DRN-5341568

The complaint

Mr P has complained that Scottish Equitable Plc, trading as Aegon, has declined to reverse the pension claim that he completed online which resulted in him taking an uncrystallised funds pension lump sum (UFPLS) instead of a stand alone lump sum (SALS) which was provided for under the rules of his pension scheme.

What happened

Mr P had a Scottish Equitable Trustee Proposed Section 32 Individual Buyout policy. Mr P was entitled to a SALS. This allowed him to take almost the full value of the policy as a tax-free lump sum. The tax-free amount was restricted to the value of the plan on 5 April 2023, which was £59,864.88. The remainder, if any, would be taxable at Mr P's marginal rate. Mr P's selected retirement date was 27 March 2024.

On 25 March 2024, Mr P phoned Aegon requesting a retirement illustration. On 28 March 2024, Aegon sent Mr P its retirement options letter with its illustration.

This showed the breakdown of his current surrender value and lump sum options, and proceeded to give details of the UFPLS and SALS. The current value of Mr P's policy with Aegon was £62,474.18. The letter directed Mr P to Aegon's website to complete a form by clicking on the relevant link.

The letter also said that Aegon had provided Mr P with risk warnings which may apply to his retirement options. Aegon said that, as it didn't know his personal circumstances, it was possible that not all of the risk warnings would apply to Mr P. It said that Mr P should therefore be aware of the risk warnings that applied to him before he took income from his plan.

The letter set out the following:

"If you take your full fund as an uncrystallised funds pension lump sum (UFPLS)

The tax-free amount £15,618.54
Tax payable £19,463.40*
Lump sum which would be credited to your bank account £43,010.78"

*"**If you take your full fund as a stand-alone lump sum (SALS)***

Tax-free amount £62,474.18
Tax payable £312.20*
Lump sum which would be credited to your bank account £62,161.98"

On 2 May 2024, Mr P called Aegon and Aegon emailed him with links to its website. Aegon discussed with Mr P what he needed to do, including arranging a retirement pack. Mr P didn't mention in this call that Aegon had already sent him a retirement pack on 28 March 2024. Because the Aegon representative wasn't aware of this, they only provided generic rather than specific information.

The e-mail sent on 2 May 2024 said:

"Following our recent conversation, here's a link to our Retirement Planner Tool.

We'll be keeping in touch with you throughout your retirement journey with help and guidance when you need it. But as an Aegon customer, you can access a range of free online tools at any time, created to make planning a little easier.

When it comes to how you use your savings in retirement, there's lots of choice and lots to think about. That's why we recommend that you get advice or guidance to help you understand your retirement options.

Pension Wise, is a free and impartial government service offering guidance about your retirement options. This service is available online at MoneyHelper, by phone on 0800 138 3944 or face to face by appointment.

To request your full retirement quote, please use our online form – this will take up to 15 working days from initial request. To do this you need to select the 'customer' option then 'pension', then 'I want to request a retirement quote'.

If you then want to proceed with your settlement, complete our online form to get started.

Your quote will detail the options available to you in full. If you're looking to take the full fund as cash option, select the dropdown "I want to take a cash lump sum". If you're looking to take the small pots option, select the dropdown "I want to take a small pots lump sum", If neither of these options meet your needs, please take financial advice or contact us to discuss further."

On 22 May 2024, Mr P called Aegon again. Mr P said that he'd lost his quote and the email with the links. In the call Mr P said the following:

"I've deleted the e-mail or something can you re-send it, or is it possible you can you send it through post?"

Aegon's customer service adviser told Mr P to go online and make the claim. They also resent the links to Mr P.

On 23 May 2024, Aegon received Mr P's instruction to settle his pension in full. After completing its regulatory checks, Aegon valued the plan on 29 May 2024 at £64,070.61.

On 5 June 2024, Aegon processed the claim and confirmed the settlement details in a letter to Mr P on the same day.

On 11 June 2024 Mr P called Aegon and made a complaint over the phone. He said he wanted to take the SALS as most of the sum would be tax-free, but when he called on 22 May 2024, the agent emailed him a link to the form which was for UFPLS only.

On 11 July 2024 Aegon sent Mr P an e-mail which read as follows:

"…I'm sorry you've been disappointed by the service provided. When you called us to ask for your options and the form for taking a Stand-Alone Lump Sum (SALS) you weren't given the correct information.

You were directed to our website where you filled in the Uncrystallised Funds Pension Lump

Sum (UFPLS) form on-line. Having agreed to the terms of the UFPLS on the form we then processed the request. This has meant you have paid £20,002.49 more tax than you were expecting. You want the claim reversed and the tax refunded. I've investigated this and I'm sorry for the confusion. When you called the Customer Service Representatives (CSRs) [they] should have explained your SALS option and a paper form is required for this. The form is available on our website but sending the generic links to all our retirement forms seems to have caused the confusion.

The claim was correctly processed after you filled out the form for an UFPLS claim online. Unfortunately to fill out the UFPLS form you must have agreed to the risk warnings and terms and conditions to complete it, and it does tell you that you will be taxed with this option.

To reclaim the tax from HMRC they require that we show there has been a genuine error and that must fall under their definition of a genuine error. Given the amount involved I've had to pass this to our tax team to see if, in their opinion, we would be able to reclaim the tax if we reversed the claim and re-added it as a SALS. I hope to be in a position to respond by 25 July but if I'm not I will update you at this point."

Aegon sent its final response to Mr P's complaint the following day, on 12 July 2024. Aegon said the following:

"With reference to my previous email, I'm sorry if there has been any confusion. When you called us on 02 May you said you wanted to take a Stand-Alone Lump Sum (SALS), we sent you generic links to our website for the information on your options and our available forms. The specific form for a SALS is available when you navigate our website here. You called us back on 22 May to ask for us to send out the generic links again which we did. On that call you didn't mention a SALS.

In retrospect, whilst a better response would have been to send the SALS form directly to you, we were correct to point you in the direction of our website to download it. If you still couldn't find it, you should have called us back or requested further help. Unfortunately, when you went to our website you have chosen the Uncrystallised Funds pension Lump Sum (option). It is explained in the terms and conditions and in the risk warnings on this form that there is tax payable with this option. It's also explained in the quote we sent to you. When we receive a correctly completed claim form and we don't require any further information, the claim can't be stopped.

I'm sorry that you have paid a large amount of tax which you weren't expecting. I've contacted the manager involved and our tax team to see if this claim can be reversed and put on as a SALS. Unfortunately, that isn't possible due to HMRC rules. As you filled out the UFPLS form and agreed to all the terms and conditions, we're unable to reverse the claim. That would constitute a regulatory breach on our part.

As the form was completed and all the terms and risk warnings were completed correctly for a UFPLS claim, HMRC won't view this as a genuine error and HMRC will not refund the tax. Regrettably, Aegon are unable to accept liability for this error and will be unable to reverse the claim and pay you the lost tax. I'm unable to uphold your complaint but I hope the information I've provided to you is useful."

Dissatisfied with that response, Mr P referred his complaint to our Service on 12 July 2024.

Having considered the matter, the investigator didn't think that the complaint should be upheld, saying the following in summary:

- When this service asked Aegon for its file, it told us that, as Mr P used its online services, he needed to make sure that he completed the correct forms. If Mr P had any doubts, he should have contacted Aegon.

- Aegon also said that it had no requirement for a plan holder to obtain advice before taking their benefits from a standalone lump sum plan. The plan had this option when it was set up and was part of the product. There was also no regulatory requirement for a plan holder to obtain advice before taking their benefits from a standalone lump sum plan.

- However, Aegon recommended that plan holders take financial advice before taking their pension benefits, either from an independent financial adviser or from Pension Wise.

- The investigator had asked Aegon if there was a reason as to why it couldn't reverse the transaction and why it told Mr P in the final response that "HMRC wont view this as a genuine error and HMRC will not refund the tax."

- Aegon had replied as follows:

  "The request that came through as a full UFPLS cannot be reversed. Any attempt to do so would involve making a false return to HMRC. There are no cancellation rights on these transactions and the policyholder will have signed a legal declaration setting out their intention to withdraw the full fund as an UFPLS, and they will have had the ramifications of that set out within the same declaration. This type of error doesn't come under the HMRC 'genuine error' rules. The HMRC 'genuine error' provisions are specific to a few circumstances where errors have been made, it's not a broad-brush approach to any error that occurs."

- It was the investigator's understanding that Mr P has been in contact with HMRC to explain the circumstances and that HMRC has asked him to fill in a form so that it can assess whether anything can be done to help Mr P, which Mr P had done.

- He also noted that Mr P completed the UFPLS process via the "Aegon.co.uk/retirementplanner" web address. Having looked at this, he could see that Mr P was provided with a series of warnings, which included a recommendation that Mr P seek advice or guidance on his options.

- The investigator said that online process also included the below statement when the completed online request was made on 23 May 2024:

  "1. Are you aware that you'll pay tax if you take a lump sum from your pension savings and this may take you into a higher tax bracket?"

  Mr P responded with "Yes".

- The investigator said that it was unfortunate that Mr P completed the wrong form online for his requirements. However, he didn't think that Aegon could be held responsible for this error. Mr P received and acknowledged several warnings when completing the form online, which included being made aware that he'll pay tax if he proceeded. Mr P also made no mention that he intended to take the SALS option in his call to Aegon.

- And so the investigator concluded that Aegon couldn't reasonably be expected to contact HMRC about the error that Mr P made, or to reverse the transaction. There was a warning that Mr P had no cancellation rights, and that the transaction couldn't be reversed.

- It was the investigator's understanding that Mr P had contacted HMRC about this matter and was waiting for a response from it. But he was unable to recommend that Aegon do anything further in the circumstances.

In a subsequent telephone call with the investigator, Mr P said it was a lot of money for him to lose out on, so he had to pursue the matter as far as he could. He'd been in touch with HMRC on 27 August 2024, but was still waiting for an answer from it as to whether it would do anything.

Mr P also described his situation and his state of mind at the time he filled in the forms (stressful home and work life, caring for disabled parents and having to take them to hospital).

Mr P then confirmed that he'd received a cheque from HMRC for £5,500.69 which was still short of the expected amount of around £20,000. He'd spoken to HMRC about this, but had been told that he'd need to refer further queries back to his pension provider.

As agreement wasn't reached on the outcome, it was referred to me for review.

I issued a provisional decision on the matter on 4 February 2025, in which I set out my findings. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I broadly agree with the investigator's assessment that it doesn't seem to be the case that Aegon has made an error here, for which I think it could reasonably be held responsible for Mr P having paid more tax than was necessary.

That said, there clearly has been an error here. There can conceivably be no set of circumstances under which Mr P would have chosen to opt for the UFPLS rather than the SALS. And whilst I appreciate what Aegon has said about it not being able to convey that a situation has occurred which might meet the bar for the type of error which would warrant an unwinding of the transaction, my view is that this ought to at least be attempted on Mr P's behalf. A conversation between Aegon and HMRC, clearly explaining what has happened, may well in my view be of more benefit that Mr P alone trying to do the same.

I understand that Aegon will have particular processes in place for this type of situation, and what it deems to constitute an error for the purposes of legitimately unwinding a transaction. But this is very much a human error – and a very clear error rather than a change of mind – made in circumstances which Mr P has described as very challenging at the time. As a result, Mr P has paid in the region of £20,000 in unnecessary tax. And so I think that this might reasonably warrant a more human and individually tailored approach in this instance, rather than a working assumption that HMRC would simply decline the request.

It's presently unclear to me as to whether Aegon has had a conversation with HMRC on Mr P's behalf about this matter. But notwithstanding the additional obligations on providers such as Aegon from July 2023, I think this is a case in which, by having that conversation with HMRC on Mr P's behalf, Aegon would be able to clearly demonstrate that it had treated Mr P fairly, as required by the FCA's underlying principles. Or, in more human terms, that it has *done everything that it can to help Mr P to recover a significant amount of unnecessary tax.*

I don't think this would be operationally onerous on Aegon, and certainly not relative to the amount of money which is at stake here for Mr P.

I accept that Aegon can make no promises to Mr P about the outcome, and Mr P would need to be aware of this, but I think that, irrespective of the outcome, in these particular circumstances a further conversation directly between Aegon and HMRC would be warranted."

Mr P accepted my findings, adding that the only thing he could say in mitigation of his actions was that he was unintentionally careless when replying to Aegon's request to submit the taxable request, instead of the tax free amount.

Mr P said that, as he'd previously told us, there'd been a lot going on outside of work, which had been mentally challenging. He had much to deal with, caring for his parents in their mid-80s, and his father had had dementia for about seven months now, had been hospitalised for the last six weeks, and his mother was also disabled on her own in the home.

He and his brother were helping their mother as much as they could, but he was under considerable strain.

Aegon also accepted my findings, saying that it had spoken to its policyholder tax team which had confirmed that it was happy to contact HMRC and indeed already had done so. But it said that it didn't know how long it would take to receive an answer.

It did also add, however, that HMRC had recently clarified that reversals of full UFPLS payments weren't permitted.

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'm grateful to both parties for their further comments. All I'd say in addition to my provisional findings is that I think it would be useful for Aegon to fully convey Mr P's situation to HMRC, as he's set out above (and previously), when speaking to it about a possible solution here.

Whilst I acknowledge what Aegon has said about HMRC's stance on UFPLS payments, it may yet be the case that it's willing to consider what has happened here as a clear and unintentional error rather than an unwise and regretted decision.

My final decision

My final decision is that Scottish Equitable Plc, trading as Aegon, should enter dialogue with HMRC as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 March 2025.

Philip Miller
Ombudsman