

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

<b>Applicant</b>	Mr Barry Rourke
<b>Scheme</b>	AEGON Retirement Control Plan No: 5240993 ( <b>the Plan</b> )
<b>Respondent</b>	AEGON

**Subject**

Mr Rourke complains that delays on the part of AEGON in effecting a partial disinvestment of the Plan's assets in order to secure an enhanced medical annuity of £7,200 pa with Just Retirement resulted in the annuity purchase price increasing from £99,865 to £101,390.

He also says that he has suffered distress and inconvenience dealing with this matter for which he would like to be suitably compensated.

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

The complaint should be upheld against AEGON because there were needless delays which resulted in Mr Rourke's annuity purchase increasing by £1,525 for which AEGON should be held liable.

## DETAILED DETERMINATION

### Material Facts

1. The Plan was a self-invested personal pension (**SIPP**) administered by Capita on behalf of AEGON. The self-administered assets of the SIPP were held with Funds Direct, a fund supermarket, and purchases and sales of these assets were made through Capita.
2. The Plan also had an insured element, the Retirement Cash Account (**RCA**), from which AEGON paid Mr Rourke a monthly income under capped drawdown. If there was insufficient cash in the RCA to pay this income, AEGON would ask Mr Rourke via his Independent Financial Adviser (**IFA**) to disinvest some of the SIPP assets and transfer the proceeds into the RCA.
3. During a telephone call on 30 July 2012, the IFA notified AEGON that Mr Rourke was looking to use the cash held in the SIPP Capital Cash Account (**CCA**) and the proceeds from the sale of some of the other SIPP assets to purchase an enhanced medical annuity with Just Retirement (costing in the region of £100,000). The IFA said that, by doing so, Mr Rourke would then receive an annual guaranteed income of (at least) £20,000 and thus qualify for flexible drawdown (with no limit on the amount of income to be drawn each year from the Plan). The IFA sought advice from AEGON on how Mr Rourke should proceed.
4. AEGON replied that:
  - they would accept Mr Rourke's instructions in writing if he specified the SIPP asset(s) to be sold and the amount(s) to be disinvested;
  - they would pass his disinvestment instructions to Capita; and
  - some types of investments were difficult to realise and could take several weeks to sell.
5. On 2 August, the IFA sent to AEGON Mr Rourke's written instructions (dated 1 August) which essentially summarised what the IFA had said during the telephone call. Mr Rourke also wrote that:
  - he wished to exercise a partial "Open Market Option" (**OMO**) in the Plan;

- he had applied for an enhanced medical annuity with Just Retirement on 31 July\*\*;
- Just Retirement would therefore be contacting AEGON shortly to confirm the sum required from the Plan to purchase the annuity and also to provide payment details; and
- AEGON should disinvest £75,000 from the CCA and the balance from the AVIVA Investors Asia Pacific Property A Fund.

\*\*According to the IFA, Mr Rourke sent his completed enhanced medical annuity application form to Just Retirement on 1 August and a copy was forwarded to AEGON by Just Retirement shortly afterwards. This form showed that Mr Rourke wished to purchase an annuity of £7,200 pa by means of exercising a partial OMO.

6. On 8 August, AEGON received an on-line partial OMO request for Mr Rourke from Just Retirement. AEGON did not process this request because they required the completion and return of their paper discharge forms for the Plan in order to do so.
7. Just Retirement notified the IFA during a telephone conversation on 8 August that the current cost of securing an enhanced medical annuity of £7,200 pa for Mr Rourke was £99,865. They also sent the IFA two annuity quotations and a medical declaration for completion by Mr Rourke.
8. On 9 August, Just Retirement sent AEGON a letter to inform them of the current annuity purchase price and the expiry date of the annuity rate guarantee, 7 September 2012. AEGON say that they received this letter on 13 August.
9. On 22 August, AEGON confirmed to the IFA that they had received Mr Rourke's partial OMO request and sent him their external transfer (instead of OMO) instruction forms by mistake for completion and return. The IFA says that he received these forms on 30 August (whilst he was on holiday).
10. On 3 September, AEGON received Just Retirement's own OMO forms. AEGON informed Just Retirement on 11 September that they would only accept their own OMO form and they e-mailed it to Just Retirement on the following day.

11. On 12 September, Just Retirement sent the IFA a quotation showing that the purchase price for Mr Rourke's enhanced annuity had increased to £101,390, which was guaranteed until 8 October.
12. The IFA sent to Just Retirement on 13 September Mr Rourke's partially completed external transfer discharge forms. Just Retirement telephoned AEGON on 17 September to ask whether these forms were the correct ones to use for a partial OMO. AEGON replied that they should use the OMO form e-mailed to them.
13. On 17 September, Just Retirement informed the IFA that the external transfer forms were inappropriate and sent the AEGON OMO form to Mr Rourke (via the IFA) for completion. On the same day, the IFA complained to AEGON about the substandard level of service provided in carrying out the partial OMO and asked them to ensure that £75,000 was transferred from the CCA to the RCA and a sum of £26,390 disinvested from the AVIVA Asia Pacific Property Fund (and paid into the RCA) by 28 September in order to meet a 1 October start date for Mr Rourke's annuity.
14. On 20 September, Mr Rourke's IFA sent AEGON the completed OMO form (showing a transfer amount of £101,390). AEGON received it on 24 September and instructed Capita to disinvest the specified funds on the following day but mistakenly asked for a full OMO instead of a partial OMO. They corrected their error on 27 September.
15. Capita forwarded the disinvestment instructions to AVIVA on 2 October. The chosen assets were sold on 3 October and the proceeds paid into the SIPP on 12 October. Capita transferred this amount into the RCA on 19 October 2012. (see paragraph 30 below for further details of Capita's claim timescale).
16. Although the expiry date for the purchase price of £101,390 had elapsed, Just Retirement was able to offer Mr Rourke an annuity of £7,200 pa payable from 1 November at the same price.
17. Mr Rourke subsequently transferred his remaining pension rights in the Plan to another pension provider. He is making a separate complaint against AEGON for failing to complete this transfer on a timely basis.

**Summary of the position of Mr Rourke's IFA (on Mr Rourke's behalf)**

18. AEGON was responsible for ensuring that Mr Rourke's disinvestment instructions were relayed to Capita and carried out by them in a timely manner.
19. There was a serious lack of communication between AEGON and Capita dealing with Mr Rourke's partial OMO application.
20. The failure of AEGON to mention during the telephone call of 30 July that they required completion of a specific discharge form for a partial OMO and to subsequently to issue the correct form were the main reasons for the delay to the annuity purchase.
21. If this delay had not occurred, he could have arranged for the completion of the AEGON OMO form before going on holiday (between 20 August and 6 September). His colleague was unsure whether the external transfer forms supplied by AEGON were correct and did not send them on his behalf to Mr Rourke whilst he was away from the office on holiday.
22. AEGON should have sent the sale request for the AVIVA Asia Pacific Property Fund to Capita on receipt and not wait until 27 September before doing so. If AEGON had done this, the disinvestment could have been completed and the funds available to Capita for transfer into the RCA from the CCA much earlier.
23. Capita should not have needed 17 working days to complete the transfer from the CCA to the RCA when most of the funds were already held as cash in the CCA.
24. In order to put matters right, Mr Rourke would like AEGON to reinstate into the Plan the number of units in the Asia Pacific Property Fund sold by AVIVA to cover the additional cost of the annuity purchase (i.e. £1,525) into the Plan.

**Summary of AEGON's position**

25. The purpose of the IFA's call on 30 July was primarily to find out more about the process used by Capita to disinvest assets in the SIPP. Although the IFA mentioned the possibility of a partial OMO application during the call, this did not constitute a valid request for a retirement benefit quotation (which would have included the OMO paperwork).

26. Mr Rourke's instructions (enclosed with the IFA's letter of 2 August) did not specify the amount required to purchase the annuity. They could not therefore provide any formal disinvestment instructions to Capita. They only received the completed OMO paperwork and details of the actual amount to be disinvested, i.e. £101,390, on 24 September in order to do this.
27. Although they accept that the most of the requisite funds were already held as cash in the CCA, some assets in the SIPP still had to be disinvested by Capita. Taking 17 working days to carry out the disinvestment and transfer the proceeds from the CCA to the RCA is not, in their view, unreasonable.
28. They accept that they caused a delay to the partial OMO process by initially failing to issue the correct OMO paperwork to the IFA. Although this was an oversight on their part, they do not accept that they should be liable for the partial OMO not being completed prior to 7 September.
29. Even if there had been no delay on their part, in their view, Mr Rourke could not have secured the original purchase price from Just Retirement for his annuity using reasonable timescales for the work to be done.
30. In an e-mail dated 3 June 2014, Capita said:

“In terms of process flexibility, we have an internal escalation process that I can see was used for this case.

When we receive a claims request from AEGON the Claims team review it before handing off to the dealers to sell the asset(s). We then have to wait for the investment house to process the trade and return the funds to us. We then reconcile those funds against the plan asset records before carrying out quality control and releasing the funds back to AEGON.

Our claims timescale is almost always between 15 and 20 working days, unless the funds are held in cash, in which case we can expedite the claims as we aren't reliant on a 3<sup>rd</sup> party investment house.”
31. Once they declined the on-line partial OMO application on 8 August, they should have created within 5 working days a retirement quote with payment forms for issue to Mr Rourke (via his IFA), i.e. by 15 August. As it took nine working days for the IFA to return the completed external transfer paperwork to them, it is reasonable to assume that the OMO form could also have been returned in this timescale, i.e. by 27 August and notification of the disinvestment sent to Capita on this date also. Taking into account that 17 working days were

required by Capita to carry out Mr Rourke's instructions, the requisite funds could have been transferred to the RCA by 19 September and payment made to Just Retirement by 24 September.

32. If Mr Rourke agrees with the above hypothetical timeline of events, they are prepared to carry out some price comparisons with both funds disinvested and the annuity purchased with Just Retirement.
33. They suggest the timescale specified in the Association of British Insurers' (**ABI**) compulsory Code of Conduct on Retirement Choices (see paragraph 37 below for details) to set up an annuity on the Open Market Option within 30 days is not reasonable for a SIPP where there is uncertainty in a disinvestment process outside their control.
34. Their procedures allow for two working days to send the completed OMO form to AEGON. They scan the form on the first day and only read it on the following day.
35. They had 26 days from 13 August to 7 September to set up the annuity with Just Retirement for Mr Rourke. Even if they had met the ABI guidance of 30 days to complete this transaction, it did not therefore necessarily mean that they would have met the deadline of 7 September. In their view, it is consequently unduly harsh to expect that they had enough time to complete the annuity purchase.

### **Industry Guidance**

36. The Association of British Insurers' compulsory Code of Conduct on Retirement Choices says:

“Where a product was bought through the Open Market Option, both providers must:

- use best endeavours to ensure the product is set up within 30 days from receipt of information by the receiving provider to completion of the contract by the provider

...

Where a customer's purchase is delayed, the provider must take steps to resolve the delay as quickly as possible and keep the customer informed.”

## Conclusions

37. In my opinion, the outcome of Mr Rourke's complaint depends only upon the events which took place from 8 August 2012 onwards. Part of Mr Rourke's argument is that events which occurred prior to 8 August contributed to the delay. But they did not contribute to the specific matter of the expiry date of the annuity rate guarantee. That was not set until 8 August.
38. Just Retirement prepared the enhanced annuity quotation on 8 August. The guarantee on the annuity rate used to calculate the cost of the enhanced medical annuity of £7,200 pa, i.e. £99,865, was valid only until 7 September, i.e. for 23 working days.
39. AEGON say that they first knew of the deadline on this annuity rate guarantee date on 13 August, when they received Just Retirement's letter dated 9 August. I accept that: 9 August was a Thursday and 13 August was the following Monday so there were two working days between sending and receipt.
40. But, knowing that there was limited time, AEGON then took seven working days before sending to Mr Rourke's IFA the discharge forms on 22 August (albeit the wrong ones). There was a further six working days before the IFA received these incorrect forms on 30 August, but I do not consider AEGON can be held responsible for any delay in transit.
41. AEGON knew that Capita would probably take between 15 and 20 working days to carry out the disinvestment and transfer the proceeds (plus £75,000 already held in the CCA) to the RCA. AEGON was therefore aware that it needed to act quickly to have any chance of meeting the 30 day target set by the ABI guidance.
42. Capita, in fact, took 18 working days, i.e. from 25 September until 19 October to carry out these transactions. I consider the overall time taken by Capita to do this was excessive given that they were aware that AEGON had received a complaint from Mr Rourke about their handling of the partial OMO. Capita was acting as AEGON's agent and knew that AEGON would be liable to Mr Rourke for any actual financial loss incurred as a consequence of the delay to the partial OMO process.



43. Capita received Mr Rourke's disinvestment instructions on 25 September but did not forward them to AVIVA until 2 October (i.e. five working days later). Capita then subsequently took five working days to transfer £101,390 from the CCA to the RCA after AVIVA had taken eight working days to disinvest £26,390 from their Asia Pacific Property Fund.
44. I accept that neither AEGON nor Capita would have any control over the time taken by AVIVA to disinvest but in my view, both parties could have taken significantly less time to complete their tasks during the partial OMO process. In my opinion, AEGON could have sent the correct OMO form to the IFA on 14 August (i.e. the day after they were informed that the current annuity price was £99,865). Their failure to do so, in my view constitutes maladministration on AEGON's part. If they had done this and the OMO form had arrived in the post without undue delay, the IFA could have arranged for its completion and return to AEGON before he went on holiday. Moreover, the time wasted completing incorrect discharge forms would then also have been avoided.
45. Assuming that AEGON had received the OMO form duly completed by 21 August, (i.e. a day after the IFA's last day in his office before going on holiday), Capita would then have received it on 22 August if AEGON had taken one working day to send it to them as per the actual timeline of events. AEGON say that their processes allow them two working days to send the completed OMO form to Capita. That may be so, but the test is whether, in this case, aware of the deadline, they used "best endeavours".
46. I also consider that Capita should have taken at most four working days to carry out two straightforward tasks of forwarding the disinvestment instructions to AVIVA and transferring the monies from the CCA to the RCA. Allowing for the fact that AVIVA needed eight days to disinvest the selected assets, the overall time taken by Capita could reasonably be expected to take 12 working days and the £101,390 paid into the RCA by 7 September.
47. But the actual number of days at each stage is not the significant point. The test is whether looked at altogether, it can be said that AEGON used its "best endeavours" as required by the compulsory ABI guidance to meet the 30 day target. I do not think it can be so described. (The guidance does not make an exception for self-invested personal pensions – and it does not need to because

“best endeavours” would allow for delay outside the provider’s control particular to that type of scheme). If AEGON had used best endeavours, I consider that there was enough time for the cost of Mr Rourke’s enhanced medical annuity with Just Retirement to have been calculated using the better annuity rate.

48. I find that the amount of compensation which Mr Rourke is seeking from AEGON reasonably represents his loss. I also consider that Mr Rourke will have inevitably suffered some inconvenience as a result of AEGON’s failure to complete the transaction in time.

49. So I uphold Mr Rourke’s complaint.

### **Directions**

50. Within 28 days of the date of this Determination, AEGON shall arrange to pay:

- the amount required now to reinstate into the Plan the number of units in the Asia Pacific Property Fund sold by AVIVA to cover the additional cost of the annuity purchase (i.e. £1,525) into the Plan;
- £200 to Mr Rourke in recognition of the distress and inconvenience caused to him dealing with this matter.

**Tony King**  
Pensions Ombudsman

2 October 2014