

The complaint

The complaint in this case relates to the information provided by Scottish Equitable Plc trading as Aegon (Aegon) to Ms W's IFA explaining how the tax on pension benefits over the Lifetime Allowance (LTA) is payable, specifically regarding whose responsibility it is to make payment to HMRC.

This incorrect information was used by Ms W's IFA to provide pension advice which subsequently turned out to be incorrect, causing Ms W financial loss.

I am aware that there was an additional unrelated complaint point made against Aegon relating to the delay in setting up of an annuity. This complaint point was upheld by our investigator with Aegon's redress calculation showing that no loss had occurred. As this outcome was accepted by all parties this decision has focussed on the outstanding issue of the incorrect information given by Aegon detailed above.

Finally, I would note here that there is a linked complaint Ms W has made against her IFA. This has been dealt with separately and will not be discussed further within this decision.

What happened

In September 2020 Ms W's IFA contacted Aegon to clarify their stance on taxes due to HMRC should a policyholder have utilised their entire LTA.

Aegon stated that they would not facilitate the payment and that this must be made by Ms W to HMRC directly.

This information was then used as part of an advice process completed by Ms W's IFA, which detailed the sequence in which Ms W's remaining pots of uncrystallised pension funds should be taken to minimise the tax payable and ensure Ms W could gain maximum benefit from the Aegon policy and the valuable guaranteed annuity rate (GAR) which this policy provided.

Ms W followed the advice given by her IFA and crystallised other pension funds held away from Aegon. Subsequently, having reached age 70, and moved into the new tax year, in May 2022 Ms W started the process of accessing the Aegon pension, wanting to take the whole fund as income to maximise the benefits provided by the GAR.

As part of this process, it became apparent that the information previously provided by Aegon was incorrect. The tax payable would in fact be sent by Aegon directly to HMRC from the monies held within the pension. This reduced the fund value available to provide income.

Ms W registered a complaint with Aegon about the incorrect information and the lost annual income.

On 29 June 2022 Aegon issued their response to the complaint. Aegon accepted that they gave the wrong information to Ms W's adviser regarding the tax due and how this would be paid and offered £200 to cover the distress and inconvenience caused.

Ms W did not accept the outcome and in response explained that given the tax charge of around £10,000, and a GAR of 10.8%, annual income of around £1,000 had been lost because of Aegon's error.

As a result of the additional points made by Ms W Aegon increased their offer of redress to £1,200.

Ms W did not accept this second response to her complaint and as such referred the case to this service.

Whilst the case was being investigated by this service, Aegon explained that whilst they accepted that the information they had provided was incorrect, they did not consider themselves responsible for the lost annual income. They stated that they had provided the information to Ms W's IFA, and that the IFA was responsible for checking its accuracy. As part of this argument Aegon also noted that the information they had provided was contradicted by the pensions tax manual, and that the adviser should have been aware of this and acted accordingly.

Our investigator looked into things and agreed with the argument put forward by Aegon. The £1,200 offered by way of compensation for the distress and inconvenience caused was considered reasonable with the investigator concluding that the lost annual income was not Aegon's responsibility.

Ms W did not agree, and with no agreement reached as to who was responsible (if anyone) for the lost annual income, the case has been passed to me for further consideration.

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.

As above, the issue around the delay in setting up the annuity was settled as a result of the investigators findings and as such this decision has focussed solely on the incorrect information provided by Aegon to Ms W's IFA, and its impact on Ms W's retirement income.

It has already been accepted that the information provided by Aegon was incorrect and as such the only thing I have to consider is whether this information was the cause of Ms W's losses.

The content of the pension tax manual was referenced by both Aegon and our investigator when reaching their outcomes regarding this issue. I also consider the content to be a key consideration. The tax manual states:

“Liability for paying the lifetime allowance charge varies, depending on whether the charge arises during the member's lifetime, or following the member's death:

- *during the member's lifetime, the scheme administrator and the member are both equally liable to the charge; the liability is 'joint and several' - in practice the scheme administrator is obliged, as a result of its liability, to account to HMRC for the charge due after the BCE.”*

Additionally

“Joint and several liability means that both the scheme administrator and the member are equally and separately liable to the whole charge, and that payment by one will discharge

the liability of the other(s), to the extent of the amount paid.

To meet their obligation, the scheme administrator must pay and account to HMRC for any lifetime allowance charge that arises in respect of any scheme member at a BCE taking place under their scheme..."

The above would seem to make it clear that the responsibility of settling any tax liability due to HMRC upon crystallisation of pension monies would fall on the pension administrator – Aegon in this instance.

Given the advice being sought by Ms W centred around the taxation of her existing pensions I consider it entirely reasonable that the content of the tax manual would be a key source of reference for the IFA tasked (and being paid) to provide suitable advice.

Additionally, I have considered the actual content of the information provided by Aegon and believe this itself should have raised concerns about its accuracy.

The note completed by the IFA at the time stated that it would be Ms W who would settle the tax liability directly with HMRC as Aegon would be unaware of Ms W's previous pension crystallisations and as such they would be unable to calculate the tax liability to be paid to HMRC.

However, whilst it is true Aegon would be unaware of Ms W's other pension provision and what had previously been crystallised, this argument could be applied to all other pension providers who would all be unaware of any pension provisions a policyholder may hold elsewhere.

The argument is undermined by common practice amongst the majority if not all pension providers who, when processing a pension crystallisation event for a policyholder, will routinely ask for confirmation from that policyholder (or their adviser) as to what amount of that policyholder's lifetime allowance has already been utilised. This allows the provider to calculate if the lifetime allowance has been breached, if so by how much, and subsequently arrange for the correct amount of tax to be sent directly to HMRC.

This is a process I would expect an IFA to have followed numerous times, if not with Ms W, then almost certainly with other clients. As such, the flaw in the information provided by Aegon should have been apparent to the IFA.

Given the above I have reached the same conclusion as our investigator. The information provided by Aegon was clearly incorrect, however it was not the cause of Ms W's lost annual income. Had Ms W's IFA acted appropriately the incorrect information would have been discovered, the correct process for paying the tax due to HMRC would have been clarified, and alternative suitable advice could then have been given to Ms W. This would have allowed Ms W's pension provision to be crystallised in the correct order, ensuring maximum benefit was provided by the Aegon policy and the GAR this included.

Whilst I am not holding Aegon responsible for Ms W's lost annual income, their provision of incorrect information undoubtedly caused Ms W distress and inconvenience. As such I am upholding the complaint. Having considered the chain of events above I have also reached the same conclusion as our investigator regarding the redress offer already made by Aegon. The £1,200 offered by Aegon to cover the distress and inconvenience caused is considered fair and reasonable and as such I am not changing it.

Putting things right

I consider the offer made by Scottish Equitable Plc trading as Aegon (Aegon) of £1,200 to cover the inconvenience caused by their error to be more than sufficient and as such I see no reason to change this.

If this payment has not already been made to Ms W, then Scottish Equitable Plc trading as Aegon (Aegon) must take steps to arrange this as soon as possible.

My final decision

As per the rationale above I am upholding this complaint as it is clear that Scottish Equitable Plc trading as Aegon (Aegon) made an error and gave incorrect information to Ms W's IFA.

However, I have concluded that the offer already made is sufficient and as such I am not asking Scottish Equitable Plc trading as Aegon (Aegon) to take any further action other than to ensure that if it has not already done so, the sum of £1,200 is paid to Ms W as soon as possible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 13 November 2023.

John Rogowski
Ombudsman