

**PENSION SCHEMES ACT 1993, PART X  
DETERMINATION BY THE PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr John Underwood
<b>Scheme</b>	Aegon Personal Pension Plan (the <b>Plan</b> )
<b>Respondent</b>	Aegon (a brand name of Scottish Equitable plc)

**Subject**

Mr Underwood complains that due to administrative failures he was unable to actively manage his investments in his pension plan for over six months. He subsequently moved his business to another provider. Mr Underwood would like the penalty waived and Aegon to compensate him for a proportion of the investment losses over the period his account information was unavailable.

**The Pensions Ombudsman's determination and short reasons**

The complaint should be upheld against Aegon because Mr Underwood lost the opportunity to manage his investments and was caused significant distress and annoyance. Rather than waiver of the penalty, he should receive compensation totalling £1,425.

## DETAILED DETERMINATION

### Material Facts

1. Mr Underwood was a member of the Plan. At the end of 2010, his fund value had reached over £300,000. Mr Underwood decided to transfer half the fund to a SIPP and keep the remainder in the Plan.
2. Mr Underwood initially instructed Aegon to transfer £195,000 to Capita, which they did on 14 December 2010. However, he subsequently changed his mind and decided to invest with Liverpool Victoria, (the **Reversed Transfer**). Aegon received the reversed transfer from Capita on 4 February 2011 and subsequently transferred £193,571.71 to Liverpool Victoria on 18 February 2011 (the **First Transfer**).
3. However, statements and online valuations showed a total fund value of around £330,000.
4. Aegon have said that after the Reversed Transfer they "...became aware of issues with Mr Underwood's plan and started to take corrective action. We discovered some fund adjusters hadn't applied to his plan. We also became aware of some incorrect pricings as a result of our "Transformation Program. The net result of this was we had to strip back Mr Underwood's plan and rebuild it again."
5. Mr Underwood sent a switching instruction to Aegon on 2 March 2011 to move 10% of the cash fund investment split between two equity funds. At this point Aegon contacted Mr Underwood to explain that there were errors on his plan, that it would be offline for two weeks whilst these errors were rectified and that they would backdate his switch instruction once this work had been completed.
6. Mr Underwood contacted Aegon in mid-April to ask when the work would be completed. He was told it would take a further two weeks. Aegon repeated this each time that Mr Underwood contacted them again in May, June and July of 2011.
7. On 12 July 2011, Mr Underwood made a formal complaint to Aegon about the online access to his plan.
8. On 14 July 2011, Aegon wrote to Mr Underwood and gave him an undertaking that the work on his plan would be completed by 26 July 2011.

9. On 22 July 2011, Aegon wrote to Mr Underwood explaining that due to unforeseen problems the errors on his plan would not be rectified until the end of July 2011. They explained that in the interim Mr Underwood could request manual valuations.
10. On 31 July 2011 Mr Underwood checked his policy online. However, although the plan was available to view, it was still showing a value of around £330,000.
11. On 10 August 2011, Mr Underwood checked his plan again. It still did not appear to be fully corrected. Mr Underwood then contacted Aegon by phone and asked for a paper valuation of his plan. He checked his plan online again around 12 August 2011 and saw that the value shown had fallen to around £125,000.
12. On 12 August 2011 Aegon wrote saying that the correction work on his plan had completed and that the switch requested on 2 March 2011 had been actioned.
13. The paper valuation that Mr Underwood had requested arrived on 15 August 2011 and showed a fund value of £316,000 as at 10 August 2011.
14. On 22 August 2011, Aegon sent an annual review statement covering the period from January 2010 to January 2011 to Mr Underwood and his IFA showing a fund value at 20 January 2011 of just under £325,000.
15. Sometime in early September 2011 Mr Underwood received a letter from Aegon apologising for the fact that the online facility had been unavailable for a week.
16. On 12 September 2011, Mr Underwood's IFA rang Aegon to request information about the Government Actuary's Department drawdown limits (**GAD limits**) applying to the plan. He was told that the limit was around £16,000 a year. The IFA queried whether this was correct as the value of the fund was around £125,000 and asked for the details to be sent to him in writing.
17. On 12 September 2011, Mr Underwood made a formal complaint to Aegon through his IFA. The IFA requested copies of any file notes held by Aegon in relation to Mr Underwood's plan and for compensation in the form of a waiver of the penalty fees for the transfer of Mr Underwood's remaining assets, plus 10% of the fund value to compensate for Mr Underwood being unable to manage his account between March and August 2011. The IFA also pointed out that:

- Mr Underwood's switch instruction from 2 March 2011 had not been actioned until 12 August 2011;
  - Aegon had persistently overstated the value of Mr Underwood's investments by as much as £200,000;
  - Mr Underwood's account had been offline for six months which denied him the opportunity to manage his money effectively, given that he would usually monitor the plan and make regular switches;
  - Mr Underwood had repeatedly been given misinformation about how long the errors would take to rectify and was then given repeated assurances that the situation had been resolved when it had not;
  - in August and September 2011 the value of his plan was still showing as around £325,000;
  - he had been provided with incorrect information about the GAD drawdown limits by phone.
18. On 20 September 2011 Aegon wrote to Mr Underwood to say that the First Transfer to Capita had been understated by £5,644.75 and that this amount had been transferred to Capita (the **Second Transfer**). They also wrote to his IFA to provide some historical fund information and quoted the GAD limit as £16,210.60 based on a plan value of £334,402.24.
19. Aegon responded to the IFA on 23 September 2011. They said that:
- their file notes were "business sensitive" and would not be disclosed;
  - following receipt of the Reversed Transfer from Capita, there was a delay of ten days in forwarding the monies to Liverpool Victoria;
  - it had been open to Mr Underwood to request switches at any point during the rebuild and pointed out that he did in fact issue a switch instruction on 2 March 2011;
  - manual valuations (although they would not have been not 100% accurate) could have been requested by Mr Underwood;
  - the rebuild of Mr Underwood's plan was completed on 15 August 2011 and that they were "happy" that they had "processed the rehash correctly and that the valuations were correct".

- although Mr Underwood's plan was not available online until the issues were resolved, the online service did not form part of the terms and conditions for the plan, but they were sorry that the service had been unavailable to Mr Underwood for so long;
  - Mr Underwood had not been financially disadvantaged;
  - the annual review of the plan issued in August 2011 was accurate as it only covered the period from January 2010 to January 2011 and therefore related to the period prior to the First Transfer;
  - they accepted that there had been errors in the GAD limits in their letter of 20 September 2011; the correct figure was £7,489.23;
  - the letter of September 2011 apologising for the online service being unavailable was a standard letter sent to all policyholders and had not reflected Mr Underwood's individual circumstances at that time.
20. Aegon offered Mr Underwood £283.83 in compensation. This was comprised of interest at 1.5% for the 10 day delay in sending his funds to Liverpool Victoria amounting to £79.56, a further interest payment at the same rate for the delay in transferring the additional £5,644.75 to Liverpool Victoria from February 2011 to September 2011 amounting to £54.28, plus £150 for distress and inconvenience.
21. The IFA wrote to Aegon on 26 September 2011 to remind them that the First Transfer had actually been made to Liverpool Victoria and that the additional amount should be transferred to them and not Capita as stated in their letter of 23 September 2011. They also wrote separately to Aegon on the same day, saying that the discovery of the error in the First Transfer "vindicated" the basis of Mr Underwood's complaint. The IFA also requested that Aegon pay their additional costs associated with handling Mr Underwood's complaint to them.
22. Mr Underwood made three switches on his plan on 13, 29 and 30 September 2011 to transfer his assets into cash. He then transferred out his remaining assets of £122,143.79 on 6 October 2011 (the **Final Transfer**). This was his disinvested funds of £125,565.44 minus exit penalties of £3,425.19.

23. Aegon's compensation offer was rejected by his IFA by email on Mr Underwood's behalf on 2 November 2011. They pointed out that the "rehash" completed on 15 August 2011 could not have been accurate as asserted by Aegon, given that a further discrepancy of £5,644.75 had been identified on 20 September 2011. They reiterated that incorrect information continued to be issued after the "rehash" was complete and renewed their request for compensation on the same terms initially outlined in their letter of 12 September 2011 (as set out in paragraph 12), plus some additional costs incurred by the IFA in handling the matter.
24. Aegon responded on 4 November 2011, reiterating their previous position and pointing out that the completion of the rehash had allowed their audit team to review the plan and spot the discrepancy in the First Transfer to LV. Aegon increased their offer of compensation to £383.83, (an increase of £100 in the payment for distress and inconvenience bringing it to £250) and offered to reassess the Mr Underwood's claim for his IFA's costs on receipt of an itemised invoice.
25. Mr Underwood then referred the matter to the Pensions Advisory Service (**TPAS**). During correspondence between TPAS and Aegon:
- TPAS suggested that Mr Underwood be compensated by 50% of the fall in investments during the relevant period as he had not been able to mitigate it by switching funds;
  - it emerged that a switch in October 2008 had not been processed correctly. (Mr Underwood had instructed Aegon to switch 10% of his cash fund to other funds, however, Aegon had only switched 1%);
  - Aegon said that Mr Underwood had benefited by £1,724.19 as they had not deducted a penalty from the Second Transfer;
  - Aegon reassessed their offer of compensation and offered Mr Underwood £483.83 (a further £100 to bring the payment for distress and inconvenience to £350) and offered to pay the IFA's additional fees of £952.50 (which they later did).

**Summary of Mr Underwood's position**

26. Mr Underwood says that after the March 2011 switch, when he was told about the valuation problem, he had “enormous uncertainty” about the actual value of his funds and had no basis on which to make further switches.
27. He says that he believed the assurances he was given in April, May and June of 2011 that the facility would be available in two weeks and as result did nothing. He was told the plan would be fixed by 29 July 2011 and even after that date, (having received no further communication from Aegon) he requested a manual statements in early August by phone and was told everything on the plan had been corrected. He was then sent a valuation which showed the value of the plan was over £316,000.
28. Mr Underwood says that he was very satisfied with Aegon's administration of the plan and would not have moved his money away from them if it had not been for this episode. He says that by the time August had arrived and further errors were being uncovered, he was concerned that their corporate governance was so bad that another “Equitable Life” situation might have arisen.
29. Mr Underwood says he was also concerned about the fact that Aegon had failed to fully inform him about the extent of the errors on his plan. He says that they had indicated all along that it was an issue with the online portal rather than his account. Had Aegon simply explained at the outset that his account had been corrupted and they had to rebuild it, he would have been more patient. But even after he had been told that the issues with the plan had been rectified they continued to provide incorrect information to him. The combination of these factors meant that by the end of September he was concerned about the safety of his money and as this was a significant proportion of his retirement savings, he wanted to leave the plan.
30. In his view Aegon's administration was so poor that he was forced to transfer away and feels aggrieved that they should benefit by the amount of the penalties from essentially forcing him to take his business elsewhere.

### Summary of Aegon's position

31. Aegon accept that were “responsible for the problems with Mr Underwood’s plan in 2011”.
32. However, they say that Mr Underwood was not prevented from dealing in the period from early March 2011 and September 2011 as it was open to him to request manual valuations and provide switch instructions by phone or fax. They say that the online service was not part of the terms and conditions of the plan but an additional benefit.
33. They do not accept that it would be reasonable to assume that Mr Underwood could have avoided at least proportion of the loss to the value of his fund if he had been able to “deal” online between March and September on the basis that:
  - Mr Underwood’s switch instruction on 2 March 2011 was to move 75% of his cash holdings into more volatile funds, and
  - he made no attempt to move his funds to “safer” funds in that period.
34. In respect of the exit penalties, Aegon point out that by the time Mr Underwood had decided to transfer out of the Plan, all the issues on it had been rectified and so the exit penalties were as a result of an investment decision made by Mr Underwood and not because of any ongoing issues with his Plan.
35. Aegon say that if they waived the exit penalties on the final transfer Mr Underwood would be in a better position than he would have been in. They point out that they waived the exit penalty on the additional amounts due on the First Transfer because it was a result of their error and therefore Mr Underwood has already benefited from receiving an additional £1,724.19.
36. Aegon argue that compensation previously offered to Mr Underwood is adequate in the circumstances.

### Conclusions

37. There were many failures by Aegon in this case. In particular:
  - Aegon applied incorrect pricing and fund adjusters and as a result had to rebuild Mr Underwood’s plan from scratch;
  - the work took them six months and Mr Underwood was unable to monitor his plan effectively for this period;



- Aegon did not explain properly to Mr Underwood what the problems were;
- they gave Mr Underwood inaccurate estimates for how long it would take to complete the rectification work on six occasions between March 2011 and the end of July 2011.
- having promised that the repair work would be completed by the end of July 2011, they failed to contact Mr Underwood to inform him that the repair would take longer than they had promised for the seventh time;
- they then provided Mr Underwood with an incorrect manual valuation of the Plan dated 10 August 2011, when he had been informed that the correction work would be completed by that time.
- because of the reconstruction Aegon were unable to action Mr Underwood's switch instruction of 2 March 2011 until 12 August 2011.
- they gave incorrect information to the IFA regarding the GAD limits;
- they needed to be told that the Second Transfer (which arose through their error) should go to Liverpool Victoria rather than Capita, when they should have known;
- Aegon did not identify that the switch in October 2008 had been incorrectly applied until September 2012 when TPAS queried matters. .

*Inability to switch*

38. I accept that in the circumstances Mr Underwood would not have been able to actively manage his funds. He was being told regularly that the problem would be solved in two weeks. So he would quite reasonably have been waiting for that to happen. He had no particular reason to make switches based on manual valuations (and given that when he did ask for one it was wrong, it seems entirely possible that it would not have helped if he had asked earlier).
39. It cannot be determined with any accuracy what, if anything, the harm to Mr Underwood was. He might have made switches that would have protected him from losses; he might (less probably) have made poor judgments that made the losses worse; he might have done nothing.

40. However, he did lose the opportunity to mitigate loss and I consider that he should be compensated for the lost opportunity and the resulting uncertainty.

*Transfer penalties*

41. It is not surprising that Mr Underwood decided to switch. However, I do not think that it is correct that he should not have to pay the penalty for doing so. He is saying that he had to switch, but accepts (indeed volunteers) that without Aegon's errors he would not have done. In that circumstance, Aegon would have recovered an amount equivalent to the penalties over the next few years in the form of charges. (They related to the up-front costs to Aegon, including commission to Mr Underwood's adviser.) Looked at that way, Mr Underwood is no worse off having been "forced" to transfer away than he would have been if he had stayed with Aegon. As it happens, some £1,700 of the penalties have already been waived, albeit because Aegon failed to apply the penalty to the Second Transfer.
42. The compensation that I award should be related to the harm suffered. I consider that Mr Underwood will have suffered protracted distress and annoyance as a result of the catalogue of failures listed above, but that the right way to compensate him for that is by a payment consistent with general awards for distress, rather than waiver of the transfer penalties.

*Compensation*

43. Mr Underwood has already had £1,724 in the form of the penalty that was not charged, though in the circumstances it is unlikely to have eased any distress. He was given it by mistake and it went by way of the Second Transfer rather than to him directly.
44. In relation to the loss of opportunity to manage his funds of about £125,000 I consider that Mr Underwood should receive £625 which, calculated as a small percentage of £125,000, is a nominal and proportionate sum to acknowledge that Mr Underwood might have been able to obtain a better investment return had he been able to make fund switches.
45. The annoyance and distress of the matter will have been significant. I consider that an appropriate sum to compensate him for it would be £800.

**Direction**

46. Within 28 days of the date of this determination, Aegon are to pay Mr Underwood £1,425.

**Tony King**  
Pensions Ombudsman

18 September 2014