

The complaint

Mr S says Scottish Equitable Plc, trading as Aegon, was responsible for a delay in establishing his annuity. As a result, he believes there's a period of several days each year when, if he were to die, his estate would lose a whole year's annuity income.

What happened

Mr S took out a personal pension plan with Aegon in 1985. An important feature of his plan was a guaranteed annuity rate (GAR). This meant when he retired, he was protected from falling rates and could rely on a known minimum annuity rate that would be applied to his fund depending on when he decided to take the benefits.

It's of note that by 2016 Aegon had taken the commercial decision to sell the bulk of its annuity business. However, it recognised it had responsibility for ensuring customers like Mr S should still be able to benefit from the guarantees associated with their pension plans. So, as part of the deal it arrived at with Legal & General (L&G), which bought the bulk of the business, it undertook to meet any resulting costs.

Mr S was entitled to take advantage of the GAR provisions in his pension plan at any point from when he turned 60 in 2011 until his 75th birthday. Although attractive in many respects, the guarantee also came with certain conditions.

For example, an annuity under the contract was only available on a single life basis, with no guaranteed period and no escalation. The pension was only payable annually in arrears. And when Mr S died his final pension income would be the last due annual payment he received preceding his death.

Mr S approached Aegon on 25 September 2017 shortly after his 66th birthday. He requested a retirement options quote. He was sent information together with a benefits illustration. Mr S then requested tailored information based on utilising only a portion of his fund. A further illustration was provided showing the tax-free cash (TFC) and annual income this would generate.

Aegon says it received a request from L&G to transfer a portion of Mr S's pension funds on 18 October 2017. It processed the settlement 4 working days later. By the time funds had cleared through bank accounts Mr S's effective pension date was 27 October with his first payment due in 2018.

Mr S's principle concern is that the arrangement between Aegon and L&G caused a delay in the establishment of his annuity. He says his retirement date should be 18 October when the paperwork was completed, not 27 October when the firms involved finalised matters. Mr S says this delay means there's a period of several days each year when his death would result in the loss of almost a year's annuity income that would've been paid if his pension had been set up immediately when he returned his application. Mr S has told us he doesn't want a monetary award. He simply wants the date his annuity is paid each year to reflect what he considers to be his correct retirement date – the 18 October.

Mr S has also raised a number of other concerns about what happened. For example, he thinks Aegon underpaid the 'top-up' it provided to L&G to meet in full its obligations to pay his annuity. He believes both companies have benefitted by tens of millions of pounds from delaying annuities at the expense of potentially thousands of consumers.

Mr S says he had no choice in using L&G to provide his annuity. It was Aegon which had taken the decision to withdraw from the market and come to a commercial arrangement with another firm and he shouldn't be disadvantaged by that decision. Mr S says our Service should consider his complaint as against both companies jointly.

Mr S says that while he can't point to a financial loss at the moment, it shouldn't be for his Estate on his passing to have to bring a complaint to have the matter dealt with at that time should it be necessary. The issue can and should be resolved now.

Aegon said Mr S hadn't been disadvantaged by the agreement it had with L&G for arranging annuities for its personal pension plan customers. It said it received a request to transfer funds on 18 October 2017. It set up the claim according to its procedure and the annuity couldn't start straight away because it had to carry out certain checks first, for example verifying his identity. It processed the payment on 24 October 2017, four working days after the request was made.

In its final response to Mr S Aegon also said that while he had suggested there could be a loss to his Estate in the future if he died during the same period in the year when his annuity was being set up, this was a hypothetical scenario. It said that if in the future his executors thought it was responsible for causing such a loss then they would have to raise a complaint at that point.

Our investigator didn't uphold Mr S's main complaint about the delay to his annuity being set up. But she did recommend Aegon should pay him £150 because she thought it hadn't made clear to him what the timescales were likely to be. Both parties disagreed and so his case has come to me for review.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

Both parties have provided information and argument concerning the events complained about. I've not provided a detailed response to all the points raised. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account and considered all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I can see from his submissions Mr S has a very strong sense that both Aegon and L&G have done wrong. As he now knows, this Service can't join third parties to complaints, so we can't do what he wanted us to do which was to consider his case jointly against both parties.

That said, I know Mr S has brought a separate complaint against L&G, and so this decision will focus on Aegon's role and responsibility for what happened. And I'm not blind to the arguments he's made, which I've thought about carefully in arriving at my findings in this case.

Mr S is concerned not only about the potential financial detriment he's suffered, but also about the impact on other consumers. While I recognise the points he's made in that regard, this Service was established to resolve cases between individual eligible complainants and respondent businesses. Of course, we have a wider responsibility to gather insights from the body of complaints we see and share these with sector stakeholders.

I've arrived at broadly the same conclusions as the investigator for similar reasons. So, I won't be upholding Mr S's main complaint. I'll explain why.

Turning to the matter at the heart of Mr S's case against Aegon - was it responsible for a delay in establishing his annuity? My starting point is the terms and conditions document for his personal pension plan. I think the following extracts are important.

The Pension Date is defined in the following terms (bolding is my emphasis):

*“Pension Date” means the **Pension Date selected or to be selected by the Member...**”*

***“The Pension Date of a Policy shall be a date selected by the Member of which written notice shall be given to the Society, and shall be a date not earlier than the sixtieth birthday of the Member (or the Assumed Retirement Date if it is earlier than the sixtieth birthday) or later than the seventy fifth birthday of the Member...Where any of the Allotted Units are Units of the Property Fund, the Member shall give one year's notice of the date selected. In other cases, notice shall be given not less than one month and not more than three months before the date selected.**”*

The investigator found that Mr S gave Aegon written notice of his intention to take benefits from his pension fund when he sent his application to L&G, on 18 October 2017. Mr S didn't dispute this or inform us that he'd given earlier notice. Strictly speaking then, if he'd wanted his annuity paid on 18 October each year, he should've informed Aegon at any point between 19 July 2017 and 19 September 2017.

The investigator also concluded that the terms didn't specify when an annuity would start, for example on the Pension Date, or when the application was completed or received, or at some other point. I don't agree with this finding. Mr S's personal pension plan sets out the following terms in this regard (bolding is my emphasis):

“On the Pension Date of a Policy the Allotted Units will be cancelled and the Retirement Value will be the total value at the Bid Price of all of the Allotted Units...”

*“On the Pension Date of a Policy the Retirement Value will be applied to purchase from the Society under the Policy a retirement annuity on the life of the Member payable during the lifetime of the Member, **the first payment falling due one year after the Pension Date and the last on the yearly due date immediately preceding his death...**”*

So, I think it's clear that Mr S's annuity was due to be paid one year in arrears of his Pension Date. But as I've found, Aegon didn't receive notice of his planned retirement date prior to his submitting his application on 18 October 2018.

Next, I thought about Aegon's decision to withdraw from the annuities market and to sell most of its interest to L&G. While it clearly has the freedom to take the commercial decisions it feels appropriate for the benefit of its business and its stakeholders, it wouldn't be fair or reasonable for it to do so with the intention or effect as to avoid its obligations to existing customers.

I think Aegon's agreement with L&G recognised and provided for certain obligations it had to ensure customers weren't disadvantaged. For example, it gave an undertaking to people in Mr S's position who benefitted from GAR's associated with their personal pensions, that L&G would apply the same annuity rates as set out in their individual policies.

Mr S doesn't dispute there was a GAR protection. Rather, he says he's suffered detriment of another kind as a result of Aegon's contract with L&G. He says the establishment of his pension annuity was delayed because of the arrangement between the firms.

Mr S believes that once he elected to take some of his pension benefits and had submitted the application, his wishes should've been given immediate effect – on 18 October 2017. He argues this would've been the case had Aegon retained its interest.

I'm afraid I don't think Mr S's expectation here was realistic. The terms of his contract that I've already set out indicate to me that Aegon would've required, and provided for, some time to make arrangements once it knew of his retirement intentions.

To re-cap, he approached Aegon on 25 September 2017 shortly after his 66th birthday. He requested a retirement options quote. Two days later he was sent a letter detailing the information he needed together with a benefits illustration.

On 2 October 2017 Mr S asked Aegon for further information based on him taking around 30 percent of his fund. It provided a more tailored illustration on 12 October 2017 showing the tax-free cash (TFC) and annual income this would generate.

AGEON says it then received a request from L&G to transfer a portion of Mr S's pension funds on 18 October 2017. It processed the settlement 4 working days later. By the time funds had cleared through bank accounts Mr S's effective pension date was 27 October with his first payment due in 2018.

Mr S didn't notify Aegon of a specified retirement date prior to his application. I think the purpose of the notice period stipulated in his original policy documentation was to provide sufficient time for it to have been confident it could process such a request in good time and to meet the customers target date.

I can't see there was a critical time line Mr S was working to. He'd been eligible to apply for his annuity for around 6 years before he did so. It isn't the case that he wanted his annuity to start on the date he was first able to take it. And his planning wasn't strictly associated with his birthday, which was a significant factor given the GAR he could benefit from increased each year according to his age.

Instead Mr S's annuity start date was going to depend on many moving parts. These included, when he initiated enquiries; the provision of information to him; his consideration of the details and request for refined options; his consideration of those options and decision to proceed; the application process; the requirements on firms to ensure adherence to correct procedures such as identity checks; and the establishment of the annuity.

On balance, I don't think the time it took to start his pension was unreasonable. I've not seen clear evidence the process would've been quicker had Aegon retained control and provided the annuity itself.

The nature of Mr S's policy is that it's paid annually in arrears. So, whenever he passes, he will have been alive for part of a year and his Estate won't qualify for pro-rata benefits. This is an inherent feature of the policy he bought.

One of the matters Mr S has raised with this Service was that L&G had confirmed to him that Aegon hadn't provided sufficient 'top-up' funds to meet in full its obligations to pay his annuity. We asked for him to provide a copy of the correspondence he was referring to. The key extract was as follows:

"Regulations were followed and your commencement date was not manoeuvred for our own gain in any way. You mention the top-up payment received from Aegon which provides your [GAR]. This does not cover the cost of bringing your commencement date forward..."

My interpretation of this note is that L&G refuted that his pension commencement date had been the subject of inappropriate adjustment. And it was confirming the top-up payment it received from Aegon wouldn't cover the cost of bringing forward that date. It seems to me this doesn't support Mr S's case, it's merely a statement of fact and takes us back to the central argument about what is a fair and reasonable expectation for the setting of his Pension Date.

Mr S also said that while he can't point to a financial loss at the moment, it shouldn't be for his Estate on his passing to have to bring a complaint to have the matter dealt with at that time should it be necessary. I'm mindful that Aegon covered this line of argument in its own final response to him. I think in the circumstances of this case this issue is a red-herring – I'll explain why.

In relation to the argument about Mr S's correct Pension Date, there's merit in the principle he argues here. That's to say, *if* the result of Aegon's actions and its agreement with L&G had been to expose him to detriment, then I'd certainly be considering requiring it to put matters right now by making arrangements to effect a change in the date of his annual annuity payment.

But I've concluded that Aegon wasn't responsible for delays in the process of setting up Mr S's annuity. Indeed, it seems to me this was established in a reasonable timeframe. And it follows that I don't require it to do anything further in this regard.

Finally, Aegon disagreed with the recommendation made by the investigator that it should pay Mr S £150 because of its failure to provide him with clear information about the time scales and process for establishing his annuity. It said it didn't offer a service of providing a customer with expected timescales of a third party (L&G) carrying out work. It could only provide such information where it was in control.

I note the following extracts from its final response to Mr S about his complaint which I think strikes a different tone:

"As part of our decision to leave the annuity market, we agreed to sell and transfer a significant part of our annuity business to Legal and General. We decided to stop providing annuities as we believe this will make our company stronger and serve our customers better in the long term. We also believe that with Legal and General expertise and long standing experience in annuities, they'll provide our customers with an excellent service."

"You mentioned you could lose out because the process of starting your payments takes a little longer. While I understand your concerns about this issue, we're confident that Legal and General are able to start payments to our customers in a reasonable timescale. All payments are the same through Legal and General as they would be through Aegon."

In arriving at a deal with L&G it would've done due diligence to ensure, as it assured Mr S, that the service customers received wouldn't suffer. Clearly, it can't be held responsible for the subsequent operational performance of a third party. But the point the investigator was

making is about Aegon providing their customers with effective and clear information about process and timetables.

On balance, I think Aegon should've done more when it was in communication with Mr S about his pension options to make clear the broad timetable and process that could be involved in establishing his annuity. That's not only because of its legacy responsibilities, but also because it still had a key role to play in enabling his pension through the transfer of funds. I also think it confused matters when it covered the prospect of a hypothetical loss to Mr S's Estate in its final response letter.

Putting things right

I think it's more likely than not in the circumstances of this case, that had Aegon's communications been more effective this would've been successful in managing Mr S's expectations.

So, I require Scottish Equitable Plc to pay Mr S £150 in recognition of the distress and inconvenience it caused him through its failure to provide him with sufficiently clear and effective communications.

My final decision

For the reasons I've already set out, I'm not upholding Mr S's main complaint, but I'm awarding him £150 for the trouble and upset he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 February 2021.

Kevin Williamson

Ombudsman