

The complaint

Mr H complains that in 2016, Scottish Equitable Plc trading as Aegon (Aegon) provided him with incorrect information about whether or not his Section 32 Buyout Plan had protected Tax-Free Cash (TFC) attached to it. He said this led to him leaving the plan that he'd been told had protected TFC with Aegon, rather than transferring it to a new provider alongside his other plan in late 2016. As a result, Mr H feels that he has suffered a financial loss.

What happened

Mr H had two periods of service with the same employer, through which he built up two separate pensions. In 2013, his employer's pension scheme was wound up and his pensions were moved across to two Section 32 Buyout Plans with Aegon. I'll refer to one plan as XXXX243 and the other as XXXX245. The Aegon plans were set up by the trustees of Mr H's workplace pension on the same basis.

I understand that the transferred funds were invested 33% in cash and 67% in fixed interest.

At the time of the wind-up, Mr H received a letter from the trust looking after his employer's pension scheme. This stated that the value of his personal account as at 5 April 2006 was £83,980.44. And that his maximum TFC entitlement as at that date was £32,289.83. This was also shown as a "TFC percentage" of 38.45%.

Notes explaining what would happen if Mr H transferred his plans to Aegon stated:
"However, if your tax-free cash entitlement at 5 April 2006 under the Plan was more than 25%, then your entitlement to this higher amount will be protected when you transfer to a Trustee Transfer Plan with Aegon."

In March 2016, Mr H's financial adviser (FA) contacted Aegon to ask it for information about both plans. Mr H was considering transferring them in order to consolidate his pension funds.

Aegon replied separately to the FA on 18 March 2016 about each plan. It sent two letters about plan XXXX243.

One stated that the transfer value was £37,124.53 as at 17 March 2016. It also said: *"Tax Free Cash is protected under this policy. Tax Free Cash at A-Day is £31,292.66."* The other letter explained that: *"...the destination and circumstances of a transfer will dictate whether the tax free cash protection will be retained on transfer. Tax-free cash protection will only be retained if this policy is transferred to another UK Section 32 Buyout contract."*

It will be lost if it is transferred to any other contract eg. SIPP, Personal Pension or if it is transferred to an overseas plan."

Aegon sent a single letter about plan XXXX245. This stated that there was no protected TFC under that plan.

Mr H's FA questioned this as he felt that both plans should contain protected TFC.

Aegon wrote to Mr H's FA on 9 August 2016 about plan XXXX245. It confirmed that it'd been told at the time of the 2013 transfer to it that there was no protected TFC under this plan. It asked Mr H's FA to provide certain information about Mr H if he believed that there should be protected TFC. And said it would then re-calculate the TFC.

On 21 October 2016, Mr H's FA called Aegon to say he'd received information from the workplace scheme which confirmed that XXXX245 did have protected TFC. Aegon replied to the FA the following day. Its letter referenced both plan numbers and opened with the sentence: "*Thank you for your recent enquiry regarding the tax free cash payable under these 2 policies*". The letter contained both of Mr H's plan numbers. And asked for the details it needed to check the TFC entitlement for both plans. Aegon said it would: "*recalculate the tax free cash values as a priority*" once it'd received the requested information.

Mr H's FA called Aegon on 24 October 2016. Aegon's call note recorded that the FA had asked it to investigate the issue and email a response to him. He noted that Mr H had another plan with Aegon and that the TFC could be split between the two. And asked it to confirm the current plan and the TFC values for the two plans.

Mr H's FA called Aegon in November 2016 to provide the information Aegon needed for plan XXXX245. But he didn't provide any information about plan XXXX243.

On 17 November 2016, Aegon wrote to Mr H's FA to confirm that there was no protected TFC on plan XXXX245.

Aegon then received an Origo transfer request in December 2016 for plan XXXX245. But no such request for plan XXXX243. Plan XXXX245 was transferred to a new provider later that month.

On 31 March 2023, Aegon wrote to Mr H about plan XXXX243 with information about his retirement options.

In December 2023, after a request from Mr H's FA, Aegon sent Mr H a retirement letter for plan XXXX243. This letter showed TFC based on the usual 25% of the fund's projected value at retirement, not the protected TFC amount stated in March 2016. It also sent Mr H's FA plan information on 11 December 2023. Mr H said he complained about the incorrect information he'd received in 2016 at this point.

Aegon emailed the FA on 13 January 2024 to confirm there was no protected TFC on plan XXXX243.

Mr H's FA called Aegon on his behalf on 17 January 2024 about his complaint. Aegon issued a response to Mr H's FA on 19 January 2024. It confirmed that Mr H only had the usual 25% TFC entitlement in his plan XXXX243. It said that the TFC information it'd issued in March 2016 had been based on an incorrect interpretation of the information provided by the ceding scheme. It said the figure of £31,292.66 TFC it had noted had in fact been Mr H's commutable A-Day fund value, not his TFC. Aegon apologised for supplying Mr H with incorrect information. And explained its plan to provide feedback to prevent such an error from happening again.

On 7 March 2024, Aegon received a transfer request for plan XXXX243. The plan was then transferred to the same provider as plan XXXX245 on 19 March 2024.

Mr H's FA called Aegon on 14 March 2023 about Mr H's complaint. Aegon's phone note recorded that the plan Mr H had left with it had only increased by £1K since he'd transferred his other plan. It'd calculated that if Mr H had instead transferred both his plans at the same

time his funds would've been almost £11K bigger than they now were.

Aegon issued its final response to the complaint on 12 April 2024. It acknowledged that it had provided incorrect information on protected TFC in plan XXXX243 in 2016. It said this had been based on incorrect interpretation of the information that had been provided to it by the ceding scheme.

Aegon said that Mr H hadn't asked it for any further information until November 2023, when it'd issued plan information that stated there was no protected TFC. It acknowledged that Mr H had thought there was protected TFC in plan XXXX245, but said this had never been the case. It also said that the annual statements it'd issued had always quoted a TFC of 25%.

Aegon felt that the FA should've responded to its October 2016 request for information about both plans, rather than simply providing information for plan XXXX245. It said it'd never received any of the further information it'd requested about plan XXXX243. And felt that as Mr H had two plans relating to the same employment for different periods of service, it was reasonable to assume that the FA should've followed up on his request for TFC information for both plans.

Unhappy, Mr H brought his complaint to this service in March 2024. He felt he would've transferred both plans in 2016 if he'd been given the correct information. And that if he'd done so, he would've been significantly better off now.

Mr H felt that his two plans would now be worth around £11K more if he'd transferred them at the same time in 2016. He felt that Aegon should make good this loss.

Our investigator first considered whether the complaint had been brought to this service in time for us to consider its merits. She felt that it had. This was because she considered that Mr H had first become aware that he might have cause for complaint in December 2023, when his FA received the retirement options pack.

Our investigator then considered the merits of the complaint. She didn't think the complaint should be upheld. She acknowledged that Aegon had provided incorrect information about plan XXXX243 on 18 March 2016. But she was satisfied that Aegon had later explained to Mr H's FA what it needed so it could investigate the correct TFC status of both of Mr H's plans.

As the FA hadn't provided the information Aegon had requested so it could investigate plan XXXX243, it couldn't confirm the correct TFC status for that plan. Our investigator felt that she couldn't therefore fairly hold Aegon responsible for the fact that plan number XXXX243 wasn't transferred away from it in 2016.

Mr H didn't agree with our investigator. He made the following points:

- He felt that despite our investigator's acknowledgement that Aegon had provided incorrect information on plan XXXX243, she'd then unfairly and wrongly concluded that it was Mr H's FA's responsibility to provide Aegon with means to correct its error.
- He said that based on the information Aegon had already provided on plan XXXX243 and XXXX245 he'd decided, with his FA, to transfer plan XXXX245 and leave plan XXXX243 with Aegon. He said that his FA had only then discussed plan XXXX245 with Aegon to clarify its status before transferring it.
- Mr H provided testimony from his FA as follows:

"As a financial adviser, when we receive information from a provider, we have to accept that information is correct when it is put in writing. If we had to check on every single piece of information for our clients to ensure it was correct, we would not have the time to run our business effectively. The onus is not on us as advisers to check every document received to ensure it is correct, this is the responsibility of the pension company.

On this occasion, we double checked the policy XXXX245, that stated it did not have protected tax free cash due to the policy XXXX243 stating that it had. We wanted to ensure that if we were to look to transfer policy XXXX245, that there was definitely no protected tax free cash as the policy XXXX243 had it, to which we would not transfer a policy that had protected tax-free cash due to the loss of protection.

We would not have double checked the policy XXXX243 that stated it had protected tax-free cash, as this information should be correct for us to explain to the client why we would not consider a transfer. We deemed it necessary to check the policy XXXX245 for protected tax-free cash in case it was incorrect as the policies appeared similar."

Our investigator felt that it wasn't unreasonable for Mr H's FA to take Aegon's information as fact. But she said that when the FA had called Aegon on 24 October 2016, the call notes showed that he'd discussed with Aegon whether any protected TFC could be split between both plans. She said that Aegon then explained that it would need the information to check the TFC entitlement again on both plans. She therefore felt that Mr H's FA had been given enough information to query the letter in March 2016. And she was satisfied it was the FA's responsibility at this point to provide the requested information on both plans. Our investigator therefore still felt that she couldn't hold Aegon responsible for the advice Mr H then received to transfer only one of his plans.

As agreement couldn't be reached, the complaint has come to me for a review.

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 done so, I'm not going to uphold it. I know this will be disappointing to Mr H. I'll explain the reasons for my decision.

I'd first like to say that, having considered whether this service can consider the merits of this complaint, I've reached the same conclusion as our investigator. I agree that the evidence shows that Mr H first became aware that he might have cause for complaint in December 2023, when he received his retirement options pack.

Before I reached my decision on the merits of this complaint, I asked Mr H for further information on the transfer from his employer's pension scheme to Aegon in 2013. He provided me with the following additional information:

- An 8-page "Key features of the Trustee Transfer Plan" for the Aegon policies he transferred. Mr H noted that on page 5 of this document it acknowledged that it was possible to have more than 25% TFC. He noted that the document stated, under the "Can I transfer again?" section: "If your original transfer included an entitlement of more than 25% of your pension fund, or a protected pension age, please speak to your financial advisor before transferring again". And said this was exactly what he'd done.
- The full 12-page document detailing the options available to him at the time of the

transfer. Mr H confirmed that he'd chosen the default option, which was to transfer to Aegon.

It's clear from the evidence I've been presented with that the paperwork from the 2013 transfer led Mr H to believe that he had protected TFC of 38.45% across his two plans with Aegon. And that he would potentially lose this if he transferred again.

I can also see that Mr H took the steps he was supposed to take when he asked his FA to confirm his TFC before making a decision on whether or not to transfer his two plans.

However, Mr H has now transferred both of his plans away from Aegon. So it's reasonable to assume that any protected TFC has been lost. So I've gone on to consider whether Aegon is responsible for that loss, or for any subsequent investment loss, as Mr H alleges.

What went wrong?

There's no dispute that when Aegon wrote to Mr H's FA on 18 March 2016 it incorrectly stated that plan XXXX243 had protected TFC, when it's now satisfied that that plan didn't have protected TFC. Aegon said that it made this mistake because it incorrectly interpreted information it held. Aegon also confirmed in March 2016 that plan XXXX245 had no protected TFC.

Aegon's current position is that it has no record of either of Mr H's two plans having any protected TFC. However, the evidence Mr H has provided from 2013 shows that he should've retained an overall level of 38.45% across his two plans when they transferred to Aegon.

While the evidence from 2013 shows that protected TFC should've been retained on the transfer, I've not been provided with sufficient information to say whether Aegon made an error on the transfer, or the Trustees of Mr H's former scheme - or some other party - were responsible.

In the absence of such evidence, I've gone on to consider if Aegon's mistake directly led to Mr H losing his protected TFC, or caused subsequent investment loss.

What happened after the error?

Aegon said that Mr H's FA clearly thought that both plans had protected TFC. It said he'd questioned this with it in 2016. And said that he'd had confirmation from the ceding scheme that both plans had protected TFC. But it said that it hadn't been provided with this information. Aegon also said that since 2018, its annual statements had quoted the normal 25% TFC. But that neither Mr H nor his FA had ever questioned this.

I've been provided with four annual statements dating from 2018, 2019, 2021 and 2023. They do all contain TFC estimates at age 65 based on 25% of the projected value of the fund at that point. And there's no evidence that either Mr H or his FA ever questioned this.

I've gone on to consider what Aegon did after Mr H's FA questioned the information it'd provided about protected TFC in March 2016.

The evidence shows that after the FA questioned the information in Aegon's March 2016 letter about plan XXXX245, Aegon asked him on 9 August 2016 for further information if he believed that there should be protected TFC. The FA then called Aegon on 21 October 2016 to say that he had information from the workplace scheme which confirmed that XXXX245 did have protected TFC.

Aegon then quickly wrote to the FA to ask him to provide information about both plans, so that it could check the TFC entitlement for them both as a priority as soon as it'd received the requested information. After this, the FA called Aegon again on 24 October 2016. During this call he noted that Mr H had two plans with Aegon and that it was possible that the TFC was split between the two. But when the FA called Aegon again in November 2016, he only provided it with the information it'd requested for plan XXXX245. Therefore Aegon could only confirm the protected TFC status for that plan.

Based on what I've seen, I'm persuaded that Aegon clearly stated the specific information it needed for both plans so that it could check the protected TFC status for both of them. This is what I would've expected it to do under the circumstances.

I'm also satisfied, based on the note of the 24 October 2016 call, that the FA was aware that if there was any protected TFC, it could be split between both of Mr H's plans. Despite this, he only sent in the information Aegon had said it needed so that it could check the protected TFC status for one of the plans. There's no evidence that he shared the information he said he had from the original transfer about both plans having protected TFC.

I've not been provided with any explanation about why the FA decided to only provide information for one plan. I would've expected him to have followed up with Aegon in 2016 to provide it with the information he said he had about Mr H's protected TFC. And I'm persuaded that, if he had provided the information Aegon had requested for plan XXXX243, it would've carried out the same checks it carried out for plan XXXX245. As that information wasn't provided, I'm satisfied that Aegon couldn't reasonably confirm the protected TFC status for XXXX243, despite the fact that it'd made it clear in its 22 October 2016 letter that it would need information for both plans.

I acknowledge that Mr H doesn't agree that his FA should've been responsible for providing Aegon with information so that it could correct its error.

I do agree that Aegon gave the FA incorrect information in March 2016, based on an incorrect interpretation of the information it held. But, as I noted earlier, I don't have sufficient evidence available to me to work out which party was responsible for the failure to record the correct protected TFC after the 2013 transfer. And, from what I've seen, the FA was aware that the information Aegon held for Mr H about his protected TFC might not be the same as the information he held. Despite this, he didn't provide Aegon with the information it'd clearly requested so that it could check the protected TFC information that it held for Mr H.

I therefore can't reasonably hold Aegon responsible for the FA's failure to respond to its clear information request. As I noted earlier, I'm satisfied that Aegon would've checked the protected TFC status of plan XXXX243 in 2016 if the FA had provided the information it'd requested on that plan.

I next considered Mr H's point that he'd decided to only transfer plan XXXX245 in 2016 because of the information Aegon had provided at that time. He felt that if he'd had the correct information on both plans in 2016, he would've transferred both. And that if he'd done so, he would've been around £11K better off now.

Is Aegon responsible for any financial loss due to the delayed transfer of plan XXXX243?

I've carefully considered Mr H's testimony and that of his FA on this point.

While I agree that an FA should be able to trust the information it receives from a provider, I think that the evidence here shows that Aegon acknowledged it'd made a mistake with the March 2016 information it'd provided for plan XXXX243. And then took reasonable steps to

try to confirm the correct protected TFC on both plan XXXX243 and plan XXXX245.

I acknowledge that the FA felt that Aegon had confirmed in March 2016 that plan XXXX245 didn't have protected TFC. But I'm satisfied that the evidence shows that he knew, based on his call with Aegon on 24 October 2016, that any protected TFC Mr H had could be split between his two plans.

I'm satisfied that the call note shows that the FA called Aegon on 24 October 2016 with a view to establishing whether or not any protected TFC was split between the two plans. Therefore I would've expected him to have followed up on both plans, rather than just one.

I therefore remain of the view that Aegon took reasonable steps in the latter half of 2016 to confirm the protected TFC status of the two plans. I can't therefore fairly hold it responsible for any financial loss Mr H feels he's suffered as a result of his decision in 2016 to only transfer one of his plans. And I can't reasonably uphold the complaint.

My final decision

For the reasons I've set out, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 October 2024.

Jo Occleshaw
Ombudsman