

The complaint

Mrs B and Mrs W, as executors of the estate of the late Mrs S, complain that Scottish Equitable Plc trading as Aegon has failed to pay the proceeds of a bond that were due on the death of Mrs S.

What happened

Mrs S sadly passed away in 2022. Her executors complain that she was the beneficiary of a performance bond taken out by Mrs S and her late husband in 1985. On the death of Mrs S's husband Scottish Equitable told her that the bond would pay a death benefit on the death of the last survivor – Mrs S. Her executors have sought to claim that death benefit but Aegon has said it has no record of an open bond against which any death benefits should be paid.

Locating any details of the bond has been complex. It was originally sold to Mr and Mrs S by Scottish Equitable. But over the years the responsibility for the administration of bonds of that nature has moved from Scottish Equitable to two other firms. The firm which now would have responsibility for the bond says that it doesn't hold any records of it leading to a conclusion that it was closed before the transfers from Scottish Equitable took place.

Aegon says that it too doesn't hold any records of the bond. It says that once a bond has been encashed it would only hold details for a period of seven years. So its conclusion is that the bond must have been encashed by Mrs S some time ago. Aegon says that the terms and conditions of the bond do allow for it to be encashed before the death of the last beneficiary.

The complaint has been assessed by one of our investigators. He said that the lack of any evidence of the bond still being open meant that he couldn't conclude Aegon had dealt with this complaint unfairly. So he didn't think the complaint should be upheld.

Mrs B and Mrs W didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by each of the parties. In this case, given it is more than thirty years since the last evidence that the bond was still active, it isn't surprising that the information available is rather limited. So I need to make my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

As I mentioned earlier, the responsibility for bonds of this type has passed over the years from Scottish Equitable to another firm. Mrs B and Mrs W, on behalf of Mrs S's estate, have made a complaint about that other firm's investigation into the current status of the bond. That complaint has been dealt with separately. In this decision I will only be dealing with the actions of Aegon in relation to the bond.

Mrs B and Mrs W have been able to provide comprehensive details about the original purchase of the bond by Mr and Mrs S in 1985. And there is a letter from Scottish Equitable, some years later following the death of Mr S, that confirms the bond remains active, and would pay a benefit on the death of Mrs S. I think it likely, given that information, that Aegon would be able to trace the bond should it remain open. Aegon has told Mrs B and Mrs W that it has performed a thorough search of its records – and I have no reason to think that isn't the case.

The last evidence I have seen that the bond remained active was sent to Mrs S in January 1991 – that is more than thirty years ago. And the limited records that ReAssure has been able to find regarding Mrs S's investments with that firm show that she encashed a similar bond held by then with the other firm in December 1994. I cannot discount the possibility that Mrs S also encashed the performance bond that is the subject of this complaint at the same time.

I've looked carefully at the policy conditions that applied to the performance bond. Those clearly indicate that it is possible to surrender, either fully or partially, the benefits of the bond investment. So whilst the letter sent to Mrs S following the death of her husband correctly noted that death benefits would only be paid after the death of the last beneficiary, those benefits could be surrendered at any other time.

Having considered the evidence we have seen, and what is most likely to have happened, I'm not persuaded I can reach a reasonable conclusion that this bond remained active at the time of Mrs S's death. On balance I think it more likely that the bond was surrendered by Mrs S sometime after 1991.

I appreciate how disappointing my decision will be for Mrs B and Mrs W, especially given the sad circumstances that have preceded this complaint. But there is no evidence that the performance bond opened by Mr and Mrs S in 1985 remained active at the time of Mrs S's death. So I don't think that Aegon has acted unfairly in refusing the claim for death benefits from the bond.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Scottish Equitable Plc trading as Aegon.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mrs W, on behalf of the estate of Mrs S, to accept or reject my decision before 5 April 2024.

Paul Reilly

Ombudsman