DRN-3660425

Financial Ombudsman Service

The complaint

Mr J has complained about the transfer of his pension held with Scottish Equitable Plc trading as Aegon (Aegon) to the Capita Oak Pension Scheme (the Scheme) in 2013. The Scheme was subsequently found to be fraudulent and as a result of this Mr J feels it is very likely that he has lost the total funds he transferred. He feels Aegon should have done more to protect him and to warn him about the potential dangers of transferring his pension.

Mr J is represented by a claims management company (CMC), which has made various arguments on his behalf. However, for simplicity, I'll refer to all submissions made on Mr J's behalf as being from Mr J, except where necessary.

What happened

In 2012 Mr J held a group stakeholder pension plan associated with his previous employer. In 2012 he began the process of transferring this pension to the Scheme.

At the time, he was 45 years of age. He was unemployed due to ill health and was reliant upon state benefits. Mr J has told us that he was not a sophisticated investor and had no experience of investments or pensions. He had no savings and was living in rented accommodation. He hadn't contributed to his pension since 2009.

Mr J says he was cold called in early 2012 by a company offering to review his pension arrangements. He can't remember specifically which firm this was but the CMC has said it was thought to be Imperial Trustee Services Limited (Imperial).

Mr J has said that he was told by this firm that his funds in the pension with Aegon were not performing well and he would make more if he transferred the funds to the Scheme. He was told his monies would be invested in property.

When speaking with the investigator Mr J stated that he thought his pension with Aegon was "just sitting there" and as he hadn't paid into it since 2009 he thought this was a good opportunity to make more money.

He said that he spoke to the firm two or three times by telephone and then the rest of the process took place over email. He also said that he was offered some upfront cash, around £3,000, but he never received this.

The Scheme stated it was an Occupational Pensions scheme. The transfer documentation stated its registered address was in Manchester but the Scheme was established in Cyprus. Imperial was noted in the transfer documentation as the Scheme's administrator.

It would appear that Imperial liaised with Aegon after contacting Mr J to obtain details of the pension. The Scheme then wrote to Aegon on 31 January 2013 requesting the transfer of Mr J's pension. It included the completed transfer paperwork, signed by Mr J dated 20 November 2012 as well as the HMRC registration certificate for the Scheme which showed it was registered with HMRC on 23 July 2012. The transfer of around £29,000 to the Scheme was completed on 1 February 2013.

While Mr J says he was told his pension would be invested in property, it seems the scheme in fact made a single investment in storage pods with Store First Ltd, an unregulated UK based entity. The Pension Regulator (TPR) appointed Dalriada Trustees as independent trustees and administrators of the scheme on 12 January 2017. There has been an investigation into the scheme by the Serious Fraud Office (SFO) and the scheme is now thought to have been a scam.

Points of complaint

Mr J complained to Aegon in July 2020 saying that it had failed to carefully assess the transfer and failed to identify any potential warning signs from TPR's guidance to prevent pension scams. These were:

- Mr J was under the age of 55.
- The involvement of unregulated introducers.
- He'd been cold called and offered a 'free pension review'.
- There was a lack of regulated advice.
- The scheme had been recently registered with HMRC on 23 July 2012- only six months before the transfer was requested.
- The scheme was based in Manchester (and seemingly established in Cyprus) which was geographically remote from Mr J and it didn't employ him.
- The administrator of the scheme was not FCA registered.

Mr J said, had Aegon identified the presence of these warning signs and given him appropriate warnings, he would not have gone ahead with the transfer.

Aegon's response to the complaint

In its final response letter Aegon said its process at the time was to pass the transfer paperwork to its transfer out team to check the forms. The team checked whether the details on the certificate were accurate and checked whether the Scheme was named on its internal list of schemes and providers that its financial crime team had identified as high risk or suspicious.

As this wasn't the case it felt it could proceed with the transfer as requested.
It stated it had met the standard that was required for transfer at that point in time.

Unhappy with the response from Aegon Mr J brought his complaint to this Service where it was assessed by one of our investigators.

At this time Aegon raised an objection to this Service considering the merits of the complaint Under the Dispute Resolution (DISP) Rules set out in the Financial Conduct Authority (FCA) handbook (set out below) because it thought it had been brought to us too late. As the transfer took place in 2013 it felt the complaint had been brought outside of the six-year element of the rule. It also stated that Mr J would have been aware of a cause to complain in 2017 when the trustees appointed to the scheme had sent communications explaining they had been appointed, that the SFO had begun an investigation into the Scheme and that it would be unlikely there would be any funds in the scheme to pay any benefits.

The investigator was unable to resolve the dispute informally, so the matter has now been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Time Limits

Because Aegon has raised a time bar objection and didn't accept the investigator's view I must first consider whether Mr J has brought his complaint to this Service within the timescales set by the FCA DISP Rules (as already mentioned) under which I am required to operate.

Without the consent of the business involved, we can't consider a complaint that is brought to us outside set time limits.

The rules setting out which complaints this Service can and can't consider are found in the DISP rules, mentioned above.

Specifically, DISP 2.8.2 R sets out the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:
……..
(2) More than:

(a) Six years after the event complained of; or (if later)
(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and had written acknowledgement or some other record of the complaint being received;

Unless:

(3) in the view of the ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; …….

The transfer of Mr J's pension took place in 2013, so given he brought his complaint to this Service in 2020 it's clear his complaint is out of time under the first part of the rule, as it was referred more than six years after the event complained of. I therefore need to consider whether Mr J became aware, or ought reasonably to have become aware, that he had cause for complaint against Aegon more than three years before he referred his complaint to our service in 2020.

To determine this, I will need to consider:

a) When I think Mr J became aware, broadly that he had suffered some sort of loss.
b) When I think he became aware that this was a result of some act or omission, and
c) Whether on the basis of facts known to Mr J, or reasonably ascertainable by him at that time (including facts he might reasonably have been expected to acquire with the help of appropriate expert advice) Mr J should have been aware there was a real possibility that his loss was attributable to the acts or omissions of Aegon.

The appropriate question is not whether Mr J was aware that he *could make* a complaint against Aegon, but rather whether he ought reasonably to have known *he had cause to* complain about Aegon. In order to have the requisite awareness, it is not necessary that Mr J understood that Aegon may have been responsible for omissions that amounted to 'due diligence failures' as such. All that is required is that Mr J ought reasonably to have been aware that there was a real possibility his loss was attributable to failings by Aegon. He need not know with any precision what it was that Aegon had failed to do – it would be enough that he understood the 'essence' of the failings that may have occurred (such as a broad understanding that Aegon had failed to take reasonable steps to ensure the transfer was not made to a fraudulent or otherwise inappropriate scheme). In addition, in order for the three-year clock to start to tick, the loss reasonably attributable to Aegon need only be *part* of the loss suffered – he does not need to have had requisite awareness of Aegon's possible role in causing *the whole* of the loss suffered.

Mr J didn't receive anything from Aegon at the time he requested the transfer except for the confirmation documentation. So I have no reason to think that he should reasonably have known that Aegon had any specific duties (as required by the FCA, for example) as part of the transfer process other than Aegon being the provider of his stakeholder pension.

Aegon has said that the Scheme had been encountering problems from 2015. This may well be the case but for this to have triggered Mr J's awareness of a problem with the Scheme he would have to have known about it and/or the information had to be something he would have reasonably come across. But, from my knowledge there was very little information in the public domain about the problems facing the Scheme at that point in time. So I think it's unlikely Mr J would have been aware of the problems with the Scheme and therefore I don't think he should have or would have had a cause to complain at this point in time. Furthermore, even if Mr J had seen information about the problems the Scheme was facing, I think it unlikely that he would have known about Aegon's responsibilities in relation to the transfer.

Turning now to the announcement Mr J would have received from Dalriada in 2017 when they were appointed as trustees of the Scheme. The first one would have been in March 2017 when Dalriada were appointed by TPR. In this announcement they explained who they were, why they had been appointed by TPR and they set out their role to be:

- To administer the scheme.
- To manage the scheme's assets and understand the nature of all assets held.
- To act in the best interests of all member and beneficiaries.
- To assist the Pensions Regulator with any enquiries in relation to the management of the scheme.

The announcement also explained what action Dalriada had taken so far – exclusive control of the existing trustee bank accounts and investigating the assets. It also provided their own contact details should the member have any questions.

The second announcement from Dalriada in July 2017 explained SFO had opened an investigation into the scheme. The announcement included a link to an SFO questionnaire and encouraged members to complete it to assist with the investigations. It also gave some information about Store First Limited and explained that a large amount of the money transferred to the Scheme was passed onto Store First Limited and this company is one of the companies included in a petition made by The Secretary of State for Business to be wound up. And again, it offered themselves if the member had any further enquiries.

The second announcement from July 2017 is the specific one which Aegon feels would have put Mr J on the path of discovery to making his complaint. Given the contents of this announcement I agree that Mr J would, or at least should, have by this time been aware that something had gone wrong with his pension fund in the Scheme. However, as I mentioned above, this alone isn't enough for me to conclude that Mr J had a cause to complain against Aegon at this stage. This is because there is nothing in the July 2017 (or the March 2017) announcement that informs Mr J that Aegon's actions, or lack thereof, may be responsible for his loss, nor does the announcement provide Mr J with anything that could lead him to find this out at this stage.

Even looking at the questionnaire from the SFO I don't think anything in that document would have led Mr J to the fact that Aegon had duties when transferring his pensions. While I haven't been able to locate the exact questionnaire from 2017 I have seen one from 2021. I think the contents would have been very similar and none of the questions allude to the responsibilities of the ceding scheme.

So in my view, from the announcements issued in 2017announcement I don't think Mr J would have realised the problems with his pension were attributable to Aegon nor do I think that this is information Mr J could have expected to acquire given what he was told at the time.

It was only from the announcement from Dalriada in February 2020 that I think Mr J would have reasonably become aware that Aegon, as his ceding scheme provider, had due diligence obligations in relation to his pension transfer. This announcement explained that the transferring scheme provider might have some due diligence obligations and included a final decision by The Pension Ombudsman (TPO) where a complaint had been made against the transferring scheme provider.

So to conclude, nowhere in any of the announcements until 2020 does it state that the ceding scheme may have been required to take steps to reduce the risk of pension liberation. The previous announcements from Dalriada in relation to the Scheme don't specifically refer to any roles played by the parties involved in the transfer nor do they mention anything about potential complaints against the ceding scheme or steps the ceding scheme may have taken to prevent fraud.

So while Mr J would have, or at least should have, been concerned about his pension upon receiving these announcements (up to 2020) I haven't seen anything that might suggest Mr J ought reasonably to have known that his loss was attributable, even in part, to the failures of Aegon. So in my view, having considered the evidence available from the time of the transfer, and later when the trustees became involved, there is not enough evidence to establish the requisite awareness required by DISP2.8.2R started until February 2020 which is the year Mr J made his complaint to this Service.

It therefore follows that I am satisfied that Mr J's complaint was made in time.

The merits of the complaint

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Aegon was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- At the time of Mr J's transfer, Aegon was regulated by the Financial Services Authority (FSA). As such, it was subject to the Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA rules governing pension transfer requests, but the following have particular relevance to transfer requests:

  – Principle 2 – A firm must conduct its business with due skill, care and diligence;
  – Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly
  – Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
  – COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme.

- The possibility that this might be exploited for fraudulent purposes was not new, even in 2013 when Mr J transferred. The transfer of benefits to a fraudulent receiving scheme used to be known as "trust busting" and was, for example, specifically referred to in practice note changes made in the Inland Revenue's Pensions Update No.132 (May 2002). The Inland Revenue asked *all* pension schemes to be vigilant to the possibility of receiving transfer requests to these schemes. But, at this time, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- The various different pensions tax regimes were brought under a single regime with the implementation of the Finance Act 2004, and the Inland Revenue became HMRC in April 2005. The previous Inland Revenue practice notes were replaced with a new manual which didn't specifically refer to liberation. However, the new Act only permitted a range of payments that were deemed 'authorised payments' to be made from a tax-approved scheme. It therefore rendered a transfer to a liberation scheme liable to be treated as an unauthorised payment with the possibility of tax charges both on the member and the ceding scheme.

- On 10 June 2011 and 6 July 2011, the regulator at the time, the Financial Services Authority (FSA), warned consumers about the dangers of "pension unlocking". It referred to cold-calling and websites promoting transfers to schemes that invest money overseas to avoid paying UK tax and/or result in cash being drawn from the pension ahead of retirement, including as a loan. Particular concerns related to the tax implications of these transactions, the fees charged and potential investment losses from scam activity. The FSA said it was working closely with HMRC and The Pensions Regulator (TPR) to find out more information and encouraged affected

consumers to contact the FSA, HMRC or TPR helplines.

- July 2011 the FSA/FCA published an announcement about early release pensions schemes on its website aimed at consumers. It mentioned that consumers had reported being approached by scammers. It said the first contact comes out of the blue and consumers are offered to transfer existing pension to a QROPS or an overseas pension structure to avoid paying UK tax. Or to transfer the pension to an alternative provider that will arrange for the money to be invested overseas, such as in property abroad. It also detailed the risks involved.

- In August 2011 the FSA published an announcement on its website aimed at consumers entitled "Protecting yourself from fraud and unauthorised activity". It recommended four checks to carry out before accepting advice to transfer:

    - Check whether the firm contacting you is regulated and it gave a link to the FCA's website and consumer helpline number.
    - Check you have the firm's correct details by looking at the website if possible and companies house – this is especially important if you have been cold called.
    - Check the FCA's list of unauthorised firms and individuals (website link provided) that are currently targeting UK investors and that the FCA has had complaints about.
    - Keep in mind that authorised firms that you have no relationship with are highly unlikely to contact you out of the blue offering to buy or sell shares or other investment opportunities.

- TPR announced in December 2011 that it was working with HMRC and the FSA and had closed some schemes that were used for liberation.

- February 2012, TPR published a warning, and factsheet, about pension liberation. The FSA supported this campaign. It was designed to raise public awareness about pension liberation, and remind scheme trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow. The warnings highlighted in the campaign related to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan.

- For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr J's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension scams was still in its infancy at the time of Mr J's transfer and that it wasn't until after Mr J's transfer that scheme administrators had more specific guidance to follow in this area.

What did Aegon do and was it enough?

With the above in mind, at the time of Mr J's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Aegon had the Scheme's HMRC registration certificate, and PSTR, so it didn't need to do anything further in this respect.

Aegon has told us that upon receiving the transfer request and the completed transfer forms it passed the paperwork to its transfer out team to check the forms. The team checked

whether the details on the certificate were accurate and checked whether the scheme was named on its internal list of schemes and providers that its financial crime team had identified as high risk or suspicious.

Given the timing of this transfer request – the fact it was before TPR guidance - Aegon's process appears to be in line with what I'd expect a business to be doing around this time taking into account the obligations under PRIN and COBS. It was keeping a record of suspicious schemes and checking against those records when each transfer came in.

There was also a need for businesses to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

However, I'm satisfied nothing along these lines would have been apparent to Aegon at the time of the transfer. Mr J's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call. And, given the guidance in place at the time, there was no expectation for Aegon to contact Mr J to see how his transfer had come about. Similarly, in the absence of those enquiries, Aegon wouldn't have known that Mr J was expecting a £3,000 payment following the transfer, which would have been a cause for concern for Aegon.

I appreciate the point raised by the CMC about the fact the scheme had been established in Cyprus looking odd and therefore Aegon should have picked up on this. But, Aegon would only have known about this from the HMRC data feed that it had been provided with. However, the purpose of that was to confirm the scheme was a registered one which was all Aegon was looking for at that point in time. Given this transfer took place before the before the Scorpion guidance was published Aegon wouldn't have had reason to think this was an anomaly, especially given pre-Scorpion there wasn't widespread knowledge that schemes established abroad were more at risk than those in the UK.

Furthermore, it's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. This means that I can't fairly expect Aegon to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate it was sent) as being suspicious. And it means I don't expect Aegon to have investigated the sponsoring employer's trading status, geographical location or connections to unregulated investment companies.

I'm also satisfied Aegon didn't have to be alarmed at the contact it received from a third party that wasn't authorised by the FSA. The FSA didn't regulate occupational pension schemes at all, so Aegon wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very

activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

So sending information to Imperial ahead of the transfer, which Aegon did, wasn't problematic in itself and it wasn't something it needed to be mindful of when it came to processing the transfer. And when Aegon received the transfer request itself, it came directly from the occupational scheme (or those administering it), which again did not require FSA authorisation.

I would expect an FSA -regulated personal pension provider at that time to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights. Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider, in 2012 and the beginning of 2013, to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

So given the time of this specific transfer and what was known within the industry at that stage I am satisfied that Aegon carried out its duties in relation to the transfer in line with the FSA's principles. I don't think Aegon should have reasonably had cause for concerns about the transfer and I see no reason why it would have needed to carry out any further checks at this time.

Should Aegon have blocked the transfer

Mr J's CMC has said that Aegon should have known he was unemployed at the time he requested the transfer and therefore should have blocked it because he had no statutory right to transfer. They've also said that Aegon acted wrongly in granting a discretionary right to transfer.

However, my view is that Aegon didn't act under its discretionary powers because it had no reason to believe Mr J was not employed.

The CMC is correct in saying that in being unemployed, Under the Pensions Schemes Act 1993 (chapter 48, section 95, subsection 2b) Mr J didn't have a statutory right to transfer. However, there was no requirement at the time of this transfer for providers to actively check a member's employment status, so I must consider what was reasonable for Aegon to have known when it received Mr J's transfer request.

Having looked at the transfer paperwork I am satisfied that no mention was made of Mr J's employment and none of the completed forms asked for information about his employment. So, I don't think it's reasonable that Aegon would have known Mr J's employment status at the time of the transfer.

As well as this, while Aegon was aware that Mr J had left the employment of the business which held the group stakeholder pension plan (from which he was transferring) this was in 2009, some three years before Mr J requested to transfer his pension. So, I don't think it's reasonable for Aegon to have recalled this information when it received Mr J's transfer request. Furthermore, knowing Mr J had left the employment of this specific firm didn't necessarily confirm Mr J was unemployed -– he could have been employed elsewhere. And the same applies if Aegon had seen that Mr J was no longer making contributions to his pension. All this would indicate is that Mr J had stopped paying into that specific pension – he could have been employed elsewhere and contributing to another scheme.

Overall therefore, at the time of the transfer request, and by the reasonably expected standards of industry due diligence at that time, Aegon had no reason other than to conclude that Mr J had an employment link to the scheme requesting the transfer. Aegon was in possession of no other information to suggest Mr J was unemployed. Unless it was, there is no basis on which I could reasonably expect Aegon to have explored refusing to make this transfer – whether that was because Mr J had no statutory right to make it, or otherwise.

Therefore, to summarise, as I have explained in this decision, at the time of Mr J's transfer, Aegon would have been expected to know the receiving scheme had a PSTR and was correctly registered with HMRC. Aegon had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-liberation due diligence. The FSA's Principles and COBS 2.1.1R meant Aegon still had to be alive to the threat of pension liberation and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Aegon should have responded to. I am also satisfied that Aegon didn't know Mr J was unemployed nor did it have reason to know or question this.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 March 2024.

Ayshea Khan
Ombudsman