ms Y could take her 25% tax free payment.
- It had explained the various options for taking a withdrawal.
- It had outlined the timescale within its initial correspondence as being six weeks, which Ms Y was unhappy with and as a result she requested a partial withdrawal instead.
- The options going forward were outlined, and it was confirmed Ms Y’s employer could continue contributing to her pension plan.

39. Ms Y’s position:-

- It is clear from correspondence with AEGON that she was confused by the entire process of making a withdrawal from the pension.
- She acknowledged AEGON had given her a Ts & Cs brochure, but it was 94 pages long, with the salient information about the MPAA not being mentioned until the last two pages. She said she should not be expected to read such a large document.
- At no point was it made clear to her that her and her employer’s future gross contributions would be limited to £4,000 per year as a result of the withdrawal. She

would never have proceeded had the rules regarding the MPAA been made clear to her, or even mentioned to her.

- Her current financial situation was “pretty dire” and the issue with her pension was weighing her down. HMRC were deducting the additional tax due on the monies transferred from the Aviva Plan to the SIPP and as a result she was over £100 worse off per month and overdrawn every month.
- She had put her house on the market but the local property market was static.
- Her house had needed maintenance which had cost her money on top of the survey fees in preparation for the property sale, and she had built up some credit card debt, which she intended to clear by taking the withdrawal from her pension.
- She had swapped her car to save on fuel costs, changed utility providers to obtain cheaper energy and had cancelled non-essential charity subscriptions to help reduce the financial burden.
- She wanted help to reverse the situation regarding her pension which would ease the pressure on her until she could downsize her property.

40. AEGON’S position:-

- It paid Ms Y an UFPLS in accordance with her instructions.
- It gave her the correct information regarding the different options open to her for taking a lump sum.
- It did not accept that it caused any delays in the process.
- It provided her with a Ts & Cs brochure, and a Key Facts document at the outset, both of which provided warnings about the MPAA.
- It had drawn Ms Y’s attention to the flexi-access drawdown option which would have provided her with up to 25% of her fund tax free, but she stated on more than one occasion she did not want that option.
- She stated that she wanted to cash in the transferred fund value only and pay the required tax.
- The form used to make the application contained the following warnings:-
 - The MPAA would be triggered if she proceeded.
 - She would have no cancellation rights.
 - Once AEGON paid the money, the transaction could not be reversed so Ms Y could not return the money once it had been paid to her.
 - Ms Y had ticked the box indicating that she wanted to withdraw £8,000 “partial payment – amount before tax”.

- She had ticked the box confirming that she had received guidance from Pension Wise and also that she had received advice from an adviser.
- She had ticked the box to agree that she was aware she would pay tax if she took the lump sum from her pension and that this may take her into a higher tax bracket.
- Page 12 of the application form sets out details of the MPAA and when it would apply.
- In summary, it had acted at all times in line with Ms Y's instructions.

Adjudicator's Opinion

41. Ms Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by AEGON. The Adjudicator's findings are summarised below:-

- AEGON had maintained from the outset that it did not offer advice and that Ms Y should take financial advice before making any decisions. Ms Y had a financial adviser but appeared not to have sought further advice before making the withdrawal.
- Ms Y told AEGON she did not want to take 25% of her fund and then transfer the balance into a drawdown arrangement. She was warned by AEGON that any other kind of withdrawal would be an UFPLS, resulting in an immediate tax charge and would likely trigger the MPAA. Despite these warnings, Ms Y proceeded to select an UFPLS.
- AEGON had stated at the outset that it could not reverse the decision to take an UFPLS, and the money could not be returned once it had been paid out. A further warning that the position would be irreversible was provided on the application form on which Ms Y had indicated she understood tax would be payable on the withdrawal. The Adjudicator explained that HMRC would not generally permit a reversal where a person has realised they had acted in error.
- The warnings about the MPAA were contained in various documents and on the application form. The Adjudicator considered that the information supplied in the Ts & Cs and other documentation, together with the information provided in all the emails sent by AEGON, provided sufficient information to ensure Ms Y had access to all the relevant information before she made any decisions. She was also encouraged at all stages to take further advice but did not do so.
- The Adjudicator acknowledged Ms Y's point about the Ts & Cs being 94 pages long. However, the brochure was sub-divided into various sections dealing with the various types of product provided by AEGON. Section C, dealing specifically with SIPP, was only around 11 pages long and the Adjudicator did not consider this to be an unreasonable amount of information for AEGON to have supplied.

The Adjudicator was also of the view that it was reasonable for AEGON to expect its customers to read such information which had been provided to make sure they could make fully informed decisions.

- The Adjudicator did not consider AEGON could be held responsible for the income tax Ms Y had paid on the withdrawal nor the fact that her actions had triggered the MPAA.
- The Adjudicator said the delay in the transfer from Aviva to AEGON was largely caused by third party action, not attributable to AEGON. Ms Y was told completion of her withdrawal would take up to four weeks, rather than the more likely six-week timeframe to complete the process. The Adjudicator did not consider this amounted to maladministration because the turnaround times were not guaranteed by AEGON and accordingly, she did not consider a payment for distress and inconvenience would be appropriate.

42. Ms Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms Y has provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms Y which are summarised below:-

- The disputed sum represented a lot of money for her.
- AEGON's statement of 10 June indicated an £8,000 withdrawal but gave no indication that tax would be deducted.
- If AEGON had acted on her email which she sent a few minutes after receiving its email dated 13 June 2019 informing her the withdrawal funds had been transferred to her account, the matter could have been stopped in its tracks, regardless of whatever errors had been made before that point.
- Because of AEGON's slow response to her email of 13 June 2019, the money was transferred to her account and at that point, could not then be reversed.
- AEGON could have handled the matter with more care.

Ombudsman's decision

43. I understand Ms Y feels she has been misled by AEGON, but the evidence indicates that she was provided with sufficient information about each of the withdrawal options open to her in order to reach an informed decision on what next steps she wished to take.

44. Ms Y's employer set up the SIPP and engaged the services of a firm of financial advisers to assist Ms Y. AEGON was the SIPP provider and did not offer advice to its customers, which it told Ms Y at the outset, so AEGON had no responsibility to advise her. It also had no responsibility to oversee the adviser's actions in respect of what advice Ms Y received from him.

45. AEGON provided a substantial amount of information, including a Key Facts document and Ts & Cs, to ensure Ms Y had sufficient information before she reached a decision. Further, it provided a full explanation regarding the types of withdrawal available from the SIPP and the tax implications of each, including income tax and the events which could trigger the MPAA.
46. I do not consider that AEGON failed to inform Ms Y, in advance of the decision she made, that income tax would be deductible before the net withdrawal was paid to her if she chose an UFPLS, having stated that she did not want to go into drawdown.
47. The evidence does not support Ms Y's assertion that AEGON did not inform her of the risk of triggering the MPAA. If Ms Y did not fully understand the implications of the MPAA for her and her employer's future contributions to her SIPP she could have sought further clarification from AEGON. Alternatively, or in addition, she could have sought further advice from her adviser or from Pension Wise. This was something AEGON had urged her to do before making any decisions, which it had told her would be irreversible once made.
48. Ms Y's contention that AEGON's failure to respond immediately to her request to have the withdrawal paid back is not supported by the evidence. She was told before she made the application to withdraw cash, and again on the application form, that the MPAA would be triggered if she proceeded, and that the transaction could not be reversed once the money had been paid, and yet she proceeded to make the withdrawal.
49. Pensions, including Ms Y's SIPP are governed by legislation and by HMRC rules, which are inflexible with regard to the MPAA. Once it is triggered, the amount permitted to be paid in total into a defined contribution pension plan by the employer and the employee jointly is limited to £4,000 per annum. It is set down in statutory regulations and I have no power to order AEGON or HMRC to reverse the payment.
50. I do not consider AEGON can be expected to make good Ms Y's tax position since it has come about entirely by her own actions. It is not enough for Ms Y to say the Ts & Cs were unwieldy and that she could not have been expected to read them. Such information was provided so that Ms Y could have the opportunity to fully inform herself or seek advice from her adviser if she was unsure of how to proceed.
51. It is reasonable for AEGON to expect Ms Y would have read the information and satisfied herself of what needed to be done, before putting herself in a position that resulted in her withdrawal being taxable and her future pension contributions limited by the MPAA.
52. In respect of the delays, as the evidence has shown, the initial delay was not caused by AEGON and it cannot be expected to compensate for a delay not of its making. I have not seen anywhere in the documentation or in the email exchange, that Ms Y would have been able to make an immediate withdrawal after the transfer in was complete.

53. I note that there was mention of a turnaround time of approximately four weeks, when in fact the turnaround time was closer to six weeks. However, no guarantees were offered in respect of the turnaround time. Pension withdrawals are not like withdrawals from a bank account. They can be complex transactions and I have not seen any undue delays in the process. Accordingly, I do not find the delay has the qualities attributable to maladministration.
54. I do not uphold Ms Y's complaint.

Anthony Arter

Pensions Ombudsman
15 June 2021