

Ombudsman's Determination

Applicant	Mr N
Scheme	AEGON SIPP (the SIPP) Reference No: 4488224
Respondents	AEGON Capita SIP Services (Capita)

Ombudsman's Determination and reasons

1. I agree that part of Mr N's complaint against AEGON should be upheld, but there is a part of the complaint I do not agree with. To put matters right, AEGON shall pay Mr N £1,000 in recognition of the distress and inconvenience caused to him by delay in authorising his instructions and £199.90 for the "loss interest" on the £20K transferred to the Barclays Wealth brokerage account in September 2012.
2. My reasons for reaching this view are explained in more detail below.

Complaint summary

3. Mr N complains that AEGON and Capita did not follow his instructions on a timely basis to:
 - a) approve a new stockbroker, Barclays Wealth, for the SIPP which prevented him from making potentially profitable investments based on their advice; and
 - b) transfer cash into a new Barclays bank deposit account he had opened within the SIPP which offered a higher rate of interest.

Background information, including submissions from the parties

Appointment of Barclays Wealth

4. In 2001, Mr N transferred the benefits available to him from a previous pension scheme to the SIPP. AEGON and Capita are the trustees and current administrators of the SIPP respectively.
5. The SIPP is comprised of self-administered and insured components. For the self-administered element, as per Mr N's instructions, AEGON only held sufficient cash in

a Royal Bank of Scotland bank account (**RBS account**) to pay the SIPP fees. AEGON also used this account to audit investments bought/sold in the SIPP.

6. Mr N says that the insured element provided by AEGON was the incentive for them to offer a bespoke SIPP which allowed him to place funds with as many stockbrokers as he wished with whom he could deal directly on an execution only, advisory or discretionary basis. Each stockbroker held its own bank account into which Mr N could deposit cash for investment and receive interest/dividend payments. The stockbrokers also had their own nominee accounts to hold his stocks and shares investments in the SIPP.
7. Capita received copies of bank statements, contract notes and valuations from his stockbrokers for their information. They charged a fee to the SIPP for each investment which he bought or sold and also for setting up a new SIPP bank (deposit) account or stockbroker's bank account.
8. Mr N originally appointed two stockbrokers for the SIPP. One was Gerrards.
9. In October 2011, Mr N decided to replace Gerrards with Barclays Wealth.
10. Barclays Wealth informed Capita in their e-mail dated 17 January 2012 that:

“We are currently seeking to be appointed as investment manager and custodian of part of the aforementioned SIPP. Mr N is currently looking to move the management of his Gerrards holdings through to Barclays Wealth.

Although we have a master agreement in place with AEGON through another part of the group (Gerrards) we do not currently hold one through Barclays Wealth. Barclays Wealth operates on different platforms/systems hence we require your agreement to manage on an advisory mandate with Barclays Wealth as investment manager.

I attach a copy of our advisory application form. I would ask that you consult with AEGON for your agreement in this matter.”

The enclosed form was signed by Mr N on 20 December 2011.

11. On 25 January 2012, Capita informed Barclays Wealth that in accordance with the SIPP trading rules (a) all stocks would have to be registered in the name of Barclays nominees, (b) all cash would have to remain in the RBS account and (c) deals would have to be placed through their dealing team as a telephone trade.
12. On 27 January 2012, Capita returned the application form duly completed to Barclays Wealth with a covering letter which reiterated that AEGON only permitted cash for investment in the SIPP to be deposited in the RBS account and not externally (in Barclays Wealth's bank account).

13. Mr N was unhappy that he was not allowed to deal with Barclays Wealth in the same way that he had previously been dealing with Gerrards and complained to Capita on 10 April 2012. He maintained that Capita were trying to change the way he operated the SIPP.
14. Capita referred his complaint to AEGON because, in their view, allowing Mr N to deal with his stockbrokers in the way he wished did not comply with the SIPP trading rules.
15. AEGON asked their legal department to investigate this matter because they shared Capita's concerns. In particular AEGON were worried of the risk that Mr N might become locked in an investment which was not permitted in accordance with the SIPP trading rules.
16. In their e-mail dated 9 May 2012, Capita informed AEGON that:

“Carrying on as things are is not wrong in terms of current SIPP/pension legislation but it would be contrary to your scheme trading rules. It was the member's request to transfer his account from Gerrards to Barclays Wealth (both of which are essentially members of the same Group) that highlighted that Mr N's account was/is being operated in contradiction of the scheme trading rules and therefore why we have raised it as a potential issue. Having established that the member was trading incorrectly in the past does not mean that we have to acquiesce going forward...

It is an issue for AEGON because its scheme trading rules are not being adhered to by the member...The rules are there to ensure that execution only trades are placed by the Capita Dealing Team and that settlement of trades is controlled by us. Furthermore we are also able to ensure that only permitted investments are purchased...

...it is for AEGON trustees to decide whether to allow the status quo with Gerrards to remain and/or to allow it to be carried over to Barclays Wealth or to take the transfer to Barclays as the opportunity to regularise Mr N's account activity bearing in mind the likely strongly negative response that would result.”
17. After a protracted investigation, Capita informed AEGON on 12 February 2013 that, in their view:
 - a) the arrangement with Gerrards did not contravene the SIPP trading rules; and
 - b) the agreement between AEGON and Gerrards set out what investments were permitted and thus mitigated the risks of investing in non-permitted funds
18. AEGON confirmed to Capita on 30 March 2013 that they would allow the transfer of Mr N's existing stockbroker arrangement to Barclays Wealth.
19. In their letter dated 10 April 2013, Capita notified Mr N of AEGON's decision and also informed him that:

- a) they would not be involved with his investment instructions and merely send money to Barclays Wealth whenever required;
- b) they had enclosed an appendix showing which stocks Barclays Wealth could invest in;
- c) he should sign the appendix if he agreed with the terms; and
- d) their investment team would examine any investments made which was not listed on the appendix and instruct their sale if necessary

Transfer of cash to a new Barclays bank deposit account held within the SIPP

- 20. Under the SIPP rules, Mr N could open as many bank (deposit) accounts within the SIPP as he wished.
- 21. Mr N opened (via Gerrards) a new deposit account with Barclays, his private banker, on 10 March 2012 in order to earn interest on the cash held within the SIPP at a preferential rate of 1.25% pa.
- 22. Mr N asserts that:
 - a) he asked Capita via Gerrards to transfer around £630K from the Gerrards bank account into the new Barclays deposit account; and
 - b) he complained to Capita on 10 April 2012 when they refused to comply
- 23. Capita, however, say that they have no record of receiving such instructions in writing from him. Mr N contends that he did not do this because Capita had told him that cash could only be deposited in the RBS account (which paid no interest) and could not be transferred into the new Barclays deposit account. The £630K therefore remained in the Gerrards bank account earning a lower rate of interest.
- 24. Mr N also says that:
 - a) during the summer of 2012, Barclays Wealth informed him that Capita had given their consent for the transfer of his existing stockbroker arrangement from Gerrards to them;
 - b) it was only after receiving such notification that Barclays Wealth arranged for a new Barclays deposit account to be opened for him on 3 September 2012 (to replace the unused account opened in March 2012) and also transferred his share portfolio held with Gerrards to themselves on 6 September 2012;
 - c) he subsequently asked Barclays Wealth to transfer around £642K from his Gerrards account to the new Barclays deposit account; and
 - d) Barclays Wealth suggested that the transfer should be made via the RBS account to establish an audit trail

25. As he was concerned that Capita might retain the £642K in the RBS account, he requested a transfer on 16 September 2012 of £20K already held in it to Barclays Wealth's bank account (and not the new Barclays deposit account).

26. Capita informed him in their e-mail dated 24 September 2012 that:

"Although we can see that an account has indeed been set up by Barclays we are in discussion with AEGON about the basis of such an account that, on the face of it, appears to contravene AEGON's own scheme rules that relate to execution and advisory accounts...

Ordinarily AEGON scheme rules also require that trades be placed through the CSIPS Dealing Team as a telephone trade...I do not believe you follow this scheme rule and that you issue your trading instructions direct to Barclays Wealth and previously to Gerrards. This issue is also being discussed with AEGON.

I am sorry for the delay...but we need to establish the ground rules for your account in order that there are no further complications in the future."

27. Mr N replied on 25 September 2012 as follows:

"I understand your position but the ground rules have been established for 12 years. The scheme was set up in 2001 on the basis that the funds allocated to Gerrards (later Barclays)...would not come under AEGON's direct control. AEGON gained the protected rights fund on condition they provided me with a tax wrapper for the main fund that I would control. Therefore the two brokers have always followed my instructions and reported directly to me although they provide details of all transactions to Capita and warrant not to invest in unauthorised products. They are not required to transfer uninvested cash to you...The RBS account only exists to pay your fees. It does not pay interest whereas the deposits with brokers earn interest. I will not agree to this change.

Your version of the scheme rules on placing orders is not the same as mine...the AEGON manager who sold me the scheme said I did not have to use the dealing service with an execution only account and the scheme documentation stated I "may" use the service, it did not say that I must use the service..."

28. Capita informed Mr N that they had referred the matter to AEGON on 26 September 2012.

29. Once AEGON was satisfied that the new stockbroker arrangement with Barclays Wealth did not contravene the SIPP trading rules (please refer to previous section for further details), Capita transferred £20K into Barclays Wealth's bank account on 17 May 2013 and the balance in Gerrards bank account of around £547K was subsequently transferred on 11 June 2013.

Mr N's position

30. In his view, Capita and AEGON should have resolved their issue by 10 April 2012 at the latest. He maintains he has lost net interest of £5,341 as a consequence of the the £630K not being transferred to the Barclays deposit account on this date. He also maintains he has lost stock market gains because he did not reach his goal of being 95% invested following the advice of Barclays Wealth.
31. He decided to replace Gerrards with Barclays Wealth as one of his stockbrokers because he needed advice on how to invest £500K saved in the Gerrards bank account in the stock market which he was expecting to rise in 2012. He therefore asked Barclays to set up a SIPP advisory agreement for him with Barclays Wealth for which he had to pay a fee regardless of whether he traded with them or not. He could not therefore seek advice elsewhere once the agreement was established (on cost grounds) and to use the same service with Gerrards would have cost him an extra £25,000 pa.
32. He did not want to invest in the stock market without the benefit of Barclays Wealth's advice. He has estimated that he suffered an investment loss of £90,407 as a result of missed opportunities due to the failure of AEGON and Capita to approve on a timely basis his stockbroker arrangement with Barclays Wealth. Although he accepts that he cannot prove this loss, it is a reasonable estimate based on the performance of his existing SIPP investments. He has allowed for the stock purchases which he made through Gerrards in order to try mitigating his financial losses.
33. Capita should not have signed the Barclays Wealth advisory agreement on 27 January 2012 if they were unhappy with it. They should have deferred signing it until they had sorted out the problems, in particular, the risk issue with AEGON before doing so. AEGON concluded that there was no risk as Capita could always sell the stocks/shares if the stockbrokers made a mistake but this was known in 2001 so there was never a problem. Furthermore in their advisory agreement, Barclays Wealth committed to only buying permitted investments.
34. AEGON and Capita took 17 months to decide that transferring his existing agreement to Barclays Wealth was acceptable. In his view, this was too long and they should therefore he held responsible for him losing the potential investment gains. He had warned them that this might happen if they delayed the transfer.
35. In particular, he was keen to invest during October/November 2012 in shares which Barclays Wealth had recommended but forfeited the opportunity because he could only do so if he traded through them.
36. He disagrees with AEGON's view that he could still have traded with Gerrards whilst the protracted transfer was ongoing because he was denied Barclays Wealth's advice in order to take advantage of the investment opportunities which they had identified.

He had to pick all the stocks himself during this period and he was not comfortable doing this.

37. Capita had no right to refuse the transfer of around £630K from the Gerrards bank account to the Barclays deposit account which is permitted under SIPP rules. They failed to distinguish between Barclays Wealth's brokerage account and the Barclays deposit account. They should only have blocked requests to transfer cash to the former account.
38. He bought shares using his selected stockbrokers and only asked Capita occasionally to buy on his behalf. He would check all the statements/contract notes and correct any errors. All Capita had to do was to check that no unauthorised investments had been made. Capita wanted to change this efficient system of running the SIPP and make trades on his behalf and replace the Barclays Wealth account with the RBS account. The effect of this would be to prevent him from trading at best market price and loss of contact with the broker.
39. He expected AEGON to ensure that the terms of the SIPP are honoured as originally agreed for as long as it exists and not try to force him into making changes which he did not want. He says "the last minute changes" made by Capita on 25 January 2012 (referred to in paragraph 11) were not brought to his attention and he should not be bound by them. He says he had already agreed the appendix of permitted investments when he gave his instruction to appoint Barclays Wealth.

AEGON's position

40. There was an unacceptable delay before they decided to allow Mr N to transfer his existing stockbroker agreement to Barclays Wealth. This delay can be attributable to the complexity of the matter and having to obtain further information from Capita before making their decision.
41. When Capita took over the administration of the SIPP, they put new agreements in place which allowed them to monitor investments more closely and block any potential investments not permissible under the SIPP trading rules.
42. Capita would allow any existing stockbroker arrangements already in place to continue. They were not prepared however to agree to any new bespoke stockbroker arrangement without firstly ensuring that it was operating in the way they would expect. When Mr N requested that they allow him to transfer his stockbroker arrangement from Gerrards to Barclays Wealth and change it from an execution only to an advisory basis, they considered this to be an amendment to the contractual arrangement. It was therefore reasonable for them to review the new arrangement.
43. They did not prevent him from seeking investment advice from Gerrards or elsewhere and can see no reason why whilst the transfer was ongoing, Mr N could not have continued to trade with Gerrards as he had done previously.

44. Mr N continued to trade with his other stockbroker. He could have mitigated any potential loss during the period in question by investing funds held with Gerrards along the same lines as his other stockbroker.
45. Mr N has not provided any evidence to show that he has suffered an actual investment loss of £90,407. He is claiming for speculative losses which he has admitted are impossible to prove.
46. They have offered him a “distress and inconvenience” compensation payment of £600 as a gesture of goodwill and also £199.90 in loss interest on the £20K which he instructed Capita to transfer from the RBS account to the Barclays Wealth bank account on 16 September 2012 - this transfer did not actually take place until 17 May 2013.
47. They disagree that any delay in the transfer of Mr N’s portfolio caused him to fail to reach his goal of being fully invested and thus lose out on stock market growth.

Capita’s position

48. It was AEGON’s decision not to allow stockbrokers to hold SIPP monies when the arrangement is made on an advisory basis. They made this decision in order to adhere to the Financial Services Authority’s (FSA) (now Financial Conduct Authority (FCA)) principle that they must arrange adequate protection for their clients’ assets.
49. As Mr N wanted the arrangement with Barclays Wealth to be on the same basis as the Gerrards one, they referred the matter to AEGON on 30 April 2012 to make a final decision. AEGON was not obliged to accept this new arrangement because it did not comply with execution or advisory account product rules.
50. They did incorrectly tell Mr N that he could not deal directly with Barclays Wealth though.
51. Mr N’s e-mail instructions of 16 September 2012 asked them to transfer £20K to the Barclays Wealth’s account. They were unable to do this as the concession had not been authorised by AEGON. Mr N did not mention in his e-mail that the money should be transferred to the Barclays deposit account.
52. They did not tell Barclays Wealth the issue had been resolved in August 2012. The fact that AEGON did not agree to the arrangement until 20 March 2013 proves this.
53. They only learnt that the new Barclays deposit account had been opened on 3 September 2012 when they received a bank statement on 5 June 2013.
54. They are only able to transfer funds to a bank deposit account if written instructions are provided. They did not receive such instructions from Mr N in either March or September 2012.

Adjudicator's Opinion

55. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by AEGON. The Adjudicator's findings were that the complaint should be partly upheld against AEGON because:
- a) the time which they took to approve the new stockbroker arrangement with Barclays Wealth for Mr N was clearly excessive;
 - b) the maladministration identified had not in his view caused Mr N any injustice in the form of actual financial loss though; and
 - c) he considered that Mr N had only suffered a loss of expectation and also considerable distress and inconvenience for which he should be suitably compensated
56. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments many of which were not new. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Determination

57. I consider that when Mr N submitted his request to replace Gerrards with Barclays Wealth as one of his stockbrokers in January 2012, Capita and AEGON were entitled to check whether or not the new bespoke arrangement with Barclays Wealth complied with the SIPP trading rules in force at that time using their new procedures which allowed them to monitor the SIPP investments more closely.
58. I agree with Mr N that this process should not have taken 17 months.
59. AEGON have conceded that they were mainly responsible for the unacceptable delay before approving the new arrangement. It is clear from the evidence that the root cause of the delay was AEGON's failure to obtain the information which they needed from Capita on a timely basis to make their decision as quickly as possible. I consider that this failure contributed significantly to the time taken by AEGON to complete the review and clearly amounts to maladministration.
60. I accept that Mr N was hindered in his ability to use advice from Barclays Wealth during the time between setting the transfer of the arrangements in motion and their eventual completion, but there is insufficient evidence of actual financial loss having occurred as a result. I do not accept that lack of access to a particular adviser led directly to his being out of the market and the amount which he has calculated for his investment loss is purely speculative. I concur with AEGON that Mr N could have continued to trade using Gerrards in order to mitigate any potential financial loss from being disinvested.

61. That said, the distress and inconvenience caused by the lack of access to the services of Barclays Wealth will have been significant, given the length of time and the amount of money concerned and I agree with the adjudicator that £1,000 is an appropriate award in the circumstances.
62. In my view, the first part of Mr N's complaint should be partly upheld against AEGON only.
63. I do not uphold the second part of the complaint. In order for Capita to transfer cash held in the Gerrards bank account into the Barclays deposit account Capita required clear written instructions from Mr N. This was particularly important since both the deposit account and the brokerage account were operated by Barclays.
64. The available evidence does not, however, indicate that Mr N provided such instruction, either in March or September 2012.
65. If he had done so in March 2012, I see no reason why AEGON would not have carried out the cash transfer to the deposit account since they were aware of its existence.
66. In September 2012, Mr N instructed Capita to transfer £20K from the RBS account to Barclays Wealth stockbroker account. At that point he did not tell Capita that Barclays Wealth had opened a new Barclays bank deposit account for him.
67. In my view, Capita was therefore not at fault for failing to carrying out Mr N's instructions to transfer the balance in the Gerrards bank account to the Barclays bank deposit account.
68. The goodwill compensation payment of £199.90 offered by AEGON to settle this part of Mr N's complaint is entirely reasonable under the circumstances.

Directions

69. Within 28 days of the date of this Determination, AEGON shall pay Mr N £1,000 in recognition of the distress and inconvenience caused to him and £199.90 for the "loss interest" on the £20K transferred to Barclays Wealth brokerage account in September 2012.

Karen Johnston

Deputy Pensions Ombudsman
2 June 2016