

Ombudsman's Determination

Applicant	Mrs E
Scheme	Aegon Flexible Pension Plan (the Plan)
Respondent	Scottish Equitable plc (Aegon)

Complaint Summary

Mrs E has complained that Aegon, the provider of the Plan, failed to carry out sufficient due diligence checks when transferring her benefits to a Small Self-Administered Scheme (**the SSAS**) in July 2015.

Summary of the Ombudsman's Determination and reasons

The complaint should not be upheld against Aegon because it did not have a legal duty to undertake due diligence on the advice Mrs E received or her investment plans in the receiving scheme or to issue the Scorpion leaflet or other warnings to Mrs E and, being under a statutory duty to make the transfer payment to the SSAS, compliance with that duty could not be a breach of duty. I also find that the transfer would have gone ahead regardless of any additional steps Aegon might have taken.

Detailed Determination

Material facts

1. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
2. Mrs E held benefits in the Plan, a stakeholder personal pension plan, with Aegon.
3. On 10 February 2015, Aegon issued an Annual Statement to Mrs E confirming a transfer value of approximately £90,000.
4. On 22 June 2015, Mrs E signed an application form for a Rowanmoor Group SSAS (**Rowanmoor**) linked to a non-trading limited company. The limited company had been incorporated on 18 June 2015 and Mrs E was the sole Director. The intended investment recorded on the SSAS application form was Akbuk Resort Group Unity Bay (**Akbuk**). Mark Stevenson of Stevenson Pride, an unregulated introducer was

recorded as the Trustee adviser. There was to be an arrangement fee of £1,295 and ongoing charges of £250 per year.

5. On 24 June 2015, Rowanmoor wrote to Mrs E and confirmed her membership of the SSAS. At this point Rowanmoor Trustees Limited (**RTL**), a subsidiary of Rowanmoor, was the sole trustee of the Scheme. This letter went into further detail about the structure of the SSAS and how it would operate, it also provided information about how benefits could be accessed.
6. On 25 June 2015, Rowanmoor wrote to Stevenson Pride confirming receipt of the application form to establish the SSAS. The letter said that an application had been made to HMRC to register the SSAS and the process of opening a bank account was also underway. Rowanmoor asked for further details about Mrs E and the limited company as sponsoring employer of the SSAS.
7. On 7 July 2015, Stevenson Pride wrote to Mrs E explaining the requirement under Section 36 of the Pensions Act 1995 that appropriate financial advice be considered on the intended investment and that this letter constituted that advice. It noted:-
 - 7.1. Stevenson Pride had not advised on the establishment of the SSAS.
 - 7.2. The advice was to Mrs E as a trustee of the SSAS, and not in her personal capacity or as a Member of the SSAS.
 - 7.3. Investing in commercial property through a SSAS was not a regulated activity and that Stephenson Pride's advice was not regulated under the Financial Services and Markets Act 2000.
 - 7.4. The advice was not member specific and was only in relation to the potential suitability of the investment within a SSAS.
8. An outline of Akbuk was provided along with seven specific risks. There was also a section relating to Pension liberation, stating:

"Pension liberation

It would be remiss of us not to mention at this stage that the UK Government is keenly tackling pension's liberation fraud. We are satisfied that the arrangements to establish an investment in Akbuk Unity Bay through your [SSAS], do not facilitate any form of pension liberation. You may be required to provide such information and declarations as are necessary to facilitate the transfer of existing pension funds to your [SSAS], in order to demonstrate that you are not involved in pension liberation."
9. It went on to say that the investment was suitable for "more adventurous investors". Mrs E signed to confirm receipt of this advice.
10. On 13 July 2015, Mrs E signed a Deed of Appointment to become a member trustee of the SSAS, with RTL as the continuing trustee.

11. On the same day, Aegon received a request to transfer Mrs E's pension to Rowanmoor through the online Origo system. The Origo system enables pension providers and administrators to submit electronic transfer requests to ceding schemes. Included in the case notes from Rowanmoor for the Origo transfer was the statement:

"Risk Warnings Needed – please advise if there will be any loss of guaranteed annuity rates or bonus and if any penalties will be incurred in making this transfer. Please do not transfer any funds at this stage."
12. On 17 July 2015, Aegon completed the transfer. In total around £92,000 was transferred from the Plan to the SSAS. Confirmation of this was sent to both Rowanmoor and Mrs E.
13. On 23 July 2015, Rowanmoor wrote to Stevenson Pride to confirm receipt of the transfer funds from Aegon.
14. An Agreement for Sale of Membership of a Company between Akbuk, Rowanmoor Trustees Limited and Mrs E was made on 28 July 2015.
15. On 3 August 2015, Mrs E signed a Property Development Information Schedule in relation to the Akbuk investment.
16. On 25 August 2015, Rowanmoor wrote to Stevenson Pride confirming receipt of a Benefits Options Form and confirmed that around £22,000 had been paid as a tax free lump payment.
17. Following this, around £60,000 was invested in Akbuk, under a fractional ownership scheme.
18. On 27 April 2017, Rowanmoor wrote to Mrs E and said that there was a problem with the Akbuk investment and that she would no longer receive any rental from it.
19. Mrs E has subsequently argued that Aegon did not exercise its duty of care to protect her interests when transferring to the SSAS. She has lost her pension funds due to Aegon not following guidance put in place by The Pensions Regulator (**TPR**).
20. On 16 December 2019, Mrs E's representatives (now resigned) raised a complaint to Aegon on her behalf, raising the following points:-
 - 20.1. Stevenson Pride was not regulated by the FCA and was involved in cold calling activity;
 - 20.2. Aegon did not carry out any due diligence on any of the parties involved in the transfer;
 - 20.3. there was no evidence that TPR's warning leaflet had been sent to Mrs E;
 - 20.4. Mrs E was presented with a completed SSAS application form to sign;

- 20.5. the transfer was completed shortly after it was requested, bringing into question the robustness of Aegon's administration process;
 - 20.6. Aegon did not directly contact Mrs E to discuss the transfer in line with TPR's guidance at the time; and
 - 20.7. Aegon did not check whether Mrs E had received regulated advice.
21. Mrs E asked to be put into the position she would have been in had the transfer not been processed, leaving her funds invested with Aegon instead of in the SSAS.
22. On 3 January 2020, Aegon issued a response to the complaint. It said it did not think there was evidence of pension liberation at the time of the transfer and that it carried out the necessary checks required of it. Aegon made the following points:-
- 22.1. It was not aware of the involvement of Stevenson Pride in the transfer. It had no contact from Stevenson Pride during the transfer process.
 - 22.2. It received a request to transfer Mrs E's pension to the SSAS from Rowanmoor through the automated Origo system. Origo is an online system through which reputable providers and administrators can submit transfer requests. Due diligence is performed on firms before they can use the system and those not meeting the standards, are not able to submit transfers using Origo.
 - 22.3. Receipt of the transfer request via Origo allowed Mrs E's transfer to be processed sooner, as Aegon was satisfied with the suitability of Rowanmoor as Trustees and administrators of the SSAS.
 - 22.4. Rowanmoor was well known in the pensions industry, and it was not aware of any reasons for concern about Rowanmoor at the time of transfer, or when responding to the complaint.
 - 22.5. It was not able to advise Mrs E about the suitability of her transfer to the SSAS.
 - 22.6. The SSAS was registered with HMRC.
 - 22.7. The due diligence it carried out was appropriate in the circumstances of Mrs E's transfer.
23. Holdings for fellow investors in Akbuk were considered to be worthless by the Financial Services Compensation Scheme in May 2021.
24. Mrs E did not agree with Aegon's response, and the complaint was referred to The Pensions Ombudsman (**TPO**).

Summary of Mrs E's position

25. Mrs E considered that AEGON has failed to:-

- 25.1. Take account of the Financial Conduct Authority's (**FCA**) Principles 1, 2, 3, 6, 7 and 9. When deciding if she has been treated fairly and reasonably, the requirements of these principles should be taken into account.
 - 25.2. Ensure that any third parties involved in the transfer were regulated and had appropriate permissions and qualifications to carry out the proposed transfer.
 - 25.3. Seek appropriate clarification if there were concerns about the proposed transfer.
 - 25.4. Provide the Scorpion Leaflet.
26. In answer to specific questions put to Mrs E, she said, in summary:-
- 26.1. She was introduced to Stevenson Pride through a friend. It told her that she could get a better return on her pension and that her investment would not be at risk. She was unaware that Stevenson Pride was unregulated.
 - 26.2. Mrs E said that she "knew someone who was already in the scheme and was receiving good interest payments and I trusted the information I had been given".
 - 26.3. She was self-employed at the time of the transfer and in the process of winding up her Limited Company. She was 58 years old and had planned on taking the 25% tax free lump sum from her pension to pay off some debts. In July 2015 she had started a part time job to help with living costs and bills.
 - 26.4. She was not aware of TPR's leaflet about pension scams and was convinced she was entering into a safe investment. She was not offered any incentives to transfer.
 - 26.5. When she was unsure about anything to do with the SSAS, she would contact Stevenson Pride and it would reassure her that there was nothing to worry about.
 - 26.6. She was aware that her funds were being invested into a development in Turkey, but she believed it was recognised by HMRC as being suitable for investment.

Summary of Aegon's position

27. Aegon initially relied on the Origo system's acceptance of Rowanmoor onto its platform to justify the level of due diligence it undertook. It has subsequently changed its position as to whether this was sufficient, although it maintains that liability for Mrs E's losses does not lie with it.
28. Aegon makes the following arguments:-
- 28.1. It understands that the SSAS would be established with Mrs E as a member trustee and RTL as a professional trustee.

- 28.2. Having been accepted for the Origo Transfer Portal, Aegon considered Rowanmoor, and RTL, as not presenting a risk of pension liberation or scam activities.
- 28.3. Rowanmoor was a longstanding reputable SSAS provider, winning several awards for its services.
- 28.4. RTL, as professional trustee, had a duty to follow pension legislation and trust law, including the Pensions Act 2004. It also held a fiduciary duty and as a professional trustee was expected to operate to a high standard including acting in the best interests of the pension scheme. Additionally, it was required to consider the investments made under the provisions of the Pensions Act 1995.
- 28.5. As an occupational pension scheme and regulated by TPR, the SSAS was the targeted audience of the Scorpion Campaign.
- 28.6. This combination of factors relating to Rowanmoor meant that it was reasonable to conclude that the risk of pension liberation or scam activity was very low. Therefore, provided the statutory conditions were met, the transfer could proceed without enhanced due diligence and the Scorpion Leaflet was not shared with Mrs E.
29. Aegon also argues that for reasons of causation it is not responsible for Mrs E's losses, arguing:-
 - 29.1. It had no legal basis to stop the transfer as the statutory obligations were met.
 - 29.2. The Scorpion leaflet did refer to warnings which Mrs E may have recognised but this must be balanced against the information provided by Rowanmoor and Stevenson Pride.
 - 29.3. RTL had a statutory duty to undertake a risk assessment of the Akbuk investment and whether it met the needs of the SSAS in terms of diversification and liquidity. This should be a factor in the consideration of the complaint.
 - 29.4. RTL may have provided adequate risk warnings which were ignored. Aegon considers that this would have carried more weight than the generic Scorpion leaflet.
 - 29.5. Aegon was not aware of the intended investments, but, in Aegon's view, Mrs E would have been reassured by information provided by Rowanmoor and Rowanmoor Trustees Limited given their reputation. Given this, even if further due diligence was undertaken, it is argued that Mrs E would have continued with the transfer.
 - 29.6. If Rowanmoor Trustees Limited has failed to undertake appropriate investment due diligence or issue warnings to Mrs E, then given the obligations placed on

it as trustees, if there were failings on its part, then it is likely that was the cause of the loss. Any negligence on the part of Rowanmoor Trustee Limited breaks the chain of causation, particularly as the loss is believed to emanate from failed or scam investments made after the transfer to the SSAS.

30. In these circumstances Aegon is not liable for Mrs E's losses. In hindsight, while a Scorpion leaflet ought to have been shared, this was not the cause of the loss.

Conclusions

31. This complaint relates to the extent of due diligence that Aegon was required to conduct at the time of Mrs E's benefits being transferred to the SSAS in exercise of Mrs E's statutory transfer right in 2015 and the scope of its duty to Mrs E.
32. Mrs E is concerned that her funds cannot now be accessed and are thought to have no value. It is accepted that Mrs E had a statutory transfer right which she exercised and that Aegon transferred her entitlement in the Scheme to the SSAS of which she was the sole beneficiary in compliance with its statutory obligation and the funds were then held for her benefit and invested. Nothing went wrong with the transfer itself but the funds not drawn by her as a PCLS were invested in Akbuk and that investment failed.
33. TPR guidance at the time this transfer took place was published to make members, trustees and administrators aware of pensions scams and identify potential red flags to look out for. There was guidance given on checks that could be conducted to identify potential schemes that should not be transferred to and additional steps which could be taken to ensure the risks of the transfer were known to the member. While this was only guidance and did not change the legal obligations of trustees and managers of schemes required to complete statutory transfers requested by their members, the guidance could be relevant to whether the trustees or managers discharged their duty to Mrs E to carry out the transfer with skill and care.
34. Aegon has conceded that the Scorpion leaflet, as it was at the time of the transfer, was not shared with Mrs E.
35. Aegon relied on Rowanmoor's admittance to the Origo Transfer Service, an electronic portal through which pension providers and administrators submit transfer requests, because due diligence is performed on any pension provider before it can use the service and on the longstanding reputation of Rowanmoor as a SSAS provider of good repute and financial standing and RTL's status as an established professional trustee as reassurance that the transfer was low risk and not linked to pension liberation or scams.
36. Reliance on such systems and the reputation of counterparties is reasonable and legitimate in principle and should inform the extent of any further independent due diligence, but the reliability of Origo's systems and the reputations of Rowanmoor and RTL might not address all risks potentially associated with a transfer and it may still have been appropriate to issue the Scorpion leaflet. Aegon now accepts, with

hindsight, that the Scorpion leaflet should have been shared with Mrs E, with further steps being taken if risk factors were identified.

37. The issues I have to determine, however, are whether Aegon had a duty to issue the Scorpion leaflet or carry out other due diligence, whether it breached that duty and whether Mrs E suffered a recoverable and foreseeable loss caused by Aegon's breach of duty.
38. I should first clarify in relation to Mrs E's position summarised at paragraph 25 above that, unlike the Financial Services Ombudsman who may determine complaints according to what is "fair and reasonable" and having regard to the Financial Conduct Authority's Principles, it is well settled that I must decide disputes in accordance with established legal principles rather than by reference to what I may consider to be fair and reasonable (*Henderson v Stephenson Harwood* [2005] Pens LR 209), save in relation to awards for distress and inconvenience.
39. I do not consider that Aegon had a duty ensure that any third parties involved in the transfer, other than the recipient of the transfer, were regulated or had appropriate permissions and qualifications to carry out the proposed transfer. Aegon had a duty under section 95 of the Pension Schemes Act 1993 (the "**1993 Act**") to make payment to the SSAS to give effect to Mrs E's exercise of her statutory transfer right to require them to use her CETV to acquire transfer credits for her under the rules of the SSAS as an occupational pension scheme. They needed to be satisfied of the validity of her application and that the SSAS was an occupational pension scheme, and that the payment would be used to acquire rights for Mrs E under the rules of the SSAS. Some due diligence was required for this. I do not need to determine whether reliance on Origo and the reputation of Rowanmoor and RTL was sufficient as there is no dispute that the SSAS was an occupational pension scheme and that the transfer was used to acquire rights for Mrs E under the rules of the SSAS. However, at the time of this transfer, there was no requirement under law for Aegon to investigate or carry out any due diligence as to other third parties involved in the transfer, including persons advising Mrs E, regulated or otherwise, or as to her reasons for the transfer or intended investments after the transfer or the advice she had received.
40. I further do not find that Aegon had a duty to seek any clarification if there were concerns about the proposed transfer, provided they were satisfied that Mrs E's application was an exercise of her statutory right and that the way it required them to use her CETV was permitted under section 95 of the 1993 Act and in particular that the SSAS was an occupational pension scheme and that the payment would be used to provide transfer credits for her, i.e. rights of a type that could be accrued by a person in employment under the rules of the SSAS. If they had concerns on any of those matters, they needed to seek clarification. They also needed to ensure they made the payment to the correct bank account for the SSAS.
41. But they did not have any duty to investigate any concerns they may have had about Mrs E's intentions or expectations or any advice she had received or any risks she

might be exposed to in relation to the administration and investment of the SSAS. I note that Aegon had no discretion and no right to refuse to make the transfer under the 1993 Act and might face sanctions at the instance of the Pensions Regulator if they failed to make payment in accordance with Mrs E's exercise of her statutory right. I note Aegon is not responsible for the management or administration of the SSAS or investment of its assets. Their duty to Mrs E in relation to the administration of the Scheme terminated on making a payment to the SSAS pursuant to her exercise of her statutory transfer right under the 1993 Act. They were not advising her on the transfer or the investment of the transferred funds in the SSAS. I cannot therefore find that they had a duty to investigate any concerns they may have had about the future administration or investment of the SSAS or any advice she had received.

42. In considering whether Aegon had a duty to investigate concerns they may have had, I have considered the decision of the Supreme Court in *Philipp v Barclays Bank UK Plc* [2024] 1 All ER (Comm) 1 in relation to the obligations of a bank to make payment further to a customer instruction where there was a risk of an "authorised push payment" fraud. Reversing the decision of the Court of Appeal that the bank had a duty to investigate and not to make payment until it had investigated if it was put "on inquiry", the Supreme Court held that there was no such duty and that, provided the instruction was clear and given by the customer personally or by an agent acting with apparent authority, no inquiries were needed and it was the bank's duty to execute the instruction and any failure to do so would prima facie be a breach of duty by the bank, even where the instruction had been induced by another person's deceit. It quoted with approval the words of Lord Sumption NPJ in *PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA* [2023] HKCFA 3, that: "*The law cannot coherently treat compliance with an authorised instruction as a breach of duty*". The circumstances of Aegon as manager of the Scheme under a statutory obligation to comply with Mrs E's exercise of her statutory transfer right are in my view similar to those of a bank that has received a payment instruction from its customer. It had a duty to make the payment and compliance with that duty cannot be treated as a breach of duty.
43. I also find that Aegon had no legal duty to provide the Scorpion Leaflet to Mrs E. The Scorpion leaflets issued by The Pensions Regulator together with other bodies were designed to raise awareness of the possibility of pension liberation and other pension scams and trustees and scheme managers were asked to share the leaflet. However, there was no provision of law requiring the Scorpion leaflet to be issued by trustees or managers and no general duty on trustees or managers to protect members from or advise them or warn them about potential fraud or scams by third parties. Aegon had a duty to protect Mrs E's funds within the Scheme and to avoid wrongly paying away amounts held by the Scheme in respect of her but not to warn her about risks that might arise after a transfer to another scheme. As such, I find that Aegon had no legal duty to provide the Scorpion leaflet to Mrs E and could not therefore be in breach of duty in failing to do so.

44. For completeness, I have considered what would have happened had Aegon issued the Scorpion leaflet and made further inquiries about the SSAS and the transfer. There are a number of factors which need to be taken into account when determining this issue.
45. On the one hand, the Scorpion Leaflet, as issued in March 2015, did contain a number of risk warnings which were relevant to the transfer, including: overseas investment; high investment returns; a single investment; and, appointment as a company director and trustee of the pension scheme. These are factors which Mrs E may have recognised as being relevant to her proposed transfer and prompted her to reconsider. Mrs E was not looking to access her benefits before age 55 and so a number of the other risk factors highlighted in the Scorpion leaflet were not relevant.
46. Similarly, if Aegon had itself considered the March 2015 Scorpion checklist in relation to the transfer and undertaken some initial due diligence checks about the SSAS, beyond satisfying itself as to the provider and the professional trustee, it might have identified that the SSAS was newly established with a dormant company as the employer, and on further enquiry it might potentially have identified risks related to the intended investment and the involvement of an unregulated adviser Stevenson Pride. It is arguable that had it identified such matters and raised them with Mrs E (without advising her), they would have led her to an independent view that the transfer was not in her best interests. On the other hand, there are several factors which may have led Mrs E to disregard the warnings that ought to have been brought to her attention which I must consider. As I understand it, Mrs E was introduced to Stevenson Pride by a friend who was receiving good returns on their investment. Further, she was of the belief, albeit incorrect, that she was receiving regulated advice in relation to the transfer and investments and she was wholly reliant on that advice and trusted Stevenson Pride, believing the investment to be guaranteed.
47. Had Aegon raised queries about the transfer I think it is logical to assume she would have liaised with Stevenson Pride about those queries and any doubts she might have had, and no doubt it would have looked to allay those concerns. At the time, Rowanmoor was an established provider of SSASs since 2006. Stevenson Pride would have been able to point to this as evidence of the legitimacy of the transfer and arrangement to allay any concerns that Mrs E might have had. Finally, having a friend who was apparently earning returns from a similar arrangement would have suggested to her that this was not a risky transfer.
48. Taking all the above into account, and considering what Mrs E would have done had she been provided with the Scorpion leaflet, and had Aegon made some further inquiry about the SSAS, on the balance of probabilities I consider that Mrs E would have continued with the transfer. She evidently trusted Stevenson Pride, and was transferring to what was, at the time, a demonstrably reputable pension provider in Rowanmoor. Additionally, a friend had suggested the arrangement and was earning returns from it. Taking all of this into account, I am satisfied that she would not have cancelled the transfer even if Aegon had provided additional warnings about it. It must be remembered that Aegon, not being regulated to do so, could not advise Mrs

E about the transfer or indeed the investments she intended the SSAS to make, and could only provide warnings.

49. In any event, I note that Mrs E's loss arises not from the transfer itself, or anything done wrong as part of the transfer, but from the investment of the funds by the SSAS after they were transferred or indeed the management of that investment. While issuing the Scorpion leaflet to Mrs E or making further inquiries that might have led Aegon to provide other warnings to Mrs E, might have led Mrs E not to make the transfer and not to make the investment, her loss arises from the decision to invest in Akbuk and not the transfer. Aegon had no role in that decision.
50. Mrs E has argued that she has not been treated fairly and reasonably by Aegon and that it failed to adhere to the FCA's Principles, specifically 1, 2, 3, 6, 7 and 9. I do not have the power to determine this case on the basis of what is fair and reasonable, and the principles, while part of the FCA Handbook, do not have the same status as Rules. Therefore, while Mrs E might have a right of action for damages as a result of a breach of a Rule, an argued breach of the Principles is not actionable on the part of an individual.
51. I do not uphold Mrs E's complaint, and no further action is required by Aegon.

Camilla Barry

Deputy Pensions Ombudsman
8 April 2025