

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

Applicant	Mr Geoffrey Heppell
Scheme	Aegon Personal Pension Plan (the Plan)
Respondent(s)	Aegon

Subject

Mr Heppell has complained that Aegon have not managed or administered his Plan correctly or provided him with correct valuations of his investments and subsequently transferred an incorrect amount from the Plan.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against Aegon as although there were errors in the transfer value paid, Aegon have recognised this and offered compensation. Aegon have a legitimate right to seek the return of the overpaid amount included in the transfer value paid.

DETAILED DETERMINATION

Material Facts

1. The background to this case concerns Aegon seeking to recover an overpayment they say they made when transferring Mr Heppell's Plan to Scottish Widows. Aegon say the overpayment amounts to £15,561.85 less a rebate for a unit pricing issue with one of Mr Heppell's investments in Scottish Equitable's Universal Lifestyle Collection Fund which reduced the overpayment to £14,930.31. Aegon say the overpayment occurred as a result of the processing of a divorce settlement and the treatment of the Protected Rights Payments (PRPs).
2. The divorce payment could not be processed by Aegon's computerised system and was therefore processed as an external settlement and calculated manually. Similarly the PRPs could not be processed by the system and were too treated as an external manual settlement. This meant that for system purposes the whole value of the PRPs amounting to £16,732.84 was deducted from the system and after applying the Pension Sharing Order, £2,589.98 of the PRPs was paid to Mrs Heppell and the balance of £14,142.86 was reapplied to Mr Heppell's account. Aegon say that this manual calculation was carried out correctly.
3. In January 2008 Mr Heppell asked for his personal pension plan to be transferred to Scottish Widows. In order to do this Aegon had to manually calculate the Plan value as the system had been 'locked' due to the pension sharing order. The transfer value was calculated as £308,428.12, but Aegon say there was an error in this calculation and it should have been £305,142.21. A transfer value of £308,428.12 was paid to Scottish Widows on 5 February 2008.
4. Aegon had on 30 January 2008 advised their IT department that the Plan had become locked. The IT department responded and said that it was the external transfer of the PRP made on 4 October 2007 as part of the divorce sharing order that had caused the Plan to become locked. They suggested reversing the external transfer and on 11 February 2008 they confirmed that this reversal had been completed.
5. In August 2008 Aegon's Finance Department identified that there were outstanding entries in relation to Mr Heppell's Plan. These entries related to the PRPs paid (£2,589.88) as part of the pension sharing order and the transfer to Scottish Widows of £308,428.12. Aegon investigated the position and not

realising that the external transfer had been reversed with the sum of £16,732.84 being reapplied to Mr Heppell's policy, concluded that Mr Heppell had been underpaid. The transfer value was therefore recalculated as at 24 January 2008 (the date of the original calculation of the transfer value) as £320,704.06 and on 19 August 2008 Aegon paid a further sum of £12,275.94 to Scottish Widows.

6. Aegon first became aware of the overpayment in 2009 and wrote to Mr Heppell's financial adviser in January 2010 and then to Mr Heppell to advise him of the overpayment. Aegon initially told Mr Heppell that the overpayment was £16,732.84, which was the amount that had been credited to his policy following the internal review by IT in February 2008.
7. In February 2012 a further review was undertaken and Mr Heppell was given a figure of £15,422.91. This amount was worked out manually. After Mr Heppell questioned the figures and the evidence for the overpayment a revised schedule was produced using spreadsheets to show that the overpayment was £15,561.85.
8. Separate to the overpayment issue, Mr Heppell's Plan was reviewed as part of a general unit pricing issue regarding the Scottish Equitable Universal Lifestyle Collection Fund. As a result of this review Aegon calculated that Mr Heppell was entitled to additional units together with interest. The amount due to Mr Heppell as a result of the unit pricing issue was calculated as £631.54. This was deducted from the overpayment to reduce the amount due to Aegon to $(£15,561.85 - £631.54) = £14,930.31$ as set out in their letter of 27 August 2012.

Contributions to Mr Heppell's Plan

9. Mr Heppell has claimed that his employer made contributions to his Plan during 2007 totalling £33,882.86. Aegon say this is incorrect and is based on firstly an erroneous statement, which was sent to Mr Heppell before they had discovered their error and second a telephone call between Mr Heppell's IFA and one of their Customer Service representatives.
10. The Customer Service representative received a telephone call from Mr Heppell's IFA and he incorrectly confirmed that the sum of £14,142.86 was received as a contribution from Buro Four (Mr Heppell's employer) on 14 October 2007. This was incorrect and the representative did not look at the policy notes when he made this statement.

11. Aegon's records show that Buro Four made monthly contributions with the final contribution being paid on 24 September 2007 to coincide with Mr Heppell leaving his employment with Buro Four.
12. Aegon say their records show that the reference to the credit of £14,142.86 is clearly in relation to the PRPs, which was reapplied to Mr Heppell's Plan following the pension sharing order. The contributions received from Buro Four were all in relation to non- protected rights.
13. Aegon say that PRPs are only paid by HMRC and only if the planholder is contracted out. Mr Heppell was not contracted out under his Plan with Aegon. The only PRPs in his Plan came from a transfer from another policy which they received on 12 October 2006 for the sum of £15,146.08. Mr Heppell has not provided Aegon with any evidence from his IFA or from his former employer to show that the sum of £14,142.86 was a contribution from his employer.

Summary of Mr Heppell's position

14. Mr Heppell says that Aegon made and admitted to making a series of incorrect statements, errors and mistakes for which it expects him to both correct and interpret without the benefit of properly independently audited paperwork. He also says that he wants a complete and thorough independent investigation of every aspect of Aegon's management of his pension plan.
15. Aegon has failed to treat him as a reasonable former customer and to act diligently in looking after his best interest during the administration and management of his pension plan especially at the time of its surrender and transfer.
16. Mr Heppell says he has suffered the following injustices:
 - The transfer value paid to Scottish Widows did not reflect the correct amount owing due to Aegon's errors, oversights and delays. As a layman without immediate and direct access to its records and faced with such a catalogue of errors it was impossible for him to properly investigate the matter.
 - His pension plan could have suffered from other mistakes and errors which he has no means of establishing. He suspects that he may have suffered other injustices but it is not possible to ascertain this. If Aegon

are entitled to correct an isolated single injustice without justifying every other act it undertook on the Plan then he contends that to be right and just, it must demonstrate that every other act was correctly administered. The fact that he has uncovered other injustice without any access to its files leads him to call for the level of any, each and every error or omission to be accounted for and the value of his Plan to be correctly restated.

- He has suffered and continues to suffer distress, worry and inconvenience and waste of his valuable time directly as a result of Aegon's failures, omissions and claims. Aegon endeavoured to levy a charge to his current IFA for its time in responding to a reasonable request. To correct the injustice Aegon should reimburse him for the cost of his time wasted in this matter which he is reasonably sure would result in Aegon owing him money.
17. As regards the calculation date of the transfer value Mr Heppell has checked the position with Foster Denovo, who were his Financial Advisors at the time of the transfer of funds, and established the following facts relating to the Discharge Form.
 18. Foster Denovo issued the Discharge Form to him on 17th December 2007 which he received in the post over the Christmas period. Their letter clearly stated that the signature of the Discharge Form was required in order that "Scottish Equitable can release the money to Scottish Widows".
 19. Mr Heppell signed, dated and posted the form on Monday 7th January 2008. Foster Denovo received the signed Discharge Form on Tuesday 8th January 2008 and forwarded this to Aegon on the same day.
 20. Foster Denovo has confirmed their view that Aegon would have had the signed Discharge Form on Friday 11th January 2008 which was confirmed by them.
 21. Mr Heppell also says that he has consistently indicated to Aegon that it is the "costs" he has incurred in the deployment of his valuable time as a result of their handling of their claim which is a far more significant issue than any compensation which may also apply. The proposal of £500 for the time that he has had to deploy on this matter is derisory.

22. Compensation at such a level might, ordinarily, be appropriate to address the stress and inconvenience incurred had Aegon presented its claim information in a timely, logical and easily understood manner and in plain English. However, his contention has always been that it is the manner of Aegon's pursuit of this claim that has caused him, and continues to cause him having to deploy substantial time in response. As a self-employed consultancy professional, any substantial use of his time has a significant cost which must be recognised.
23. Mr Heppell says he has expended well in excess of a hundred hours on this matter even prior to the referral to the Pensions Ombudsman service. He continues to expend time on this which has been ongoing for several years. Similarly, he has had to assemble huge amounts of file information for the Financial Ombudsman Service, to whom Aegon originally suggested he refer the matter. He has also had to address significant further correspondence and dealings with the Pensions Advisory Service and then the Pensions Ombudsman service as well as those matters arising from the "stayed" County Court Claim.

Summary of Aegon's position

24. Aegon say their claim against Mr Heppell is based on the fact that they mistakenly overpaid £15,561.85. They are entitled to recover the money even though the overpayment was paid as a result of its own error.
25. The only defences which Mr Heppell might have available to such a claim are those of change of position or estoppel. In February 2012 Aegon sent Mr Heppell a copy of the Pensions Advisory Service guide in relation to payments made in error and the defences to an overpayment claim.
26. Mr Heppell has not asserted that he has any such defence to Aegon's claim. The overpayment was transferred to Scottish Widows and as far as Aegon is aware it remains unspent. Mr Heppell has been asked to authorise the return of the money from Scottish Widows but he has refused to do so. Mr Heppell is clearly not entitled to retain any payments, which were made in error to him and it is simply these monies which they are seeking to recover. Scottish Widows were made aware of the overpayment in December 2009.
27. Mr Heppell disputes that an overpayment has been made. He maintains that £14,930.86 more contributions were made to his Plan than were in actual fact made. In addition he claims that his fund should have been valued on 14 January

2008 rather than 24 January 2008. On this basis he maintains that Aegon should have paid him £347,605.34 rather than £320,704.06 and that he is therefore owed the sum of £26,901.28. This is incorrect.

28. Aegon say the correct date of transfer is 24 January 2008, which is the date they received all of Mr Heppell's completed forms from his IFA. The last form which was needed was Form CA1544 which is a mandatory form required by HMRC. The terms and conditions of Mr Heppell's policy made it clear that where a member wishes to transfer all or part of his benefits under the Plan to another pension arrangement the member must give Aegon in writing full details of the benefits to be transferred and any other information, which they reasonably need. A completed Form CA1544 was part of the information, which they required.
29. For these reasons Aegon does not accept that it is liable for any fall in the investment value of Mr Heppell's fund up until 24 January 2008 when the final form was received from his IFA.
30. Aegon have offered to pay the sum of £500 to Mr Heppell to compensate him for any distress and inconvenience he may have suffered and for any loss of expectation and also the errors which they have made in calculating the value of his Plan.
31. Aegon did initiate a legal action against Mr Heppell to recover the overpayment but have agreed to this being stayed whilst the Pensions Ombudsman's office reviews the case.

Conclusions

32. In my view there are three main issues here as follows:
 - Did Mr Heppell's employer pay additional contributions to the Plan which account for the alleged overpayment
 - Is Aegon's explanation of the overpayment reasonable and is there an amount to be repaid
 - Did Aegon delay the payment of the transfer value and should Mr Heppell's fund have been valued on 14 January 2008 rather than 24 January 2008.

33. On the first of these issues my investigator has contacted Mr Heppell's former employer Buro Four to establish the amount of pension contributions paid during the period of his employment with them. Buro Four have confirmed that they paid contributions for Mr Heppell between September 2006 and September 2007 and the normal pension contributions paid during this period amounted to £27,790. There was no contribution of £14,142.86 paid after Mr Heppell had left service.
34. I have also considered the point made by Aegon that the amount in question of £14,142.86 is made up of PRPs and that these types of contributions would not be made by an employer. It is true that PRPs are payments made by the Department of Work and Pensions in respect of individuals who contract out of the second part of the State Pension Scheme. Therefore on the balance of probabilities I am of the view that Aegon's Customer Service representative did incorrectly advise Mr Heppell's IFA that the sum of £14,142.86 had been received as a contribution from Buro Four on 14 October 2007.
35. The next question to be addressed is whether Aegon's explanation of the overpayment is reasonable and is there an amount to be repaid. It does seem to me that the arguments put forward by Aegon are logical and coherent. Mr Heppell's employer has confirmed that they did not pay a further contribution of £14,142.86. Therefore again on the balance of probabilities I find that it is more likely than not that Aegon's explanation of how the overpayment arose is correct.
36. Mr Heppell has also asked for a complete and thorough investigation of every aspect of Aegon's management of his pension plan. Although I can understand that Mr Heppell may have concerns over the further administration of his Plan the Pensions Ombudsman's office does not have the resources or time to carry out such an investigation. We have to be proportionate in our investigations and have concentrated our investigation on the main element of the complaint namely whether an overpayment was made.
37. Aegon have also said that they identified that the unit prices for one of Mr Heppell's funds was incorrect and this was picked up as part of Aegon's customer remediation programme. Aegon also say that this was a robust and transparent programme which was carried out with full visibility to the Financial

Services Authority and the governance processes included external auditors and consultants.

38. Aegon admit they calculated the transfer value incorrectly and compounded the issue by incorrectly reapplying the PRPs that had been excluded when carrying out the pension sharing order. In effect they had double counted for these PRPs. Aegon have asked for the return of £14,930.31 after making allowance for the unit pricing issue and for interest to be added to this amount.
39. Aegon say that as Mr Heppell was notified of the overpayment at the end of 2009, he has had at least four years 8 months for his investment to increase in value. If Mr Heppell simply pays back the amount of the overpayment without any interest or any of the growth he has received he will be unjustly enriched as a result of Aegon's mistake. Mr Heppell has never asserted that the funds have gone down in value and in all probability the funds have increased in value. The fairest conclusion would be for Mr Heppell to authorise Scottish Widows to return the funds to Aegon inclusive of any growth over the period.
40. Aegon also say that if Mr Heppell does not authorise the repayment they will have no option other than to proceed through the courts. In any claim for restitution Aegon would be entitled to claim interest from the time of the overpayment in accordance with the court's common law restitutionary jurisdiction or under section 35A of the Senior Courts Act 1981 at such rate and for such period as the court thinks fit.
41. In these situations where an overpayment has been made Aegon do have a right to seek the return of the overpaid amount. I am therefore of the opinion that Aegon do have a legitimate claim for the return of the overpaid amount. Aegon have also asked for interest to be added to this amount for the period that Mr Heppell has had this money in his Scottish Widows personal pension plan. However I do not consider it appropriate for Mr Heppell to pay interest over the intervening period as there is no certainty that the manner in which he would have invested the overpayment has produced a return and to pay interest would possibly leave him in a worse off position.

42. I have however taken into account Aegon's submission that they should be entitled to any growth in the value of the funds for the four years or so that these have been in Mr Heppell's personal pension plan with Scottish Widows. I therefore agree that the fairest solution would be for Mr Heppell to authorise Scottish Widows to provide Aegon with a reconciliation of how these monies have been invested over the four years or so and to return the equivalent amount inclusive of any growth (or loss) on these funds.
43. The final issue is whether Aegon delayed the payment of the transfer value unnecessarily and whether Mr Heppell's fund should have been valued on 14 January 2008 rather than 24 January 2008. Mr Heppell says that Aegon failed to calculate the value of his fund in a fair and timely manner upon receipt of his signed Discharge Form and their incorrect interpretation of, and reliance upon, the use of the HMRC Form - which the HMRC confirmed is only required by Pension Companies to "release" not "calculate" fund values.
44. Aegon say they do not dispute when the Discharge form was received but one of the forms they required was CA1544 which is a mandatory form required by HMRC. The terms and conditions of Mr Heppell's policy also made it clear that where a member wishes to transfer all or part of his benefits under the Plan to another pension arrangement the member must give Aegon in writing full details of the benefits to be transferred and any other information, which they reasonably needed. Form CA1544 was part of the information, which they reasonably needed.
45. Aegon have provided a copy of Form CA1544 and I see that this is required to confirm to HMRC that the member wishes to transfer his PRPs to another pension arrangement. As Mr Heppell did have PRPs within his Plan I agree that it would require completion before the transfer could proceed. Form CA1544 was completed and signed by Mr Heppell on 22 January 2008. The form was scanned on to Aegon's system on 24 January 2008 and that was also the date used to calculate the transfer value. I therefore do not consider that the transfer should have been calculated at an earlier date.
46. Mr Heppell has said that HMRC had said that the form was only required to release and not calculate fund values. Although HMRC may have said that I can see that it would be impractical for an insurance company to calculate a transfer

value on a date before all the necessary forms are received. It would in all probability give rise to a number of claims such as this and the only practical and accepted way of calculating a transfer value is when all forms have been received.

47. Finally Aegon have offered Mr Heppell a compensation payment of £500 which I believe is a fair amount and in line with what I would be likely to direct. My awards in relation to distress and inconvenience are modest and are not intended to recompense the complainant for the time he has put into the case.

Jane Irvine
Deputy Pensions Ombudsman

13 October 2014