DRN-5287243

Financial Ombudsman Service

The complaint

Mr L has complained about delays caused by Scottish Equitable Plc trading as Aegon when he tried to access tax-free cash from his pension. It took just over nine weeks from the time he first contacted Scottish Equitable until he received the money.

What happened

Mr L messaged Scottish Equitable on 4 September saying that he wanted to take his 25% tax-free lump sum from his pension in cash. The following day Scottish Equitable emailed Mr L a list of options on how he could access his funds. One option – listed as option five – said he could take part or all of his tax-free cash as a lump sum and then invest the rest of the money in a separate flexi access drawdown policy. It went on to say that if he took this option he would need to have a financial advisor or go through Aegon Assist.

Mr L emailed Scottish Equitable the same day saying that he wanted to take option three and take 25% of his pension pot as a tax-free cash lump sum, leaving the remaining 75% in the pension. He further added that at some point in the future he intended to drawdown cash from the remaining pension. But as he was aware of speculation about the Government's intention to possibly remove or reduce the 25% tax-free allowance he wanted to withdraw the 25% tax-free amount as soon as possible.

On 11 September Scottish Equitable sent Mr L the form he needed to complete for option three. Mr L queried the form the next day as it said he couldn't use it if he only wanted to take a tax-free lump sum from his pension. Mr L spoke with one of Scottish Equitable's advisors on 13 September. He confirmed the wrong form had been sent and he told Mr L that as he didn't have a financial advisor he'd need to go through its Aegon Assist scheme to help and advise him through the process. An appointment was made for 9 October – which was the next available appointment.

The appointment took place as planned and Mr L confirmed his wish to take the 25% tax-free cash and to have the remainder in a drawdown plan. It was left that Scottish Equitable would send Mr L an offer pack in five to seven working days.

The offer pack was sent on 23 October and Mr L called Scottish Equitable the same day to accept the offer/confirm his wish for the 25% tax-free cash withdrawal. The underlying investments were then sold and Mr L received the money on 7 November.

Mr L complained to Scottish Equitable about the delay in receiving the lump sum payment. Scottish Equitable investigated the complaint and concluded it had caused a delay of one day. It offered to pay Mr L £133.91 compensation – £8.91 for the potential loss of interest and £125.00 for the distress and inconvenience caused.

Our investigator concluded that the complaint should be upheld. In summary, he felt Scottish Equitable caused a delay of around three and a half weeks and that Mr L should have received the tax-free cash on 14 October.

Mr L accepted our investigator's conclusion but Scottish Equitable didn't. It said many consumers were keen to receive their tax-free cash due to uncertainty around possible changes to tax-free cash entitlements prior to the budget and demand for appointments with Aegon Assist during this period increased by over 90%. It also said the sudden increase in demand had a knock-on effect administratively as the volume of offer packs needing to be sent also increased. As a comparison, Scottish Equitable said it currently aims to arrange appointments within five to seven working days and to send offer packs within two working days. Scottish Equitable felt the spike in demand wasn't something it could have reasonably foreseen or mitigated against and that any delay in the appointment or in sending the offer pack wasn't its error.

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.

The issue for me to determine is whether there was a delay in Mr L receiving his tax-free cash and, if so, whether Scottish Equitable should compensate him for that delay.

Mr L had a self-invested personal pension with Scottish Equitable which didn't have an option to provide a flexi-access drawdown. So, as Mr L wanted to take the entire 25% tax-free cash and leave the rest invested, a separate drawdown policy was needed – it wasn't as simple as Scottish Equitable just sending him the money.

I firstly considered that Scottish Equitable sent Mr L the wrong form. Mr L had told Scottish Equitable that he wanted to take option three but this option was for him to only take a *partial* lump sum from his pension where 25% of the amount taken was tax-free and the remaining 75% was subject to income tax. To do what he wanted to do Mr L needed to take option five. At this point Mr L had told Scottish Equitable twice that he wanted to take 25% of his pension as a tax-free cash lump sum and leave the remaining 75% in the pension. So I think Scottish Equitable should have realised that the option Mr L had chosen wouldn't allow him to do what he wanted to do; and it should therefore have clarified the situation with Mr L rather than just sending him the wrong form.

It was this failure/delay that Scottish Equitable recognised when it considered Mr L's complaint. It felt if it had clarified the situation with Mr L rather than sending the wrong form the appointment with Aegon Assist would have been one day earlier. While Scottish Equitable realised this delay, I'm not persuaded in the grand scheme of things it was that significant.

Like our investigator, I think there were two main delays in the process – the appointment with Aegon Assist and the sending of the offer pack. Given what Scottish Equitable said in response to our investigator's conclusion:

- Mr L waited nearly four weeks for an appointment whereas he would ordinarily have waited around one week
- it took Scottish Equitable two weeks to send the offer pack whereas it would ordinarily have taken around two days.

Had it not been for these delays, rather than taking nine weeks for Mr L to receive the money I think it would have taken around four. I therefore conclude that there was a delay in Mr L receiving his tax-free cash.

The issue then turns to whether Scottish Equitable should compensate Mr L because of the delay.

I have some sympathy for the position Scottish Equitable found itself in – there was sudden and unexpected speculation about potential changes to pension entitlements and that resulted in a sudden spike in consumers contacting it about their pensions. I also recognise that Scottish Equitable couldn't *immediately* just get more resource and create extra appointments to cope with the increased demand. But my sympathy only goes so far. At some point I think in order to treat consumers fairly Scottish Equitable needed to allocate resources from somewhere to deal with the demand. And I note that the time for an appointment and for the offer pack to be sent quadrupled even though demand only doubled.

Accordingly, I think it's fair to give Scottish Equitable some leeway given the sudden increase in demand. But even with the sudden increase in demand I'm of the view that taking nine weeks in total was unreasonable.

With that in mind, I think the fairest way of assessing this is to work on the basis that the demand doubling ought reasonably to have led to the length of time for an appointment and for the offer pack to be sent to also double. So, the process would have looked something like this:

- 11 September – Scottish Equitable queried which option Mr L wanted and an appointment with Aegon Assist arranged
- 25 September – Mr L spoke to Aegon Assist
- 1 October – the offer pack was sent and Mr L accepted the offer
- 16 October – Mr L received the tax-free cash.

This isn't an exact science though as it's impossible to know precisely what would have happened on each day. For example, Mr L said he called Scottish Equitable the same day as receiving the offer pack because he felt email communication with it was "slower than snail mail". If there hadn't been any delays up to this point it's possible that Mr L might have chosen to reply by email the following day. Nevertheless, overall I conclude that Scottish Equitable unreasonably delayed the payment by around three weeks – which is broadly in line with what our investigator calculated. So I don't see the need to depart from the conclusion our investigator reached.

Putting things right

There are two potential financial losses that Mr L might have occurred due to the delay – in respect of the tax-free lump sum payment and in the value of his pension now.

Tax-free cash

In order to calculate if Mr L has suffered a financial loss:

- Scottish Equitable should calculate how much tax-free cash Mr L would have received had the sale of the underlying investments been completed on 11 October 2024 and the payment made to him on 14 October 2024 ie the next working day (this figure is 'A')
- the tax-free cash Mr L actually received is figure 'B'
- if 'A' is less than 'B' then Mr L didn't suffer a financial loss and Scottish Equitable doesn't need to do anything more in this respect
- if 'A' is more than 'B' then the difference is the financial loss Mr L has suffered – this is figure 'C'
- if there was a financial loss, the figure calculated as 'C' should be paid to Mr L, plus interest at a rate of 8% simple calculated from 14 October 2024 to the date of payment

- if Scottish Equitable has already paid Mr L the £8.91 it calculated as being the financial loss it can deduct this from the payment
- the calculations should be provided to Mr L in a clear and simple format.

Income tax may be payable *on any interest paid* ie not on the loss itself. If Scottish Equitable deducts income tax from the interest, it should tell Mr L how much has been taken off. It should also give Mr L a tax deduction certificate in respect of the interest if he asks for one so he can reclaim the tax on interest from HMRC if appropriate.

Pension fund value

In order to calculate if Mr L has suffered a financial loss:

- Scottish Equitable should compare the current value of Mr L's pension (this is figure 'D') with the value it would have been had it been invested on 14 October 2024 (this is figure 'E')
- if 'D' is more than 'E' then Mr L didn't suffer a financial loss and Scottish Equitable doesn't need to do anything more in this respect
- if 'D' is less than 'E' then the difference is the financial loss Mr L has suffered – this is figure 'F'
- if there was a financial loss, the figure calculated as 'F' should if possible be paid into Mr L's drawdown plan; the payment should allow for the effect of charges and any available tax relief; the compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- if a payment into the drawdown plan isn't possible or has protection or allowance implications, it should be paid directly to Mr L as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid; as Mr L has taken the tax-free element from this pension, all of the loss would be taxable at his likely income tax rate in retirement – presumed to be 20%; so, making a notional reduction of 20% overall from the loss adequately reflects this
- the calculations should be provided to Mr L in a clear and simple format.

Distress and inconvenience

Our investigator concluded that Scottish Equitable should pay Mr L total compensation of £200 (ie £75 more than the £125 offered) for the distress and inconvenience caused by the delay. He felt £125 was insufficient for a delay of three and a half weeks.

I don't have the authority to fine or punish Scottish Equitable for getting something wrong. So it's not so much the length of the delay that's important; it's more the effect the delay had on Mr L. In certain circumstances a delay of one week can have a far greater effect on a consumer than a delay of one month.

In this case the whole reason Mr L wanted to access his tax-free cash was because he was concerned that if he didn't do so he might not be able to after the budget. And he's said that his concern/anxiety in this respect increased as the days went by and he hadn't received his money. I accept this to an extent as I'm mindful that the anxiety would/should have decreased after the budget (ie in the final week that Mr L was waiting for his money) as no announcement was made that would affect Mr L's ability to receive his tax-free cash.

I usually make an award between £100 and £300 where I think there have been repeated small mistakes, or one larger single mistake, that typically causes a consumer some distress, inconvenience, disappointment or loss of expectation over a few days or weeks. I think the situation in this case falls into this category as the delay was around three weeks and there was a real possibility for some of that time – at least in Mr L's mind – that he might lose the opportunity to take his tax-free cash because of the delays.

The £200 our investigator suggested is in the ballpark of what I consider fair for the distress Mr L suffered. It should therefore pay this amount to Mr L – less the £125 previously offered if this has already been paid.

My final decision

I uphold this complaint. I 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 L to accept or reject my decision before 5 March 2025.

Paul Daniel
Ombudsman