

Ombudsman's Determination

Applicant	Mr E
Scheme	Aegon Flexible Pension Plans (the Plans)
Respondent	Aegon

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Aegon.

Complaint summary

2. Mr E complains that Aegon did not undertake adequate due diligence when transferring his benefits in the Plans to a Gaudi Regulated Services Limited self-invested personal pension (**the SIPP**).
3. He says that, with the exception of some small payments he has received, his funds have been lost. He would like Aegon to put him back in the position he would have been had the transfers not taken place.

Background information, including submissions from the parties and timeline of events

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr E is represented by Whitehall Randall & Associates Ltd (**WRAL**).
6. Mr E established the Plans, of which there were two, with Aegon.
7. Mr E says that he was approached by an agent (**the Agent**) concerning a possible transfer of his benefits out of the Plans.
8. On 14 January 2015, someone purporting to be Mr E telephoned Aegon (**the Telephone Call**). He provided Mr E's date of birth, home address and a plan number in order to pass Aegon's security checks. During the conversation he was provided with valuations for the Plans. He requested transfer packs, including the transfer discharge paperwork. When asked by Aegon's call handler, he declined to provide his

email address and any telephone numbers, saying that he preferred to correspond by post.

9. Due to a system error at Aegon, the transfer packs were never issued.
10. On 10 February 2015, Gaudi Regulated Services Limited (**Gaudi**) wrote to Aegon enclosing completed transfer discharge paperwork requesting the transfer of Mr E's benefits in the Plans to the SIPP. In relation to this paperwork:-
 - A transfer instruction signed by Mr E on 27 January 2015 was included.
 - None of the information on the forms was pre-populated.
 - The SIPP's HM Revenue & Customs (**HMRC**) registration certificate was provided. This showed that it was registered on 23 April 2012 with a pension scheme tax reference of 00783372RA.
 - Gaudi was the SIPP's provider and administrator, and Gaudi Trustees Limited was its trustee.
11. On 16 and 17 February 2015, Aegon made payments of £64,674.15 and £621,734.06 to Gaudi in respect of Mr E's benefits in the Plans.
12. WRAL has confirmed that, in 2019, Mr E took a small pension commencement lump sum (**PCLS**) and income from the SIPP.
13. On 10 February 2021, WRAL raised a complaint with Aegon on behalf of Mr E. In summary, it said:-
 - Mr E had been the victim of a scam. With the exception of the benefits he had taken in 2019, this had resulted in the loss of £686,408.21.
 - The transfers took place after February 2013, when The Pensions Regulator (**TPR**) had issued its 'Pension liberation fraud - The predators stalking pension transfers' guide (**the 2013 Guide**). There were a number of red flags which Aegon should have been aware of, and which should have resulted in the case being referred to its Financial Crime Team (**the FCT**).
 - Aegon had no evidence of regulated advice being provided to Mr E. The Agent, who had provided Mr E with financial advice, had been an authorised and regulated independent financial adviser until 2009. Aegon did not check who he was. Mr E had no reason to transfer his benefits out of the Plans had he not been persuaded to do so by the Agent.
 - While Aegon may not have been able to refuse the transfer, it should have done more to ensure that Mr E was able to make an informed decision. This included issuing a disclaimer for him to sign.
 - Aegon did not engage with Mr E in relation to his transfer request, either by telephone or letter.

14. On 8 April 2021, Aegon provided its response. In summary, it said:-

- It was not clear to it how WRAL concluded that the transfers were obvious scams.
- Its due diligence process included checking:-
 - Whether the receiving scheme was on its internal list of high-risk schemes which was compiled from its own investigations and industry shared knowledge. Neither the SIPP, Gaudi nor Gaudi Trustees Limited appeared on the list.
 - The receiving scheme's HMRC registration and whether it had been established in the last 12 months. The SIPP had been registered on 23 April 2012, more than two years before the transfers took place.
 - Whether the financial adviser, the receiving scheme or the scheme's administrator were authorised by the Financial Conduct Authority (**FCA**), and so subject to its regulations. Gaudi had been regulated by the FCA since July 2009. At the time of the transfer, it had not been made aware whether Mr E was receiving regulated financial advice.
- Where there were concerns, these would be raised with the FCT who would perform additional checks, including contacting the customer to discuss the transfer. In the case of Mr E's transfers, no concerns were identified.
- The SIPP was still an ongoing concern and Gaudi continued to file annual accounts and remained authorised with the FCA. Mr E should make his claim to Gaudi.
- It had no duty of care regarding the selection and performance of investments in a plan held with another provider.
- Mr E's application to transfer met the statutory requirements for it to proceed. It had no discretion to refuse it.

15. In 2022, the Financial Ombudsman Service (**FOS**) upheld a complaint raised by Mr E against Gaudi. Mr E said that it had failed to carry out the appropriate checks when he applied to open the SIPP and subsequently transferred money into it. FOS set out a basis for calculating the redress due to Mr E and instructed Gaudi to pay this sum to him, subject to a maximum of £160,000 plus interest.

16. Mr E also made a complaint to the police in relation to the financial losses he incurred as a result of the actions of the Agent. Investigation into this complaint is ongoing.

WRAL made the following additional submissions on behalf of Mr E:-

17. Having reviewed a recording of the Telephone Call:-

- While the caller had identified himself as Mr E, Mr E identified the caller as being the Agent.

- The security checks involving name, address and date of birth were not adequate as this was information that was readily available to the public.
 - There were many concerns including the caller declining to provide details of his email and telephone number. The caller had also given evasive and nervous responses, used technical jargon and provided a plan number without being prompted.
18. Aegon had said that the transfer packs were not issued, but they must have been as the transfer paperwork had been completed by the Agent for Mr E to sign.
19. Aegon should have issued Mr E with a copy of the 'Predator's stalk your pension' leaflet (**the Scorpion Leaflet**) or equivalent advice should have been provided.
20. If Aegon had talked to Mr E and indicated that a scam may be in progress, he would not have proceeded with the transfers.

Aegon made the following additional submissions:-

21. It was not permitted by the FCA to provide Mr E with financial advice. Nor was there a legal requirement for Mr E to take financial advice from a regulated adviser. During the Telephone Call, it had asked the caller whether the financial adviser it held on Mr E's record should be removed and it was told that it should. It then informed the caller how he could locate a new adviser.
22. In relation to the Telephone Call:-
- Its security checks had included the provision of a plan number, date of birth and home address. The caller went through the checks with no hesitation. It would not expect customers to make plan numbers publicly available.
 - The checks were in line with those performed by its FCA regulated competitors.
 - It questioned whether the Agent had been given the plan numbers and permission to contact Aegon by Mr E and, if not, whether the matter had been reported to the police.
 - The caller had requested transfer quotes and valuations for the Plans. The Telephone Call did not form part of the transfer request process.
23. In relation to the transfer paperwork, none of the information on the form was pre-populated. This indicated that it was likely that it had been downloaded from Aegon's website. Any form provided as part of a transfer pack would have had information pre-populated. The signature on the form matched that on Mr E's original application form.
24. The evidence suggested that the transfers proceeded with Mr E's explicit instruction and knowledge.

25. It had not been made aware of any attempt by Mr E to access benefits before age 55 or of any offer of a cash incentive made to him.
26. At the time of the transfer, it was its policy to only send applicants a copy of the Scorpion Leaflet with transfer packs if a risk had been identified. In the case of Mr E's transfers, no such risk had been identified. Furthermore, no transfer pack had been issued due to a technical issue.
27. It had subsequently been informed that the Agent was known to Mr E as they were both associated with the same social club.
28. Mr E would have been reassured by the involvement in the transfers of a friend and also a FCA regulated provider. On the balance of probabilities, Mr E would have proceeded with the transfers even if he had received the Scorpion Leaflet.

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 below in paragraphs 30 to 39:-
30. Aegon had received Mr E's request for transfers to the SIPP. It had a statutory duty to transfer his funds unless it had any indications that the SIPP was being used as a pension scam or for pension liberation.
31. Aegon said that its initial due diligence checks did not provide any indication that the transfers requested by Mr E were high-risk transfers.
32. It maintained that this was the case because the SIPP was registered with HMRC, and the registration had been in place for over a year before the transfers took place. In addition, there was no evidence that Mr E was attempting to access his pension before age 55. Mr E had not indicated to it that he had been approached unsolicited or that he had been offered a cash incentive to transfer. Furthermore, neither the SIPP, Gaudi nor Gaudi Trustees Limited was on its list of high-risk schemes, and Gaudi was authorised by the FCA.
33. The Adjudicator reviewed the 2013 Guide. In his opinion, the factors considered by Aegon were a reasonable approach for its initial due diligence checks given the factors indicated by the 2013 Guide that were appropriate to initially consider.
34. The 2013 Guide mentions some additional checks. However, it is only if the initial analysis throws up some concerns that it recommends these further checks are undertaken, otherwise the transferor can consider proceeding to payment. In the Adjudicator's opinion there was no requirement for Aegon to undertake further investigation.
35. WRAL raised concerns in relation to the Telephone Call, which it said were indicators that it was likely that a scam was taking place. Having listened to a recording of the

call, the Adjudicator did not take the view that Aegon's call handler missed any warning signs. His reasons for saying this were:-

- In the Adjudicator's opinion, the security checks undertaken by the call handler were adequate. The caller provided his name, date of birth, home address and a plan number. The last of these items would not have been readily available to the public.
- Mr E subsequently identified the caller as being the Agent. If this was the case, then it was unacceptable for the Agent to be impersonating Mr E. However, the Adjudicator did not take the view that the call handler should have been aware that the caller was not Mr E.
- The Adjudicator was not of the opinion that the caller's reluctance to provide email and telephone details was a concern as some people do prefer to receive letters. The call handler could not be expected to know information about Mr E such as whether he was familiar with some pensions jargon or whether he was nervous on the telephone. So, the Adjudicator did not take the view that these were warning signs. Nor was he of the opinion that the caller providing a plan number without being prompted was unusual behaviour. The caller was likely to be aware that the call handler needed this information to deal with his enquiry.

36. Aegon's policy at the time that the transfer packs were requested was to only issue a copy of the Scorpion Guide where a risk had been identified. In the case of Mr E, as no such risk had come to light, he was not sent the Scorpion Guide. The Adjudicator also noted that Gaudi was FCA registered. In his opinion, it was therefore reasonable for Aegon to expect that the SIPP was being run in a manner consistent with the FCA's standards.
37. Even if Aegon had contacted Mr E to discuss the transfers or sent him a copy of the Scorpion Guide, it is difficult to see that either of these would have led him to change his mind about transferring. Aegon had not identified any risks during its due diligence so it had no concerns that it could communicate to Mr E. Furthermore, Mr E was being advised to transfer by someone who has been identified as a friend / acquaintance whose opinion he would have been likely to have valued.
38. Having taken all of the above into account, the Adjudicator was of the view that the due diligence checks carried out by Aegon were reasonable. There were no indicators, at the time of the transfer, that the SIPP was high risk.
39. Furthermore, in view of the checks that were carried out, the Adjudicator took the view that it was reasonable for Aegon to make the transfer payment to Gaudi.
40. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
41. WRAL provided further comments on behalf of Mr E in response to the Opinion. These are summarised in paragraphs 42 to 68 below:-

42. The Adjudicator's Opinion was at variance with a number of previous Pensions Ombudsman's Determinations.
43. Aegon had completed the transfer of Mr E's benefits to an unknown SIPP provider without making any enquiries apart from checking that Gaudi was authorised by the FCA. It had not attempted to contact him to discuss the transfer; nor did it question who was advising him. It had also not referred the case to its FCT.
44. The transfer packs requested on 14 January 2015 were never sent, meaning that Mr E never received anything directly from Aegon. This was maladministration.
45. In order to receive the transfer payments, the Agent had been able to download the transfer forms from Aegon's website. He had then inserted information he had obtained from the Telephone Call during which he impersonated Mr E. The fact that the information was not pre-populated on the transfer forms should have been a red flag for Aegon. This should have prompted it to have sent the Scorpion Leaflet to Mr E.
46. In a previous Determination it was stated that: "the Scorpion warnings were designed to be sent individually to scheme members" and were the 'bare minimum' that firms should have done to protect their customers. However, Aegon did not send the Scorpion Leaflet to Mr E. Nor had it provided him with any similar warnings.
47. Aegon and the Adjudicator incorrectly took the view that checking that Gaudi was authorised fully discharged Aegon's duty of care.
48. In relation to the unsent Scorpion Leaflet, Aegon raises the risk that its issue would have delayed the transfer and introduced a competing risk of fund value movements. However, the risk of Mr E losing a sum in the region of £686,000 should have taken priority. In a previous Determination, PO-26616, it was stated that "the overall tone of the 2014 Action Pack is for the transferring scheme to engage with the member to understand the transfer". Mr E's funds would have remained invested during any delay. There was no need for a delay anyway as all that was needed was for Aegon to make a telephone call to Mr E.
49. Had such a telephone call taken place, Aegon could have asked the name of the Agent who was advising Mr E and it could have checked this name against the FCA register. It should have also questioned the SIPP's underlying investments. Asking these questions would have identified the name of an unregulated adviser and a purported fixed return on an overseas investment which would have identified it as a scam. Aegon could not 'understand the transfer' without some reference to what Mr E was planning to do with the money and who was advising him.
50. In explaining why it did not issue a Scorpion Leaflet to Mr E, Aegon said that Gaudi did not fit the profile of a scam provider. This was not the case as it fitted that profile exactly.

51. The fact that the Agent was an acquaintance of Mr E was not relevant as it was a common tactic of scammers to befriend their victims. It was the fact that he had not been authorised since 2009 that was relevant.
52. The fact that Aegon was checking Gaudi on the FCA register was an indication that it had not heard of Gaudi before. This was a red flag.
53. Aegon's response to Mr E's complaint of 8 April 2021 had said that, as the transfers met the statutory requirements for it to proceed, it had no discretion to refuse them. This was only superficially true as Aegon was not prevented from raising concerns with Mr E, and it could have issued him with a disclaimer to sign.
54. The Adjudicator had referred to the Determination of case PO-16475. However, this case has nothing in common with that of Mr E. In particular, in Mr E's case there were multiple red flags that pointed to the need for Aegon to do more. These were not present in PO-16475. Mr E's case took place two years later, so any grace period given to implement procedural changes to issue the Scorpion Leaflet no longer applied. Furthermore, more knowledge was available in relation to pension scams. The 2013 Guide, which largely alluded to 'liberation', had been revised in July 2014 to cover the kind of scam that Mr E had been the victim of.
55. Previous Determinations, including CAS-43847-P7M0, referred to 'proportionate' due diligence processes. The primary test of proportionality is the sum of money involved which, in Mr E's case, was over £680,000. This should have been reflected in the level of due diligence undertaken by Aegon.
56. The Adjudicator's Opinion made reference to the 2013 Guide. However, the landscape involving scam warnings significantly changed in July 2014 with the publication by TPR of an action pack for trustees and administrators titled: 'Pension scams – A lifetime's savings lost in a moment' (**the 2014 Guide**). The 2014 Guide refers to both pension liberation and "... being scammed into moving their retirement savings into unregulated high-risk or bogus investments that could result in them losing their entire pension pot." This was exactly what happened to Mr E and yet Aegon had not communicated the risk to him, thus ignoring the 'Proactive member communication' section of the 2014 Guide.
57. In past Determinations, weight was repeatedly given to a failure to communicate the warnings in the Scorpion Leaflet to the complainant. The picture of a scorpion on the front and the words "Predators stalk your pension" were an indication why. The 2014 Guide suggested some common features of pension scams, a number of which applied to Mr E's transfer, including:
 - the use of phrases like "one-off investment opportunities";
 - transfers of money or investments overseas;
 - no member copy of documentation provided; and

- victims being encouraged to speed up the transfer of their money to the new scheme.
58. The 2014 Guide went on to give a checklist that providers could use to investigate further if any of the above features applied. It stated that, if several items on the checklist are present there may be cause for concern. However, Aegon had not contacted Mr E to query any of these aspects of his transfer, which included the items in the paragraph above and:
- connected to an unregulated investment company;
 - hints at unusual, creative or new investment techniques;
 - being contacted by an introducer;
 - being advised by a non-regulated advisor; and
 - taking no advice.
59. “Being contacted by an introducer”, “being advised by a non-regulated advisor” and “taking no advice” were all red flags.
60. The Pensions Scams Industry Group’s 2015 publication ‘Combating Pensions Scams – a Code of Good Practice’ (**the 2015 Guide**) was published shortly after Mr E’s transfers completed. The contents of this document were not new guidance, but a reminder of what providers should always have been doing.
61. During the Telephone Call, the caller had been ‘evasive and skittish’. He had avoided the question when asked his name at the start of the call. Furthermore, there was no basis for Mr E not wanting Aegon to know his email address and telephone number. Aegon should have been alert to the possibility of scammers making contact in this way and the call handler should have been trained accordingly.
62. The Adjudicator said that Aegon was excused from issuing the warnings in the Scorpion Leaflet because no risks had been identified. This had ignored all the evidence and Aegon had not asked anything. The 2013 and 2014 Guides set out what Aegon should have done, including communicating with Mr E to find out what was going on.
63. The thing that Aegon should have established is whether there was a legitimate reason why the transfer was happening or were the funds being requested as part of a scam.
64. The Adjudicator had found it difficult to see that Mr E would have changed his mind about transferring if Aegon had telephoned him or he had been sent the Scorpion Leaflet. This was conjecture. Mr E was not contacted by Aegon or sent the Scorpion Leaflet, so never had the opportunity to change his mind. This argument had been considered in a previous case, PO-22965. In the Determination of this case, in

relation to the respondent questioning whether asking the applicant further questions relating to the transfer would have dissuaded him from proceeding, it was stated that:

“... this is missing the point. It was Liberty’s responsibility to put Mr E in a position where he could make an informed decision and it failed to do so.”

65. Had Aegon telephoned Mr E to advise him that it was concerned that he was being scammed, he would not have proceeded with the transfers. He had no financial incentive to proceed with them, apart from the offer of better investment returns.
66. In a recently determined case, CAS-43847-P7M0, a guaranteed rate of return and an overseas investment opportunity were mentioned as factors that would trigger a need for additional due diligence. In the case of the SIPP, overseas investments with a guaranteed investment return were involved. Had Aegon sought to ascertain information on the SIPP’s underlying investments, this should have been of concern to it.
67. He had received redress offers for other clients from three providers where transfers had been paid to scam schemes without checking who was giving advice or what the intended investments were. Advice on moving pension funds was a regulated activity. It was incumbent on Aegon to ensure that there was no breach of section 19 of the Financial Services and Markets Act 2000 (**the FSMA**), the ‘general prohibition’. An extract from the FSMA can be found in the Appendix. That duty would prevent an unauthorised and unregulated scammer giving financial advice.
68. It was impossible for the transfer of Mr E’s benefits to have taken place without someone advising him. What happened was a criminal offence as defined in section 19 of the FSMA. The Adjudicator did not explain how the transaction could take place without an adviser being involved. All Aegon needed to have done was ask Mr E who was advising him.
69. Aegon provided further comments which are summarised in paragraphs 70 to 82 below:-
70. WRAL said that Aegon should have:
 - checked that the SIPP provider was authorised;
 - sent Mr E the Scorpion Leaflet;
 - telephoned Mr E to ask who was advising him; and
 - referred the matter to its FCT.
71. However, based on the regulatory and legal requirements in place at the time of the transfers in February 2015, this was not the case. In February 2013 TPR issued the 2013 Guide which detailed how to identify pension liberation. This was updated in July 2014 to also cover pension scams. At the time of the transfers, no regulations

were in place in relation to how transfer instructions should be processed to protect customers from pension scams.

72. It does not agree with the WRAL's interpretation of the 2014 Guide and the obligations it placed on providers.
73. It was not a requirement for the Scorpion Leaflet to be issued for all transfer requests and Aegon had discretion to devise its own controls. The 2014 Guide states that pension providers: "... could include our scams leaflet in any member communications". So, the fact that the Scorpion Leaflet was not sent to Mr E did not amount to maladministration; nor was it a compliance breach.
74. The 2015 Guide proposed, for the first time, that the Scorpion Leaflet be issued to customers with their transfer packs. However, this was published after Mr E's transfers had completed so it could not have been expected to follow this guidance.
75. The Scorpion Leaflet at the time of Mr E's transfers listed methods that scammers may use:
 - claim that benefits can be accessed before age 55;
 - make an approach out of the blue;
 - offer upfront cash; and
 - offer a free pension review or a one-off investment opportunity.
76. It did not consider these to be hallmarks of Mr E's case. So, even if he had been sent the Scorpion Leaflet, it did not consider that this would have alerted him to the risks involved in his transfers. As a result, on the balance of probabilities, it would not have caused Mr E to contact Aegon or decide not to proceed with the transfers.
77. The 2014 Guide refers to a longer Scorpion Guide which should be issued if providers had any concerns. However, it was not aware of any such factors.
78. It had checked whether the SIPP was newly registered and whether Gaudi was regulated by the FCA. As these were not transfers to an occupational pension scheme, the question of what connection Mr E had to the sponsoring employer and his geographical location did not apply.
79. WRAL suggested that Aegon undertook these checks as it was unfamiliar with the receiving scheme. This was not correct; the checks were being undertaken as part of Aegon's due diligence process. It was reasonable for Aegon to place weight on the results of these checks given the extracts below from the 2014 Guide:

"The FCA also regulates those responsible for operating SIPPs, personal – and contract – based stakeholder pension schemes. If you are concerned that a member of your scheme may have been targeted by a scam, you can check whether the receiving pension provider is authorised by the FCA.

[...]

HMRC has introduced checks on all applications to register a pension scheme and monitors activity throughout the life of a registered pension scheme. If HMRC does not believe a scheme is being set up as a genuine pension scheme, it will not register that scheme.”

80. WRAL referred to a previous case to support its argument that Aegon should have telephoned Mr E to discuss the transfer. However, in that case, it was concluded that the Authority should have had concerns about the transfer. It was not stated that all providers were required to contact all transferring members.
81. WRAL had questioned the purpose of the FCT on the basis that Mr E was transferring a large sum of money to a “niche” SIPP provider and the transfer had not been referred to it. Aegon said that it had performed its legal obligation of checking the SIPP’s HMRC registration. While Gaudi was not a high street name, it was unreasonable to suggest that it had the hallmarks of a scam scheme provider, or that a scam was apparent. From the decision made by FOS in relation to Mr E’s complaint against Gaudi, it appeared to be a sophisticated scam that did not manifest itself until a number of years after the transfers.
82. Mr E was not required to take financial advice in relation to the transfers. Some customers feel that they have adequate knowledge to make their own decisions without taking advice. During the Telephone Call, it had provided the caller with details of how to find a regulated financial adviser. While Mr E has said that he did not make this call, it was reasonable for it to assume, at the time, that the caller was him.
83. I have considered the additional points raised by WRAL and Aegon, however they do not change the outcome. I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

84. I have considerable sympathy for Mr E, who appears to have been the victim of a pensions scam and is now unable to access his pension funds. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances at the time of the transfers which are of importance.
85. Mr E’s complaint concerns the level of due diligence undertaken by Aegon at the time of the transfers. In his Opinion, the Adjudicator considered the transfers in the light of the 2013 Guide. In July 2014, TPR relaunched the 2013 Guide to include greater reference to the risks of pension scams. I have reviewed both the 2013 and 2014 Guides when considering Mr E’s complaint. I have not considered any information in the 2015 Guide as the transfers from the Plans took place before the 2015 Guide was published.
86. Aegon had a statutory duty to transfer Mr E’s funds. It was required to act upon this duty when it received his transfer paperwork in February 2015, unless there were any

indications of why the transfers should not go ahead, such as those concerning pension liberation fraud and pension scams.

87. The 2013 and 2014 Guides provide an outline of potential warning signs which could suggest pension liberation fraud or pensions scam activity was taking place. In both guides a check list of additional questions that can be asked is provided should the initial investigation raise some concerns. However, in the case of Mr E's transfers, there was no indication that Aegon had any reason for concern. So, it did not take the next step of making any further enquiries.
88. The checks undertaken by Aegon are summarised in paragraph 32 above. In particular, I note that the SIPP had been registered with HMRC for over 33 months at the time of the transfer and Gaudi had been registered with the FCA for over five years.
89. WRAL referred to Gaudi as being an 'unknown' SIPP provider and suggested that it fitted the profile of a scam provider. It said that this should have prompted Aegon to undertake further enquiries. I do not agree that this was the case. Due to Gaudi's registration with the FCA, I find that it was reasonable for Aegon to have expected that the SIPP was being run in a manner consistent with the FCA's standards.
90. WRAL also suggested that the fact that Aegon had checked Gaudi on the FCA register indicated that it had not heard of Gaudi before, and that this was a red flag. Aegon would have checked the FCA register regardless or not of whether it had dealt with previous transfers involving Gaudi. Furthermore, even if this was the first transfer that Aegon was dealing with involving Gaudi, I do not consider this to be a red flag. Aegon was responsible for following its due diligence process regardless or not of whether it was familiar with Gaudi.
91. WRAL says that Aegon should have contacted Mr E to ask him who was providing him with independent financial advice. It also suggests that it could have obtained information from Mr E in relation to the SIPP's underlying investments. However, Aegon was not required to undertake all the checks documented in the 2013 and 2014 Guides. It should be noted that these guides are not statutory code, with the mandatory obligations that entails. Aegon was entitled to develop its own, proportionate, due diligence process.
92. Furthermore, during the Telephone Call, Aegon had told the caller how he could locate an independent financial adviser. I consider it reasonable for it to have believed that it had provided this advice to Mr E, even though this may not have been the case.
93. I am satisfied that the actions of Aegon were reasonable, in this particular case and at this particular time, in not making further checks. I do not agree that Aegon's decision not to undertake further checks or raise the transfer with its FCT amounted to maladministration. Nor do I agree that Aegon was required to undertake further checks due to the magnitude of the transfer values; its due diligence process had been proportionate.

94. I would encourage providers to communicate regularly with their customers in relation to the dangers of pension scams. However, I note that Aegon had a policy in place at the time in relation to when it issued the Scorpion Leaflet to its customers. I consider that this policy was reasonable, given the regulatory guidance that had been issued at that time, and Aegon had followed it when dealing with Mr E's transfers.
95. WRAL refers to the transfer packs requested during the Telephone Call which Aegon never provided due to a technical issue. While it is unfortunate that the transfer packs were not provided, I do not agree that this had a material effect on the subsequent transfer of Mr E's benefits in the Plans. Mr E saw and signed the transfer form that would have been included in the packs.
96. WRAL noted that none of the information on the transfer form that Mr E had signed was pre-populated, suggesting that it had not been provided as part of a transfer pack. WRAL considered this to be a red flag. I do not agree that this is the case. In all likelihood the form had been downloaded from Aegon's website where blank forms were available for its customers to use. The provision of forms in this way is common within the financial industry. Furthermore, Aegon confirmed that it had checked the signature on the transfer form with that on the application form that Mr E had signed when the Plans were created, and they matched.
97. WRAL referred to the caller's behaviour during the Telephone Call as being an indication that Aegon was being contacted by a scammer rather than Mr E. People have different telephone manners and I do not agree that there was anything in the call to suggest that the caller was not Mr E. WRAL referred to the caller's reluctance to share his email address and telephone number. However, as I see from other complaints raised with The Pensions Ombudsman, people have a range of communication preferences, including using only surface mail.
98. The caller passed Aegon's security checks which included the provision of a policy number. If the caller was not Mr E, then, in the absence of any evidence to the contrary, this information had most likely been provided to the caller by Mr E. If the caller was not Mr E, he should not have impersonated Mr E. However, the likely sharing by Mr E of his policy number does suggest that he had consented to the caller having knowledge of his pension arrangements.
99. In his Opinion, the Adjudicator referred to a previous case, PO-16475. WRAL said that this case formed a significant part of the Adjudicator's findings, but had very little in common with the case of Mr E. I do not agree that this is the case as the Adjudicator was only using this case to raise general points in relation to:
- not reviewing matters with the benefit of hindsight;
 - the statutory duty to complete a transfer unless indicators of why it should not go ahead exist; and
 - the two-stage process for due diligence suggested in the Scorpion Leaflet.

100. WRAL said that Mr E would not have proceeded with the transfers had Aegon engaged with him directly to notify him that it was concerned that he was being scammed. However, during its due diligence, Aegon had not identified any factors that it considered to be a risk, so it did not have such concerns. As a result, having such a conversation with Mr E would not have been appropriate. I acknowledge that Aegon could have discussed the transfers with Mr E and obtained further information from him. However, it had undertaken its due diligence checks based on its procedure at the time. So, I find that Aegon was not obliged to have such a conversation with Mr E. Furthermore, the impact of such a conversation would have been limited as it had not identified any concerns.
101. While WRAL said that Mr E had no incentive to proceed with the transfers apart from the offer of better investment returns, this can be a strong incentive for some people. On the balance of probabilities, I find that the transfers would have proceeded even if Aegon had spoken to Mr E.
102. WRAL has brought to my attention a number of past The Pensions Ombudsman and FOS cases, some of which are referred to in this Determination. I have reviewed these cases and have noted where similarities exist to Mr E's case. I have determined Mr E's complaint based on the facts relating to his case. It is usually a combination of these facts that leads me to come to my conclusion.
103. WRAL has referred to the 'general prohibition' in the FSMA. This prohibits someone from carrying out a regulated activity unless they are authorised or exempt. In the case of Mr E's transfer, WRAL said that the Agent, who had ceased to be regulated in 2009, had provided Mr E with advice. The member being advised by a non-regulated adviser is one of the suggested checks in the check list in the 2014 Guide. I do not agree that Aegon was required to undertake this check as it had not identified any concerns in the initial checks it had completed. Furthermore, the check list is a guide and not a statement of what Aegon was legally required to do.
104. I note that a police investigation is being undertaken in relation to the activities of the Agent. I would assume that this would include any breach of the general prohibition and any attempt that the Agent made to impersonate Mr E. This is an appropriate place for these issues to be investigated.
105. It is regrettable that the transfer of funds from the Plans has not transpired to be in Mr E's best financial interests. However, I consider that Aegon fulfilled its due diligence obligations with the information it held at the time.
106. I do not uphold Mr E's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
23 August 2023

Appendix

Extract from the Financial Services and Markets Act 2000

“Part II Regulated And Prohibited Activities

19 - The general prohibition

(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is -

(a) an authorised person; or

(b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.”