DRN-3501665

Financial Ombudsman Service

The complaint

Mr M complains that Scottish Equitable Plc trading as AEGON have made numerous mistakes in its administration of his personal pension, causing him to suffer a loss.

What happened

Mr M took out a personal pension in 1986 and made regular contributions. His policy had a waiver of premium benefit. And in 1996, Mr M unfortunately needed to make a claim against this benefit because of a medical condition.

Scottish Equitable accepted Mr M's claim in 1998 and paid the missed premium payments into Mr M's pension fund in line with the policy.

Mr M has complained about a number of issues in the way that Scottish Equitable have administered his policy since his claim for waiver of premiums. He has raised these issues with Scottish Equitable in a number of separate complaints.

Scottish Equitable issued a number of responses to the separate complaints, that I won't list in any detail here as both parties are familiar with the issues. These have offered explanations on a number of issues for Mr M as well as identifying certain failings and offering to put things right. In summary Scottish Equitable have:

- Acknowledged errors in the application of premiums under the waiver of premium benefit. And say have put those right for Mr M.
- Agreed that Mr M hadn't been sent annual statements for over 20 years, and apologised for the error.

Scottish Equitable's offer of compensation to Mr M increased over the course of its complaint handling, finishing at £1,500, cumulatively for the mistakes it identified and the service he'd received.

Mr M remained unhappy with Scottish Equitable's response and brought his complaint to our service.

Our investigator summarised Mr M's concerns as:

- Changes to his pension over the lifetime of the product have left the policy unsuitable for him.

- Poor administration of the policy and the closure of specific with-profit funds that were initially the investment choices have adversely affected the performance of his pension.

- Hidden administration charges impacting his pension fund causing his fund to erode once contributions stop.

- Absence of annual statements which has impacted his ability to review the performance of his pension.

- Uncertainty that the premiums have been properly applied from his waiver of premium cover.

- The fairness in the way that the annuity is now being provided through a third-party insurer.

- The low offer of compensation from Scottish Equitable.

Our investigator looked into what had happened and thought that Scottish Equitable had offered to put things right in a fair way. So didn't ask them to do anything else.

Mr M didn't agree and asked for an ombudsman to consider the case.

I looked into the circumstances and requested further information from Scottish Equitable about discrepancies in the annuity quotes that Mr M had been provided. Scottish Equitable explained that Mr M had been sent a quote in September 2020 of £22,835.23 that had been based on an incorrect date of birth. Scottish Equitable explained that was caused by human error, but it meant that the annuity quote was higher than his policy actually entitled him to.

Our investigator considered this additional information and issued a further opinion on how this information changed his view of a fair outcome. He explained that he thought that the compensation should be increased to reflect the loss in expectation that Mr M suffered as a consequence of this specific mistake. He suggested that Scottish Equitable pay an additional £400. Taking the total compensation payable to Mr M, for the distress and inconvenience of all of the issues identified, to £1,900.

Mr M remained unhappy and still wanted an ombudsman to decide on a fair and reasonable outcome.

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.

I'd like to reassure Mr M that I've read all of the submissions he's made. There has been a lot to consider in this case, with a great deal of correspondence. But I would explain that our service is intended to provide informal resolutions to disputes, as an alternative to the courts. In delivering my finding I will give my decision based on what I believe to be the crux of the matter. I may not address every single point that Mr M has raised. This isn't intended as a discourtesy to Mr M. I have deliberately set out to address the issues in so much as they're relevant to my findings.

Errors in applying premiums

I can see that Mr M has been affected by mistakes that he has identified. And our role is to decide whether he has been treated fairly by Scottish Equitable. And where I find that he hasn't, I need to decide the fairest way to put Mr M back into the position he'd have been but for the mistakes.

In this case, I believe that Scottish Equitable have tried to investigate and address Mr M's concerns over a long period of time. Scottish Equitable have admitted to errors in response to a complaint in 2011 that identified missing premiums under the waiver of premium cover.

And later issues in the renewal of the premiums. Which I think has undermined Mr M's trust in Scottish Equitable leading to his concerns on the many other issues.

In response to identifying an error, I would expect Scottish Equitable to rectify the mistake so that Mr M was returned to the position he'd have been if it hadn't happened. Which I think it has done.

Scottish Equitable explained the way that it made up the missing policy premiums to Mr M, a number of times in different response letters. I don't intend to repeat all of what Scottish Equitable have already explained. I would instead like to reassure Mr M that the way in which Scottish Equitable put this right was in line with what I would expect to see. His pension is a with-profits fund, so his premiums, even though applied retrospectively, were correctly used to purchase the correct number of units based on the unit price on the 28th of each month. Scottish Equitable have explained why and how they have done this. I understand that Mr M remains sceptical, but I've seen no evidence that caused me to think that Scottish Equitable haven't put things right correctly. In respect of this issue I cannot identify any loss that Mr M still suffers.

I note that Mr M seems to have additionally disputed the fairness of his waiver of premiums stopping when he reached age 60. Scottish Equitable have explained that was always a feature of the cover in the terms and conditions. They provided a copy of this. In Part II it said:

> "*Benefit Period means a continuous period of incapacity in any Policy Year, commencing not earlier than the first anniversary of the date of commencement, and excluding.. (ii) any period of incapacity after the member's sixtieth birthday or the Assumed Retirement Date if earlier."*

Which I think shows that the way that Scottish Equitable applied the waiver of premium's was in line with the policy. And I think it was fair and reasonable of Scottish Equitable to rely on those terms in determining how the benefit should be paid. Even though Mr M had an Assumed Retirement Date of 70 on his policy, that didn't extend the period of cover for the waiver of premium benefit.

The impact of missing annual statements

Scottish Equitable also failed to provide Mr M with annual statements for his pension for a period of over 20 years. It has explained the error that led to this. It has taken full responsibility and apologised to Mr M. Mr M has argued that this mistake meant that he was unable to monitor the performance of his pension. And says that he'd have been able to see that the performance was poor and he could have selected different funds.

I've considered whether it would be reasonable for me to conclude that Mr M suffered a loss because of the lack of statements. Mr M wasn't in a position to vary the contributions that he made to this policy whilst his premiums were being paid by the waiver benefit. So he couldn't adjust his contributions in response to performance concerns. And I think it also made it unlikely that he'd have moved his pension to another provider, irrespective of what the statements showed.

I've considered whether it's more likely than not that Mr M would have moved funds in response to performance concerns. Whilst Mr M wasn't receiving annual statements, he was in touch with Scottish Equitable in order to resolve concerns he made. In 2011 for example he identified missing premiums that he complained about. He was made aware in 2016/17 that Scottish Equitable were exiting the annuity market, explaining what this would mean for him.

I think that the correspondence makes it clear that Mr M was aware of this pension policy and the importance of it to him. I agree that he should have received annual statements as a matter of course. But I would also expect reasonable actions to be taken to mitigate a loss where a consumer was concerned one existed. Mr M could have easily obtained valuations for his pension and taken a more active interest had he wished. He could have sought financial advice. But he didn't. So I don't think that, on balance, I can say that the receipt of annual statements would have caused Mr M to take any specific action that wasn't already available to him anyway.

Incorrect annuity quotes

Mr M was understandably concerned about the discrepancy between a quoted annuity he received from Scottish Equitable in September 2020 for £22,835 and a quote in December 2020 for £16,628. This has now been explained as being caused by human error in December when Mr M's date of birth was entered incorrectly. Which would have had a big effect on the annuity quote.

I accept that this was caused by a mistake. And as a general principle, I can't ask Scottish Equitable to honour an annuity quote that Mr M was never entitled to. I understand Mr M's annoyance. Annuity calculations are complex, so I don't think that he could reasonably have been expected to know that the illustration he received in December 2020 was wrong. But Scottish Equitable are entitled to correct that mistake.

I understand that Mr M doesn't accept that Scottish Equitable shouldn't pay the higher figure. But it was never the annuity that he was actually entitled to receive at that time. So he hasn't actually suffered a loss in not receiving it. It may feel like that to him because his expectations would have been raised by the illustration until he received the later one. In upholding this element of his complaint, I will later consider the impact of the raised expectation when determining what Scottish Equitable should do to put things right.

Mr M's other concerns

It is not my intention to minimise the significance of Mr M's remaining concerns by dealing with them collectively here. I understand that he is frustrated by the issues he has identified. And this has, not unreasonably, caused him to question a number of other areas.

I've considered all of these and have identified no other areas of complaint that I will be upholding. I'll summarise below.

Mr M has asserted that his pension was mis sold. His expectation seems to have been that his policy would have remained the same throughout its term. And it is clear that in certain regards it has changed. But I don't think that the things he's identified are examples of unfair practices by Scottish Equitable.

Our investigator explained to Mr M that Scottish Equitable weren't responsible for the sale of this pension to Mr M. This has also been explained by Scottish Equitable. It is a simple matter of fact. Scottish Equitable didn't provide the advice that led to Mr M taking out the policy. So I will make no finding on this pension's suitability for Mr M. In regard to this pension, Scottish Equitable can only be held accountable for the way it has administered the policy for Mr M.

Mr M has argued that he has suffered a loss in the region of £80,000 because Scottish Equitable discontinued the with profits he was invested in initially. These were the WPE fund that was closed in 1996 and the WP2 fund that was closed in 2002. He says they'd performed at a higher level than the funds he was moved into. And he extrapolated the performance of those funds, assuming that they continued to perform at their previous levels as a comparison.

But, the terms and conditions of Mr M's pension didn't guarantee access to a particular fund or that funds wouldn't close or be discontinued. The terms and conditions for this pension said in section I.8.3:

> "*The managed fund company has the right to close an investment fund by giving not less than three months' notice. No further subscriptions may be made to a fund which is closed but it shall remain in being until it is wound up or the last of its units is cancelled."*

I think that Scottish Equitable were clearly entitled to make the changes to the with-profits funds that Mr M started out invested in. And I'm unconvinced by the argument that the pre 1996 and 2002 performance of the WPE and WP2 funds in any way guaranteed that they'd continue to perform at that level subsequently. So don't agree that Mr M's estimate of an £80,000 loss is fair or reasonable.

Mr M has expressed concern about the fact that he is no longer able to obtain an annuity through Scottish Equitable. I accept that would have most likely been Mr M's expectation when he started this policy in 1986. But when Scottish Equitable made the decision to withdraw from the annuity market it had to consider the impact on its customers. There was regulatory oversight. It put in place alternative provision with a third party provider who would provide an annuity using the guaranteed annuity rates (GAR) that Mr M had. I can't see that this will have financially disadvantaged Mr M at all. He is still entitled to the same guaranteed rates that his policy always included. Only the annuity provider has changed.

Mr M has complained that his choice of pension provider has been removed by this. But I don't really agree. Mr M has all of the same options that would always have existed. He is entitled to transfer his pension or explore open market annuity options. But these choices would most likely result in his losing access to the GAR. And this would always have been the case, even if Scottish Equitable were still in the business of providing annuities. I don't think that what has happened has treated Mr M in an unfair or unreasonable way.

I've seen that in Mr M's most recent response to our investigator he asked why the Guarantee Terminal bonus of his with profits fund has reduced. Which is a new question that he hadn't brought to our service in his original complaint. In the interests of trying to bring a final resolution to this matter for both parties I will comment briefly on this. This matter seems connected to Mr M's general misunderstanding regarding the way his with-profits funds work. I can see that Scottish Equitable have offered repeated explanations to Mr M regarding the mechanics of this type of product. And have referred him to other information. I don't intend to attempt to further explain this. That isn't the role of our service. The terminal bonus on Mr M's pension fund is not a guaranteed thing and is not protected like he suggests.

Putting things right

I've considered this very carefully as I understand it's a significant source of dispute for Mr M.

I've noted Scottish Equitable's acceptance of certain failings and the fact that they've put things right in such a way that I don't believe that Mr M has now suffered any financial detriment. Including, as I've said, regarding the mistake made in sending out an incorrect annuity illustration.

Mr M has brought all of these matters to us as a single complaint, rather than as the individual issues at the times that Scottish Equitable responded to them. So I think it's appropriate now for me to consider the distress and inconvenience as a whole.

Mr M was undoubtedly caused inconvenience in having to correspond with Scottish Equitable about missing premium payments on his policy. It involved time and effort and it's apparent from his correspondence that he was upset. But he was still some time from taking his benefits when these issues were resolved. He has had to wait, sometimes unreasonable periods for responses to his complaints. And whilst complaint handling alone is not something our service would normally judge a business on, Scottish Equitable have acknowledged and offered increased compensation for that service. It settled eventually on a cumulative award of £1,500 for the distress and inconvenience. Which I agree was fair, and in line with what I'd consider awarding at the point the complaint was brought to us.

But I agree with our investigator's view that the offer didn't reflect the additional distress caused in raising Mr M's expectations regarding his potential annuity payment. This will have been impactive. I've considered how long the raised expectation was in place in assessing the impact. The incorrect quote was provided on 29 September 2020 and the next quote on 7 December 2020 made Mr M aware that his annuity may not be as high as he'd been told. So Mr M's expectation was raised for just under six weeks. I think that Scottish Equitable should increase its compensation by £400 to account for the specific distress caused by this mistake.

For the above reasons, I think that Scottish Equitable should pay Mr M a total of £1,900 for the trouble and upset caused by the above identified failings.

My final decision

For the above reasons, I uphold Mr M's complaint in parts. And direct Scottish Equitable Plc trading as AEGON to pay him £1,900 for the distress and inconvenience its failings caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 August 2022.

Gary Lane
Ombudsman