

Ombudsman's Determination

Applicant	Mr E
Scheme	Scottish Equitable Stakeholder Pension (the Plan)
Respondent	Aegon

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Aegon.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that Aegon negligently transferred the Plan into the Bardwell Heights Ltd Pension Scheme (**the Bardwell Scheme**).

Background information, including submissions from the parties

4. In March 2013, Mr E was contacted by text message with the offer of an investment opportunity for frozen pension funds. At the time, he was 38 years old and employed.
5. Having responded, Mr E received a telephone call from Pension Assist Limited (**Pension Assist**), an unregulated introducer. He was informed that the investment was a "fully insured Bond", and he could invest through a pension scheme with The Wicker Shine Ltd.
6. On 19 March 2013, Mr E signed a letter of authority for Pension Assist to make enquiries about the Plan. This letter also stated: -

"I also confirm that I am aware the company is not FSA regulated and as such cannot give me any specific pension advice."
7. On 19 March 2013, Pension Assist wrote to Mr E. Among other things, this stated: -

"In order to assess your eligibility we need you to sign and return the enclosed Letter/s of Authority (we will need one for each of your pension providers). This will allow our assessors to determine the suitability of your current pensions for transfer and calculate your likely commission entitlement..."

Please sign and return the enclosed Letter(s) of Authority as soon as you can in the SAE provided..."

"Agreement – this document is for your retention only as confirmation of your introducer's commission."

"Wicker Shine Ltd. Pension Scheme – this document is a brief introduction to Wicker Shine and to Protected Portfolio Bonds. This is for your retention only.

Wicker Shine Ltd. Letter of Authority – please check personal details and then sign as indicated and return in envelope provided."

Frequently Asked Questions

(Q) How much can I get from my pension upfront?

(A) Nothing – Pension Release (Liberation) is illegal, you cannot take any cash from your pension before the date set out by HMRC. Please refer to the following web address regarding the legalities of your pension...

(Q) If I can't get money out my (sic) pension, how does Pension Assist Ltd. pay me?

(A) Pension Assist Ltd. receives a commission from the investment provider upon a successful transfer from one pension scheme to another. Your commission is paid to Pension Assist Ltd. Who are the principal introducers. Pension Assist Ltd. will forward all "sub-agent" commissions to their clients as soon as they are received."

8. There is a second letter of authority, with the signature dated 21 March 2013, also confirming Pension Assist's authority.
9. On 25 March 2013, Aegon date stamped receipt of the letters of authority from Pension Assist. These letters of authority made no reference to a specific scheme that Mr E might be transferring into.
10. On 30 March 2013, Aegon issued a transfer value quotation to Pension Assist.
11. On 1 April 2013, Aegon wrote to Mr E's previous and updated address for data protection purposes.
12. On 12 April 2013, Mr E received a letter from Pension Assist confirming his interest in a "commission rebate" of 10% of his pension investment. It also confirmed that the investment would provide a yield of 69% over 10 years and that Pension Assist would not provide financial advice.
13. On 17 April 2013, Mr E signed a letter of authority for the Wicker Shine Limited Pension Scheme (**the Wicker Shine Scheme**), agreeing to the release of information to it. The letter of authority included an address for the scheme. It was submitted to Aegon, however no information on the Plan was requested and Aegon did not issue any documents to the Wicker Shine Scheme in response to it.

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14. On 3 May 2013, the Wicker Shine Scheme was placed on an internal list held by Aegon called 'list B'. Transfers linked to businesses on list B would be subject to additional due diligence checks.
15. On 9 May 2013, Aegon received a transfer request from the Bardwell Scheme. The transfer instruction document had been signed by Mr E on 17 April 2013.
16. The request included confirmation of the Bardwell Scheme's registration with HMRC and its Pension Scheme Tax Reference (**PSTR**). In the footer of the letter, the address provided for the administration office was the same address as on the Wicker Shine Scheme's correspondence, but the registered scheme address was a different location.
17. As the Bardwell Scheme had been registered within 12 months of the transfer request Aegon referred the transfer internally to its financial crime team in line with its pension liberation checking process.
18. On 13 May 2013, having reviewed the transfer, and after referring to the internal financial crime team, Aegon issued a letter to Mr E requesting he confirm in writing that he wished to transfer. The letter stated:-

 "We also enclose a leaflet produced by The Pension Regulator on possible risks associated with transferring your pension."

19. The Pensions Regulator leaflet (**TPR, the Scorpion Leaflet**) had been issued following an industry wide announcement (**the Announcement**) in February 2013¹, highlighting the risks of pension liberation. The Scorpion Leaflet contained a number of warnings directed at potential members who were thinking of transferring. Mr E says that this leaflet was not enclosed in the letter he received.
20. Also on 13 May 2013, Aegon referred the transfer to the Serious Organised Crime Agency (**SOCA**). The reasons given for the referral were the recent registration with HMRC and the fact that the Bardwell Scheme shared a director with the Wicker Shine Scheme.
21. On 16 May 2013, SOCA responded confirming that it consented to Aegon making the transfer. Although the letter consented, amongst other points, it did not: -

 "Oblige or mandate a reporter to undertake the proposed act

 Imply SOCA approval of the proposed act"
22. It also stated: -

 "Should the circumstances detailed in your disclosure change in such a way as to give rise to further knowledge or suspicion of money laundering (not

¹<http://webarchive.nationalarchives.gov.uk/20130402194931/http://www.thepensionsregulator.gov.uk/pension-liberation-fraud.aspx>

already disclosed by you) you may wish to give consideration to a further disclosure under Part 7 Proceeds of Crime Act 2002.

23. On 20 May 2013, Mr E responded to Aegon's letter confirming he wished to continue with the transfer and asked that it happen as soon as possible. This letter was received by Aegon on 24 May 2013.
24. On 23 May 2013, the Wicker Shine Scheme was moved by Aegon from list B to list A. List A was a list of businesses which, where involved in a transfer, on the basis of advice from HMRC, Aegon would decline the transfer.
25. On 29 May 2013, Aegon confirmed that the transfer to the Bardwell Scheme had been made. £20,667.51 was transferred.
26. In August 2014, TPR issued a final notice in relation to the Bardwell Scheme, and appointed an independent trustee due to concerns over pension liberation and fraud.
27. Mr E has since attempted to get clarity on the status of his pension funds, and its security. The majority of the funds appear to have been invested in an illiquid long term plantation investment. The independent trustee is investigating the scheme and the investment to determine possible recovery of funds.
28. Mr E complained to Aegon about its decision to transfer. Aegon has since defended its decision to transfer on the basis that it acted appropriately following Mr E's request.

Adjudicator's Opinion

29. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aegon. The Adjudicator's findings are summarised briefly below: -
 - The features of Mr E's transfer meant it appeared likely that Mr E was the victim of a pension liberation scam.
 - Following the Announcement, and by the time of Mr E's request to transfer, Aegon had made changes to its processes, having introduced the A and B lists and through issuing the Scorpion Leaflet for certain transfers.
 - Aegon had received inconsistent correspondence about the destination of Mr E's transfer. Initially the letter of authority made no reference to the receiving scheme, but a second letter of authority referenced the Wicker Shine Scheme. When the transfer request was received, it requested the transfer to the Bardwell Heights Scheme.
 - At the time the second letter of authority was received, the Wicker Shine Scheme was on list B, and by the time of the actual transfer request it had been moved to list A, following advice from HMRC not to transfer. The Adjudicator acknowledged

that this was a significant consideration, but he was not of the view that a restriction on a transfer to the Wicker Shine Scheme meant Aegon should not transfer to the Bardwell Heights Scheme.

- The Adjudicator highlighted that they were distinct schemes, and whilst run by the same administrator, Aegon could not cross reference concerns over one scheme to the other. In this instance, HMRC had told Aegon specifically not transfer to the Wicker Shine Scheme, but there was no such direction in relation to the Bardwell Height Scheme. In the circumstances the Adjudicator thought it was appropriate for Aegon to carry out due diligence on the Bardwell Height Scheme, but it could not have prevented the transfer as Mr E had a statutory right.
- The transfer was referred to Aegon's financial crime team and considered under its due diligence process. As part of this it wrote to Mr E, with the Scorpion Leaflet, requesting that he confirm he wished to transfer. Although Mr E says he did not receive the Scorpion Leaflet, the Adjudicator took the view that this was unlikely and considered he ought to have queried its contents as it was mentioned in the covering letter.
- The Scorpion Leaflet highlighted risk factors which were present in the arrangement of his transfer, including unsolicited contact, cash incentives and the involvement of an unregulated party. Having provided this, it was Mr E's decision whether he wished to proceed and he confirmed he did. When coupled with the HMRC registration, there was no reason why Aegon should not have gone ahead with the transfer.
- Although Mr E thinks Aegon should have requested copies of the correspondence he had received from Pension Assist prior to the transfer, that was not common practice at the time, and the Adjudicator could not see any reason why Aegon should have queried the transfer further. The provision of the Scorpion Leaflet was sufficient for Mr E to have been put on notice about the risks of transferring.

30. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

31. Firstly, I note the Adjudicator's comments that the Wicker Shine Scheme was on list B by the time the second letter of authority was received, and on list A by the time the transfer request was received. However, this does not accurately reflect the timeline. The Wicker Shine Scheme was not put on list B until after the second letter of authority was received and it was not placed on list A until after the transfer request had been received. Having said that, this does not materially change the outcome of the case.

32. Mr E has said that there was only a matter of days between his transfer and the point at which the Wicker Shine Scheme was placed on the A list. However, the timing of that switch is not relevant as Mr E's transfer was not into the Wicker Shine Scheme.
33. The Bardwell Heights Scheme was not on either of the lists at the time of the transfer. The reason additional due diligence was undertaken on this scheme was the fact it had been registered within 12 months of the transfer request and it shared common features with the Wicker Shine Scheme. Whilst the recent registration of a scheme is a common factor in pension liberation, it is not in itself a definite sign of pension liberation; new schemes are regularly established. In respect of the other shared features, Aegon could not apply the concerns held about the Wicker Shine Scheme to the Bardwell Heights Scheme.
34. Mr E suggests that Aegon ought to have noticed that the transfer was initially proposed based on a transfer to the Wicker Shine Scheme, and only at the last minute was it switched to the Bardwell Heights Scheme. The correspondence between Aegon and SOCA shows that the links between the two schemes were identified and considered by Aegon. SOCA responded confirming that it had no reason to stop the transaction going ahead. I consider that by referring this issue to SOCA, Aegon took an appropriate step to investigate this link.
35. Mr E argues that the referral to SOCA was irrelevant, but that Aegon should have updated SOCA with any change in their suspicions. Although Mr E has not specifically said so, I infer this to mean the subsequent movement of the Wicker Shine Scheme from list B to list A should have been passed on to SOCA for further comment. Whilst Aegon might have taken that action, by that point Mr E had responded confirming he wanted the transfer to go ahead, despite the additional warnings that from Aegon's perspective had already been provided to him.
36. Over the course of the transfer Aegon had received evidence of the Bardwell Heights HMRC registration and evidence that Mr E was employed. Although the test was not applied by Aegon at the time, in the current legal framework these circumstances would entitle Mr E to a statutory right to transfer. This means that Aegon could not have blocked the transfer unilaterally, and Mr E would have needed to retract his request for it not to go ahead.
37. In this situation, where there are circumstantial questions over the legitimacy of the receiving scheme, but the individual has a statutory right to transfer, the most Aegon could be expected to do would be to provide additional warnings and invite Mr E to reconfirm he wished to transfer, in line with the guidance set out in the Announcement. In doing so Aegon could not provide advice or be seen to be actively discouraging the transfer. The appropriate and proportionate act was to provide the Scorpion Leaflet, containing the risks of such a transfer, and allow Mr E to decide on whether to proceed.
38. The evidence suggests Aegon did this. The letter dated 13 May 2013, which Mr E responded to, makes specific reference to the leaflet being enclosed and states that it

outlined the possible risks of transferring. Mr E is adamant that the Scorpion Leaflet was not enclosed, and had it been, he would have read it and cancelled the transfer. I appreciate Mr E's stance on this, but where there is a dispute over what happened I must make a finding on the balance of probabilities. Although it is conceivable that the leaflet may not have been enclosed, in the vast majority of cases letters which reference an enclosure include the enclosure. It seems more likely than not that it would have been included.

39. However, assuming it was not enclosed, the cover letter which Mr E accepts was received, mentions the leaflet setting out the possible risks of transferring. Mr E has said that the decision to transfer was not one taken lightly, and I do not doubt that. But given the importance of the situation, if the covering letter mentions a leaflet containing possible risks, which wasn't enclosed, I would expect Mr E to have requested a copy of it before making his decision. That he did not request a copy lends weight to the position that it was received.
40. Hypothetically, if I were to make a finding that the Scorpion Leaflet was not enclosed, and Mr E had no reason not to request a new one, that would constitute a failure on Aegon's part. However, I would then need to follow a causation argument. But for Aegon's failure to provide the Scorpion Leaflet, would Mr E's claim for losses have occurred? There are cases where despite very clear warnings against transferring, the individual still wishes to transfer. In this instance Mr E had a financial incentive to transfer and this adds to the uncertainty over whether he would have proceeded despite having read the Scorpion Leaflet.
41. I must balance what I consider to be the high probability of the Scorpion Leaflet being enclosed against the possibility that it was not. The likelihood that it was not is less because there was reason for Mr E to be aware it ought to have been enclosed, and he could easily have requested a further copy.
42. I appreciate Mr E says that had it been enclosed and had he read it he would have cancelled the transfer, but that stance is with the benefit of hindsight. Mr E also acknowledges that he was aware this was a "big risk" with his entire pension pot, but was willing to transfer based on contact with what he knew were unregulated businesses. These high-risk circumstances suggest that even if the warnings had been provided, it is plausible that Mr E would have proceeded with the transfer regardless.
43. On the balance of probabilities, I consider it more likely than not the Scorpion Leaflet was enclosed with the letter. I realise Mr E strenuously denies receiving it, and I do not doubt his honesty or disregard his statement, but I cannot disregard the evidence provided by Aegon that it ought to have been received together with the reference in the letter to the enclosure.
44. Mr E argues that Aegon should have spoken with him directly to discuss the risks, and whilst it could have done, to do so was not established good or normal practice at the time. The announcement had encouraged pension providers to provide the

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Scorpion Leaflet to potential transferors and that is what the evidence indicates Aegon did.

45. There was no apparent justification for Aegon to unilaterally block Mr E's proposed transfer to the Bardwell Height Scheme and Mr E had been invited to change his mind in light of the risks the transfer posed. I appreciate this will be very disappointing for Mr E, and I have great sympathy for the situation he finds himself in, but I can only conclude that Aegon had followed the relevant good practice at the time and there was no maladministration.
46. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
26 April 2018