PO-13809

Ombudsman's Determination

Applicant	Mr N
Scheme	Aegon Pension Plan (the **Plan**)
Respondents	Aegon

Outcome

1. I do not uphold Mr N'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 N has complained that Aegon failed to action his overseas transfer in a timely fashion. As a consequence, he will now likely incur a significant tax charge.

Background information, including submissions from the parties

4. On 27 August 2015, Mr N's independent financial advisers, Pavis Financial Services (**Pavis**) requested scheme information from Aegon, including a transfer value.

5. On 3 March 2016, Aegon received an overseas transfer request from London & Colonial. Enclosed with this request were the completed transfer forms which had been provided to Pavis in August 2015.

6. As the overseas transfer request was made using the incorrect UK transfer forms, Aegon was unable to proceed. Therefore, Aegon sent the correct overseas transfer "request and discharge" forms on 17 March 2016. These were returned by London & Colonial on 22 March 2016.

7. On 24 March 2016, Mr N's file was passed to Aegon's Financial Crime Team so the relevant due diligence checks could be undertaken. This is a standard procedure for all overseas transfer requests received by Aegon.

8. Between 24 and 30 March Aegon's financial crime team carried out multiple checks in accordance with their due diligence process, including scheme QROPs status, scams vetting, identity checks, transfer value check, and open source checks on receiving scheme, administrator, and IFA.

9. On 30 March 2016, Pavis informed Aegon that the transfer was time critical so Mr N could benefit from the higher Lifetime Allowance (**LTA**) in force at the time. (The LTA was due to reduce from £1.25 million to £1 million with effect from 6 April 2016.) On 31 march 2016 Aegon's financial crime team called Mr N directly, to ensure he was fully aware of the implications and possible consequences of completing an overseas transfer. The same day Aegon replied to Pavis apologising for the delay in response. They said the transfer was undergoing due diligence checks, the e transfer would not be done by the end of the tax year and they could not provide a timescale for completion.

10. On 1 April 2016, Aegon emailed Mr N providing warnings about the tax treatment of transfers to QROPs by UK residents, providing links to Pensions Regulator and FCA scams awareness guidance. They concluded by asking him to reply within 21 days if he wished them to continue the due diligence process.

11. On 2 April 2016 (a Saturday) Mr N replied by email that he had been considering the move for 18 months, driven by changes to the lifetime limit. His advisers were regulated IFAs and he would appreciate it if they could now complete the transaction. ,

12. On 4 April 2016, (a Monday) a Senior Manager in the Financial Crime Team took the decision to allow the transfer, providing that Mr N signed an Indemnity and Disclaimer form.

13. On 5 April 2016 Aegon wrote back to Mr N saying they had forwarded his response to the relevant department who would continue with their due diligence checks, and they would liaise with him directly during these.

14. On 6 April 2016 the claims vetting team wrote to Mr N saying they would need him to sign a claims indemnity form waiving his right to recourse should the transfer turn out to be fraudulent or he incurred tax penalties as a consequence of completing it. This was prepared and sent to him on 7 April 2016.

15. To date Mr N has not signed it and the transfer has not proceeded.

16. Mr N and Pavis believe that by not proceeding with the overseas transfer on or shortly after 3 March 2016, Aegon have caused an unreasonable delay that will have significant tax implications for Mr N. Pavis acknowledge that to date any actual loss is currently speculative in nature.

17. Aegon say that they were under no obligation to commence due diligence until they received the correctly completed forms on 23 March 2016. That left them only 7 working days to the end of the tax year. They consider that two weeks is not an unreasonable period of time to undertake due diligence for a transfer request of this nature and is well within the timeline prescribed for transfers under HMRC regulations. The due diligence is undertaken to protect customer's interests and to ensure there was no unauthorised payment. Additional due diligence was indicated in this case because the transfer was to an overseas scheme and the member did not

live overseas or intend to. Because this triggered a scam risk warning, the transfer was therefore considered by their financial crime team. When Mr N confirmed that he wanted to go ahead with the transfer after he had been given warnings, they asked for an indemnity because it is indicated in the PASA Code of Good Practice, which is reasonable in their view.Adjudicator's Opinion

18. Mr N'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.

- Due to an increase in the number of pension liberation scams more emphasis has now been placed on ensuring a receiving scheme is genuine.
- As the number of pension liberations scams has increased more importance is now attached to the due diligence checks conducted by a provider when completing a transfer.
- Mr N's request to transfer could only properly be assessed when all the correct documentation, relevant to overseas transfers had been received.
- The desired completion date for the transfer was requested to be no later than 6 April 2016. However, the request was not correctly received until Saturday 23 March 2016, essentially two working weeks before the deadline.
- The first written confirmation that this transfer was time critical was not received by Aegon until 30 March 2016.
- The original documents returned on 3 March 2016, related to a domestic transfer and were not sufficient to proceed with the overseas transfer to London & Colonial.
- Aegon were not originally asked to provide an overseas transfer pack. Once it was made aware that the transfer was to an overseas arrangement, it conformed to HMRC's guidance and issued the correct documentation within 30 working days.
- The Pensions Regulator allows for a six month completion period for transfers of this nature.
- As Mr N is currently based in the UK, is under the age of 55, and considering the transfer was going overseas, it was reasonable for Aegon to carry out further checks. Aegon is also required to assess every overseas transfer, on its own merits. Even if a scheme is well known, that is not sufficient for any due diligence to be waived.
- Aegon's checks were also designed to ensure the payment would not be classed as an unauthorised payment which would incur a charge, and potentially an unauthorised payment surcharge, which would be payable by Mr N.
- Aegons actions, while delaying payment, were reasonable given the circumstances.

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

20. Mr N's reasons for not accepting the opinion are detailed below.

- Aegon were first made aware that this was a QROPS transfer on 3 March 2016, but did not begin the transfer process, including due diligence checks in a timely fashion i.e. from this date.
- Aegon's request for sight of Mr N's identification documentation was wrong because "It is a FCA requirement that firms identify their clients at the time they enter into a business relationship with them. Doing so many years later could be viewed as a breach of these rules. With regards to form APSS263 – please see the attached document which was produced by Aegon on QROPS transfers. The scheme administrator is to provide this within 30 days of them receiving the transfer request."
- There is nothing inherently onerous in a QROPs transfer which means it should take much longer than a standard transfer.
- If Aegon needed specific overseas request forms they should not have waited 9 days until 15 March to send them. They had 8 working days after receipt of the completed forms. That equalled 17 days of processing time which exceeded their stated turnaround times.
- Aegon had therefore not provided its customers with service of an acceptable standard as they had been led to expect, and had imposed unreasonable barriers to switching produce contrary to TCF requirements.
- Aegon had unduly delayed the transfer by sending duplicate forms on 23 March despite already being in possession of the signed originals.
- Mr N also had a policy with L&G that he wanted transferred at the same time as his Aegon policy. L&G were able to action the transfer within 7 days of receiving the original request.

Ombudsman's decision

21. I conclude that the checks which Aegon conducted were reasonable and they were conducted without undue delay. Consequently I do not consider that Aegon are responsible for any maladministration.

22. In recent years, there has been a marked increase in the number of reported pension liberation scams and as such, The Pensions Regulator and HM Revenue and Customs have taken steps to tighten the checks that are conducted by schemes when making transfers.

23. HMRC make clear (Pension Manual PTM101000), that it is up to individual schemes to carry out due diligence.

    "Before making a transfer the scheme administrator should have carried our reasonable checks in relation to the transfer as part of their due diligence. If HMRC considers that the scheme administrator has not carried out sufficient due diligence checks into the transfer they will not normally have met the conditions to be discharged from the scheme sanction charge.

    There is no checklist of the acceptable due diligence requirements as each case will depend on the circumstances."

24. Therefore there is no prescribed list for what form due diligence should take and HMRC do not put a specific limit on the amount of time these due diligence checks should take.

25. In this case, I am satisfied that Aegon have acted within HMRC and PASA guidance in exercising due diligence on a transfer which they concluded triggered a scam risk warning. None of the information requested was frivolous or unnecessary, and requests were actioned within reasonable timescales...

26. When Mr N made his original request for transfer information in August 2015, Aegon were not obliged to provide overseas transfer forms as standard. They were only required to do so within 30 days of being notified that the transfer was to an overseas arrangement. This notification was not received until 3 March 2016, and the correct overseas forms were sent out well within the 30 day turnaround time.Aegon were not on notice of a valid request for overseas transfer until 23 March and were not on notice of the need for urgency until 30 March. There was therefore no reason for them to commence due diligence as early as 3 March. I conclude that the obligation was to act promptly after 23 March and with as much expedition as was possible after 30 March when they were told that time was of the essence.

27. They replied on 31 March that the transaction could not be completed by the year end and nothing which happened thereafter changed their position on that. Aegon's explanation for why they needed this time is that they were putting the request through processes used in the financial crime team. I am satisified that the processes they were working through were consistent with the PASA Code, and Aegon did not take an unduly long time to complete them.

28. Essentially, Aegon had from 25 March 2016, this being the first working day after the correct paperwork was submitted, to complete a transfer, including the relevant due diligence checks, by 5 April 2016. This was not sufficient time..

29. Mr N also queries why Aegon issued him a set of forms he had already received via Pavis, which caused a further delay. He cites this as an example of Aegon not treating him fairly. Aegon has a responsibility to ensure members wishing to transfer away from the schemes under its care do so in a timely fashion but are also informed of the possible outcomes of the transfer. It is a fairly standard practice for

administrators to send forms to members directly even if they have representatives. This is to ensure all relevant information, including details regarding pensions liberation schemes are received by the member. In light of this, I do not agree with Mr N's assertions.

30. It was the completion of the scams awareness diligence rather than any duplication in the forms which were issued, or time taken to complete identity checks which caused the due diligence exercise to overrun the financial year end. As mentioned earlier, the number of pension liberation scams has increased in recent years, in light of which it is only logical that the transfer process is refined and strengthened. I consider the due diligence checks carried out by Aegon were reasonable and an essential part of ensuring, as far as possible, that Mr N's transfer was to a legitimate arrangement The year end timing was unfortunate, but I do not find that Aegon took an unreasonable length of time to complete the due diligence process.

31. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
10 March 2017