

Ombudsman's Determination

Applicant	Miss N
Scheme	WRVS Group Personal Pension Plan (the Plan)
Respondent	Aegon

Outcome

1. I do not uphold Miss N's complaint and no further action is required by Aegon.

Complaint summary

2. Miss N complained that Aegon understated the value of her plan which led her to claim a trivial commutation lump sum when she would otherwise have stayed in the Plan.
3. Miss N said that Aegon failed to recognise the financial detriment that she has suffered as a consequence of its error.

Background information, including submissions from the parties

4. In 2000, Miss N commenced employment with WRVS.
5. In 2001, Miss N joined the WRVS Welfare Services Pension Scheme.
6. In March 2008, Miss N joined the Plan as part of a bulk transfer from the WRVS Services Welfare Pension Scheme and £14,578.61 was transferred into the Plan.
7. When Miss N joined the Plan she commenced making contributions equal to 3% of her salary. WRVS made contributions on her behalf at 10% of salary.
8. On 5 May 2011, Miss N telephoned Aegon, the Plan's Administrator, to ask for a retirement quotation.
9. On 12 May 2011, Aegon sent a retirement quotation to Miss N, which included a fund value figure of £17,499.95 and a trivial commutation lump sum figure of £13,082.42.
10. On 25 May 2011, Miss N notified Aegon that her correspondence address should be changed to her employer's address in Germany.

11. On 30 June 2011, Aegon received Miss N's signed application form for a trivial commutation lump sum.
12. On 25 July 2011, Aegon wrote to Miss N, confirming that a trivial commutation lump sum of £13,259.52 had been paid into her bank account.
13. In April 2013, Aegon, completed a review of Miss N's policy and established that a number of investment units had not been credited, due to a system fault, meaning that the trivial commutation lump sum payment Miss N received in July 2011 was lower than it should have been.
14. On 28 May 2013, Aegon wrote to Miss N at her employer's address in Germany. The letter confirmed that upon receipt of a completed application form, Aegon would pay an additional £17,459.07 into a stakeholder pension plan for Miss N, in lieu of additional funds that were owed to her.
15. On 20 June 2013, having received no response, Aegon sent a chaser letter to Miss N at her employer's address in Germany. Further follow up letters were also sent to Miss N on 9 July 2013 and 25 July 2013.
16. On 21 December 2018, Aegon wrote to Miss N, having obtained a new address for her via a specialist tracing company. In summary Aegon said:-
 - Following a review of Miss N's policy, it had been established that there had been an error and a number of investment units were not accounted for when processing her trivial commutation claim.
 - To correct this, Miss N would receive the resulting sum that had remained unpaid from 2011 of £17,004.89, which had increased to £18,067.88 with interest added.
 - This type of payment was not permitted under HMRC regulations so Aegon would pay any resulting tax penalties.
17. On 17 September 2019, Miss N wrote to Aegon, complaining that:-
 - In 2011, she had been disappointed with the poor performance of her policy, despite the fact that WRVS was paying contributions equal to 10% of her salary, in addition to her own 3% contributions.
 - On that basis she decided to claim a trivial commutation lump sum.
 - Aegon's letter of 21 December 2018, confirming an error was made in the calculation of the payment she received in 2011 was "annoying", because a large sum of around £18,000 remained unpaid for such a lengthy period.
 - She was pleased to eventually receive payment of this sum, until a colleague who had remained in the Plan commented on their large pension fund.

- If Aegon had not made its error, she would have remained a member of the Plan, in order to benefit from further contributions paid by WRVS, and her own contributions.
- At the time she elected to leave the Plan, there were no other pension arrangements offering similarly generous terms.
- By electing to leave the Plan, which she did based on the misinformation provided by Aegon, she had suffered financial detriment. She would like an award in recognition of this.

18. On 1 November 2019, Aegon wrote to Miss N and asked for further information in order to investigate her complaint. In summary Aegon said:-

- It was unclear whether or not WRVS would be willing to pay backdated contributions from June 2011.
- Clarification was required as to whether or not she planned to purchase an annuity at age 65.
- It was unclear whether or not the payments Miss N received from Aegon in 2011 and January 2019, were reinvested or spent in other ways.
- Clarification was required as to whether, or not, the money that Miss N would have contributed to the Plan between 2011 and 2018 was invested in any other way.
- Miss N had not specified the level of financial detriment that she was claiming.

19. On 11 November 2019, Miss N emailed Aegon in response and said:-

- While she remained employed by WRVS, it would have continued to pay contributions, if she had not elected to leave the Plan.
- She had not previously planned to purchase an annuity at age 65 and would have continued to pay contributions until her retirement date, which she had not yet decided on.
- The payments received from Aegon in 2011 and 2019 have been deposited in her bank and the interest received on those benefits has been low.
- She has not saved all of the funds that would have been paid as employee contributions if she had not left the Plan.
- Her fund value would now be around £100,000 if she had remained in the Plan.
- She would likely have increased her contributions, and not left the Plan, if Aegon had not understated the value of her policy.

- She had recently joined a new pension scheme offered by WRVS, which makes contributions of 10% of salary; she matches this contribution.
20. On 14 November 2019, Aegon emailed Miss N to apologise for the delay in responding to her complaint.
21. On the same day, Aegon emailed Miss N again to ask for clarification as to when she had joined WRVS' new pension scheme. Miss N confirmed that this was in July 2019.
22. On 29 November 2019, Aegon emailed Miss N and said:-
- It was unclear whether, or not, WRVS and Miss N would be willing to pay backdated contributions in lieu of the payments that would have been made if Miss N had not left the Plan.
 - If those contributions were paid, Aegon would set up a stakeholder pension plan and ensure that the benefits matched those that would have been available, if Miss N had not left the Plan.
23. On 30 December 2019, Aegon emailed Miss N and said WRVS had confirmed that it would not pay any backdated contributions but that employer contributions would have continued if Miss N had not left the Plan. Aegon also asked Miss N if she would be willing to pay backdated employee contributions.
24. In response, Miss N said she would not pay backdated contributions; Aegon had been unreasonable in making this suggestion given its error. Miss N also asked for clarification as to whether, or not, an award would be offered to her.
25. On 3 January 2020, Aegon emailed Miss N in response to her complaint and said:-
- Aegon tried unsuccessfully to contact her on four occasions during 2013 regarding the error that had been made in processing her trivial commutation claim.
 - A successful attempt to contact her was eventually made in December 2018, following assistance from a specialist tracing company.
 - Miss N was then provided with confirmation that Aegon owed her £17,004.89 from 2011, which had increased to £18,067.88 with interest added.
 - Aegon has offered to set up a stakeholder pension plan for Miss N in order to put right the financial loss that she has claimed. However, both Miss N and WRVS were unwilling to pay backdated contributions, so this was not possible.
 - In recognition of the distress and inconvenience caused to Miss N an award of £1,000 was appropriate.
26. On the same day Miss N emailed Aegon and said:-

- Aegon ought to have known that she had not received the letters sent to her in 2013; she changes location every two years and left WRVS in Germany during 2012.
 - She was surprised that WRVS had not passed those letters on to her.
 - Aegon's award of £1,000 was insufficient recognition of the poor service she had received.
27. On 9 January 2020, Aegon emailed Miss N and said it had not received notification of her change of address from WRVS in Germany. It was the responsibility of a policyholder, their financial adviser or WRVS to provide this information.
28. On the same day, Miss N replied to Aegon and said that having left the Plan, there was no need to notify any further change of address.

Miss N's position

29. Miss N says:-

- Aegon has failed to recognise the financial detriment that she has suffered as a consequence of its error.
- A colleague who joined the Plan three years earlier than she did has accrued a fund value of over £160,000. Had she remained in the Plan, her fund value would also be over £100,000.
- Aegon should award her £50,000 to mitigate the financial detriment that she has suffered, in addition to the £1,000 offered for distress and inconvenience.

Aegon's position

30. Aegon said:-

- Contributions totaling £29,714.82, were paid into Miss N's policy, including a transfer of £14,578.61 from WRVS Service Welfare Pension Scheme in 2008.
- Miss N's fund value was understated in the retirement pack sent to her before she claimed a trivial commutation lump sum.
- Miss N and WRVS have confirmed that they will not pay backdated contributions up to the point at which Miss N left the Plan.
- Aegon cannot reasonably be expected to pay the contributions that Miss N and WRVS would have made, had the trivial commutation lump sum not been claimed.
- Miss N ought to have known that no further contributions would be paid into her policy once she took her benefits in 2011.
- There is no certainty as to what Miss N would have done if she had been provided with an accurate retirement quotation at that time.

- Miss N has provided no evidence to support her assertion that she would not have left the Plan but for Aegon's error.
- Aegon calculated the underpayment to Miss N at the date she took the benefits and added interest.
- The outstanding balance of £18,067.88 was then paid to Miss N tax-free in January 2019 and Aegon guaranteed to pay any tax penalties caused by breaching HMRC's trivial commutation lump sum regulations.

31. An award of £1,000 has been offered to Miss N in recognition of the distress and inconvenience caused to her.

Adjudicator's Opinion

32. Miss N'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 has acknowledged that Miss N's fund value was understated in the retirement quotation sent to her on 12 May 2011, and that it was not until April 2013 that the error was identified.
- Had the correct fund value been known in 2011, Aegon would have been aware that Miss N was not entitled to a trivial commutation payment, as the fund value exceeded the £18,000 limit under HMRC regulations at that time. Aegon was at fault for understating the fund value and for offering the trivial commutation option to Miss N in 2011, this amounts to maladministration.
- Miss N, however, had provided no evidence that she would have done anything differently at the time she claimed the trivial commutation lump sum had she been in receipt of the correct information.
- The funds Ms N received from the Plan in 2011 and in January 2019 were deposited in a low interest bank account. In the Adjudicator's view, this action was inconsistent with Miss N's assertion that she was seeking to improve the growth of her Plan value.
- In the Adjudicator's opinion, the figures quoted by Aegon when Miss N claimed the trivial commutation lump sum were significantly lower than one might reasonably expect. This was particularly so given the fact that contributions totalling £29,714.82 were paid into Miss N's policy. Miss N has confirmed that she felt the figures quoted by Aegon in 2011 were poor, in view of the employer contributions of 10% of her salary, and her own 3% contributions from 2008.
- This ought to have alerted Miss N to the fact that an error had likely been made and prompted her to raise the issue with Aegon in May 2011, having been sent the initial retirement quotation. Miss N could have also sought financial advice

regarding her retirement options, and Aegon's errors would likely have been identified at an earlier stage. So, it was not reasonable for Miss N to have relied on the misinformation provided by Aegon in deciding to claim a trivial commutation lump sum and leave the Plan in 2011.

- In the Adjudicator's view it is not possible to say with certainty that Miss N would have accrued a fund value of over £100,000 similar to that of her colleague, had she remained in the Plan. There could have been differences in the contributions paid by Miss N and her colleague, or their length of service might have been different, both of which would likely have produced very different fund values. Miss N has provided no evidence that her fund value would have accrued to an amount in excess of £100,000 had she remained in the Plan.
- Aegon had confirmed that it will cover any penalties imposed by HMRC as a result of paying a tax-free lump sum to Miss N in 2019. Consequently, Miss N had benefitted from only paying tax on the payment received in 2011, and from being provided with two lump sums that she was technically not entitled to receive, which could be reinvested, or used in any way that Miss N feels is appropriate. So, in the Adjudicator's view Miss N has not suffered financial detriment that can be attributed to receiving the payments in the way she did.
- The payment to Miss N in 2019, was delayed from 2013, only due to the fact that Aegon had been unable to contact Miss N. She has said that her location changes every two years but has provided no evidence that Aegon was informed of this. Consequently, it was not until December 2018 that Aegon eventually managed to contact Miss N through a specialist tracing company. In the Adjudicator's view, Aegon took appropriate steps based on the limited information available from 2013 to trace Miss N and resolve the error that was made in 2011.
- The Adjudicator was of the opinion that Miss N had not sufficiently demonstrated that the incorrect information she received inevitably led to her leaving the Plan.
- Aegon's award of £1,000 to Miss N is sufficient recognition of the serious distress and inconvenience caused to her.

33. Aegon accepted the Adjudicator's Opinion, Miss N did not, and the complaint was passed to me to consider. Miss N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Miss N and Aegon.

Miss N's additional comments

- The onus was on Aegon to check her fund value before paying out the initial trivial commutation lump sum in 2011, which was undervalued by almost 50%.
- At that time Aegon simply said that her fund value could go up or down when she mentioned the poor performance of her policy.

- Aegon could have contacted her employer during 2013, in order to obtain a new postal address for it to address its letters regarding the fund value error in 2011.
- Aegon waited several years before using a specialist tracing company to find her via a family member in 2018.
- Her colleague became a member three years before she joined the Plan. In 2018 this colleague had been a member for 20 years and earned a slightly larger salary.
- Instead of deducting 20% from the figure of £160,000 that represents her colleague's fund value in 2018, for comparison, she had reduced this sum by over 37%, in order to estimate her own fund value of over £100,000, had she not left the Plan. So, her actual fund value would likely have been much greater.
- She was aware that no more contributions would be paid into her policy once she claimed the benefits in 2011.
- It is not possible to prove that she left the Plan due to the misinformation provided by Aegon.
- Her employer only matched monthly employee contributions and was unable to make backdated contributions.
- No high interest accounts were available for her to invest the small lump sums received in 2011 and 2019.
- Aegon's award of £1,000 does not recognise the financial detriment she has suffered as a consequence of relying on the incorrect information provided by Aegon.

Aegon's additional comments

- There is no record of Miss N complaining about the poor performance of her plan in 2011.
- Aegon cannot reasonably be held responsible for Miss N's employer saying it had not received any letters addressed to her in 2013.
- Miss N's employer was not asked for a new address from 2013 to 2018 because no notification was received that Miss N had either moved or not received the letters sent to her.
- The address used for the letters sent between 2013 and 2018 had been provided by Miss N and the correspondence was not returned. So, it was reasonable to assume that this was the correct address.

Ombudsman's decision

34. Miss N has complained that she claimed a trivial commutation lump sum because of the poor performance of her policy and later discovered that Aegon had miscalculated the fund value. She contends that if Aegon had provided an accurate retirement quotation, she would not have left the Plan. The central element to this complaint is that Miss N believes she acted in a way that was detrimental to her financial interests as a result of misinformation provided by Aegon.
35. Specifically, Miss N has said that she would not have taken a trivial commutation lump sum had she known the correct value of her fund. In actual fact, had Aegon calculated the correct value of the fund at the time in question, it would not have been able to offer trivial commutation to Miss N as the commutation limit at that time was £18,000. Essentially, there is no need for Miss N to prove what she would have done had she been in receipt of the correct information as triviality rules at the time support that she would have remained in the Plan but for the error.
36. Aegon appears to have acknowledged this point in that it has put forward a proposal to put Miss N back in the position she would have been in, had trivial commutation not been offered and had she, instead, remained within the Plan from 2011.
37. In order to put Miss N back into such a position, broadly speaking, the contributions that would have been paid, would need to be backdated, plus the investment gains that these contributions would have made. To this end, Aegon approached Miss N's employer, WRVS, to ascertain whether it would be willing to pay these contributions now, so they could be held in a stakeholder plan with Aegon, thus matching the benefits that would have been available. WRVS, which is not a party to this complaint, is not prepared to pay the backdated contributions. Similarly, Miss N has said she would not be willing to pay her portion of the backdated contributions.
38. It is not disputed that Aegon made an error in calculating Miss N's fund value in 2011. What remains in dispute is how this should be rectified. I am satisfied that Aegon has made a reasonable offer to put Miss N back into the position that she would be in had the error not occurred. Both Miss N and WRVS have declined the approach Aegon has suggested. I do not consider that Aegon need do anything further; it would be a disproportionate approach in the circumstances to expect Aegon to make good both employer's and employee's missing contributions, as well as any missed investment gains.
39. Instead, Aegon has paid Miss N the correct additional policy fund value, plus interest, which she is free to invest as she sees fit. I find that this is an appropriate remedy in the circumstances and I am not persuaded that Aegon need do anything further.
40. Miss N has submitted that the onus was on Aegon to check her fund value before paying out the initial trivial commutation lump sum in 2011, which was undervalued by around 50%. She has said that she could not have known that an error had occurred because at the time, Aegon justified the poor performance of her policy by saying that her fund value could go up or down.

41. Aegon has acknowledged that the retirement quotation sent to Miss N in May 2011, understated her benefit entitlement, due to a system fault. However, a shortfall of almost 50% in the figures quoted from Miss N's actual fund value, ought to have prompted Miss N to raise the issue with Aegon. This would have required Aegon to carry out a detailed investigation, which would undoubtedly have identified the error. Despite the elementary and obvious nature of the error in the retirement quotation, this would not have been immediately obvious to Aegon when the retirement quotation was sent, due to the system fault at the time.
42. Aegon has no record that Miss N complained about the incorrect retirement quotation she received in May 2011, and she has provided no evidence to support her claim that she did this. Miss N has, however, said that she was concerned that the figures quoted were poor, in view of the substantial contributions made by her and her employer from 2008 onwards, so, Miss N ought to have contested the figures provided in 2011, before accepting them. Normal unit price fluctuations were unlikely to almost halve Miss N's fund value.
43. Miss N has confirmed she was aware that no further contributions would be paid into her policy after claiming the trivial commutation lump sum in 2011. So, it is not reasonable for Miss N to now claim further benefits based on assumed contributions that have not been paid, regardless of any improvement she has perceived in the performance of the Plan after she decided to leave it. She did not reinvest the trivial commutation lump sum received in 2011 in another pension arrangement. I find that there has been no financial detriment caused to Miss N by Aegon's maladministration.
44. Although, it was for Miss N to decide how she would invest or use the payments she received from Aegon, leaving these sums in a low interest account is not indicative of a sophisticated or long-term investment strategy. Miss N could have sought financial advice, before claiming the trivial commutation lump sum in 2011, since there was always the possibility that the Plan could outperform any other investment option she took regarding her benefits. She would then likely have been made aware of this point. Aegon cannot reasonably be held responsible for Miss N's failure to seek financial advice before she left the Plan or her decision to pay the lump sums she received in 2011 and 2019 into a low interest paying bank account.
45. Miss N contended that Aegon could have contacted her employer during 2013, in order to obtain a new postal address for her. Miss N submits that Aegon then waited several years before using a specialist tracing company to find her via a family member in 2018. She has said that her employer had not previously received a letter asking for her new address, and Aegon has failed to provide evidence that it was sent.
46. Aegon has provided evidence that it wrote to Miss N at her employer's address on several occasions during 2013, which was reasonable in the absence of any updated contact details provided by Miss N. Aegon cannot reasonably be held responsible for Miss N's employer failing to forward those letters. There was also no requirement for

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Aegon to obtain the services of a specialist tracing service to locate Miss N before 2018 or even when it did so.

47. Aegon's award of £1,000 to Miss N is appropriate recognition of the serious distress and inconvenience she has suffered as a result of Aegon's error. Miss N should contact Aegon direct should she wish to accept Aegon's offer.

48. I do not uphold Miss N's complaint.

Anthony Arter

Pensions Ombudsman
26 January 2022