DRN-4356130

Financial Ombudsman Service

The complaint

Mrs B complains that Scottish Equitable plc delayed processing her request to withdraw the tax-free cash from her pension. Mrs B says her fund reduced in value because of those delays, so she'd now like Scottish Equitable to recompense her.

In addition, Mrs B explained that she had to pay tax on her withdrawal because Scottish Equitable failed to action her instruction correctly.

What happened

In February 2022, Mrs B decided to contact Scottish Equitable to obtain a fund value on her personal pension plan. She was only three months away from her 65th birthday and at that point, she was considering taking her 25% tax-free cash. During the discussions, she also highlighted to Scottish Equitable that she'd recently got married and wanted them to update their systems accordingly.

On 27 May 2022, Mrs B contacted Scottish Equitable again, this time to let them know that she wished to go ahead with taking the 25% tax-free cash from her pension. Scottish Equitable treated the withdrawal request as an uncrystallised funds pension lump sum (UFPLS) payment. That meant that rather than receiving the full payment tax-free, part of the monies were taxed. In addition, during the time it took Scottish Equitable to process the request, the value of Mrs B's plan dropped in value. Because of the fund value drop and the way in which the withdrawal was treated, this meant that Mrs B received less tax-free cash than she initially thought she would do. Mrs B went on to receive a partial tax rebate of around £1,000 from HMRC in respect of the income tax that had been debited.

Shortly afterwards, Mrs B decided to formally complain to Scottish Equitable. In summary, she said that she'd planned to use the tax-free cash withdrawal to fund the purchase of a car and because of Scottish Equitable's delays, along with the tax that had been debited, Mrs B said that she then didn't have enough funds to purchase the car she wanted. She went on to say that she found herself having to borrow monies from her family.

After reviewing Mrs B's complaint, Scottish Equitable concluded that they were satisfied that they'd done nothing wrong. They also said, in summary, that they didn't believe the delays Mrs B had experienced were attributable to themselves. They also didn't think that the way the payment was structured - as an UFPLS – was their fault either. However, because they'd delayed responding to her complaint, Scottish Equitable decided to pay Mrs B £200 in vouchers.

Mrs B was unhappy with Scottish Equitable's response, so she referred her complaint to this service. In summary, she repeated the same concerns; those were that she was unhappy that her fund had decreased in value because of their delays and that part of her monies had been taxed. She was also concerned that Scottish Equitable hadn't returned her marriage certificate which she now wanted back.

The complaint was then considered by one of our Investigators. He concluded that having looked at the timeline of events and various interactions between Mrs B and Scottish Equitable, she'd not been treated fairly by them. Our Investigator explained that from what he'd seen, the delays in sending Mrs B her tax-free cash was because of Scottish Equitable's errors. He also said, in summary:

- Had Scottish Equitable not lost Mrs B's marriage certificate and provided her with accurate information, they would've had everything they needed by 10 June 2022. That meant her tax-free cash payment could've been sent two working days later – so, on 14 June 2022.

- In respect of the UFPLS payment, our Investigator was satisfied that Mrs B had explained on several occasions how she wished to extract the monies from her pension and that should've led Scottish Equitable to understand that they needed to organise a flexi-access drawdown payment to her. That would've meant the full amount of monies would be paid tax free.

Our Investigator then set out how Scottish Equitable should put things right for Mrs B. He also said they should pay her £500 for the trouble and upset they'd caused, but they could take account of the vouchers that they'd already provided to Mrs B.

After considering our Investigator's initial view, Scottish Equitable agreed they'd not treated Mrs B fairly. However, they disagreed with how things should be put right for Mrs B and submitted a revised redress proposal. Scottish Equitable explained that they were able to 're-wind' the UFPLS transaction and instead undertake a flexi-access drawdown withdrawal instead. The draft resolution was put forward to Mrs B who broadly accepted the suggestion.

However, Scottish Equitable said that to complete the redress process, Mrs B would need to speak to their Aegon Assist Team and go through their 'business as usual' process that she should've been directed to originally. That would then allow the correct wrapper to be set up and have her pension put right for her. In addition, by following that process, it would allow them to determine a notional date for how long the process should've taken them had things not gone wrong. Scottish Equitable said that they would then be able to apply the timings to when Mrs B would've taken her tax-free cash so the redress she received was accurate.

Mrs B felt she'd been inconvenienced enough and explained that she was reluctant to go through another process just to have things put right for her. Scottish Equitable explained that had they correctly identified Mrs B needed to arrange a flexi-access payment originally, she would've needed to go through those steps anyway, so they were unwilling to cut short their process. In addition, Mrs B felt the manner within which Scottish Equitable had set out their approach to calculating the redress was too open ended.

As the finalised approach to how the redress should be undertaken couldn't be agree upon, Mrs B asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I issued a provisional decision on the case as, whilst I agreed with the Investigator's initial view, I felt clarification on how things should be put right was needed.

<u>What I said in my provisional decision:</u>

It seems to me that Scottish Equitable have now conceded they didn't get their service quite right when Mrs B originally approached them to take the tax-free cash from her pension. Importantly, they've confirmed that there were delays that could've been avoided, and Mrs B should've been directed to their Aegon Assist Team to facilitate the 25% tax-free cash *withdrawal. Scottish Equitable have put forward a proposed solution that would put Mrs B back as close as is reasonably possible into the position that she would've been in had the mistakes not occurred and she's largely accepted their proposal with a few exceptions which neither side appear to agree on.*

So, I think it's important for me to explain that I'm upholding Mrs B's complaint and for largely the same reasons as our Investigator. My decision will therefore focus on the outstanding issues that neither Scottish Equitable or Mrs B can reach a consensus on.

In shaping my decision, I've looked closely at the proposal that Scottish Equitable have put forward. Their approach at a high-level looks fair and reasonable. Whilst I can understand Mrs B's reluctance to want to go through another process with Scottish Equitable, I don't think they're being unreasonable. That's because taking benefits from a pension isn't always straight forward. The Regulator, the Financial Conduct Authority, recognises this and requires product providers to satisfy themselves that consumers are provided with sufficient information ahead of crystalising their benefits to ensure that they're placed in a fully informed position about all of the drawbacks. Mrs B has already found out to her detriment that things can go wrong. Scottish Equitable aren't providing any advice to Mrs B but I think it's reasonable for them to want to ensure that whilst in the process of putting her back in the position she should've been in, they confirm her understanding of what's happening and what that means for her pension. Also, I don't think Scottish Equitable are asking Mrs B to do anything that they don't already ask of other consumers nor what she would have already been expected to do had she been taken down the correct route in the first place. So, it's for that reason that I think it's more than reasonable to ask Mrs B to speak to the Aegon Assist Team and follow their non-advised process. This will protect both Mrs B and Scottish Equitable.

Our Investigator has already provided a detailed explanation of what happened and when within his initial view. As that doesn't appear to be contested by either side, I don't see the need to repeat that information again here. What does appear to be in doubt, however, is when Scottish Equitable would've been in a position to pay Mrs B her tax-free cash had things not gone wrong.

I've thought about when Scottish Equitable should run their loss calculation from. Mrs B has said that she first contacted Scottish Equitable in February 2022, so that's when any losses should be determined from. I don't agree as, whilst Mrs B did speak to Scottish Equitable in February 2022, it wasn't until May 2022 that she decided to start the actual process of taking her benefits. I've looked closely at the timeline of events: on 27 May 2022, Mrs B contacted Scottish Equitable to let them know that she wished to go ahead with taking the 25% tax-free cash from her pension. Had Scottish Equitable not lost Mrs B's marriage certificate and provided her with inaccurate information, our Investigator took the view that they would've had everything they needed by 10 June 2022. That meant her tax-free cash payment could've been sent two working days later – so, on 14 June 2022. However, Scottish Equitable disagrees with this. They've said that because of the type of policy Mrs B has, to arrange the tax-free cash extraction, they'd also need to switch her pension to a new wrapper. That process, they say, could take anything from four to eight weeks depending upon the time of year it is and how busy their processing team is.

Scottish Equitable have said that once Mrs B has gone through the necessary Aegon Assist process, they'd be able to determine precisely how long it would've taken them. They went on to say that as such, they could then use that as an accurate point at which to base their loss calculations on. Whilst I think Scottish Equitable's suggestion isn't unreasonable, that places Mrs B very much in the lap of the Aegon Assist team's current workload rather than what would've happened in May 2022. Whilst it's not possible to say what the timeline would definitely have looked like had Mrs B been taken down the right route, I have to decide, *based on the balance of probabilities, what was most likely to have happened given the facts that I have.*

From what I've seen, Mrs B has acted very diligently in her dealings with Scottish Equitable. When she was sent paperwork, she returned it promptly, typically the same day. I've also thought about the nature of Mrs B's request – it's a straightforward tax-free cash withdrawal and an internal transfer to an appropriate wrapper. I think the timescales that our Investigator set out are fair. However, taking account of what Scottish Equitable have said and acknowledging that this is a different customer journey, I think it's reasonable to build an additional 5 working days on to that consideration. That additional time takes account of the time that Mrs B most likely would've had to wait for an appointment with the Aegon Assist team and for them to set up the new wrapper. To be clear, this isn't an exact science, but an approach which I believe matches as closely as is reasonably possible to what would've happened had the mistakes not occurred. So, whilst our Investigator initially believed that Scottish Equitable would've been able to complete the transaction within 10 working days, based on the information I have, I'm satisfied it could've been concluded by Friday 17 June 2022 and Mrs B's tax-free cash would've been sent to her two working days later.

I'm of the view that by setting a firm date of when the transfer would've most likely happened rather than 'waiting and seeing' is fairer for both sides. I think both parties would welcome the opportunity to draw a line in the sand on this issue and as such, I believe this approach will aide in the prompt and timely closure of the complaint.

<u>Responses to my provisional decision</u>

After reviewing my provisional decision, both Mrs B and Scottish Equitable responded, explaining that they accepted the outcome. However, Scottish Equitable felt that two sections of the proposed redress section needed minor amendment to better reflect the mechanics of what would happen internally when they were putting things right for Mrs B. These were the order in which the activities should be undertaken. In addition, they also asked for a small window of time to undertake the necessary rewind work. They felt including a small window of five working days at the beginning of the process would allow them to rectify their systems which, in turn, would ensure that quotations issued to Mrs B were accurate.

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 both parties have accepted the provisional decision, it therefore follows that I have reached the same decision for the same reasons that I've set out above. I have however made a small amendment to the order in which the activities within the redress are undertaken to take account of the feedback Scottish Equitable have provided. In addition, as the end result will be same, I have also accepted Scottish Equitable's request to build in five working days at the beginning of the process to allow them the necessary time to rewind the existing plan and prepare their systems for the new wrapper.

I therefore require Scottish Equitable to take the following actions:

Putting things right

Scottish Equitable have explained that their system is able to re-wind the UFPLS transaction. Therefore, to place Mrs B back in the position she would've been in had the delays and mistakes not occurred, the following actions should be taken:

1. Scottish Equitable to pre-fund Mrs B's Retiready SIPP (the purpose of this step is to notionally allow for the return of the UFPLS monies as Mrs B is unable to pay back the tax-free cash she's already received as she's spent it on her car purchase).

    a. The reversal work should be undertaken within five working days of Mrs B accepting the final decision.

2. Scottish Equitable to liaise in with HMRC and return the tax paid out from the UFPLS and place those monies into the Retiready SIPP.

3. Scottish Equitable to book an appointment for Mrs B with their Aegon Assist Team no later than 10 working days after the reversal work has been undertaken (in step 1 above). Scottish Equitable should:

    a. Explain Mrs B's options to her

    b. Set up the appropriate wrappers to facilitate the withdrawal.

4. Scottish Equitable to transfer the funds from the Retiready SIPP to the Aegon One Retirement proposition.

5. Scottish Equitable to pay Mrs B her 25% tax-free cash (less the amount Scottish Equitable have already pre-funded into her Retiready SIPP (in point 1) with the remaining balance transferred into a flexi-access drawdown (with an income level determined at whatever amount is agreed with Mrs B in 3a above).

6. Scottish Equitable to undertake a loss comparison. They should determine what tax-free cash Mrs B would've received and the number of units her new fund would've purchased had the transfer to the Retiready SIPP been undertaken by 17 June 2022. They should then compare that to Mrs B's current Scottish Equitable pension. They should use the date of my final decision as the end point.

    a. If the Retiready SIPP value is greater than the actual value of the current Scottish Equitable plan, there is a loss and compensation is payable. If the actual value is greater than the new Retiready SIPP, no compensation is payable.

    b. If there is a loss, Scottish Equitable should pay into Mrs B's pension plan to increase its value by the amount of the compensation. Scottish Equitable's payment should allow for the effect of charges and any available tax relief. Scottish Equitable shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

    c. If Scottish Equitable is unable to pay the compensation into Mrs B's new pension plan, they should pay that amount directly to Mrs B. But had it been possible to pay into the plan, 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. This is an adjustment to ensure that the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs B won't be able to reclaim any of the reduction after compensation is paid.

    d. The notional allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age.

    e. It’s reasonable to assume that Mrs B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

7. Scottish Equitable should recompense Mrs B for depriving her of her funds:

    a. They should pay her 8% simple interest p.a. on the unnecessary tax that she paid on the UFPLS withdrawal from the point it was paid until settlement. Scottish Equitable can take account of the rebate that Mrs B received from the point at which it was refunded back into her account.

    b. If it subsequently transpires that Mrs B would’ve been entitled to a larger amount of tax-free cash when Scottish Equitable undertake their comparison, they must pay Mrs B 8% simple interest p.a. on the difference from 22 June 2022 until settlement.

    Income tax may be payable on any interest paid. If Scottish Equitable considers they’re required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs B how much they have taken off. Scottish Equitable should also give Mrs B a tax deduction certificate in respect of interest (if Mrs B asks for one) so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

8. Pay Mrs B £500 for the trouble and upset caused. Mrs B should return all of the vouchers Scottish Equitable have already provided to her, that she says she’s unable to spend.

9. If they’ve not already done so, Scottish Equitable should return Mrs B’s marriage certificate. If they’re unable to locate the certificate they should pay Mrs B the current cost that the General Register Office charges for a replacement.

My final decision

I uphold Mrs B’s complaint and Scottish Equitable plc should put things right in the manner that I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 20 October 2023.

Simon Fox
Ombudsman