

The complaint

Mr K complains Scottish Equitable plc failed to contact him, in a timely manner, about his pension policies and he's suffered financial loss as a result.

What happened

Mr K had two retirement annuity plans with Scottish Equitable. He says it contacted him in August 2022 to tell him about the policies. Scottish Equitable said it had only recently been informed of his change of address.

Mr K says he'd been living at the same address for over 22 years and he thinks Scottish Equitable should have been able to contact him much earlier to tell him about these policies. For example, he says if it had contacted him earlier, when he was around 65 years old, he could have made different plans. He says Scottish Equitable hasn't treated him fairly or in a timely manner. He complained to Scottish Equitable.

Scottish Equitable investigated his complaint. It said it had tried to trace Mr K on numerous occasions. He hadn't advised it when he changed his address. It had used a third party tracing company to try to trace him in March 2017 but the trace had been unsuccessful. It had tried to trace him again in July 2022 and that trace had been successful. Scottish Equitable said it had made reasonable efforts to trace Mr K.

Mr K didn't agree. He referred his complaint to our service. Our investigator looked into his complaint. He said there was no rule which required a business to trace policyholders. It was fair however to expect a business to make reasonable attempts to do so. Our investigator said Scottish Equitable had attempted, without success, to trace Mr K in 2017 and he was satisfied on balance it had probably tried to trace him on previous occasions. Scottish Equitable said it hadn't retained records of previous searches.

Our investigator said Mr K also had a responsibility to keep Scottish Equitable informed of any change of address and he hadn't done that. He also referred to the fact that Mr K could've used the Pension Tracing Service to trace his pension. He didn't think Scottish Equitable should be responsible for not contacting Mr K prior to the date when it had done so.

Mr K responded to what our investigator said. He said he'd been severely financially disadvantaged because he hadn't been aware of these two policies. He'd not received any annual statements and he thought it appeared "very coincidental" Scottish Equitable had been able to trace him in 2022. He said a "HMRC mandated requirement" had to be performed at that time because of his age. Mr K also said Scottish Equitable could have traced him through the Department for Work and Pensions (DWP).

The matter was referred back to our Service. A new investigator had been appointed. He considered what Mr K said, but he reached the same view as the previous investigator. He said Scottish Equitable was entitled to use its own professional judgement about who it used to carry out traces. He also thought Mr K would've been aware he'd made payments into

these policies and that they existed. He didn't think Scottish Equitable needed to do anything more to resolve the complaint.

Because Mr K didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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.

The crux of Mr K's complaint is that Scottish Equitable didn't do enough to contact him about his retirement annuity policies after he moved address, in or around 2001.

Because Mr K hadn't provided details of his new address to Scottish Equitable it didn't send him ongoing correspondence about his pension policies. He was regarded as a "gone-away" customer. I will use that term throughout this decision - mainly because it is the phrase used by the Financial Conduct Authority (the FCA) to describe customers for whom a firm does not have up to date address details.

When thinking about whether a firm has acted fairly and reasonably we take into account the law, codes and good practice that applied at the time of the event.

There is a regulatory requirement that firms such as Scottish Equitable should comply with the Principles for Business which are set out in the FCA Handbook. The FCA superseded the Financial Services Authority in 2013. The Principles have been in place since 2001 – so they are a relevant consideration. There were some changes made to the Principles in 2023 – however those changes became effective after the events complained about here. So, I've not taken those changes into account.

The Principles set out a general statement of the fundamental obligations of firms and these included a requirement that Scottish Equitable should pay due regard to the interest of its customers and treat them fairly (Principle 6). It was also required to pay due regard to the information needs of its clients and communicate information to them in a way which was clear, fair and not misleading (Principle 7).

Although there were no specific rules in the FCA Handbook setting out requirements about the steps firms were required to take to trace "gone-away" policyholders, I would've expected Scottish Equitable, in compliance with the Principles set out above, to have had processes and procedures in place to identify gone-away customers and to take reasonable steps to try to trace them.

Scottish Equitable has provided evidence it used a third party tracing agent which carried out a search in 2017. That search failed to provide an up to date address for Mr K. Scottish Equitable says it hasn't retained evidence of tracing attempts it made prior to 2017, but it says it would've carried out tracing attempts prior to that date in line with its policies and procedures. It says, after 2010 it greatly expanded the extent of its tracing activities and for that reason it indicates it's unlikely any searches it made to trace Mr K were successful. If they had been, it says it would've contacted him at that time.

Although the evidence to support what Scottish Equitable says about its activities prior to 2017 has not been retained by it, I'm persuaded, on balance, it's likely it did make attempts to trace Mr K – at least in the period after 2010. I say that mainly

because it's told us it expanded its activities in this area specifically after 2010. And, I'm satisfied on balance, if those searches had been successful Scottish Equitable would've contacted Mr K at the time.

In 2016 the FCA published more detailed guidance about the steps it considered firms should reasonably take to trace gone-away customers. So, in this decision, I've also considered the FCA guidance and an industry Framework published by the Association of British Insurers (the ABI) in 2018. And I've looked at what Scottish Equitable did in the period after this guidance was issued to try to trace Mr K.

The FCA Finalised Guidance (FG16/8)

The FCA published Finalised Guidance (FG16/8) in 2016 which dealt with "Fair treatment of long-standing customers in the life insurance sector".

The FCA guidance applied to products such as retirement annuity contracts – so it is a relevant consideration here. In line with FCA Principle 6, which applied at the time, and dealt with the requirement to treat customers fairly, one of the outcomes which the FCA said it wanted to achieve was as follows:

Sub-Outcome 2.4

"the firm takes effective action to locate and make contact with "gone-away" customers"

The guidance sets out the type of actions the FCA expected firms to adopt to achieve this outcome. These included the following:

- *Having a clearly defined process for dealing with products where customers could not be traced;*
- *Examples of the types of actions firms could take to re-establish contact included:*
 - *attempting re-contact at point of 'gone-away' and, if unsuccessful, within 18 months of the first attempt and, if again unsuccessful, at least every three years after that (unless the firm can demonstrate why this will not be effective);*
 - *undertaking electoral register and mortality checks, or using third-party credit reference agencies who can undertake this, in addition to leveraging their substantial databases, on the firm's behalf;*
 - *using the DWP letter-forwarding service.*
- *Firms could also undertake other activities depending on the profile of their customers;*
- *"gone-away" processes should be implemented in a cost effective manner.*

The ABI Framework for the management of gone-away customers in the life and pensions market (March 2018)

The ABI Framework was published in 2018 and it set out an industry Framework for the management of gone-away customers in the life and pensions market.

This was a voluntary agreement by life and pension firms (including Scottish Equitable). It was designed to help firms to better identify, trace, verify and manage customers with whom they had lost contact ('gone-aways') and to assist them in re-engaging with such customers in a timely manner.

It set out a number of principles firms should adopt including:

- having a clear definition of what constitutes a 'gone-away' customer;*
- having a defined service level for initiating the tracing process including considering use of both financial and residential data sources to trace the whereabouts of a 'gone-away' customer, such as credit reference agencies, the Electoral Roll and/or DWP data, where available. The provider could also outsource the tracing to a tracing company who would use such data in tracing the whereabouts of a 'gone-away' customer.*
- Being mindful of the FCA guidance where an initial trace has been unsuccessful.*

It's important to note that the measures listed in the FCA guidance (and also the ABI Framework) were not prescriptive. It was a matter for each provider, using its own judgement, to determine the activities it would undertake when trying to trace a gone-away customer. And, although the measures adopted were required to be designed to be "effective," that didn't mean they would always be successful. Nor did it mean Scottish Equitable was obliged to use all of the measures listed in the guidance.

I asked Scottish Equitable to provide more detail about its processes and the types of actions it took to trace gone-away customers – specifically in the period after 2016 when the FCA guidance was issued. It has provided details of the processes it used. It says it engaged a third party tracing agent to carry out searches on its behalf. I can see that the third party tracing agent agreed to use research techniques, including carrying out searches of various databases to which it had access, to trace customers identified as gone-away.

Having considered the types of activities undertaken by the third party tracing agent appointed by Scottish Equitable, I'm satisfied, on balance, these were typical of the measures which were expected to be undertaken under both the FCA guidance and the ABI Framework. So, I'm satisfied, on balance, Scottish Equitable acted fairly and reasonably, and in line with the guidance, when it appointed a third party agent to carry out tracing activity on its behalf.

I've also considered whether Scottish Equitable should have attempted to repeat the traces it carried out more frequently. It requested a search in March 2017 and the next search was made in July 2022.

The FCA Guidance and the ABI Framework indicate it's good practice to conduct a further tracing attempt 18 months after the first unsuccessful attempt and then again every three years – unless such a search is unlikely to be effective.

Scottish Equitable says it has no additional information about other searches it may have carried out between 2017 and 2022. However, it says it's likely it took the view that further trace attempts, between 2017 and 2022, were unlikely to have been successful. The FCA guidance did not require firms to repeat measures which had failed to trace gone-aways where the firm could demonstrate this would not be effective. In light of the fact it had no additional information about Mr K, I think Scottish Equitable's view that further trace attempts in the period between 2017 and 2022 were unlikely to be successful was a fair and reasonable view to take.

Mr K says Scottish Equitable told him it was able to trace him in 2022 through the DWP. He says this same trace could've been used 15-20 years earlier and he could've accessed his pension much earlier. He also thinks it's "very coincidental" the

search was only successful in 2022 - which he says is the date an HMRC mandated requirement was required to be performed.

I've thought about what Mr K has said and I can understand why he's disappointed he wasn't able to make decisions about this pension policy much earlier.

Because of the passage of time, Scottish Equitable hasn't been able to confirm the details of the exact searches it carried out in the period since 2010. However, having considered the 2016 FCA guidance, I would comment it wasn't obliged to use the DWP letter forwarding service.

The FCA guidance states that whilst use of DWP letter forwarding was something firms may wish to undertake, it was not something they were required to do.

Scottish Equitable's records haven't been retained – so it's not clear on the basis of the information provided to me, whether Scottish Equitable did try to use the DWP letter forwarding service prior to 2022 or what the outcome of any such attempt was. If it had used that service and the outcome had been successful, I think it's likely, Mr K would have been contacted. So, if it did use the DWP service prior to 2022 (and as I say, I cannot be certain it did do that), I think the outcome was most likely unsuccessful.

However, even if it did not use the DWP letter forwarding service prior to 2022, I'm not persuaded, on balance, there's any evidence to say that meant it failed to comply with the regulator's guidance or the industry best practice guidance set out in the ABI Framework. As I've set out above, it wasn't a requirement it should use that service. Having considered everything here, I'm provisionally satisfied, on balance, the measures it did take here to try to trace Mr K, were fair and reasonable and in line with both the FCA guidance and the ABI Framework.

When reaching that view, I've also taken into account the fact that Mr K had a responsibility to provide Scottish Equitable with his up to date address details. He didn't do that. Whilst I can understand, as time passed, he may have forgotten about these pension policies, it would've been something I'd have expected him to have thought about at the time when he moved home over 20 years ago. He would've stopped receiving correspondence about his pension policies at that time. So, that might have alerted him to the need to update his address details with Scottish Equitable.

It's also something I'd have expected Mr K to have thought about as he approached retirement, especially when he says he's been severely financially disadvantaged because he wasn't able to access these pension policies at an earlier date. He doesn't seem to have thought about these policies until after Scottish Equitable contacted him in August 2022.

I'm satisfied, on balance, if he'd contacted Scottish Equitable to raise queries about his pension policies, or to have provided it with his up to date address details, it would've sent him annual statements and details about his pension policies. I'm also satisfied if Scottish Equitable had traced his new address earlier than 2022, it would have contacted him at that time.

Having considered all of the information provided to me, my provisional view is that Scottish Equitable has acted fairly and reasonably here. In these circumstances, I don't intend to require it to have to do anything more to resolve this complaint.

My provisional decision

For the reasons given above my provisional decision is that I do not intend to uphold this complaint about Scottish Equitable plc.

Scottish Equitable responded to my provisional decision. It said it didn't have any further comments to make.

Mr K also responded to my provisional decision. He said he had nothing further to add.

So I now need to make my final 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.

Having considered the responses to my provisional decision, I've not been provided with any new information or further arguments that causes me to change my view that this complaint should not be upheld.

My final decision

For the reasons given above I do not uphold this complaint about Scottish Equitable plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 July 2024.

Irene Martin
Ombudsman