

The complaint

Mr S complained that Scottish Equitable Plc, trading as Aegon, caused delays in transferring his pension into a new Aegon plan, for the purposes of releasing tax free cash.

What happened

Mr S wanted to transfer three pensions he held with Scottish Equitable into a new plan with Aegon, so he could access some tax-free cash. He submitted his application by email on 30 April 2020, which Aegon received, but the transfer process didn't start then. Mr S phoned Aegon on two occasions in May to chase progress, eventually alerting Aegon to the fact that his transfer request hadn't been properly processed due to a system error. Aegon eventually started the process on 1 June 2020, with the transfer and re-investment completing just over two weeks later. Mr S was unhappy about this and complained to Aegon.

Aegon upheld his complaint and calculated that, because the transfer wasn't actioned correctly and on time, Mr S suffered an investment loss and was deprived of the use of his tax-free cash for the delayed period – and when including interest they calculated a redress offer of just under £450.

Unhappy with this, Mr S brought his complaint to this service, prompting Aegon to review its offer of redress. Aegon concluded their initial redress was calculated using an incorrect date, resulting in an increased loss/offer of just over £1,600. But Mr S still felt this was an unfair offer. He believed his funds should have been available to invest about a week earlier, which would have resulted in him being able to have purchased about 4,500 extra units in his chosen fund.

Whilst disagreeing with Mr S' calculations, our investigator upheld Mr S' complaint and set out what he felt was the fairest way to assess (and Aegon repay) the losses Mr S had suffered. He considered the amount of time Aegon had taken to progress the transfer once they had *started* the process and using that as a benchmark concluded that Aegon must do the following:

- Establish the value that would have been received from the ceding schemes had the process started on 1 May 2020 (the day after Aegon received the request).
- Pay Mr S simple interest of 8% on 25% of the above calculated sum, from 19 May 2020 to the date the tax-free cash element was actually paid.
- Aegon was also required to calculate actual investment performance against a fair value estimate of performance had the transfer been done on time – and to pay equivalent compensation into Mr S' Aegon pension plan if a loss was calculated on that basis.
- There were further calculations based on the effect of charges and tax relief considerations.
- And, in recognition of the trouble and upset experienced by Mr S, a further £300 should be paid as compensation for this distress.

After some further clarification, both Aegon and Mr S accepted this outcome in principle, and Aegon began the steps to implement the above redress requirements.

However, Mr S queried how Aegon performed the calculations. He was unhappy with the dates used, and the calculation for the total units that should have been purchased. In response, Aegon explained their approach and timescales had been accepted by our investigator, and these had been applied in their post-view redress calculations, but Mr S remained unhappy. And despite further exchanges taking place between all parties, no agreement could be reached, so Mr S asked for the complaint to be looked at by an ombudsman – and so it's been passed to me to consider.

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.

It's not in dispute Aegon made a mistake when they failed to process Mr S' transfer documents when they first received them. And Aegon agree they are responsible for making good any losses that Mr S has suffered as a result of that delay. The remaining disagreement stems from how long Aegon *should* have taken once they received Mr S' transfer documents.

Our investigator set out what he felt was a fair and reasonable method of calculating this loss, which was eventually agreed, and remains agreed by both parties. So, on that basis I don't need to and won't be making any material comment on the calculations that have been agreed. Instead, I'll be focusing on the only key issues remaining in dispute – the timeframe that should be applied to these calculations.

I want to begin by addressing Mr S' comments regarding what the redress start date should be. He says it should be day he emailed the transfer request (30 April), whereas Aegon say it should start from the next working day (1 May), as that is their standard process.

I should explain that, generally where we conclude a business makes a mistake, we ask that business to put the consumer back into the position they would have been in had the mistake not been made. Here, the process would have started on 1 May - this is what *would have happened* had the transfer request been acted upon when received, so this is the start date that needs to be used for these redress calculations.

I now need to address Mr S' other key issue – namely how many days it took for Aegon to process the transfer after they'd realised their mistake. Our investigator commented that it took 13 working days from when they started the process on 1 June 2020, whereas Mr S says it only took 12 days, and this is the period that should be applied here. Looking at the documents provided, I agree with Mr S in that I think it did take 12 working days, with the funds being invested in Mr S' chosen fund on 16 June 2020.

However, our investigator's view doesn't say a 12-day period must be used in the redress calculation timeframe. He mentions it in the body of his view, but only to compare it to the timeline proposed by Aegon as being a "*more realistic and truer reflection to actual events*". Furthermore, Aegon have explained they prioritised certain actions due to delays Mr S experienced, and these priority actions wouldn't have occurred had the process started when it should have done on 1 May 2020.

As I've said, I need to consider what *would/should* have happened here – and so I don't think Aegon is required to use 12 days as the determining timeframe in their calculations. Aegon have provided a timeframe for what should have happened. They've said the ceding

scheme aims to complete their transfer within ten working days from the day after the claim date. Upon receipt of the funds, Aegon would then take two working days to calculate and pay the tax-free cash element, and a further two working days to have reinvested the remaining funds.

I think these are fair and reasonable timeframes, and in line with what I'd expect to see. And these are the dates that have been used in the redress calculations proposed by our investigator that have been accepted by both parties. So to be clear, the notional 'ten-day' transfer period started on Friday 1 May and ended on Friday 15 May (there was a bank holiday in the period). The next milestone is the date the tax-free cash would have been paid – two working days later is Tuesday 19 May, and with a reinvestment two further working days later on Thursday 21 May. I'm satisfied these are fair and reasonable dates to use for the calculation purposes - as they have been in the view calculation timeframe. So, I won't be asking Aegon to depart from these dates in their calculations.

Finally, I need to comment on the £449.18 compensation Aegon previously calculated and agreed to pay Mr S. This was made up of £350 for delays experienced by Mr S and £99.18 for loss of interest on the tax-free cash had the transfer been processed on time. However, our investigator's calculations allow for a different interest rate to be applied to this calculation – Aegon used 1.1% whereas our investigator used our standard rate of 8%.

So, whilst Aegon have agreed to pay the £449.18 in addition to the total settlement our investigator proposed, I don't think it's fair Aegon should pay interest *twice* on the settlement amounts. So here, I think the total compensation for distress and inconvenience experienced by Mr S should total £650 – the £350 initially offered and the further £300 as per the view. And the interest element totalling £99.18 contained within Aegon's initial offer can be ignored, as it will be replaced by a calculation using a higher interest rate.

So, for the reasons set out above, I uphold this complaint, and will be asking Aegon to compensate Mr S using the same methodology as set out in our investigator's view, and repeated below.

My final decision

I uphold this complaint, and require Scottish Equitable plc trading as Aegon to do the following:

- Establish the value that would have been received from the ceding schemes, had the transfer process started on 1 May 2020 – this value will be 'Sum A'.
- Pay Mr S 8% simple interest on 25% of Sum A, from 19 May 2020 to the date the tax-free cash was *actually* paid.
- Compare the performance of Mr S' investment with that of the benchmark below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Aegon should also pay any interest set out below.
- If there is a loss, Aegon should pay into Mr S' pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Aegon shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Aegon are unable to pay the compensation into Mr S' pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have

provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

- In that event, the *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age. For example, if Mr S is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal to the current basic rate of tax. However, if Mr S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- If the amount of tax-free cash that Mr S actually received is greater than the amount he should have received, this sum can be deducted from the final redress payment.
- Income tax may be payable on any interest paid. If Aegon considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr S how much they've taken off. Aegon should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.
- In addition, Aegon should pay Mr S £650 for the trouble and upset caused by the delays.
- Aegon must also provide the details of the calculation to Mr S in a clear, simple format.

Key definitions:

Benchmark - Scottish Equitable Cautious Core Portfolio

From, or "start date" – 21 May 2020

To, or "end date" – Date of settlement

Actual value - This means the actual amount payable from the investment at the end date.

Fair value - This is what the investment would have been worth at the end date had it produced a return using the benchmark. Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal, income or other distribution out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are large numbers of regular payments, for the purposes of simplicity these should be totalled and deducted at the end date rather than periodically.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 May 2022.

Mark Evans

Ombudsman