

## Ombudsman's Determination

Applicant	Mr E
Scheme	Aegon Executive Pension Plan ( <b>the Plan</b> )
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 the Plan was transferred away from Aegon without his authority and has since been misappropriated.

## Background information, including submissions from the parties

4. In December 2012, Mr E contacted Aegon to request a transfer value and documentation for the Plan. He chased this in early January 2013.
5. At the time Mr E was 50 years of age. He had recently been contacted by Fortitude Trading and Access2Cash, neither of which were regulated, and told that he could access his pension before age 55. It also appears that Mr E was told of a possible incentive of 20% of the fund to proceed, although this was not ultimately paid to him.
6. On 9 and 10 January 2013, Mr E signed a Client Enquiry Form. There are three copies of this document, one of which Mr E says he signed and two which he disputes. These documents included details of the Plan, and indicated that he did not require independent financial advice. The source of this document is unclear and the only business referred to is "The Processing Centre". Aegon did not receive a copy of this document.
7. Mr E has said following completion of the Client Enquiry Form, Access2Cash "introduced/confirmed that [...] would be the FA [financial adviser] who would deal with the transfer if I was to proceed".

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8. Also on 10 January 2013, Aegon sent Mr E a transfer value statement. This confirmed the transfer value as £36,705.80 as at 9 January 2013. Included with this was a Transfer Instruction Form.
9. On 24 January 2013, a Fee Agreement and Terms of Business with a regulated independent financial adviser (**the IFA**), referred to above, was apparently signed by Mr E. Mr E disputes these signatures.
10. On 30 January 2013, the IFA contacted Aegon with a letter of authority and a request for information. The letter of authority stated that Mr E had asked the IFA to advise him on his financial arrangements and was apparently signed by Mr E. Mr E disputes this signature.
11. On receipt of the Letter of Authority, Aegon recorded the IFA as Mr E's financial adviser.
12. On 31 January 2013, Mr E appears to have completed and signed the IFA's risk questionnaire. Mr E disputes this signature.
13. On 7 February 2013, Aegon provided the IFA with the requested information.
14. On 14 February 2013, The Pension Regulator (**TPR**) issued a press announcement (**the Announcement**) aimed at pension schemes and members, highlighting the potential risk of pension liberation giving rise to an unauthorised tax charge<sup>1</sup>.
15. On 20 February 2013, Aegon received a request to transfer from T12 Administration (**T12**). The request indicated that Mr E wished to transfer his Aegon benefits into the Leith Hill Capital RBS scheme (**the Leith Hill Scheme**), administered by T12. It provided a Pension Scheme Tax Reference (**PSTR**) and the bank details required for the transfer to proceed.
16. Included with the request was a transfer request and the completed Transfer Instruction Form, apparently signed by Mr E and confirming his wish to transfer to the Leith Hill Scheme. The signature was dated 1 February 2013. Mr E has said that this looks like his signature. Additionally, there was a HMRC Registration Certificate confirming the PSTR, that the Leith Hill Scheme was registered as of 17 September 2012 and confirmation that the scheme was an occupational money-purchase pension scheme.
17. On 1 March 2013, Aegon wrote to T12 confirming that the transfer had been processed. It appears that the transfer had been settled on 22 February 2013.
18. On 8 April 2013, Aegon received a second transfer request, this time from Pointon York. Included in the submission was a completed transfer instruction, dated 24

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

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January 2013, and a Pointon York transfer application dated 21 March 2013, both signed by Mr E, which he accepts.

19. On 11 April 2013, Aegon wrote to Pointon York confirming the transfer would not be possible as Mr E's pension had already been transferred.
20. Mr E has said that over this period he had considered the transfer further and concluded that "the schemes and incentives didn't stack up..." and so he looked to cancel the transfer within the 30 day cooling off period.
21. On 15 April 2013, Mr E wrote to the IFA stating:-

"I would confirm on further review of the Carbon Credits Scheme and Pointon York, I no longer wish to proceed with the pension transfer.

Please take this letter as notice of my cancellation."
22. On the same date Mr E wrote to Fortitude Trading, stating:-

**"RE: Pension Transfer Leith Hill Capital RBS Occupational Scheme**

Further to the above pension transfer.

I would confirm on further review of the above scheme, I no longer wish to proceed with the pension transfer.

Please take this letter as notice of my cancellation."
23. Following this, the IFA provided Mr E with an invoice for the work completed towards the eventual failed transfer to Pointon York. Mr E challenged this invoice and the IFA withdrew it on the basis that it appeared Mr E's signature had been forged on several of its documents. It asked Mr E to complete a questionnaire to assist it in investigating the matter but no response was received.
24. In July 2014, Mr E was contacted by Keystone Law, acting on behalf of the Leith Hill Scheme Trustees. It had concerns over the administration of that scheme and possible cash back arrangements.
25. Mr E's position is that he was completely unaware that the transfer had happened and challenged Aegon to explain why it had transferred his pension. Aegon investigated the complaint but concluded that it had acted correctly.

## Adjudicator's Opinion

26. 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 transfer had been processed after the change in good practice following the Announcement from TPR. AEGON should have been aware of this change and its

processes, where necessary, should have been adapted in light of it. In relation to advised transfers, AEGON did not undertake additional due diligence on the receiving scheme, as the responsibility and liability for the transfer would fall to the adviser for having recommended it. The Adjudicator took the view that this less stringent approach to advised transfers was reasonable.

- Aegon had received the Letter of Authority from the IFA which indicated that Mr E had appointed it to provide him with financial advice. The Adjudicator took the view that the signature on this form appeared questionable, but accepted Aegon's argument that the personal information on the letter of authority was sufficient to reach a reasonable conclusion that it was a legitimate letter of authority. In reaching this view the Adjudicator took account of the limitations of signature checks highlighted by Aegon. On the basis of this Aegon recorded the IFA against Mr E's plan and took the position that he was in the process of being advised on pension matters.
- Following the Letter of Authority, Aegon received the Transfer Instruction, which had originally been sent to Mr E, bearing a signature that the Adjudicator thought could reasonably be considered to be Mr E's. Although the Transfer Instruction was dated two weeks before the letter of authority, the Adjudicator did not think this fact was reason for Aegon to query the transfer.
- The Adjudicator noted that Aegon had previously referred the administrator, T12, to the Serious Organised Crime Agency (**SOCA**). Aegon was unable to provide detail of how the referral came about, or the response it received, but the fact that the previous transfer had subsequently gone through implied that SOCA did not have concerns over T12 at that time.
- The Adjudicator considered the referral of T12 to SOCA, with one of the potential reasons being the relatively brief period that T12 had been operating. The Adjudicator also noted that the Leith Hill Scheme and the sponsoring employer had been established a short period before the transfer, and that this was one of the reasons set out in the Announcement as to why transfers might warrant additional scrutiny. However, the Adjudicator took the view that these risk factors from Aegon's perspective were offset by the apparent involvement of the IFA.
- The involvement of the IFA would have provided Mr E with regulatory protection if the quality of the advice was disputed. In these circumstances, Aegon's reliance on the apparent involvement of the IFA was, in the view of the Adjudicator, reasonable.
- Further, the Transfer Instruction document which had been provided by Aegon to Mr E appeared to expressly authorise the transfer with his signature. In these circumstances, it did not appear reasonable, to the Adjudicator, to have expected Aegon to second guess Mr E's authority when progressing the transfer request.

- The Transfer Instruction included all the relevant information about the Leith Hill Scheme for Aegon to legitimately progress the transfer. Coupled with the presence of a regulated financial adviser, the Adjudicator took the view that Aegon was not required to undertake enhanced due diligence on the transfer and there was no reason for it not to proceed or for it to make further enquiries.

27. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E and Aegon provided further comments which do not change the outcome. I have summarised Mr E and Aegon's responses below.

28. Mr E made the following arguments:-

- The sponsoring employer of the Leith Hill Scheme was dormant and the scheme was registered by HMRC within 5 working days of establishment. Given these facts Aegon should have undertaken additional checks on the transfer.
- Aegon had concerns over T12 but has failed to provide any evidence from SOCA that the previous transfer could go ahead. The provision of this information would surely not breach 'tipping off' rules, this is a diversion and excuse. By failing to provide adequate reasons as to why it will not provide the requested information, it shows that Aegon has something to hide or demonstrates they are inept managers. Additionally, the individuals at T12 have been arrested so there seems to be no reason not to provide the details of the investigation.
- Aegon failed to follow the TPR's best practice Announcement. It has changed its criteria for transferring at a whim, claiming signatures were checked, but then reversing this stance. Aegon then places responsibility for the transfer on to the IFA who has made clear that it was not retained by Mr E, or provided him with any advice.
- Aegon has changed its position on whether the signatures on the transfer documentation form a part of the checking procedure. In response to the initial complaint Aegon had confirmed that the Transfer Instruction:  

"...bore a signature that we felt matched yours... The signature on the form also compares well to letters you've sent to us recently."
- Aegon's current position is that none of the signatures would have been checked at the time of the transfer. The Adjudicator has previously confirmed that in his view the signature on the Letter of Authority was a forgery and Aegon should have been alerted by this fact. As confirmed in the quote above, signature checks did form a part of Aegon's checking process.
- The IFA and Mr E have said at all times there was no contract between them. The IFA was dealing with Pointon York, not T12 or Leith Hill. The IFA was not representing Mr E and he had no financial adviser.

- Aegon has relied upon a forged Letter of Authority, and this would have been discovered had Aegon followed the recommendations set out in the Announcement.
- The IFA is as much a victim of the fraud as Mr E. The fraud could have been perpetrated by T12 and a representative of Aegon, as much as by the IFA. Aegon should provide details of the number of instances of fraudulent access to plans it manages, in particular in relation to T12 and Leith Hill. Hiding behind the 'tipping off' risk is unconvincing given the circumstances of this case and the police involvement.

29. Aegon made the following arguments:-

- It understands why Mr E thought its earlier correspondence meant that it conducted signature checks as part of its transferring process. However, those comments were made in the context of responding to the suggestion that the signature did not match his own in the course of investigating the complaint, not at the time of the transfer.
- Signature checks did not form part of the primary process at the time of the transfer.
- Although T12 was previously referred to SOCA, that referral did not result in the transfer being stopped. SOCA had allowed that transfer to proceed and there was no further information to cause Aegon additional concern. There have never been any specific concerns about the Leith Hill Scheme and it remains uncertain about its current position, other than the letter Mr E received from Keystone Law, including the extent of any loss suffered by Mr E.
- The Announcement did not set out a prescriptive process which providers were required to follow, only recommendations, many of which Aegon already had in place. Where a regulated financial adviser was involved it had adopted a different process which it considered was appropriate in the circumstances.
- Its procedure on receipt of a transfer request was to check:-
  - Was the receiving scheme registered with HMRC and did it have a PSTR code?
  - Was the receiving scheme registered with HMRC within the last 12 months?
  - Does the policyholder have a regulated financial adviser?
  - Does the customer have a statutory right to transfer?
  - Is the scheme on the list of those about which there were substantiated concerns?

- Were there any other factors which would have caused concern (e.g. frequent address changes, blank transfer form issued to a new party etc)?
  - This criteria changes regularly for a variety of reasons, not just TPR's various announcements. It evolves in response to intelligence received, industry standards and technological advances.
  - Signature checks are sometime performed if there is a signature on record and there are other reasons to be concerned about the transfer. No signature check was undertaken on Mr E's transfer, but even if it had, Aegon's view is that the signatures would have been considered to be a match with Mr E's specimen signature. That these were Mr E's signatures appears consistent with the fact that Mr E wrote to T12 and the IFA asking it to cancel the transfers.
  - Mr E's accusations about Aegon's staff is without foundation. Aegon had no dealings with the Leith Hill Scheme prior to Mr E's transfer and knows nothing more about it now.
  - The IFA has failed to explain how that business became involved with Mr E or came to be in possession of paperwork bearing a strong likeness to his signature, which the IFA has itself previously suggested was forged. There are a number of unanswered questions in this matter.
  - It has not been demonstrated that there was any maladministration or negligence on the part of Aegon leading to a financial loss on Mr E's part.
30. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

### **Ombudsman's decision**

31. Before detailing my decision I must highlight that I have significant sympathy for the position Mr E finds himself in. Although there is little concrete information to hand regarding the Leith Hill Scheme it appears likely that Mr E's pension has been misappropriated, and I understand that this will have caused him significant distress and concern. Whilst I cannot uphold his complaint, I would suggest Mr E contact Keystone Law and make enquiries about the position of his pension and his options going forward.
32. The circumstances of this complaint are disputed and complex. I cannot say with confidence that I am privy to all of the information, or that I can settle on a definitive timeline of events, especially as Mr E disputes that he signed certain documents. Given this, it will be necessary for me to make some findings on the balance of probability. That being said, I am satisfied that I can make a finding on whether there was any maladministration or negligence on the part of Aegon.

33. As Aegon has pointed out, the Announcement did not set out a prescriptive list of required actions on the part of a pension provider. It set out what was viewed as best practice and providers were given the discretion to apply this to the extent that it was viewed appropriate. Aegon has confirmed its process at the time of the transfer, so I will need to determine whether that process was sufficiently rigorous.
34. My starting point is to reach a view on whether the transfer was advised or non-advised. Aegon's position is that at the time, it took the stance that this was an advised sale on the basis of the presence of the Letter of Authority. Mr E argues that his signature was forged on this document and that he had no relationship with the IFA.
35. I appreciate that the Adjudicator has previously indicated that he doubted the authenticity of the signature on the Letter of Authority, and that this ought to have put Aegon on notice. However, Aegon has confirmed that on receipt of letters of authority it does not undertake a signature comparison. Mr E has challenged this, and has highlighted a confusing statement made by Aegon in its response to the complaint, but Aegon has presented legitimate reasons why signature comparisons are not undertaken in these circumstances. I am unaware of any regulatory requirement obliging Aegon to have undertaken a comparison.
36. The Letter of Authority made reference to Mr E's correct address, national insurance number, date of birth and policy number. Additionally, the Letter of Authority was submitted by a regulated financial adviser. In the circumstances, in my view, there was sufficient reason for Aegon to be reassured that the Letter of Authority came from a legitimate source. So I am not persuaded that a signature check was required on receipt and it was reasonable for Aegon to take the stance that Mr E had appointed a financial adviser to advise him on his pension options. I note the Letter of Authority specifically states:

"I have asked [the IFA] to advise me concerning my financial arrangements."
37. I note the Transfer Instruction was signed after the Letter of Authority but before Aegon had the opportunity to provide the IFA with the requested information necessary to provide advice. The suggestion is that this inconsistency should have alerted Aegon to a potentially flawed advice procedure. However, I am not persuaded that this was sufficiently unusual to prompt Aegon to query the situation. There are reasons why paperwork might be signed in advance of the information being provided, for instance Mr E could have been advised on the basis of information which had relatively recently been provided to him. This inconsistency is not sufficient in my view for Aegon to have queried the transfer.
38. The Letter of Authority was received approximately three weeks before Aegon received the Transfer Instruction. On receipt of that instruction, Aegon has confirmed that its process is to check whether the policyholder had appointed a financial adviser. In possession of the Letter of Authority, Aegon would in my view have reasonably concluded that Mr E had appointed a financial adviser, and that the



transfer was a logical next step having appointed the adviser. It was reasonable for Aegon to conclude that this was an advised transfer.

39. The relevant checks, as per Aegon's process at the time, was: to ensure the receiving scheme was registered with HMRC and held a PTSR; check when it had been established; confirm that the policyholder had a statutory right to transfer; and review whether there were any substantiated concerns about the receiving scheme or wider concerns about the transfer generally. In the context of these questions the transfer of Mr E's pension to the Leith Hill Scheme would only have raised adverse queries on the basis of the limited period of time the receiving scheme had been operating. I will comment on this below.
40. Aegon has confirmed that it had previously referred T12 Administration to SOCA in relation to a separate transfer. It does not consider it appropriate to disclose additional detail on the reasons or circumstances of the referral because of the risk of breaching "tipping off" rules. It has also said that its records of the referral are incomplete, but that the transfer ultimately went ahead as Aegon was not told not to proceed by SOCA.
41. I appreciate Mr E would like to see these records, but the concerns over the implications of 'tipping off' are justified, and a breach of the law can bring significant personal consequences for the individual(s) responsible for the breach. Although I have not seen details of the referral, I have no reason to doubt the transfer went ahead following the referral. This implies that Aegon was not advised to deny the transfer. In the circumstances, even with previous referral to T12, the fact that SOCA allowed the transfer to reach completion implies that Aegon's concerns were not justified. So I am not persuaded that additional information about the referral would have any bearing on the outcome of this complaint.
42. Having carefully considered various features of the transfer, I agree with the Adjudicator that even with the relatively short period of time since the receiving scheme was established, the involvement of the IFA meant that Aegon's decision not to scrutinise the transfer in more depth was reasonable. As the Adjudicator explained, an IFA is required to provide suitable advice and be responsible for that advice. There are regulatory protections if that advice fails, which is sufficient reason why, for an advised transfer, Aegon did not make additional enquiries.
43. I understand that Mr E and the IFA dispute that advice was provided on this transfer. Advisors do not come within my jurisdiction and I am limited to looking at Aegon's actions. It may be that the IFA did not make a recommendation to transfer to the Leith Hill Scheme, and the evidence suggests that the IFA was arranging a transfer to a completely separate pension provider. There is a completed transfer application to that effect.
44. However the matter is confused by the two letters sent by Mr E to the IFA and Fortitude Trading, cancelling any transfers. Also, having regard to the comments made by Mr E and the IFA, the evidence does not provide a complete picture of what

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occurred. I cannot see why Mr E would have written these letters if he had not progressed the transfers, suggesting he had actively participated in the process, and providing support to the argument that Mr E had signed some of the documentation.

45. Regardless of that uncertainty, concerning Aegon's actions it received the Letter of Authority appointing the IFA to the Plan and confirming that the IFA had been appointed for the purpose of advice. A short time later Aegon received an instruction to transfer. That transfer instruction was in my opinion reasonably interpreted to have been submitted on an advised basis and it met what I view to be Aegon's proportionate procedural requirements for the transfer to proceed.
46. I appreciate that with hindsight, and when in possession of the wider, albeit still incomplete, picture, the transfer has anomalous features however at the time these were not known to Aegon and so it had no reason to place the transfer under additional scrutiny. I conclude that it acted appropriately in the circumstances.
47. Therefore, I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 October 2017