

## The complaint

Mrs W is unhappy that Scottish Equitable Plc, trading as Aegon (Aegon) caused delays in the transfer of her pension fund to a new provider, causing her a financial loss.

## What happened

Mrs W has been represented in her dealings with us, and Aegon. However, for ease of reference, I'll refer to Mrs W only in this decision.

On 7 July 2022, Aegon received a request to transfer Mrs W's pension funds to a different provider, who I'll refer to as 'SW'. Aegon then sold her investments down to cash and transferred £269,342.31 to SW on 12 July 2022. However, shortly after this, SW advised Aegon that Mrs W had cancelled the transfer (within the permitted cooling off period). SW advised they'd return the funds, and these were received on 1 August 2022.

Aegon wrote to Mrs W on 15 July 2022, asking if she was intending to transfer the funds to another provider. And that if she did she'd need to complete a new transfer request. Aegon also advised Mrs W they could reopen her old plan and transfer in the funds.

Between August 2022 and October 2022, Aegon chased Mrs W to sign terms and conditions to allow her returned funds to be reinvested. There was some confusion regarding whether Mrs W had done this, and her funds remaining uninvested. Reinvestment eventually began on 28 September 2022 and completed on 12 October 2022. The reinvestment 'date' used was 12 September 2022, which Aegon said was two working days after Mrs W had accepted their terms and conditions.

However, on 10 October 2022, Aegon received a transfer request from Embark Pensions. The request had been signed by Mrs W on 1 August 2022. Mrs W's investments were again sold down to cash, and £249,740.12 was transferred to Embark on 19 October 2022.

Unhappy that the amount transferred was lower than the amount received back from SW, Mrs W complained to Aegon. However, Aegon believed they'd processed the Embark transfer, and dealt with the return of, and reinvestment of, the funds from SW as they should have done. Unhappy with this response, Mrs W brought her complaint to this Service. One of our Investigators upheld her complaint, concluding as follows:

- There was nothing within Aegon's T&Cs requiring Mrs W's returned funds to be reinvested – it was her choice whether to do this. Accordingly, had Mrs W not been pressed to agree to the reinvestment, her funds could have been sent to Embark much quicker than they were.
- Mrs W's advisor should have been told this in Aegon's call with them on 11 August 2022, and if this had been done, the advisor would have been able to instruct Embark to submit the transfer request the following day
- It took Aegon seven working days to process the funds transfer in October 2022, so applying the same timescale Aegon should have transferred the funds to Embark on 23 August 2022.

The Investigator also set out a method for calculating the investment loss caused by the delay in transferring Mrs W's funds and said Aegon should pay Mrs W £200 compensation for distress and inconvenience (D&I) caused by their mistakes.

There followed some exchanges between our Investigator and Aegon - who essentially accepted what our Investigator had recommended. Aegon said any redress calculation date should take into account the amount of time it took for Embark to reinvest the funds they'd received, which our Investigator accepted – which is standard and accepted practice in calculations of this type.

Embark subsequently provided the necessary investment information to allow Aegon to undertake a loss calculation – they'd invested a total of £223,256.72 between 19 and 20 October 2022. Information was also provided detailing the historic unit prices of each respective investment made as of 25 August 2022, allowing Aegon to perform a comparative loss calculation. The remainder of the sum transferred was held in cash.

Aegon used these details and calculated that Mrs W had suffered a financial loss of £4,828.71. This was based on having invested her funds (in August 2022) in the same proportions as she did eventually do in October 2022. Aegon processed a claim for this amount and sent this to Embark.

However, Mrs W (via her representative) didn't agree this was the correct calculation method, and in particular said it failed to take account of the difference between the original fund value of £269,342.31, and the lower transferred value of £249,740.12.

Our Investigator reviewed what Mrs W had said, agreeing that Aegon *didn't appear* to have considered the difference in fund values. However, Aegon remained steadfast that they'd followed the correct process in calculating Mrs W's loss, and so asked for the complaint to be considered by an Ombudsman, and this complaint was passed to me for that purpose.

I then considered what both parties had said and concluded Aegon had undertaken a correct redress calculation. I set out my reasoning in a Provisional Decision (PD) dated 8 December 2023, the relevant contents of which I repeat below:

#### *My Provisional Decision*

*It's accepted by Aegon they shouldn't have insisted on Mrs W's funds being reinvested after they were received back from SW. Their T&C's didn't require this. Mrs W's funds could, and I think should, have remained in cash. I also agree with our Investigator that, had Aegon not insisted on the reinvestment, Mrs W's advisor could have been told on 11 August 2022 that her funds had been received back from SW, and this would have started an immediate request from Embark to transfer Mrs W's funds. I also agree with the timeframe suggested by our Investigator, and on that basis £269,342.31 should have been transferred to Embark on 23 August 2022.*

*So, the remaining issue for me to consider here is how the redress should be calculated, to reflect the losses Mrs W has suffered. Aegon agreed with our Investigator's initial redress calculations, albeit I think these calculations could have contained greater clarity with regards to the calculation methods to be used.*

*Where a business has done something wrong, we expect it to put their consumer back in the position had their mistake not occurred. Here, that means thinking about what would have happened had Aegon transferred £269,342.31 to Embark on 23 August 2022 – and ask Aegon to take the necessary steps to put Mrs W back in that position. In cases such as this,*

*the appropriate method of calculating loss/redress would involve asking Aegon to undertake the following enquiries/calculations to work out what loss Mrs W suffered (if any):*

- *Contact Embark to ascertain the notional value of Mrs W's policy, at the loss calculation date, had the correct value of £269,342.31 been transferred to them on 23 August 2022.*
- *Aegon should assume Mrs W made the same investments as she did when the funds were actually transferred on 19 October 2022*
- *If the value is higher than Mrs W's actual fund on the 'loss calculation date', the difference is the loss that Mrs W has suffered, and Aegon would need to pay that amount into Mrs W's pension.*
- *I'd also include provision for payment of that sum to Mrs W, in the event it wasn't possible for Aegon to pay the sum into her pension, subject to appropriate tax deductions.*

*After our Investigator issued his View, Aegon accepted his recommendations and immediately asked Embark/Mrs W's advisor to provide the necessary data to allow such a calculation to take place. This was provided, and Aegon calculated the loss as at that time (24 August 2023), sending this sum - £4,828.71 – to Embark two days later.*

*Having looked carefully at the calculations undertaken by Aegon, I'm satisfied they have been done correctly, and that the loss figure they calculated (£4,828.71) appears to have been correct as at the date it was calculated. I appreciate Mrs W (and her advisor) disagrees, so I'll explain why.*

*When Embark received the lower amount (£249,740.12) on 19 October 2022, they invested £223,256.72 (89.4%) in a selection of funds, with £26,483.40 (10.6%) remaining in cash. So, the fairest way to approach redress is to apply those same percentages – exactly mirroring the investment choices Mrs W did make – to the larger sum assuming it was able to be invested by Embark in August 2022. In other words, redress needs to be calculated based on Mrs W most likely having invested £240,780.23 (89.4%), with £28,562.09 (10.6%) remaining in cash.*

*Using one investment as an example, Mrs W did invest 5.89% of her total fund (£14,720.22) into the Schroder US Mid Cap Fund. This allowed her to purchase 9,735.6 units in October 2022. However, had the larger amount been transferred, 5.89% of that sum (£15,875.62) would have allowed her to purchase more units – 10,176.16 – on 25 August 2022, using the unit price of that fund on 25 August 2022, the time the transaction would/should have occurred. So, the delay caused her to own 434.557 less units than she would have owned had the transfer happened in August 2022. This is her 'Schroder Fund' loss. That 'loss' needs to be valued for redress purposes, and Aegon have used the unit price as of 24 August 2023 – which is after they'd accepted our Investigator's View and received all necessary information to complete their calculations. The cost to replace the 'lost' 434.557 units on 24 August 2023, based on the unit cost on that date, was £638.80. So, that represents the 'loss' that Aegon needs to pay to Embark.*

*Similar calculations have been undertaken in respect of the other 13 investments that Embark made in October 2022. Ten of these showed Mrs W would have been able to purchase more units in August 2022 had the larger (correct) sum been transferred – and loss amounts have been calculated. Three show that, due to wider unit price movements, Mrs W would actually have purchased fewer units in August 2022, with those calculations reducing the total loss made as a result of the delay. The total 'fund' loss is £2,750.02.*

*I'll now address the issue of the cash amount transferred. Embark retained 10.6% of the fund transferred in cash in October 2022 - £26,483.40. This means that, had the larger sum been transferred in August 2022 – and assuming 89.4% was invested as detailed above – that would leave 10.6% left in cash, or £28,562.09. That's the cash amount Embark would have retained in August 2022, but as they were only able to retain £26,483.40, it means there is a shortfall – and this represents the cash 'loss' which here amounts to £2,078.69.*

*I appreciate Mrs W believes the above calculation method fails to take account of the difference between the August and October 2022 amounts - £19,602.19. However, I think it does. The calculation method works out how many investment units Mrs W would have been able to purchase in August 2022 using the larger transfer sum of £269,342.31 – what Mrs W would have done had that amount been sent in August 2022 when it should have been. She (or her pension) would have 'owned' a fixed number of units in the various funds that Embark chose to invest in based on £269,342.31 being sent. The loss is then calculated based on what those respective quantities of units would be worth on 24 August 2023.*

*When adding the original transferred amount of £249,740.12 and Aegon's redress payment of £4,828.71, it gives a total amount 'transferred' by Aegon to Embark of £254,568.83. It's clear this is less than the £269,342.31 figure that should have been transferred in August 2022, and I can understand if that seems, at face value to Mrs W, to be unfair and make her worse off. However, that shortfall can be explained. To do so, I would highlight the movement in the 'Embark' unit prices over the period in question. It can be seen that, generally speaking, these have fallen, meaning the value (and cost) of 'x' number of units in August 2022 was more than it was in August 2023. Investment and stock market values fell in this period due to well documented economic events, causing 'x' number of investment units to be worth less in August 2023 than they were in August 2022.*

*And it can be noted too between August and October 2022 (what I'll call the Aegon 'reinvestment' period), the value of Mrs W's investments fell by £19,602.19, coinciding with an approximate 10% fall in the UK stock market. Had Mrs W's fund been transferred to Embark in August 2022, and reinvested, it's likely her fund values would have experienced a similar fall – certainly the comparative unit prices that Embark/Mrs W's advisor provided to Aegon support this.*

*I return to the fundamental purpose of providing redress in a delay case such as this – to return the consumer to the position they would have been in had the delay not occurred. In the case of Mrs W, what would her investments be worth in August 2023 (when Aegon calculated and paid redress), had the correct amount been sent in August 2022 when it should have been. The information provided via Embark shows Mrs W's investments would have been worth less in August 2023 than in August 2022, albeit £4,828.71 more than the amount transferred in October 2022. The sum of £19,602.19 isn't 'missing', because the whole of the £269,342.31 has been used (in relative proportions) as the basis for each individual loss calculation.*

### **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.*

Aegon responded to my PD, accepting its contents. They agreed to pay Mrs W £200 D&I, upon receipt of her bank details.

Mrs W, via her representative, initially didn't agree with my PD. They asked to see the redress calculations I'd relied on in reaching my PD outcome. Having been provided with these, they've since confirmed they have nothing further to add.

Given what I've said above, I'm satisfied Aegon has undertaken an appropriate loss calculation, and paid the identified loss amount to Embark within days of identifying what that loss amount was. As such, I'm satisfied Mrs W's Embark pension was returned to the position it would have been in, had £269,342.31 been transferred to Embark when it should have been on 12 August 2022. Accordingly, I make no further award in the circumstances.

All that remains is for Aegon to pay Mrs W the D&I compensation. Calculating awards for distress and inconvenience isn't an exact science, and guidance is available on our website setting out our approach to awards under this heading. They are fairly modest in monetary terms and are not designed to 'punish' a business for their mistakes. In this case, I remain of the opinion that £200 provides a fair reflection of the distress caused, and I agree this is the amount Aegon should pay to Mrs W.

### **My final decision**

I uphold Mrs W's complaint against Scottish Equitable plc, trading as Aegon, and require them to pay Mrs W £200 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 February 2024.

Mark Evans  
**Ombudsman**