

The complaint

Mrs R complains about the way Scottish Equitable Plc trading as Aegon apportioned the death benefits from her late husband's workplace pension.

What happened

Mr R had a workplace self-invested personal pension ("SIPP") with Scottish Equitable Plc trading as Aegon ("Aegon"), to which he and his employer both contributed. Mr R was married to Mrs R, and they had a child "O" in 2011 who has a disability. Mr R also had two older children ("A" and "J") from his previous marriage, who were both under 23 at the relevant time.

Mr R sadly and unexpectedly passed away in June 2022, and Aegon was notified by his employer. Aegon needed to contact Mr R's next of kin regarding the death benefits of the policy, but the address the employer provided was Mr R's previous marital home, where his older children live. So Aegon wrote to Mr R's legal representatives at that address, and the letter found its way to Mrs R.

Mr R hadn't completed an "*expression of wishes*" letter to set out how he wanted his pension benefits to be distributed. So Aegon asked Mrs R to provide details of any person who might be financially dependent on Mr R. On receipt of this information the trustees would exercise their discretion to apportion the pension to the beneficiaries. Mrs R completed Aegon's form in October 2022, as Mr R's next of kin and widow. She listed Mr R's potential beneficiaries as herself and his three children, plus she included details of Mr R's parents and brother, although they were not financially dependent on Mr R.

Mrs R was named as main beneficiary and sole executor in Mr R's Will. She thought the fair outcome would be for she and the three children to all receive equal shares of Mr R's Aegon pension.

But Aegon decided Mrs R and the two older children A and J should receive a distribution from the policy, but O received nothing in his own right. Mrs R complained as she thought it unfair that Mr R's children weren't treated equally, particularly as O has complex needs and will require care for life, which limits her ability to work to support them both. Aegon said that because O is only 11 he's considered to be dependent on Mrs R, so the funds are just paid to her.

Unhappy with this, in December 2022 Mrs R referred her complaint to this service. Mrs R felt she was being put under pressure by Aegon as she needed to make a decision within thirteen months of Mr R's death to avoid a tax charge.

She also complained about the lack of empathy she was shown at such a difficult time, and how she had to constantly chase Aegon to progress the claim.

One of our investigators looked into what had happened. She was satisfied the policy terms allow the trustees to use their discretion to distribute the benefits as they saw fit. But she

thought the way Aegon dealt with Mrs R through the claim process caused her significant upset and distress, so recommended compensation of £350 for that.

Mrs R still felt it was unfair that Mr R's three children weren't treated equally. She queried the point of the information requested on the beneficiary form when O's impairment had been ignored.

And Aegon didn't think they should pay compensation, as they said Mrs R's complaint was about the claim outcome not the customer service it provided, so she'd need to raise her concerns about that separately. Our investigator said it would be unfair to inconvenience Mrs R further by treating the claim handling as a separate matter.

On further consideration Aegon agreed to pay £350 to Mrs R, but she still thought the claim decision was unfair, so asked an ombudsman to make a decision.

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.

Firstly I'd like to offer my sincere condolences to Mrs R and her family for the sudden and untimely loss of Mr R, which must have been a huge shock. I also understand this sad event was closely followed by Mrs R receiving the formal diagnosis of O's condition, and the likely impact on his ongoing health and care needs. So she's clearly been going through a difficult and distressing time, which hasn't been helped by the upset and stress around the distribution of his pension.

Mrs R is the beneficiary under the terms of Mr R's Will, and his sole executor. But death benefits from a pension are not automatically distributed according to the terms of the deceased's will (or the 'rules of intestacy' if there is no will), as they do not form part of the estate. So my role here is to decide if Aegon fairly and reasonably discharged their duty in deciding how to distribute the death benefits of Mr R's plan

The policy terms and conditions state, that on receipt of satisfactory evidence of the member's death, the death benefits of Mr R's workplace pension would be distributed to survivors who are beneficiaries under the rules. A "*survivor*" is defined as "*any person who, in the opinion of the scheme administrator is a dependent, nominee or successor of that member*".

Aegon uses the definition of a "*dependent*" as set out in paragraph 15 of Schedule 28 of the Finance Act 2004. The relevant definitions for this complaint are as follows:

- (a) a person married to or in a civil partnership with the member at the date of the member's death (which would apply to Mrs R).
- (b) *not relevant*
- (c) a dependent child (which may apply to Mr R's children).

According to the Act, a child aged under 23 is considered a dependant. As all three children A, J and O were aged under 23 at the time of Mr R's death, they were automatically considered Mr R's dependents.

It goes on to say that when a child reaches age 23 they will stop being a dependant unless, in the scheme administrator's opinion, they were, at the date of the member's death dependent on the member due to physical or mental impairment. So the reference to mental or physical impairment would only be relevant if any of Mr R's children were 23 or older at the time he died, which doesn't apply in this case.

Section 16.6 of the terms and conditions explains that the trustees have discretion over the distribution of the death benefits of Mr R's policy, which means there is no set way in which they should do this.

Mrs R has told us Mr R had another pension plan which was distributed according to his "*expression of wishes*". Mr R had apparently made provision for his two older children by including them in the ownership of his rental property. Mrs R feels strongly that O's interests should be similarly protected, particularly as he's unlikely to live independently as an adult, unlike the older children who can work.

The "Guide to Death Benefits" for Mr R's policy explained "*the nominations you make aren't binding on us. This means that while we can take your wishes into account, the final decision about who to award benefits to, and how much to allocate to them rests with us. We may choose other or additional people as beneficiaries*". Mr R hadn't completed a letter of wishes for the Aegon plan, but even if he had, the trustees weren't obliged to follow it, if they thought the benefits should be distributed some other way.

I'd like to reassure Mrs R that the way she completed the form didn't affect the decision Aegon made. And perhaps it would be helpful to explain that usually where there is a widow and dependent children, 100% of the policy would go direct to the widow, with the children receiving nothing in their own right. So if all three children (A, J and O) were of the marriage, or were dependent on Mrs R and resident with her, then it's likely none of them would have received a distribution in their own right. The death benefits of the policy would most likely have been paid to Mrs R as their parent, on the assumption she will act in the children's best interests.

Although their age meant the two older children were considered to be Mr R's dependents, they were from his previous marriage, and did not live with, nor were they dependents of Mrs R. So the trustees decided to award a distribution to them, and for this reason the policy was split three ways. I appreciate Mrs R feels it's unfair, but O would never have received a distribution in his own right. So I don't think the way Aegon decided to distribute Mr R's pension was unreasonable, and don't uphold that element of Mrs R's complaint.

However I agree with the investigator that Aegon could have treated Mrs R with more empathy through the claim process. She was acting as the executor of Mr R's estate, which is a formal role and inevitably requires some administrative effort. So I don't think it was unreasonable of Aegon to advise her of the tax implications. But she was also a grieving widow, so to avoid adding to her distress the process should have been made as smooth as possible, without the need for repeated chasing. And some of the communications could've been handled with greater sensitivity. So I think Aegon should pay some compensation to reflect Mrs R's distress.

I understand Aegon has now agreed to the investigator's recommended compensation. So I uphold the service element of Mrs R's complaint and direct Aegon to pay her £350.

Putting things right

Aegon should pay Mrs R £350 if it has not already done so.

My final decision

I uphold Mrs R's complaint in part. Scottish Equitable Plc trading as Aegon should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 10 October 2023.

Sarah Milne
Ombudsman