DRN-4580657

## The complaint

Mr T complained because he felt Scottish Equitable Plc trading as Aegon (hereafter, for simplicity, referred to as Aegon) gave him misleading information about the timing of a pension fund switch – which led to his fund being switched a year earlier than he expected.

## What happened

Mr T has a self-invested personal pension with Aegon. His selected retirement date was his 65th birthday. During what Aegon refers to as the "growth stage" Mr T's pension savings are invested across a variety of assets. As the selected retirement date approaches the savings are gradually moved into what are considered to be more stable investments. This is often referred to as "life styling" and the aim is to protect the value of the savings in the years running up to retirement.

About a month before his 58th birthday Aegon wrote to Mr T to say:

- it was approaching seven years from his selected retirement date so his pension savings would soon be switched into the "lifestyle" stage
- his pension was on track to buy an annuity when he turned 65
- he needed to review whether this is still what he wanted to do
- he needed to check his selected retirement age because this would affect when the savings started switching into different investments.

The information I've received from Aegon shows that on Mr T's 58th birthday his pension savings (121,372.08 units valued at £250,481.51) were automatically switched from the original fund to the new fund (287,096.34 units valued at £251,720.33).

About six weeks later Mr T amended his selected retirement date to his 70th birthday. The information I've received from Aegon shows that his pension savings (the same 287,096.34 units – but now valued at £270,324.46) were then switched back from the new fund to the original fund (121,021.92 units valued at £267,983.19).

Mr T then complained to Aegon as he felt it provided misleading information on when the original fund switch would take place. He felt this led to him suffering a loss of 350.16 units – which he estimated to be worth around £775. He said if it had provided clearer information he would have taken action to prevent the original switch from happening. Aegon looked into the matter but didn't think it had done anything wrong. It said the funds switched in line with how it was designed to work.

## What I provisionally decided – and why

I issued a provisional decision which explained why I was minded to uphold the complaint. The relevant parts of my provisional decision are outlined below and form part of my final decision.

- Aegon's position was essentially that no error was made because its system acted correctly and did what was supposed to happen ie automatically transfer Mr T's pension savings on his 58th birthday. Even if that was correct, I thought it ignored the nub of Mr T's complaint – which was that Aegon didn't make it clear that this is what was going to happen. I therefore considered the logical thought process in deciding this complaint to be:

- did Aegon provide Mr T with misleading or unclear information?
- if yes, would Mr T have taken a different course of action if the information had been clearer?
- if yes, what did Aegon now need to do to put things right?

*Misleading/unclear information*

- One of the Principles for Businesses ("PRIN 7") set by the regulator is "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading".

- I didn't agree with all of Mr T's arguments about the ambiguity of Aegon's correspondence. For example, the correspondence sent shortly before his 58th birthday said his "investments will soon be switched into the lifestyle stage" and as he'd held his pension for many years he interpreted "soon" as meaning in a year's time rather than a few weeks. I didn't think that was a reasonable interpretation. In my view, any reasonable interpretation of "soon" would be akin to the near future not a year away. Nevertheless, I thought the critical information provided to Mr T was ambiguous and unclear.

- I looked at the documents Mr T and Aegon provided to us. I considered the Key Investor Information Documents ("KIID") the most important in deciding this case. Mr T said he received these quarterly and that they were the only source of information Aegon provided as to when a switch would happen. I'd seen three KIIDs:

    - 30 September 2017 and 30 June 2022 (before the initial fund switch) – on the first page, under the heading 'Fund objective', it said "This fund uses a two-stage investment process called life styling … Six years before the start of your target retirement year (the lifestyle stage), we'll progressively start switching your investment…"
    - 31 December 2022 (after the initial fund switch) – this gave the same information on the first page as outlined above; but on the third (and final) page, amongst other information relating to risks associated with the fund, it additionally said "Lifestyle performance information … The information and performance for your fund will be different if you're within the 'Retirement target/lifestyle stage', which normally starts seven years before your selected retirement date".

- The phrase "Six years before the start of your target retirement year" was the contentious one as far as Mr T was concerned and I thought he had a point. I didn't think it was particularly helpful in telling a consumer when the switch of funds was going to start.

- Mr T's view was that his selected retirement age was 65 so the start of his target retirement year was his 65th birthday – and, therefore, six years before that was his 59th birthday. Our investigator thought there could be two other interpretations – he felt "start of the target retirement year" could refer to:

  - the start of the calendar year in which the target retirement date fell (so 1 January 2029 in this case as Mr T turns 65 in 2029 – thereby meaning six years before that is 1 January 2023), or
  - the start of the year long period before Mr T's 65th birthday (so if the target retirement age was 65 the year long period before that started on the 64th birthday and six years before that was his 58th birthday).

- I didn't think any of those interpretations were particularly unreasonable. That in turn meant the information Aegon provided to Mr T was ambiguous and unclear – and, in my view, a breach of PRIN 7.

- It seemed in the months after the switch that Aegon changed the wording in the KIID by adding in the extra statement on the third/final page. I thought the additional wording provided some clarity – as "seven years before your selected retirement date" is far clearer than "Six years before the start of your target retirement year". But there were also problems with it, eg:

  - there was the potential for further confusion given one part of the KIID referred to six years and another part to seven years
  - the additional wording was located amongst various risk warnings – and I wasn't persuaded this wording was a warning about risk
  - I hadn't seen anything (eg in a covering letter) that drew Mr T's attention to the fact the wording in the KIIDs (which had previously been in place for a number of years) had changed.

- Most importantly, the new wording wasn't put into the KIIDs until after the initial fund switch. So whether it was clear enough or not, it wouldn't have given Mr T the clarity he needed in respect of the previous ambiguous/unclear wording.

- It's a common legal principle that an ambiguous contract term should be construed against the party who created or introduced it. With that in mind, I thought it was fair in this case to adopt Mr T's interpretation – which was that the switch of funds would start on his 59th birthday ie a year later than it did start.

*Mr T's actions*

- Six weeks after the initial switch Mr T changed the selected retirement date to his 70th birthday so that his savings would switch back to the original fund. I thought that was a good indication of what he most likely would have done had Aegon clearly explained to him that the switch would happen on his 58th birthday. Accordingly, I concluded it was most likely that if Aegon had provided clear information on when the switch would happen Mr T would have taken action to prevent the switch happening on his 58th birthday. This would have had the effect of the savings remaining in the "growth stage".

**Responses to my provisional decision**

Mr T said he had no new information to add.

Aegon disagreed with my provisional decision. In summary, it felt the information in the KIIDs was clear and correct, and explained what happens in the lifestyle stage of the pension. It explained and clarified the 'life styling' process – namely that:

- seven years from a customer's selected retirement year their retirement savings are switched to a new fund

- but although that switch happens the mix of underlying investments doesn't change – so the customer has the exact same mix of investments in the new fund that they had in the original fund
- the move into the new fund is made seven years from the retirement year to operationally prepare the fund for the lifestyle glidepath strategy – the mix of underlying investments doesn't start to gradually change until six years from retirement.

Aviva felt my comment about it changing the wording in the KIIDs soon after the switch was incorrect. It said the wording hadn't changed and it provided copies of some KIIDs to support its position. It added that the risk wording was intended to reflect that the switch into the new fund normally happens seven years out and to make it clear that performance will differ from that shown in growth stage factsheet as the mix of investment changes over the seven year period.

It also said the change in value when the pension was switched back to the original fund was due to market movement between the time the switch was instructed and the settlement period for finalising the switch.

**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 acknowledge Aegon's explanation and clarification of the life styling process. However, in my view the outcome of this complaint doesn't hinge so much on how the life styling process works but on the clarity of the information Aegon provided to Mr T. I also note that Aegon's explanation contradicts what it told us when it sent its file ie *"Once the customer reaches <u>the start of the seventh year</u> before their selected retirement date, <u>the assets are slowly moved into more stable, less exposed funds</u> to protect the value already Gained"* and *"In addition, at the end of the fund factsheet, there is a paragraph about the lifestyle performance – <u>the gradual move into safer assets begins seven years before the retirement date</u>"* 9my underlining). Both of these statements say, or at the very least imply, that the move to safer/less exposed investments starts at the beginning of the seventh year before retirement, not the sixth. So I think Aegon's clarity has actually added to the ambiguity and unclear messaging that I outlined in my provisional decision.

I've now seen five KIIDs:

- 30 September 2017 (before the initial fund switch)
    - as outlined in my provisional decision, on the first page, under the 'Fund objective' heading, it said the fund uses a two-stage investment process called life styling and six years before the start of Mr T's target retirement year Aegon would progressively start switching his investment [to save repetition, the same message was given under the same heading in the KIIDs listed below]
    - under the 'Risks specific to this fund' heading on page three there is no reference to life styling

- 30 March 2018 (still before the fund switch)
    - under the 'Risks specific to this fund' heading on page three it refers to *Lifestyle performance information* and says the lifestyle stage normally starts seven years before Mr T's selected retirement date

- 30 June 2022 (still before the initial fund switch)
    - the copy sent to us didn't include page three so I don't know what it said

- 31 December 2022 and 30 September 2023 (after the initial fund switch)
    - under the ‘Risks specific to this fund’ heading on page three the same message is given as I’ve outlined above for the KIID dated 30 March 2018.

With the above in mind, I’m not persuaded by Aegon’s comment that the wording in the KIIDs hadn’t changed. The differences on page three in the KIIDs dated 30 September 2017 and 30 March 2018 is clear evidence that it did change. I nevertheless accept that the change was before the switch rather than soon after it.

I don’t think this helps Aegon’s case though. This is because the KIIDs referring to six years in one part and seven years in another means the potential for confusion remains, I’m not persuaded that the ‘new’ wording was strictly a warning about risk and I still haven’t seen anything that drew Mr T’s attention to the fact the wording in the KIIDs had changed.

Finally, I note Aegon’s comment about the change in value being due to market movement. I accept this might have been the case. But this misses the point that there would never have been any time lag between the switch instruction and the finalising of the switch had Aegon’s communications been clear – because the original automatic switch on Mr T’s 58th birthday would never have happened.

So, to summarise, Aegon’s response to my provisional decision doesn’t persuade me to change my mind. For the reasons outlined above, I conclude that:

- the information Aegon provided to Mr T’s about the life styling and when it would start was unclear and misleading
- it’s therefore fair in this case to adopt Mr T’s interpretation – which is that the switch to the new funds would start on his 59th birthday
- had Aegon provided clear, fair and not misleading information Mr T would most likely have taken action to prevent the switch happening on his 58th birthday (so his pension savings would have remained in the original fund).

**Putting things right**

In my view Mr T’s financial loss is the monetary value of 350.16 units. Accordingly, I think the fair remedy is for Aegon to add 350.16 units to Mr T’s pension savings. That will increase the current value of Mr T’s pension savings to what it would have been had the switch not happened on his 58th birthday.

**My final decision**

I uphold this complaint and require Scottish Equitable Plc trading as Aegon to settle the matter as outlined under the ‘Putting things right’ heading above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 27 February 2024.

Paul Daniel
**Ombudsman**