

## The complaint

Mr C complains that Scottish Equitable Plc (trading as Aegon) didn't ensure his annuity was set up in-line with his contractual right to payment.

## What happened

Mr C had three section 226 Retirement annuity policies with Aegon. Two of the plans were issued with the same Policy Conditions booklet, the third, whilst using a different Policy Conditions booklet, shared much of the same terms. All three said that on retirement:

### Pension Date

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, except as provided in the following paragraph. 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.

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. The amount of the annuity secured by each £1,000 of the Retirement Value will be calculated according to the Society's then current immediate annuity rates for annuities purchased in these circumstances, but will not be less than the amount shown in the Appendix hereto.

In 2017, Aegon decided to stop providing annuity contracts for new customers. It agreed with Legal & General to transfer its annuity business to it. This proposal required high court approval and Aegon set out this proposal to its customers. Within this letter it said a number of times that customers won't be adversely affected and there will be no change to contractual terms. Below is an extract from the summary included in the letter:

- The timing and amount of your annuity payments won't be affected by the transfer.
- Any contractual guarantees you have will continue, and the terms and conditions of your policy won't change as a result of the transfer.

Mr C notified Aegon on 3 April 2019 of his intention for his pension date to be 12 May 2019 (his 65<sup>th</sup> birthday) and so the first payment according to the policy conditions would be 12 May 2020. Mr C notified Aegon within the notice period set out in the Policy Conditions booklet.

Mr C then contacted L&G and told them of his intention to retire on 12 May 2019 and send it

the documents it required on 24 April. L&G said it then contacted Aegon to communicate this to it – and Aegon confirmed it wouldn't disinvest the money until 12 May 2019.

Aegon sent Mr C a letter on 26 April to say the bank details it had received from L&G were different to the ones it held – so it wanted confirmation these were correct to pay the tax-free cash. Mr C rang to confirm these details on May 2. Aegon paid the tax-free cash and sent the money over to L&G on 15 May (it says this was within its usual 10 day service level agreement) and the annuity was setup on 20 May 2019, with the first payment due the same day the following year.

Mr C then complained initially to L&G (a complaint about it is also being considered under a separate reference alongside this) and then Aegon. He said that the Policy Conditions allowed him to select a date in advance for the pension commencement date. And that Aegon and L&G had told the high court that customers wouldn't be disadvantaged through the transfer of business. But yet the terms of his policy weren't kept to. And with his annuity being payable in arrears, if he was to die between 12 May and 20 May, his estate would lose out on nearly £50,000 and this is to the advantage of the insurers.

Neither Aegon nor L&G felt it had done anything wrong on their side.

Aegon says it did the required administration within its usual 10 working day service agreement. So it doesn't think it caused a delay.

Our investigator looked into matters and upheld the complaint – awarding £250 for the trouble and upset caused by Aegon's part in failing to allow Mr C an annuity in line with the Policy Conditions. The investigator said that Aegon had a responsibility to Mr C to make sure in the transfer arrangements to L&G the Policy Conditions would be met.

Aegon replied to say it strongly disagreed as the investigator's decision ignored any of the practicalities of setting up an annuity. It said clearly things have changed since the 1980's and it is now required to do many more checks for security reasons. Such as the check it did here of Mr C's bank details. It said in fairness to all its customers it processes the requests it received in order. And the time they had taken wasn't unreasonable here.

### **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.

And having done so, I agree with the conclusions reached by the investigator and for broadly the same reasons.

It seems Aegon's processes in place for transferring Mr C's policy meant that the Policy Conditions Mr C was entitled to were never going to be met. But I've seen nothing to suggest Aegon told Mr C and/or its customers more generally that it would no longer be able to meet the Policy Conditions in relation to the pension commencement date. When Aegon left the annuity market (as it was entitled to do so) it agreed that customers wouldn't be disadvantaged by this change. Mr C made it clear what his intentions were. He told Aegon more than a month in advance on 2 April that he wished to choose 12 May 2019 as his pension commencement date – as he was entitled to do so under the Policy Conditions. Yet Aegon never explained to Mr C that this wouldn't be possible.

Aegon has said it is no longer practical to select a date in advance for an annuity to be setup. If this was the case I think it should've told Mr C. And I think it's fair to presume the

reason why the original Policy Conditions required a months' notice was because of the administration and processing times involved in setting up an annuity.

I understand that this process becomes more difficult when a transfer to another party is required and communication is needed with both sides. But Aegon had a responsibility to organise the transfer of its business in such a way that it could meet the terms and conditions of the policies. And that customers would suffer no adverse effects due to this. In Mr C's case this hasn't been fulfilled, despite Mr C notifying both parties within reasonable timescales.

Also, where a transfer is involved for an annuity payable yearly in arrears (and where the terms and conditions allow for it – with the customer meeting these requirements) – I can't see why a future retirement date cannot fairly be selected. Aegon's argument about the practicality of doing so, would hold more weight in my view if the annuity was payable immediately.

The approach taken by Aegon and L&G here meant that if Mr C was aware of what his options actually were, it seems he would've been faced with a definite financial loss or a future potential loss. If Mr C chose a date before his 65<sup>th</sup> birthday on 12 May, the guaranteed annuity rate would've been reduced, as a higher rate only kicked in on that date. In selecting the date of his 65<sup>th</sup> birthday, he couldn't receive the annuity on that date a year later due to the arrangements between Aegon and L&G. So if he was to die between the date selected and the actual commencement date, he (or his estate) will miss out on a whole year's annuity payment. This does not strike me as fair and isn't in-line with the Policy Conditions.

If there was a way Mr C could've received the full guaranteed annuity rate at 65 and have the pension commencement date he wished (as he was entitled to under the terms of the policy) Aegon didn't explain this to him.

In conclusion, Mr C had an entitlement under the policy-conditions to select a specific retirement date in the future if he met the conditions applied. He did meet these conditions. As part of the agreement to transfer its policies to L&G, Aegon was required to keep in place the prior contractual agreements. It told its customers it would do so. And it didn't tell Mr C here that this would be a problem here. So I don't think Aegon have acted fairly.

### **Putting things right**

Aegon cannot now put Mr C in the position he would've been in, as the annuity is not it's to amend. But I think it bears the responsibility of much of the trouble and upset caused to Mr C.

Mr C thought he had done everything required of him to meet what he was entitled to under the policy and will have suffered shock and frustration when he saw his actual pension commencement date. Mr C's annuity is not an insignificant amount and if he were to die between the date he selected (a date he was entitled to do so under the Policy Conditions) and the date the annuity actually commenced, he and/or his estate would lose out on nearly £50,000. Therefore, I think the £250 recommended by the investigator to compensate Mr C is fair and reasonable in the circumstances.

### **My final decision**

I uphold Mr C's complaint against Scottish Equitable Plc trading as Aegon and direct it to put things right as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 March 2022.

Simon Hollingshead  
**Ombudsman**