

The complaint

Mr M complains that Scottish Equitable Plc (trading as Aegon) poorly administered his pension including charging him the wrong fees over several years.

What happened

The details of the complaint are well known to both parties and spanned several years. As such I've only summarised them below.

On advice from his IFA Mr M opened a personal pension with Scottish Equitable in 2013. Mr M's advisor had negotiated a discounted rate of management fees for the plan. Scottish Equitable paid Mr M's advisor a set-up fee of £7,000 from Mr M's funds.

In 2015, due to a change in the available fund choices, Mr M's pension was moved onto the Aegon Retirement Choices (ARC) platform and he was told that his fee structure would remain the same.

In 2017 Mr M became concerned that Scottish Equitable had been collecting their management fees at a higher level than he'd agreed to since the plan started in 2013.

Over the following years Mr M made several complaints to Scottish Equitable about the incorrect fees being charged and their administration of his pension. I've only summarised below what I consider to be Mr M's main concerns.

He said;

- The fees Scottish Equitable had taken since the start of the plan were incorrect. And he was specifically told when he moved onto the ARC platform that the fees wouldn't change.
- He wanted to see the invoice his IFA had sent Scottish Equitable for the set-up fee. And he didn't think they should have sent the IFA any money unless the request had come directly from him as the terms of his policy noted.
- As part of a subject access request (SAR) he'd been sent documents relating to other customer's plans.
- The SAR revealed a third-party company that he did not recognize had paid a cheque to Scottish Equitable. So, he wanted to know what their relationship to his plan was.
- His name and personal data had appeared on paperwork from a company called Novia who he'd never heard of. He didn't think Scottish Equitable should be sharing his data with other parties without asking him first.
- He asked for an updated SAR in his email to Scottish Equitable on 6 March 2020. But they failed to provide him with the requested information.

Scottish Equitable issued several final response letters and other communications to Mr M's complaints. In summary the relevant parts said;

- February 2018 – Scottish Equitable concluded in their investigation that Mr M had been incorrectly charged since the plan was opened in 2013. They said they'd calculated Mr M's losses as £901.58 and £57.54 for loss of interest which was calculated using the Bank of England base rate of 0.5% plus 1%. Scottish Equitable also offered £750 for the inconvenience they caused. They explained Mr M was moved on to the correct charging structure in October 2017.
- July 2018 – Scottish Equitable sent Mr M a spreadsheet showing their calculations.
- December 2018 – Scottish Equitable apologised for including other customers information in Mr M's SAR. They also explained that they hadn't received an invoice from Mr M's IFA, but the set-up fee was requested as part of the IFA's online journey in setting up the plan.
- October 2019 – Scottish Equitable reiterated their previous offers. They said they relied on Mr M's IFA to notify them of agreed fees to be paid. Regarding the third-party Mr M had concerns about, they were unable to comment on their relationship with Mr M's plan due to the passage of time. They clarified that Novia administered their platform services between 2013 and 2014. And again, apologised for including others information in Mr M's SAR.

Mr M also made a complaint to his IFA regarding the set-up fees as he thought they'd been paid more than the agreed amount. An ombudsman at our service made a final decision on that complaint against the IFA upholding it. They asked the IFA to pay Mr M back the additional fees plus interest.

Mr M brought his complaints about Scottish Equitable to our service. He said his complaint about the fees has been ongoing for several years, he's had to speak with many different members of staff at Scottish Equitable and the whole situation has affected his mental health.

Our investigator said it was unfair to apply only 1.5% returns to Mr M's overpayment of fees. And suggested Scottish Equitable should use the actual rate of returns Mr M's plan has seen over the period. But he said the £750 offered by Scottish Equitable was fair compensation for the upset they'd caused.

Scottish Equitable conducted another loss assessment which they say showed a loss of £592.80. They say they've mistakenly paid this amount to Mr M already, acknowledging that he hadn't accepted our investigators view. They initially said the incorrect fees had only been charged between 2015 and 2017. But later, when challenged by Mr M, acknowledged the incorrect fees had been charged between 2013 and 2017. So, they agreed to conduct another loss assessment.

Mr M said he thought that the loss he'd suffered due to the increased fees should be grown by 8% simple interest as he'd seen in other decisions by this service, including that of his complaint against his IFA. He didn't think we'd addressed his concerns about his SAR request; the incorrect set-up fees and the way Scottish Equitable had handled his data. He was also concerned that Scottish Equitable were doing the calculations themselves and said he couldn't trust the results. And he didn't think it would be fair for Scottish Equitable to deduct any tax if the compensation was paid to him directly.

I sent Mr M and Scottish Equitable a provisional decision on this complaint. In it I said I didn't think Scottish Equitable had acted fairly. I set out how they needed to put things right for Mr M. I've included the findings from my provisional decision below.

My provisional decision

In my provisional decision I said;

It's clear that Mr M has very strong feelings about his complaint, having provided detailed submissions in writing in support of his complaint points, which I can confirm I've read and considered in their entirety. However, I trust that Mr M will not take the fact that my findings focus on what I consider to be the central issues as a discourtesy. In line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.

There's no dispute that Scottish Equitable charged Mr M the incorrect fees on his pension plan. And Scottish Equitable have now agreed that the fees were incorrect from 2013 (as they also did in a letter from December 2018). It isn't my role to punish a business when they do something wrong. My role here is to assess whether Scottish Equitable have put things right by putting Mr M in a position as close as possible to what he would have been in had the error not occurred.

In trying to put things right Scottish Equitable have agreed to carry out a loss assessment to calculate how much Mr M has overpaid his fees. Scottish Equitable then said they'd add interest to that figure at a rate of 1.5%. I agree with our investigator that the interest element of the compensation is unfair. Had the correct fees been taken then the additional funds would have remained in Mr M's pension and seen growth in line with his investments. Therefore, fair compensation would be for Scottish Equitable to calculate the returns that each overpayment would have received using the actual growth of Mr M's fund. I'll set out below how I think Scottish Equitable need to put things right.

I appreciate Mr M's concerns that Scottish Equitable themselves will be doing the calculations which he doesn't trust. However, I'm satisfied Scottish Equitable are in a position to accurately calculate Mr M's losses. If Mr M accepts my final decision it will become legally binding and may be enforced against Scottish Equitable through the courts if he demonstrates they've failed to follow the directions I'm making.

I've also considered Mr M's concerns that Scottish Equitable paid an incorrect initial fee to his IFA when the pension was set up.

In the ombudsman's decision about the IFA I can see that there was a discrepancy between the client agreement Mr M held with his advisor which said Mr M would pay a fee of 3% (around £6,730) and the recommendation report his advisor produced which noted a fixed fee of £7,000 to be paid.

The ombudsman ruled that the IFA's fee should have been 3% and not the £7,000 that they were paid. And directed the IFA to repay the additional fee plus interest.

I can appreciate Mr M's disappointment that Scottish Equitable haven't provided evidence of what fee was requested by his IFA as a set-up fee. But where evidence is conflicting or missing – as it is in this case – I base my decision on what I think is most likely to have happened. And considering the wider circumstances of Mr M's complaint against his IFA, I think it's likely Mr M's IFA requested an incorrect fee of £7,000 from Scottish Equitable during their application for his plan. And Scottish Equitable simply followed that request.

While I can see Mr M's view that fees should be agreed by him before they're paid. I have to consider whether Scottish Equitable made an error that led to a financial loss. And in this case Mr M's IFA has redressed the financial loss he's suffered. So, I don't think Scottish Equitable need to do anything more to put right the incorrect set-up fees being paid.

Mr M also has concerns about how Scottish Equitable have administered his pension in terms of the data they've shared with other parties. As part of a SAR Mr M said his pension had received a cheque from a company he didn't recognise. And I can understand Mr M's upset that Scottish Equitable, due to the passage of time, are unable to explain to him how that company were linked to his pension.

The ARC was a Self-invested personal pension (SIPP). A SIPP is a 'wrapper' which you can put a wide range of investments and financial instruments into. So, it's common for several parties to be involved. But while there's no evidence of Mr M suffering a financial loss as a result of this third parties' involvement in his SIPP, I've kept this in mind when considering the redress for the impact of Scottish Equitable's administration of Mr M's plan.

Mr M is also concerned with the involvement of Novia in the administration of his SIPP. However, while Mr M may not have been aware that Novia supplied administration and development services to the ARC platform, I wouldn't necessarily expect a customer to know the exact details of how Scottish Equitable operated their business.

I've seen no evidence that Mr M's data was mishandled by Scottish Equitable. But even if Scottish Equitable didn't have the correct authority to pass Mr M's data on to Novia, I can't see that he's suffered any financial losses from his data being shared. Although I accept Mr M is upset by this.

In his email to Scottish Equitable on 6 March 2020 Mr M said;

'I will now prepare my court action documents to recover the stolen monies and costs from Aegon under the Simple Procedure process but before I submit this, I am hereby making a further Subject Access Request under Article 15(1) of the GDPR, as the previous request only covered the period up to June 2018.'

Mr M says Scottish Equitable never responded to his SAR and so he didn't receive the information he requested. The SAR is connected with Mr M's concerns around Scottish Equitable's administration of his pension and the incorrect fees they claimed from his funds. As Mr M's SAR relates to the operation of a personal pension, it is something our service can consider. But as I've already said, it isn't my role to punish a business when they do something wrong. I've got to consider the impact of Scottish Equitable's error.

I don't believe Mr M has instigated any court proceedings as he awaits a determination from this service. So, I don't think Mr M has suffered any kind of financial loss as a result of the SAR not being actioned. However, I can see how his request being ignored has caused Mr M further annoyance and upset. Therefore, I'll consider this when deciding how much to award for the impact of Scottish Equitable's errors.

I can see more generally Mr M has been upset by Scottish Equitable's administration of his plan. For example, he says they initially incorrectly valued his plan, he was sent information about other customers and he received conflicting information about the initial and on-going fees from Scottish Equitable when he questioned them about it. I've also kept this in mind when deciding if Scottish Equitable have done enough to put things right for Mr M.

Mr M has also questioned why our Service wouldn't direct Scottish Equitable to apply 8% simple interest to the compensation, rather than calculating the growth on his fund. As he said it would make it difficult for him to be able to assess whether Scottish Equitable's calculations were accurate. He also made reference to a past decision on his IFA's complaint where 8% was added.

I appreciate Mr M's point that it would be easier for him to check the calculations if a simple 8% was added. However, we look at each case individually and my aim is to put Mr M into, as close as possible, a position he would have been in had the error not occurred. And as I'll set out below, I think the fairest way to settle this complaint is to use the actual returns Mr M saw on his plan during the period in question.

The responses to my provisional decision

Scottish Equitable responded to my decision to say the calculations, dating back to 2013, and factoring in various transactions is complex. So, they're concerned that the calculations couldn't be interpreted as 'clear and simple'.

Scottish Equitable also put forward an offer to Mr M to settle the complaint. The offer included deductions for compensation Scottish Equitable say they've already paid Mr M. They said £118.90 was added to Mr M's funds in November 2017 and £582.90 was added in December 2022.

Mr M rejected Scottish Equitable's offer and provided a detailed submission to comment on my provisional decision. He also sent evidence which he says demonstrates Scottish Equitable haven't paid him the compensation they say they did in 2017 or 2022.

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've also reconsidered my provisional decision which forms part of my final decision.

As I said in my provisional decision, while I may not comment on everything raised in Mr M and Scottish Equitable's latest submissions to our service, I've thoroughly read and considered all the evidence and arguments from both sides. My decision focuses on the relevant key issues, and on what I consider fair and reasonable in all the circumstances of the case.

Firstly, I'd like to assure Mr M that this complaint is set up against the correct business. Aegon is a trading name of Scottish Equitable.

Mr M's concerned that Scottish Equitable aren't able to accurately assess his losses. He says this was demonstrated when they did an incorrect calculation in December 2022 which contradicted their earlier calculations. Mr M says he hasn't been told what the figure of £582.90 represents. However, I don't think the calculations behind the figure Scottish Equitable paid in error makes a material difference to this complaint other than to show a further error that they made.

I say that because Scottish Equitable seem to accept that the loss calculation in December 2022 was incorrect and only considered incorrect fees from 2015, not 2013 as they should have. And they say the amount was paid to Mr M in error.

Mr M also says Scottish Equitable's offer mentioned an amount of £118.90 which they say was paid to him in 2017. However, Mr M says this amount was never paid to him and wasn't mentioned in any of his complaint responses or SAR requests to the business.

I appreciate Mr M's concerns that he cannot see in his account the payments that Scottish Equitable say they paid him in November 2017 and December 2022. He's sent in

transaction statements for his SIPP over the two periods which don't show any incoming payments of these amounts.

However, the statements show a transaction summary in the SIPP and don't include a cash balance. It's possible the payments have been made into the cash wrapper as Scottish Equitable suggest but aren't showing on the report that Mr M has supplied. But in any case, it's fair to say Scottish Equitable must demonstrate to Mr M that previous compensation payments have been made before deducting them from their current loss calculation. And while I've considered Mr M's submission carefully, Scottish Equitable are still best placed to carry out the loss assessment.

Mr M has clarified that the cheque seen in his SAR was to Scottish Equitable from a third party he didn't recognise, not received by them. It's disappointing that, due to the passage of time, Scottish Equitable are unable to explain to Mr M what the involvement of this third party was in relation to his SIPP. I understand that Mr M finds that upsetting. And that's something I've considered in my assessment of the compensation I've recommended. But, on balance, I'm not satisfied there's evidence to show the cheque was paid in error or that Mr M suffered any financial loss in relation to the cheque being paid to Scottish Equitable.

Mr M is also still concerned that I've said Scottish Equitable may make a notional reduction for income tax from the compensation if it can't be paid into his plan.

Scottish Equitable have said that they should be able to pay any compensation into Mr M's cash wrapper – as they say they did in December 2022. But if they can't because it will conflict with any existing protection or allowance, it's fair for them to make a notional deduction for the likely income tax Mr M would end up paying at the point he would have taken that from his pension as income.

I agree with Mr M that had the erroneous additional fees not been taken they would have remained in his fund. But the tax deduction is only applied *if* Scottish Equitable are unable to pay the compensation into Mr M's fund. If the money was paid to Mr M from his pension it would be subject to income tax at his marginal rate. Which is what I've asked Scottish Equitable to deduct but only if the compensation has to be paid directly to Mr M.

Mr M also asked me to consider directing Scottish Equitable to pay for set-up fees for a new pension so that he's able to transfer away from them. I can understand why Mr M may be unhappy with Scottish Equitable. And he is free to consider his options for the future of his pension. But it wouldn't be fair for me to direct such an award because transferring away from Scottish Equitable is a matter of personal choice for Mr M. It isn't a direct consequence of Scottish Equitable's errors with Mr M's pension.

As I'll set out below, Scottish Equitable will now need to conduct a loss calculation to assess Mr M's losses. I accept that these are complex calculations, and it may be subjective as to whether they can be provided to Mr M in a 'clear and simple format'. However, it's reasonable for Mr M to ask for a copy of the calculations so that, if he wants to, he can check them for accuracy. So, Scottish Equitable should supply Mr M with a copy of the calculations that clearly demonstrate how they arrive at the final figure of compensation.

Putting things right

A fair and reasonable outcome would be for Scottish Equitable to put Mr M, as far as possible, into the position he would now be in but for their delay.

To put matters right Scottish Equitable should calculate the loss on each incorrect fee taken from the plan opening in 2013 to when it corrected the fee structure in October 2017. They should use the notional value of the plan had the correct fees been taken in each calculation.

I also consider that Mr M will have lost out on investment returns on this loss amount between the date each fee was taken and now. So, losses need to be brought up to date by calculating the returns Mr M's plan has actually seen between the date of each incorrect fee being taken and the date of my final decision.

The compensation amount should if possible be paid into Mr M's pension plan. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

I understand from Scottish Equitable that it should be possible to pay the compensation into Mr M's plan. However, if a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr M hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Scottish Equitable claim to have already paid some compensation after an earlier loss calculation. If Mr M's losses exceed what's already been paid it's fair for Scottish Equitable to deduct the sum already paid from the redress they now pay. But they must first evidence the earlier payments into Mr M's plan.

Scottish Equitable should pay interest at the rate of 8% simple per annum on the compensation calculated as at the date of my final decision if it's not paid to Mr M within 28 days of us notifying Scottish Equitable that Mr M has accepted my final decision.

Income tax may be payable on any interest paid. If Scottish Equitable considers it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Details of the calculations should be provided to Mr M in a clear format.

I've considered the full circumstances of Mr M's complaint which has spanned several years. In this complaint the impact of Scottish Equitable's mistakes have caused considerable distress, upset and worry as well as a considerable amount of inconvenience and effort to sort out. However, I consider that Scottish Equitable's offer of £750 for the upset and inconvenience caused fairly reflects the overall impact on Mr M. So, Scottish Equitable should pay Mr M £750 if it hasn't done so already.

My final decision

My final decision is that I uphold this complaint and direct Scottish Equitable Plc to compensate Mr M as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 April 2023.

Timothy Wilkes
Ombudsman