

Ombudsman's Determination

Applicant	Mr R
Scheme	Scottish Motor Auctions Ltd Group Personal Pension Plan (the Plan)
Respondent	Aegon (Scottish Equitable plc) (Aegon)

Complaint Summary

Mr R has complained that Aegon did not carry out the appropriate due diligence when transferring his pension fund to a Small Self-Administered Scheme (**SSAS**) administered by Greenchurch Capital Ltd (**Greenchurch**).

Summary of the Ombudsman's Determination and reasons

The complaint is not upheld as I am satisfied that Aegon did not breach its regulatory responsibilities at the time it transferred Mr R's pension in accordance with his wishes.

Detailed Determination

Material facts

1. Mr R held a Group Personal Pension with Scottish Equitable through his employer, Scottish Motor Auctions Limited.
2. On 14 December 2012, Mr R signed a Letter of Authority (**LOA**) for UK Pension Transfers Limited (**UKPT**) to receive information, on request, in relation to the Plan. This was forwarded to Aegon.
3. On 17 December 2012, UKPT wrote to Aegon enclosing the above LOA, and requesting it to “provide all relevant information in respect of any existing life policies, private pension arrangements to include plan details and charges, current value statement and transfer forms.”
4. On 7 January 2013, Aegon responded to UKPT enclosing details of the Plan and discharge forms. Within this information, a transfer value of £20,563.21 was stated.
5. On 25 January 2013, Mr R signed an Aegon transfer instruction form for £20,563.21 to be transferred into the [Mr R] Ltd Pension Scheme.
6. On 12 February 2013, Greenchurch sent a letter to Aegon saying:

“Further to [Mr R’s] request please accept this letter as confirmation that Greenchurch Capital Ltd, as pension’s [sic] administrators, accepts the above policy to be transferred to the new scheme [Mr R] Ltd Pension Scheme...”
7. On 13 February 2013, Greenchurch signed Aegon’s discharge form, providing payment details for the receiving scheme and indicating that this was an unsecured pension plan. A date stamp on Aegon’s copy of this document indicates that it received this form on 14 February 2013.
8. Also on this date, Greenchurch sent a letter to Aegon saying:

“...please accept this letter as confirmation that Greenchurch Capital Ltd, as pension’s [sic], administrators, has registered the [Mr R] Ltd Pension Scheme with HMRC...

As the registration has recently been submitted we are not yet in possession of the confirmation letter however we have enclosed a screen print of the registration confirmation from our HMRC online account proving its validity.”
9. The enclosed ‘Acknowledgement of Registration for Tax Relief and Exemptions’ notice stated the following:

“The [Mr R] Ltd Pension Scheme has been registered by HM Revenue & Customs (HMRC) on 12/02/2013. Tax relief and exemptions are due from this date...”

Your Pension Scheme Tax Reference (PSTR) is...You should use this when you want to view the scheme details online and in all future communications with HMRC.

HMRC may carry out checks to ensure that the conditions to be a registered pension scheme for tax relief and exemptions are met and continue to be met.”

10. On 14 February 2013, The Pensions Regulator (**the Regulator**) published guidance on pensions liberation fraud directed at pension professionals. This is commonly referred to as “the Scorpion guidance” due to the imagery used within and is entitled “Pension liberation fraud – The predators stalking pension transfers.”

11. On page 8 of the Scorpion guidance, the following was stated:

“Looking out for pension liberation fraud

When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring.

If you are a trustee or administrator, and any of the following criteria apply to a transfer request you have received, then you may be about to transfer a member’s pension to a scheme designed to liberate their funds.

Here are some of the things to look out for:

- Receiving scheme not registered, or only newly registered, with HM Revenue & Customs
- Member is attempting to access their pension before age 55
- Member has pressured trustees/administrators to carry out transfer quickly
- Member was approached unsolicited
- Member informed that there is a legal loophole
- Receiving scheme was previously unknown to you, but now involved in more than one transfer request

If any of these statements apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request.”

12. The next two pages of the guidance contained a checklist of activity characteristic of pension liberation fraud, along with suggestions on the enquiries to make in respect of these.

13. On 15 February 2013, Aegon sent a letter to Greenchurch saying it had transferred £21,461.92 to the latter’s bank. Aegon confirmed that this was the total transfer value for the Plan.

14. On 22 February 2013, Greenchurch wrote to Aegon saying that there had been an “administrative error by the schemes [sic] banking provider” and that it wished to

change the transfer account payment details. It attached a letter from Lloyds Bank confirming the error and providing new payment details.

15. An internal Aegon email on 25 February 2013, from the 'Finance' department to the 'Group Claims' department stated that the above payment had been returned to Aegon where the receiving account was closed.
16. On 15 March 2013, Aegon wrote to Greenchurch to confirm that the above payment would be made to it. This was authorised and made on 19 March 2013.
17. Just over 4 years later, on 11 April 2017, Mr R's representative (**the Representative**) wrote to Aegon to make a complaint about the transfer. In summary, the points made were:-
 - Mr R was approached without any regulated advice to transfer his pension to a SSAS administered by Greenchurch.
 - Greenchurch had never been authorised or regulated by the Financial Services Authority or the Financial Conduct Authority. From Aegon's file, it appeared that a check was done to confirm this was the case by way of a printout from the FCA register.
 - Mr R was not treated fairly in Aegon allowing this transfer to take place. Mr R should have been warned of the potential consequences of transferring and would not have proceeded had he been made aware of the risks.
 - In January 2013, the Regulator published a document referred to as the 'Principles and features for good quality pension schemes.' Within this document, reference was made to those running a pension scheme acting in the best interests of all beneficiaries. The Regulator wanted to see the following in place in order to mitigate risk: "Conflicts are declared and managed appropriately and firms are able to demonstrate that they act in the best interests of all beneficiaries in their decision-making processes."
 - Further, under the Financial Conduct Authority principles (**FCA**), providers and distributors of products and services had various responsibilities that have an impact on customers, which applied to all authorised firms. In particular, principles 2, 3, 6 and 7 applied here.
 - COBS 2.21 stated that a firm must act honestly, fairly and professionally in accordance with the best interests of its clients.
 - Aegon should have considered whether accepting the instruction from Greenchurch was treating its customer, Mr R, fairly, taking reasonable care and acting with due skill, care and diligence. The nature and source of the proposed business was such that Aegon should not have accepted it.
 - Mr R transferred into a single, personal SSAS. His background was the automotive industry and his pension with Aegon had been invested in balanced

funds. He had never been a director or shareholder of a company. These facts should have meant that Aegon “added an additional duty of care.”

- The trustees of Aegon were “further bound by Principle 6 of the Principles for Business.”
- Aegon should have ensured that it conducted and retained appropriate and sufficient due diligence on Greenchurch, been satisfied that Greenchurch was appropriate to deal with and sought appropriate clarification if it had any concerns.
- Aegon should have been aware that ordinarily you would not expect to see clients moving pension monies on an execution only basis and this would only be relevant for suitably qualified individuals.
- Aegon should have warned Mr R of the consequences of proceeding with the transfer. It could have warned Mr R that the chances of the transfer being suitable were very small.
- Had Aegon undertaken sufficient due diligence, it would have discovered that it should not have proceeded without Mr R taking advice. Had it made Mr R aware of the various points of concern, it is very unlikely that he would have proceeded with the transfer and he would have sought advice from a regulated individual.

18. I understand that Aegon briefly replied to the Representative on 21 April 2017 asking it to provide a letter of authority for Mr R. This was received by Aegon in March 2018.

19. On 13 March 2018, Aegon responded to the complaint as follows:

- It did not agree that it had acted incorrectly or caused any loss to Mr R.
- In December 2012, it received a LOA to release information to UKPT. This request was processed and UKPT was sent the information requested. All of its transfer illustrations stated that it always recommended seeking independent financial advice before transferring a plan.
- It had an obligation to make sure that any transfer it made was to a pension scheme regulated by, approved by, and registered with HMRC.
- It had reviewed the transfer from 2013 and was confident that the transfer was processed as it would expect. It received the appropriate signed paperwork and carried out the appropriate due diligence checks prior to the transfer. As there was no indication that the transfer should not be completed, the transfer went ahead.
- The Representative had said that Aegon’s due diligence checks should have warned Mr R in respect to the implications of transferring away. Aegon was not trained or authorised to give financial advice and therefore it would not be in a position to confirm what the implications or suitability of the transfer might be.

- It had acted fairly and reasonably when processing the transfer. Further, in signing the transfer form, Mr R agreed to the transfer, and the payment for the transfer was a full discharge of Aegon's liability under the Plan.

Summary of Mr R's position

20. Mr R's position is as set out in the Representative's letter to Aegon of 11 April 2017.

Summary of Aegon's position

21. Mr R's position is that Aegon did not perform appropriate due diligence prior to transferring his pension fund in February 2013. In order for Aegon to be considered negligent it would need to be demonstrated that it fell below the standards of a competent pension provider and administrator, acting reasonably, with reference to the standards at the time of the transfer.
22. It received a request on 12 February 2013 from Greenchurch with completed paperwork for the transfer of Mr R's pension fund. At the time, its transfer process involved making the following checks:
- Was the transfer paperwork fully completed and signed by the policyholder? In this case, it was satisfied that the transfer paperwork had been fully completed, giving Aegon a clear instruction from Mr R to make the transfer, a discharge of its obligations and confirmation from the receiving scheme that they would accept the transfer.
 - Was the receiving scheme a registered pension scheme? A check was made with HMRC who confirmed that the [Mr R] Limited Pension Scheme had been registered by them and held a PSTR number. This meant that Mr R had a statutory right to transfer his pension plan, under the terms of the Pension Schemes Act 1993.
 - Did the scheme or scheme administrator appear on Aegon's financial crime team's list of parties which they were concerned about? At the time of the transfer, neither the [Mr R] Limited Pension Scheme or Greenchurch appeared on the list, although Greenchurch was added some months after Mr R's pension had been transferred.
23. It had enhanced the due diligence performed on transfers since this period, having received guidance from the Regulator and various incarnations of the Pension Scams Industry Group's Code of Good Practice. However, this request to transfer was received just days before the Regulator made their announcement to the industry on how to tackle pension scams, on 14 February 2013.
24. Its position was that the checks performed at the time of processing Mr R's request to transfer out were those of a competent pensions provider and administrator acting reasonably, and were in line with the industry standard at the time. As a result, it refuted the suggestion that it acted negligently. It was not liable to compensate Mr R for any losses he may have suffered as a result of the transfer.

25. Mr R had referred to the FCA's Principles of Business and argued that the failure of Aegon to refuse to transfer his pension amounted to a failure to meet the standards set by the FCA and treat him fairly. It did not accept that it fell below the standards which were prevalent and reasonable at the time of the transfer.
26. The Pensions Ombudsman's Office (**TPO's Office**) had considered several complaints relating to the due diligence performed by providers and administrators around the time of the Regulator's announcement in February 2013, including in the Determination of Mr R's complaint about the Prudential Personal Pension Scheme (PO-21243). These cases followed the approach set out in the Determination of Mr Hughes' complaint concerning Aviva (PO-6375). In short, they identified the guidance given by the Regulator in February 2013 to be a point of change, but also that it was reasonable to allow providers and administrators a short time in which to consider the guidance and implement processes which incorporated its recommendations.
27. Mr R's request to transfer his pension was received two days before the Regulator issued its guidance and was already being processed at the time that announcement was made. Its file showed that it wrote to Greenchurch on 15 February 2013, confirming that the transfer had been made. It received a letter dated 22 February 2013, from Greenchurch, saying that there had been an error with the scheme's bank account and that it wished to change the transfer account details.
28. Following this, the transfer payment was returned to Aegon and re-allocated on 16 March 2013. On 15 March 2013, Aegon wrote to Greenchurch to confirm that the payment would be made; this payment was authorised and made on 19 March 2013. It was not aware of any further warning signs having come to light between the first and second transfer payment.
29. In respect to a question posed by TPO's Office regarding whether it had considered temporarily suspending transfers around the time of the issuance of the Scorpion guidance should it have needed time to review its literature and processes, Aegon processes large volumes of transfer requests every day. It has a legislative obligation to complete these transfers within six months and legal obligations to ensure it completes transfers timeously and without undue delay. It has regulatory obligations to ensure that there are appropriate and proportionate processes and controls in place. The Scorpion guidance was not binding on providers but did set out a new standard of best practice and strengthened the hand of providers to delay suspicious transfers.
30. To implement the Scorpion guidance, it was required to analyse this guidance, advise the business on how the recommendations would be introduced, draft new procedures and template letters to customers, and make sure this was all done in a controlled manner, with appropriate governance. The effect of suspending all transfers would be that customers would not receive the expected transfer value for their pensions and could even suffer financial loss. This might have also been viewed as being a breach of its competition law obligations. All these factors had to be weighed up.

31. The Ombudsman had recognised this challenge in previous decisions, most recently in the complaint by Mr Z against Sun Life Financial of Canada (PO-27901), where he stated: “I deem it reasonable to allow SLOC, as a provider, the necessary time to implement changes arising from this [the Pensions Regulator’s Scorpion guidance]. In line with previous Determinations, I consider a three-month period, from 14 February 2013, a reasonable timeframe to do so.” With this transfer, the due diligence checks were completed and payment made by 15 February 2013, just one day after the guidance was issued, and well within the three-month period from 14 February 2013.

Conclusions

32. The Representative has argued that had Aegon undertaken sufficient due diligence, it would have discovered that it should not have proceeded without Mr R taking advice and has said that Aegon failed to warn Mr R of the consequences of transferring his pension. I will consider this matter in the context of Aegon’s regulatory obligations at the time of the transfer.
33. Aegon says it received Mr R’s completed transfer paperwork on 12 February 2013, although its file suggests this would have been received on 14 February 2013. Hence, Aegon received the paperwork at a time when the Scorpion guidance had just been published.
34. In respect of the date of the transfer, Aegon has highlighted that little had changed between the date when it first attempted to make the transfer payment on 15 February 2013 and 19 March 2013, and says no further checks were made, I consider that the latter date was the effective date of the transfer. So, although Aegon might have considered that it could proceed with the second payment (the actual transfer) in the same manner that it had the attempted transfer, in actual fact, the timing of the former meant that Aegon had potentially become subject to different regulatory obligations in respect of the due diligence it was required to carry out. I will expand on this point concerning timescales later in this Determination.
35. At the date of the initial attempted transfer, the Scorpion guidance was very newly issued and as at 19 March 2013, it had been published for just over a month. It is correct to say that were I to find that Aegon was obliged, at the time it processed the transfer, to comply with the Scorpion guidance, then this would have indicated some matters for potential concern (see below) though it should be noted that the transfer could not have been refused since there is no indication (following the High Court judgment in *Hughes v Royal London*) that Mr R did not have a statutory right to this transfer. At most, any such potential concerns might have led to a further enquiry with Mr R but not advice (as Aegon could not give advice in this respect) or prevention of a transfer. Whether such contact would have led to Mr R withdrawing his transfer request is another matter.
36. Turning to the content of the guidance itself, page 8 sets out the “the warning signs” to look out for. The first on this list concerns whether the receiving scheme was not registered, or only newly registered, with HMRC. In Mr R’s case, it was clear that the

[Mr R] Ltd Pension Scheme had only recently been registered by Greenchurch, as it made reference to this point itself in its letter of 13 February 2013, and as Greenchurch was only able to provide an 'Acknowledgement of Registration for Tax Relief and Exemptions' notice rather than the official confirmation. This document stated that the [Mr R] Ltd Pension Scheme had been registered on 12 February 2013, so a day prior to Greenchurch's letter to Aegon.

37. In respect of whether Mr R was attempting to access his benefits prior to age 55, at the time of the transfer, Mr R was 40 years old. Therefore, there was the possible concern that he was attempting to gain access to his benefits earlier than legislation would allow.
38. It does not appear to be the case that Mr R or UKPT pressured Aegon to carry out the transfer more quickly. Incidentally, Aegon attempted to process the transfer within days of receiving the completed paperwork and indeed the only reason this did not happen was because of a failure on the part of Greenchurch, or its bank, so, there was little time available during which such pressure could be applied.
39. In regard to any purported loophole, the information available does not suggest that Mr R was told that by transferring, he could benefit from a legal loophole, and if this was the case, I cannot see that Aegon was made aware of this.
40. Lastly, there is no evidence to indicate that Aegon was aware that Mr R had been approached unsolicited, nor does there appear to be any reason why Aegon should have known this. UKPT contacted Aegon directly in December 2012, providing Mr R's signed letter of authority for it to receive information on the Plan. Both UKPT and Aegon liaised directly with one another thereafter to the point of the transfer's completion.
41. When Aegon was asked to clarify why it did not suspend transfers at the time the Scorpion guidance was issued, Aegon referred to a previous Determination of mine (PO-27901). In this, I stated that providers should be allowed a three-month period, from 14 February 2013, to implement any changes required by this guidance. Aegon is correct to do so as I, and my predecessor, have consistently found that **a period of time** is appropriate during which pension providers could and should have reviewed the substance and then amended their procedures in response to the Regulator's new guidance.
42. I am not bound by previous Determinations I have made, and each case is assessed on its individual facts. I have taken the opportunity to review the facts, further evaluate the evolving regulatory position and the cases I have previously Determined. Having done so, I consider that a period of approximately one month would generally be sufficient for a provider to put in place any procedures necessary as a result of the Regulator's new guidance. This view is supported by previous Determinations I have issued, such as PO-6375, along with others. Should this timeframe not be met by any provider, I would expect it to consider temporarily suspending transfers while it makes

the necessary arrangements or contacting The Regulator to request an extension on the stipulated transfer deadlines.

43. In this instance, the transfer application was made before the Regulator's guidance was issued; and the transfer was agreed and paid the day following the issuance date, so well within that one-month period. Of course, there was an issue around the bank account which meant the payment had to be re-sent but I do not consider this changes the position. The transfer had been agreed and paid and re-sending it was essentially an administrative action. No new information had been received to raise concerns about the transfer, the receiving scheme or to doubt the member's intentions. Furthermore, the final payment was made one month and five days after the Regulator's guidance. In the circumstances, I am prepared to accept that it would not be reasonable to have expected Aegon to have updated its transfer process and then revisit this transfer application on that date and at that last stage of the process.
44. The Scorpion guidance marked a point of greater vigilance and checks to be carried out by pension providers and I accept that this required a significant change in procedure and literature; the Regulator had made pension professionals aware of its concerns over pension liberation fraud prior to this and guidance was awaited. Moreover, new regulatory obligations were brought in to protect against a known and pressing problem and no permitted lead-in time or introduction date was given by the Regulator, so urgency was clearly required and expected. I consider that an approximate timeframe of one month, rather than three months, is generally appropriate, but it will always depend upon the circumstances in a particular case.
45. As the transfer process was completed within one month initially and then administratively re-sent shortly thereafter, I do not consider that Aegon was required to carry out the enhanced due diligence, involving further checks on the receiving scheme, as set out within the Scorpion guidance. The due diligence which Aegon carried out was in accordance with that which I would expect for transfers processed prior to the issuance of the Scorpion guidance. Namely, checking that the receiving scheme was registered with HMRC and not on any warning lists.
46. I do not find that Aegon was negligent in allowing the transfer, nor do I consider that doing so amounted to an administrative error.
47. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
11 March 2021