

The complaint

Mr H complains that Scottish Equitable plc, trading as Aegon, paid too much in 'waiver of premium' payments to his pension fund. He also complains that Aegon's delays in completing the waiver's annual review have caused him distress and financial loss.

What happened

I issued a provisional decision on this complaint on 20 January 2022, in which I set out the background to the case as follows.

Mr H finished work on medical grounds in 2016. He claimed on a waiver that was part of his pension policy, to cover future contributions. His earnings stopped during the tax year 2018/19, which meant the annual amount he could contribute to his pension was limited to £3,600 gross. But Aegon paid more than this into the pension.

Aegon said it couldn't refund the excess to Mr H without proof that he didn't have earnings for the tax year 2018/19. Mr H couldn't provide the evidence Aegon was asking for, but following an internal review the business eventually accepted a printout of Mr H's tax account from the HMRC website. A refund for the tax year 2018/19 was made in August 2020.

There were also delays by Aegon in responding to some of Mr H's correspondence, and the business paid £100 compensation.

Our investigator concluded Aegon's internal review should have taken place sooner than it did. Had it done so, the investigator considered the refund would have also been made sooner. He said Aegon should pay £100 for the delay, and later said annual interest of 8% simple should be paid on the refund for the period April to August 2020.

Mr H was also unhappy that delays by Aegon meant the review date for his waiver claim had moved from May to November. He considered this meant he'd lost out financially on the refund that was due to him. The investigator didn't find this was the case. He was satisfied that, following the review, payments to the plan were backdated using historic prices. So the investigator wasn't persuaded Mr H had suffered any financial detriment as a result of the review date changing.

The investigator thought it was reasonable for Aegon to consider moving the review date back to May if it was possible to do so.

Mr H said he'd made Aegon aware of his earnings status earlier in 2019. So he thought it would have been reasonable for the refund to have been made before April 2020 (the date from which the investigator thought it was reasonable for 8% interest to be paid).

Mr H said moving the review date from May to November meant any refund was paid later than it should have been. So he considered the delay had caused financial loss, and would continue to do so if Aegon wasn't committed to the review on a fixed date.

Mr H was also concerned that the value of his pension fund may have suffered when Aegon had to sell units to pay the refund to him.

Aegon queried the interest rate on the refund recommended by the investigator.

The investigator reviewed the responses from Mr H and Aegon, and issued two further views. In the most recent view, he concluded that the date on which Aegon became aware of Mr H's earnings status wasn't relevant, because it was going to refund overpayments for all of the months that he was a non-earner.

The investigator maintained that the value of Mr H's pension hadn't been disadvantaged as a result of the refund Aegon had made.

The investigator said annual interest of 8% simple was the standard rate used by this service to reflect the cost of being deprived of money that the customer was entitled to. He said it is in line with the rate used by the courts.

The investigator looked again at the period for which Aegon should pay interest on the refund. He said it should be calculated from 19 May 2020 to the date it was actually paid.

The waiver annual review that should have taken place in November 2020 had been delayed. So the investigator said Aegon should also pay interest on any refund due from November 2020 to the date of payment.

Mr H responded to say that he still considered he'd made Aegon aware of his non-earner status in July 2019. And he maintained that it wasn't possible to tell whether the value of his fund had suffered because of the refunds that had to be made.

Mr H also considered the original review date of May should be used for the purpose of calculating redress. He asked for the complaint to be reviewed by an ombudsman.

Aegon responded to say that it didn't consider the refund in connection with the November 2020 review had been unreasonably delayed. It explained the process for reviewing the waiver and said this was why the date for applying any refund could be later than 12 months from the date of the previous review.

Aegon agreed that interest on the 2018/19 refund should be calculated from 19 May 2020. It said it could move Mr H's review date to May if this was what he wanted, and carry out the reviews on a six month basis.

Before this case was referred to me, a previous ombudsman had set out her findings on the case as follows

"I've considered all the available evidence and argument to decide what's fair and reasonable in the circumstances of this complaint.

It seems to me there are three issues to determine here:

- 1. Whether it's reasonable for Aegon to carry out the waiver's annual review in November rather than May.*
- 2. The point at which it was reasonable for Aegon to have known Mr H was a non- earner for pension contribution rules.*

3. *Whether the value of Mr H's pension fund has suffered because of the refunds Aegon has had to make.*

Review Date

Mr H considers he's been financially disadvantaged because the review date was put back from May 2019 to November 2019.

I accept that if the review had taken place in May 2019, it's likely Mr H could've made Aegon aware at that stage that he was no longer employed and had no earnings. If that had been the case, the refund could've been returned to him much sooner.

Aegon has explained why it's not always possible for reviews to take place and follow up work to be completed within a strict twelve month time limit. Based on what it's said, I accept there may be some slippage in the timetable for carrying out reviews, and I don't consider a small delay would be unreasonable.

But by November 2019 the review that should've taken place for Mr H was six months late. I don't consider that to be a reasonable delay, especially given the consequences if an individual's situation had changed, as was the case with Mr H. I think it would've been reasonable for the review to have been completed no later than the end of July 2019.

I've set out below my conclusions about the time at which it was reasonable for Aegon to have been aware of Mr H's employment status. And I've set out the basis on which I think interest should be paid on the refund for the tax year 2018/19.

If the 2019 review had taken place in May, or by July at the latest, the 2020 review should've happened at around the same time the following year. I understand Mr H hadn't received a refund for the 2019/20 tax year by February 2021.

I'm satisfied that the 2020 review should've been completed by the end of July at the latest. So I consider interest on any refund for the tax year 2019/20 should be calculated at an annual rate of 8% simple for the period 1 August 2020 to the date of payment.

Aegon's awareness of Mr H's circumstances

It's not in dispute that excess contributions were paid to Mr H's pension once he became a non-earner for the purpose of pension contribution rules. Aegon has confirmed that it will refund all of the overpayments for every month that Mr H has been a non-earner.

But I have to determine the period over which interest is payable on the refund. And in that respect, I consider the point at which it was reasonable for Aegon to have been aware of Mr H's non-earner status is relevant.

When Mr H wrote to Aegon in July 2019 he said:

'In the year 2018/19 I did not pay any tax and as such I understand that for tax relief purposes only a certain amount of the visa waiver can go into my pension pot. Can you please let me know what options I have for the remaining funds'

I can see there has been a lot of debate around the differences between a 'non-tax payer' and a 'non-earner'. I accept that Mr H's letter didn't specify he was a non-earner in the tax year 2018/19. But I think there was enough information in his letter to indicate he

was aware that his contributions were subject to the non-earner limit. So I think it would've been reasonable for Aegon to clarify with Mr H what his earnings position was.

As it was, Aegon responded to Mr H's letter in September 2019. It said:

'In regards to your query on how and when any funds will be paid to you, I've checked this with our back office team. They've confirmed that we'll write to you requesting the relevant information in November during your annual waiver review. Providing the claim is still medically valid, we'll be able to refund this by cheque as a part of the claim.'

So it seems Mr H's new circumstances wouldn't be taken into account by Aegon until the annual review. I don't think that's unreasonable - although I appreciate Mr H considers the annual review shouldn't have been delayed beyond May 2019. I've made findings on that point above.

Mr H has said he told the Aegon adviser he was no longer employed during the November 2019 review. On balance I think that's likely to have been the case.

By December 2019 Aegon was asking Mr H for proof that he wasn't earning. But Mr H told Aegon on several occasions that it wasn't possible for him to provide the evidence it was asking for. From what I've seen, I think it would've been reasonable for Aegon to realise that Mr H couldn't provide that evidence. Aegon eventually decided it would accept the information Mr H had provided previously, and the refund payment was made in August 2020.

I don't consider it was unreasonable for Aegon to try to verify what Mr H was telling it about his non-earner status. And even if, as I've suggested above, the 2019 review had been completed by the end of July, I accept it's likely there would've been some delay while Aegon established the position.

But from what I've seen, I think that by the end of December 2019 it would've been reasonable for Aegon to realise Mr H couldn't provide the evidence it was asking for, and to accept the information he'd already supplied. Had it done so, I'm satisfied that the refund could've been made to Mr H by the end of December 2019.

That means I consider interest on the refund for the tax year 2018/19 should be calculated at an annual rate of 8% simple for the period 1 January 2020 to the date of payment.

Potential loss to the value of the fund following the refunds

Mr H is concerned that the value of his fund will have suffered, depending on the unit price Aegon had to sell at to produce the refunds it's made.

To ensure Mr H is no worse off, Aegon should work out what the value of the fund would've been if the correct contributions had been made once it was aware of his non-earner status. As I've already said, I consider this was from 1 January 2020 for the 2018/19 tax year, and from 1 August 2020 for the 2019/20 tax year.

If the value of Mr H's fund is lower than it would've been if the correct contributions had been applied at the right time, Aegon should pay into the fund to make up the difference. But it shouldn't do so if this would conflict with any existing protection or allowance.

If Aegon is unable to pay into Mr H's pension fund it should pay any amount of loss, calculated at the date of any final decision, directly to him. But had it been possible to pay into the pension, 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.

The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. I have assumed that Mr H will be a basic rate taxpayer, and so, allowing for the prospect of Mr H taking tax free cash, a deduction of 15% would be appropriate here.

I've also thought about the likely impact on Mr H of what has happened, especially considering the reason why the waiver of premium needed to be invoked in the first place. I think this would have been quite distressing for Mr H and therefore Aegon should also pay £100 compensation to Mr H, in addition to the £100 it has already paid."

Aegon disagreed with that ombudsman's findings, however, saying the following in summary:

- It made it clear in its waiver confirmation letters to Mr H in November 2017 and December 2018 what it required from him. Those letters informed him that the maximum which he could contribute and receive tax relief at source on was the greater of a basic amount of £3,600 and 100% of relevant UK earnings. The letters further said that if Mr H didn't have enough earnings to support the contributions, then it was his responsibility to inform Aegon so it could refund any excess. If he was unsure, the letters said he should contact his IFA to clarify this and advise Aegon accordingly.
- But despite these letters, Mr H didn't contact it until 31 July 2019 – and even then he didn't confirm his level of income, saying only that he hadn't paid any tax.
- Mr H didn't notify Aegon of his income for the 2018/9 tax year until his complaint letter of 11 October 2019. This was therefore the first date it could start considering the process of refunding any of Mr H's contributions.
- It had made a number of suggestions to help Mr H provide the evidence it required to make the refund of excess contributions, but to date he hadn't supplied this. It had confirmed that once it had this, it would remove the excess contributions and pay these directly to him.
- It only agreed to accept the information supplied by Mr H in December 2019 as an exception and to help resolve the situation. It therefore didn't think it should pay interest from 1 January 2020 for the 2018/19 tax year refund.
- Once the full waiver had been paid into his plan, it confirmed this in its letter dated 31 December 2019 and said that the next review would be in October 2020. But at no point did Mr H question that review date.
- The 2018/19 tax year was the first review it undertook, but even using the personal tax account details supplied by Mr H, it still needed to confirm that this belonged to him. The review was completed on 5 August 2020, with £5,347 being refunded to

Mr H directly. Mr H had supplied his bank details on 3 August 2020, and it queried as to how it could have made the payment before this.

- It sent a further £8,894 on 11 May 2021 to cover the 2019/20 and 2020/21 tax years, which included £2,860 covering the period from May 2020 to December 2020. Therefore, if the 2020 review had been completed in July 2020, it wouldn't have been for the amount settled as this covered a period beyond the date of the review.
- It therefore requested clarification on the dates for the interest being paid and also what period the reviews were to cover. And it queried as to whether Mr H receiving money early, according to the suggested timetable, would then be taken into account.
- It provided a breakdown of the payments made to Mr H, as follows:
 - "Premium from May 2019 to September 2019 is £695.16 (net) less £240 (net) that we can apply each month = £2275.80
 - Premium from October 2019 to April 2020 is £713.10 (net) less £240 (net) that we can apply each month = £3311.70
 - $£2275.80 + £3311.70 = £5587.50$
 - $£5587.50 \times 8\% \text{ interest} = £447$ – This is one year's interest at 8%
 - Total refund is £6,034.50 for 2019/20 tax year including interest"
- To the figure of £6,034 it added £2,860 for the 2020/21 tax year, but no interest had been added to this as there'd been no delay. In fact, according to the suggested timetable, this payment should have been processed in July 2021.
- To allow future checks to be carried out, it approached HMRC directly, but before it could do this it needed a letter of authority from Mr H, which he supplied on 3 July 2020. It couldn't therefore assess whether there was any excess to be refunded until after that date and it had received confirmation from HMRC.
- But this wasn't an instantaneous process – it took time and involved third parties such as insurance companies. Once the process was complete, it could add the appropriate premiums to the plan, which could take up to a fortnight as it could only add one premium per day, and then refund the excess. It therefore disagreed with the suggested timescale set out in the provisional decision.
- There was no financial loss, as the premiums were backdated to when they were applied. It had then removed the excess premiums and refunded the amount over the allowable limits rather than the amount taken from the plan. This placed Mr H in the position he should have been.
- It also didn't think that the suggested rate of 8% simple interest was appropriate here. It didn't think that it was sufficient to refer to the rate applied by the courts, as this service wasn't a court. It said that this has, in the past, been justified by reference to interest rates a consumer may have paid on borrowing, but it wasn't aware that Mr H needed to cover borrowing. It therefore considered that the rate should be changed to reflect current interest rates.
- It also noted the suggested additional payment of £100 in respect of the distress and inconvenience caused to Mr H, and that this had been described as being in addition to the £100 already paid. But it said that it had already paid Mr H £350

and sent him two hampers, worth about £60 each. It therefore felt it had already been “more than generous” to Mr H.

Mr H also responded to the provisional decision, saying that whilst he broadly agreed with the ombudsman’s findings, he enquired as to whether he would be compensated for further financial disadvantage from December 2020 – the date that it had been suggested the payment should have been made to him.

Mr H said that he’d needed to sell banking shares to cover the period until the money was paid by Aegon, and that due to the changes in the share price, he’d suffered financial loss.

My own provisional findings, taking account of the facts of the case and the submissions made by both parties, were as follows.

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Aegon has said that, when Mr H contacted it by letter on 31 July 2019, he was confirming that he hadn’t paid any tax, and that he didn’t “finally” notify it of his income tax for 2018/19 until his complaint letter of 11 October 2019. But I would then wonder what Aegon in fact thought Mr H was telling it in his July 2019 letter. And I don’t think it would have been a particular leap to either have concluded that he was confirming that he wasn’t earning, or at the very least for what he had said to merit some kind of follow up enquiry as to the purpose of the information he was providing.

For example, Mr H included in his letter reference to him being aware of there being only a certain amount which could be paid by the waiver into his policy for tax relief purposes. I think this should have been a clear indication that further enquiries around this should have swiftly been made. And as with the previous ombudsman, I think that, had it done so, the process could have moved much quicker than it did.

I’ve in fact noted that, in a response to Mr H’s earlier enquiry, Aegon wrote to him on 17 September 2019, simply saying that any excess would be refunded to him. It made no comment on the steps which Mr H would need to take for this to happen, or the steps which it would take towards the same endeavour.

So I don’t agree that October 2019 was the earliest that Aegon could start considering the process of refunding the excess contributions. This should have been from when Mr H first wrote to it in July 2019.

But once it had agreed to accept the information provided by Mr H in his email of 20 December 2019, following the November 2019 review, it then took until 21 April 2020 to confirm this to him – four months. Whilst I appreciate that it might have taken time to seek the agreement of its tax and risk teams, these were nevertheless internal departments and Aegon wasn’t reliant on third parties in those matters.

I think that was too long, especially when it might intuitively have been concluded, even setting aside Mr H’s complaint in October 2019, that his financial situation might have been somewhat straitened due to him no longer working. I think a period of two months should have been ample for this to have been resolved and confirmed to Mr H. This means that Mr H should have had a refund of excess contributions for the 2018/19 tax year by 1 October 2019.

Aegon has then said that, when Mr H was informed that the next review wouldn’t occur until October 2020, Mr H didn’t question this – and therefore neither should this service. But if we

conclude that Mr H should have been entitled to an earlier review, then it wouldn't be the case that he would have needed to complain about this. This is a finding that this service is able to make, without Mr H needing to have specifically raised a concern about it at the time.

As it was, the review which began in November 2019 wasn't then finalised until 5 August 2020, at which point Aegon paid Mr H £5,374 – and Aegon has said that this was after Mr H had supplied his bank details on 3 August 2020. Aegon has queried as to how it could make payment to Mr H before he'd provided his bank details.

The implication here appears to be that Aegon's hands were somehow tied until Mr H provided his bank details. But to clarify, the request for his bank details was made in an email of 31 July 2020 [corrected from 2019 in the provisional decision]. So Mr H replied within three days, demonstrating no delay on his part.

Aegon has then requested clarity on the timescales being suggested by the previous ombudsman, remarking that it paid an amount in May 2021 to cover the excess contributions for the 2019/20 and 2020/21 tax years – and that if the 2020 review had been completed in July 2020, it wouldn't have been for the amount settled as this covered a period beyond that date.

I agree, but that's only because two years' excess contributions were refunded at once – in May 2021 – due to, as far as I can tell, unwarranted delays in undertaking previous reviews. A review in July 2020, for example, should have addressed, and refunded, the excess contributions for the 2019/2020 tax year, and then a review one year later would have refunded the excess contributions for 2020/21. Had that happened, Mr H wouldn't have received any money "early", as is suggested by Aegon – any redress payable by the suggested timeline would ensure that he'd simply be receiving money when he should.

And in any case, it seems to me that by paying the refund for 2019/20 and 2020/21 together in May 2021, Aegon may have been paying Mr H earlier than it might otherwise have done for the 2020/21 tax year, but it was still nevertheless paying Mr H the refund for the 2019/20 contributions considerably later than it should.

Aegon then asserted that it wasn't able to undertake its future checks with HMRC until Mr H had provided necessary information – again the seeming implication being that it was prevented from doing so until Mr H had provided a letter of authority. But as with the issue of the bank details referred to above, there was no delay on the part of Mr H in providing this. Aegon only requested this on 1 July 2020, and Mr H supplied it on 3 July 2020 – so two days later.

Aegon said that the process then took time, and that the suggested timescale of this being completed on 1 August 2021 was unrealistic – although I think it meant 1 August 2020. It said that this wasn't an instantaneous process, and that it involved third parties such as insurers. This may be a valid point, and as with the timescale for the initial process to have been completed after July 2020, I think a period of two months is probably more realistic. And so my current view is that the refund for the 2019/2020 excess contributions should have been made by 1 September 2020.

As to the comments made by Aegon relating to the interest rate suggested by the previous ombudsman of 8% simple pa on any late payment, I think Mr H's own commentary on what he needed to do in the interim – selling shares - probably addresses that point satisfactorily. The application of the 8% simple interest rate is designed to reflect a range of potential situations in which a consumer might find themselves, one of which, as noted by Aegon, is that of borrowing. Mr H may not have needed to borrow money, but he's

taken other steps which have had financial consequences. And so, although actual interest rates may for some time have been lower, I'm satisfied that 8% simple interest on delayed payments here is appropriate.

Putting things right

As with the previous ombudsman, and for the reasons set out above, my view is that the complaint should be upheld. The timescales I'm proposing vary slightly however, and so my current thinking is that Aegon should calculate whether redress is due to Mr H on the following basis.

- 1. As set out above, even allowing for some slippage in the timing of the review from May 2019, the 2018/19 review should have happened by the end of July 2019. And as also set out above, this should have been concluded within two months. And so the refund of excess contributions should have been made by 1 October 2019 for the 2018/19 tax year. To the amount of the refund should then be applied 8% pa simple interest from 1 October 2019 to the date of settlement.*
- 2. The 2019/20 review then should have begun at the beginning of July 2020 after Aegon had requested, and promptly received, the letter of authority from Mr H - with excess contributions then being refunded by 1 September 2020. To the amount of the refund should then be applied 8% pa simple interest from 1 September 2020 to the date of settlement.*
- 3. The 2020/21 review should then similarly have begun by the beginning of July 2021, with excess contributions then being refunded by 1 September 2021. To the amount of the refund should then be applied 8% pa simple interest from 1 September 2021 to the date of settlement.*

The total of A + B + C is effectively what should have happened. But this needs to be balanced against what actually happened, including the 2020/21 payment being made earlier than it otherwise would, as follows.

- 4. This should be the total of actual payments made, with the addition of 8% pa simple interest from the date that each payment was made up to the date of settlement.*

The application of A + B + C – D should determine the overall position of loss to Mr H as at the date of settlement. And this should be paid to Mr H.

In terms of ensuring that the right deductions have been made from Mr H's pension policy, and that it has the correct value, the actual number of units bought by the excess contributions should be deducted, to ensure there was no benefit or disadvantage to Mr H through removing monetary amounts.

Aegon has objected to the additional suggested payment in respect of the impact on Mr H through what has happened, and notably the distress, which the ombudsman said the matter would have caused.

I've firstly noted that no such objection was raised in response to the investigator's view of 28 October 2020, which Aegon explicitly accepted. However, notwithstanding this, I've in any case considered the matter afresh and whether an additional sum is warranted.

When Mr H contacted us in October 2020, he was clearly distressed by what had happened to date. To quote from his letter, he said:

“To summarise we have explained and given information as to why the 3 methods of indicating no income are unobtainable. All they do is continuously repeat the request for information that does not exist. Having realised that this blocking process is flawed, they have now invented a new blocking tactic of underwriters. They say that the underwriters want information before they can act on our instructions however; the underwriter has already agreed the release of funds some six months ago. Therefore, it is nothing to do with the underwriter and it is Aegon who have illegally put the money into the pension fund against my strict instructions and the law.

As you can imagine this ongoing problem is causing me a great deal of stress and indeed financial implications. I hope this helps with your investigation.”

Whilst I may not agree with everything Mr H has said in that letter, I think the delays incurred in this matter will quite understandably have caused him not inconsiderable amounts of worry and distress, at a time when he was no longer earning due to health reasons. Mr H had also already told Aegon earlier in 2020 that the delays were causing him financial distress, along with stress related health issues.

From what Aegon has sent us, I can see that a cheque for £250 was paid to him in October 2017, but this would seem to predate the additional complaint Mr H made in 2019, and which is the subject of this assessment.

And so, whilst I’m mindful of what Aegon has said about the payments and goodwill gestures already made, and I accept that it paid Mr H £100 in response to his complaint in 2019, I do think that an additional £100 is warranted here.”

Responses to the provisional decision

Mr H has said that he accepts my provisional findings. Aegon, however, has not, commenting further as follows:

- Although I had directed that the first refund of contributions (for the 2018/19 tax year) should have been made by 1 October 2019, Mr H didn’t supply evidence of his zero income status until 20 December 2020.
- Mr H’s letter in July 2019 confirmed that he was a non-taxpayer. This was different from him confirming that he hadn’t earned any income, and he asked what he could do with the excess money. Aegon said that it merely replied that it would return the money but couldn’t comment on what he could do with it. It recommended that he speak to a financial adviser about it. And so it disagreed with my finding that this was the starting point.
- Aegon didn’t feel that it was appropriate to follow up with further communication as its waiver settlement letters put the onus on the plan holder to provide the evidence it needed. This was evidenced by its letters of November 2017 and December 2018.
- Mr H didn’t confirm that he was a non-earner until 11 October 2019, which was almost two years after it first wrote to him in November 2017.
- It appreciated that it was the professional party, but it found it difficult to believe that it was reasonable for Mr H to have taken two years to tell it that he had no earnings and to ask for help in resolving the overpayment to the pension and return of funds to them. But this was the time Mr H had taken and it was being suggested that it should have engaged further with him following his letter of July 2019.

- Not only had it taken two years for Mr H to reach the point of contacting Aegon about his non-taxpaying status, but it then took him until 20 December 2019 to provide confirmation from HMRC as to his non-earning status.
- As a pension administrator, it couldn't just take a policyholder's word for what they were saying. It needed physical evidence from a reputable person or organisation before making payments.
- The starting point for Aegon's internal teams to review and consider whether this was acceptable was 20 December 2019, but it still needed to confirm that the information it received was for Mr H, because the details provided didn't indicate that it was his own personal tax account.
- I'd noted that the effects on Mr H of the delay in making the refund of contributions would have been more keenly felt due to his non-earning status at the time. But Aegon queried as to why, if this was the case, it had taken Mr H nearly two years to bring it to its attention.
- Given the time it had taken Mr H to contact it in the first place, it considered that it shouldn't need to pay an additional £100 in respect of the distress and inconvenience caused to Mr H by the matter.

Aegon also said that a date needed to be corrected as to when I had said Mr H's bank details had been corrected. I've done so in the above text.

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.

To firstly address the matter of how Aegon should have reacted upon receipt of Mr H's letter of July 2019, it's difficult for me to understand Aegon's position here. On the one hand it acknowledged that Mr H was indicating that he was a non-taxpayer and that he was asking what he should do with the excess contributions. And on the other, the implication seems to be that this wasn't sufficient for it to proactively make further enquiries as to Mr H's actual situation with regard to earnings, with the onus being on the policyholder to provide the evidence it needed. As Aegon has said, it "merely" replied that it would return the money to him but couldn't comment on what he should do with it.

But surely if Mr H's letter and enquiry about what he should do with the excess contributions was enough for Aegon to recommend that he seek financial advice, it must also have been a reliable indicator as to why there might be excess contributions, i.e. that, as the non-taxpayer he'd confirmed he was, it was likely to be the case that he wasn't earning. And this should then have been sufficient for it to have made further enquiries, or at the very least outline the steps which would be taken to refund those excess contributions, which would then have included Mr H providing evidence that he had no earnings.

Further, although the waiver settlement letters issued in previous years may have said that it was the policyholder's responsibility to advise it that there were insufficient earnings so that it could refund any excess contributions, I think Mr H was making a fairly clear and genuine attempt to do just that. And had he been asked the specific question as to him having no earnings, which, as I've said, I think would have been the reasonable response – rather than taking no further immediate action - I'm confident that he would have confirmed his position.

Aegon has further said that Mr H didn't in fact confirm his non-earning position until 11

October 2019, which it said was almost two years after it first wrote to him with the requirements. But I'm afraid I don't really see the relevance of the two years which had elapsed since the letter of November 2017, given that it seems Mr H was still earning in 2017 when the first letter was issued. My understanding, as set out in the provisional decision and not corrected by Aegon, is that it wasn't until the 2018/19 tax year that Mr H became a non-earner. And it would have been rather difficult for Mr H to have confirmed that he had no earnings for that tax year before that tax year had ended, as Aegon then required of him.

Therefore, although this is a repeated theme of Aegon's response to the provisional decision, it didn't take Mr H two years to notify Aegon of his non-taxpaying status, as has been suggested. I'd also find it somewhat odd if Mr H had confirmed his non-earning/taxpaying status for 2018/19 in November 2017, following receipt of the first letter referred to by Aegon, or even following that of December 2018, without waiting until the end of the 2018/19 tax year – as he then did.

And I'd like to be confident that this doesn't – or at least shouldn't - need clarifying, but I'd seek to emphasise that it's not my position that Aegon should have taken proactive action before Mr H notified it of his non tax paying status – this would clearly be unreasonable. It's the action, or rather lack thereof, following his communication in July 2019 which needs to be addressed here.

As to the point about Aegon requiring evidence of Mr H's non-earning status, I don't disagree. My counterpoint is that, as set out above, this ought to have been requested when Mr H first alerted it to his change in situation in July 2019. And just as a reminder of what Mr H said in his letter, it was as follows:

"I am writing to you concerning my pension plan with you. In the year 2018/19 I did not pay any tax and as such I understand that for tax relief purposes only a certain amount of the visa waiver can go into my pension pot. Can you please let me know what options I have for the remaining funds."

I simply don't think that realising Mr H was telling it of a situation in which excess contributions might have been paid, most likely due to him having insufficient earnings, was the unreasonable leap of faith that Aegon purports this to be here. Or in other words, that Mr H saying he was a non-taxpayer, with waiver of contribution already invoked, might not intuitively or logically suggest that he was trying to tell it that he wasn't earning, or that there was perhaps some other purpose behind him contacting Aegon with that specific information. And if there was any doubt, I'd question as to why Aegon wouldn't simply have sought clarity on this.

But to reiterate what I've said above, Aegon had in any case seemingly joined the dots, by recognising that there might be excess contributions and that Mr H would need to seek independent advice on what to do with them once refunded. I'd simply reiterate my query as to why it wouldn't therefore begin the process of making the refund at that point, and if clarification/evidence of his non-earning status was required, ask for it then.

So overall, and for broadly the same reasons as set out in my provisional decision, my conclusions remain the same. I think the complaint should be upheld, and that Aegon should undertake the redress calculation as set out in the provisional decision.

I've noted Aegon's comment relating to the further £100 I thought Aegon should pay Mr H in respect of distress and inconvenience, in that Aegon considers this to be unjustified given the time it took Mr H to notify it of his change in situation. Suffice to say, on the basis of what I've said above on this matter, my view on that also remains unchanged.

My final decision

My final decision is that I uphold the complaint and I direct Scottish Equitable plc, trading as Aegon, to undertake the calculation and payment as set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 March 2022.

Philip Miller
Ombudsman