DRN-5171942

The complaint

Mr H has complained that Scottish Equitable Plc trading as Aegon gave him wrong information about how his pension plan would be invested after he'd reached his nominated retirement age. Mr H claims that he's suffered a financial loss as a result.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued earlier this month.

My provisional decision said:

Mr H holds a pension plan with Scottish Equitable Plc trading as Aegon (Aegon). The nominated retirement age (NRA) for Mr H's pension plan was his 65th birthday, which fell in January 2022.

On 14 December 2021 Mr H telephoned Aegon. During the call Mr H told the Aegon representative who he spoke with that he hadn't had any contact with the financial adviser who was recorded against his pension plan, so Aegon agreed to remove this adviser from Mr H's pension. Mr H is also told by the Aegon representative of the amount of tax-free cash available under his pension plan and that if he did want to draw his tax-free cash then he would also have to take the rest of his pension benefits at the same time. Mr H is also given information by Aegon about the amount of annual pension he could potentially receive from his plan.

On 17 December 2021 Mr H telephoned Aegon again to discuss what options he had with his pension plan when he reached his NRA. Mr H spoke with a different Aegon representative to the one he'd spoken with on 14 December 2021. Mr H explained to the Aegon representative who he spoke to that as he had no income in the current tax year then he had already withdrawn all the benefits under another pension that wasn't with Aegon. Mr H went on to explain that he was thinking of doing the same with his Aegon pension in the following tax year, which would have been 2022/3, as he also expected to have no other income in that tax year.

Mr H went on to ask the Aegon representative if he could take just the tax-free cash sum from his pension, without drawing any income. Mr H was told by the representative that under his current plan he could take 25% of his fund as a tax-free lump sum but if he did this then he would also have to take the remaining 75% of his pension fund at the same time.

The representative also explained that the remaining 75% of his pension fund would be subject to tax.

However, Mr H was also told by the representative that if he didn't want to withdraw the total value of his pension in one go then that he could instead take his 25% tax free cash entitlement from his existing plan and then at the same time transfer the remaining 75% of his pension fund into a new drawdown plan with Aegon.

Mr H asked the representative if his pension would stay invested in the same fund as his existing pension plan if he transferred it into a new drawdown plan. In response the Aegon representative told Mr H that at his NRA the investment of his current pension plan would automatically be switched into Aegon's Cash Fund. Mr H was also told that if he decided to transfer his pension into a new drawdown plan with Aegon, then this new plan could also be invested in Aegon's Cash Fund.

Mr H reached the NRA of his pension plan in January 2022. However, the investment of his pension plan didn't move into Aegon's Cash Fund, as he'd been told by the Aegon representative on 17 December 2021, but was instead invested in Aegon's Retirement Fund. Aegon has provided a factsheet for its Retirement Fund that's dated 31 March 2023. Under the heading "Fund Objective" this factsheet says:

"This fund is designed for investors who intend to buy an annuity when they retire. If you are in a lifestyle fund (non-XX) and are within one year of your selected retirement date (SRD), you will automatically be switched into this fund. This fund aims to help preserve the size of pension you can buy through an annuity by investing 73% of the fund in long-dated UK government bonds (gilts,) through our Long Gilt fund. The remaining 25% of the fund is invested in our Cash fund, so you can take the maximum tax-free cash sum you are entitled to when you retire, based on current legislation, you should be aware that if you don't move your investment on your SRD, you 'will remain in this fund until you tell us what you want to do with your pension".

Aegon has provided this Service with copies of the annual statements it sent to Mr H for his pension plan in 2021 and 2023. These valuations show that on 4 May 2021, so before Mr H reached his pension plan's NRA, his pension was worth £22,474.66, but on 4 May 2023 the value of Mr H's pension plan had fallen to £15,859.02.

Mr H wrote to Aegon in June 2023 to complain about the fall in the value of his pension plan. Mr H said in his letter that he had sought help from a new financial adviser about the fall in the value of his pension plan. Aegon replied to Mr H to say that it didn't uphold his complaint, but Mr H wrote to Aegon again in December 2023 to say that he didn't think that Aegon had grasped the main issues that he was complaining about.

Aegon issued its final response to Mr H's complaint in December 2023. In this response Aegon said that whilst Mr H had been given inaccurate information during the telephone call of 17 December 2021, Mr H hadn't been given any guarantees on the fund value.

Aegon went on to say to Mr H: "As you're invested in a lifestyling fund, and as part of the terms and conditions of investing in that fund, you will be moved to the Retirement fund at the end of the lifestyling process. The Retirement fund is made up of both the Cash fund and the Long Gilts fund. These are the same funds used when you're invested in the last year of your lifestyling profile".

Aegon didn't agree that it had caused Mr H any financial loss so didn't uphold his complaint. Mr H brough his complaint to the Financial Ombudsman Service. One of our Investigators reviewed Mr H's complaint and their view was that in giving Mr H incorrect information during *the 17 December 2021 telephone call, Aegon had caused Mr H to suffer a loss in his pension value. Our Investigator therefore thought that Aegon should compensate Mr H for his loss.*

Aegon didn't agree with our Investigator's view so asked for Mr H's complaint to be brought to an Ombudsman.

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.

I've listened carefully to the recordings of the telephone conversations that Mr H had with Aegon on 14 December 2021 and 17 December 2021. In its response to our Investigator's view Aegon has said that it didn't think it was correct for our Investigator to base their view on information supplied by its representative on 17 December 2021 who worked at its "Contact desk" because "the staff are not experts nor are they qualified to give financial advice".

I do however think it's reasonable to assume that Mr H would have thought that the Aegon representative he spoke with during the 17 December 2021 call would have had sufficient knowledge and understanding of his pension plan to provide correct and accurate answers to his questions. I also think it's reasonable to assume that Mr H would've based any decisions he made about the investment of his pension plan on information he was given by Aegon during this call.

Aegon has also said that our Investigator had based their decision on the assumption that Mr H would've made changes to his pension plan had he known that its investment wouldn't be moved to its Cash Fund when he reached his NRD. Aegon has claimed that Mr H's subsequent actions don't support that view because Mr H's pension plan is still invested in Aegon's Retirement Fund.

During the telephone call of 17 December 2021 Mr H says that he is thinking of drawing down all his pension plan after the start of the 2022/23 tax year. This was because he thought he wouldn't have any other income during this tax year, so wanted to use his Income Tax allowance through his Aegon pension plan.

However, Mr H has told this Service that his circumstances subsequently changed and that he worked between January and June 2022. Mr H has said that the earnings he received between April and June 2022 used his Income Tax allowance for the 2022/3 tax year, and as a result he decided not to withdraw monies from his Aegon pension plan in that tax year. I think that is reasonable that as Mr H's circumstances changed, he decided not to take any retirement benefits from his Aegon pension plan in that tax year.

Mr H has also said that because he was working and had been told by Aegon that his pension plan would be invested in its Cash Fund after his NRD, then he didn't take any action on his Aegon pension plan. Again, I think it's not unreasonable for Mr H to have thought at that time that his pension plan was invested in Aegon's Cash Fund, as he'd been told this by Aegon in December 2021.

Mr H has also told this Service that in July 2022 he suffered a serious illness and as a result his attention was focused on his recovery from this illness and not his Aegon pension plan. Mr H has said that when he subsequently realised that his Aegon pension plan had fallen in value he initially sought help from a financial adviser and then contacted Aegon to find out why his plan had dropped in value. Mr H has said that it was then that he learned that his *pension plan hadn't been invested into Aegon's Cash Fund, as he'd believed.*

Aegon has said that the changes it made to the investment of Mr H's pension plan, moving this into the Aegon Retirement Fund, was made in line with the terms and conditions that applied to Mr H's plan, and that it was Mr H's responsibility to make sure his investment choice met his requirements and to change his fund investment if it didn't meet his needs or attitude to risk.

Aegon has also said that it doesn't provide Mr H with any financial or investment advice. Instead, it only administers Mr H's pension. I think that Aegon is saying that it would be Mr H's responsibility to make investment decisions on his pension plan and that Aegon wouldn't provide Mr H with any advice or recommendations on how he should invest his pension. I think that this is reasonable.

However, I also think that as Aegon was the administrator of Mr H's pension plan then it was able to provide Mr H with information about his pension plan. I think that it would then be for Mr H to make his own decisions and choices based on information he received from Aegon. As I've said above though, I also think that it was reasonable for Mr H to expect that information about his pension plan that he received from Aegon was accurate and correct, so that he could then make decisions based on this correct information.

Aegon has admitted that its representative gave Mr H incorrect information on 17 December 2021 when he was told that his pension plan would be invested in its Cash Fund after his NRA. I've therefore considered whether Mr H would've acted differently if he hadn't been told that his pension plan would be moved to Aegon's Cash Fund at his NRD.

During the telephone call of 17 December 2021 Mr H is told by Aegon that for the six years before his NRA the investment of his pension plan is slowly moved to a fund that is like a cash fund and is designed to protect the value that Mr H has built up within his pension plan. Mr H is also told that the fund that his pension is moved to is a low-risk fund that offers less return but is safe. I think it's reasonable to conclude that the fund that the Aegon representative was referring to was the Aegon Retirement Fund, which Mr H's pension plan was invested in after he had passed his NRA.

As I've said above, under the heading "Fund Objective" Aegon's factsheet for its Retirement Fund says: "This fund is designed for investors who intend to buy an annuity when they retire". The factsheet goes on to say: "This fund aims to help preserve the size of pension you can buy through an annuity by investing 73% of the fund in long-dated UK government bonds (gilts,) through our Long Gilt fund".

I think that this information is saying that by investing in long-dated gilts, the fund's aim is to preserve the size of pension that Mr H could buy through an annuity. This would be because if long-dated gilt yields rise, which resulted in a fall in the value of the fund, annuity rates should increase, which would then help to offset some of the fall in fund value.

I therefore don't think that the fact sheet is saying that the fund is aiming to preserve or protect the investment value held in the Retirement Fund. Instead, I think the fact sheet is saying that by investing in long-dated gilts the Retirement Fund is aiming to preserve the amount of pension that can be bought through an annuity.

But, as I've said above, Mr H was told by Aegon during his telephone call of 17 December 2021 that the Retirement Fund was designed to protect the value that he'd built up within his pension plan and that it was like a cash fund. I think it's reasonable to conclude from this that the Aegon representative was telling Mr H that the Retirement Fund was designed to protect the value of his pension plan, not that the Retirement Fund was designed to protect the *value of the size of pension that he could buy through an annuity.*

I therefore think that the information that Mr H was given about the Retirement Fund during his telephone call of 17 December 2021 was incorrect. I also think that if Mr H had been told on 17 December 2021 that his pension investment would remain invested in Aegon's Retirement Fund, and not changed to Aegon's Cash Fund, had Mr H then decided to stay invested in the Retirement Fund, it's reasonable to conclude that this decision would have been based on the incorrect information about the Retirement Fund provided by the Aegon representative.

Aegon has also said that during his telephone call with its representative on 17 December 2021 Mr H was told that the value of his pension plan wasn't guaranteed. The Aegon representative told Mr H that if he didn't take any benefits from his pension then the value of his pension would continue to fluctuate depending on the performance of the fund that he's investing in. The Aegon representative further explains that the value could go up, or could go down, or it could stay the same.

However, later in the telephone call Mr H is told that at the pension plan's NRA, investment will be switched to Aegon's Cash Fund. Mr H is also told that this is to protect the value of the pension fund that he'd built up. I think it's reasonable to conclude from this that Mr H would've thought that the value of his pension plan wouldn't fall after it had been switched into Aegon's Cash Fund.

Mr H also asks the Aegon representative if there are any guarantees applying to his pension plan and is told that there are no guarantees or guaranteed minimum rates. As I've noted above, Aegon has said that Mr H was told during his telephone call that the value of his pension plan wasn't guaranteed. However, having listened carefully to the recording of this telephone call, I think that the Aegon representative is saying that there are no guaranteed benefits applying to Mr H's pension plan, for example any guaranteed annuity rates, rather than saying that there are no guarantees to the value of Mr H's pension plan.

I've also listened carefully to the recording of the telephone conversation that Mr H had with Aegon on 14 December 2021. During this call Mr H is told that as his pension plan is invested in the stock market its value will rise and fall. Mr H is also told that if he doesn't do anything with his pension at his NRA then because the money is his pension plan is still invested, it will still grow. But I don't think it was reasonable for the Aegon representative to say that because Mr H's pension plan was still invested, it would still grow, as I don't this this could be guaranteed.

I therefore think that Mr H was given incorrect information about the investment of his pension plan by the Aegon representative that he spoke to on 17 December 2021. I also think it's reasonable to conclude that this incorrect information impacted on the decision that Mr H then took on his pension plan when he reached his NRA, which was to make no change to its investment as he thought it was invested in a Cash Fund. I further think that had Mr H been given correct information about the investment of his pension plan at his NRA, and about the features and objectives of the Retirement Fund, then Mr H would've been able to make an informed decision about how he wanted his pension plan to be invested after he'd passed his NRA.

I therefore conclude that, on balance, Aegon's errors have caused Mr H to suffer a possible loss in the value of his pension plan after his NRA, which I think could reasonably have been avoided had Aegon given correct information to Mr H. I therefore think that Aegon should compensate Mr H for any loss.

Aegon has however said that Mr H hasn't made changes to the investment of his pension *plan since he discovered that it was still invested in its Retirement Fund and not its Cash Fund and has therefore not taken any action to mitigate any loss. Mr H has explained that since he found out that his pension wasn't invested in Aegon's Cash Fund he's consulted with a financial adviser who recommended that he didn't make any changes to the investment of his pension plan until his complaint with Aegon had been resolved.*

I think that it's reasonable to conclude that when Mr H first complained to Aegon on 6 June 2023 he was then aware that his pension plan wasn't invested in Aegon's Cash Fund, as he'd been previously told, but was instead invested in its Retirement Fund. Mr H was also then aware of the fall in value of his pension plan. By June 2023 Mr H has said that he had also sought help on the investment of his pension plan from a financial adviser. I therefore also think that it's reasonable to conclude that by June 2023 Mr H would've then been aware that Aegon's Retirement Fund wasn't meeting his investment aims and objectives.

But since making his complaint to Aegon, Mr H's Aegon pension plan has remained invested in its Retirement Fund. My conclusion is that it would have been possible for Mr H to switch the investment of his personal pension to Aegon's Cash Fund, possibly with the help of his financial adviser, since he made his initial complaint, if he'd wanted to mitigate any potential further loss on his pension plan.

As I've said above, Mr H has said that his financial adviser recommended that he made no changes to the investment of his pension plan until his complaint against Aegon had been resolved. But I don't think it would be fair or reasonable to hold Aegon liable for any losses that Mr H may have incurred after he complained that his pension plan wasn't invested as he'd been led to believe, or because Mr H has subsequently retained investment in the Retirement Fund on the recommendation of his financial adviser.

Instead, I think it's fair and reasonable for Aegon to compensate Mr H for any losses incurred on his pension plan from his NRA and up to when he made his first complaint to Aegon on 6 June 2023. But I don't think it would be reasonable for Aegon to compensate Mr H for any losses that he incurred on his pension plan after 6 June 2023, when Mr H had complained about the investment of his pension plan.

I then set out details on how I thought Aegon should put things right for Mr H.

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.

Both Mr H and Scottish Equitable Plc trading as Aegon (Aegon) have responded to my provisional decision.

In his response, Mr H has said that the statement he received for his pension plan in May 2022 showed his pension was still invested in Aegon's Universal Fund. Mr H has added that when he received his next plan statement for 2023 the investment was then showing as Aegon's Retirement Fund. Mr H has said that he thought this change in fund name was "*rebadging*" and the statements had caused him "*confusion*".

Mr H has also said that Aegon should be responsible for any losses that he's suffered to date, and not just up to 6 June 2023 as I'd said in my provisional decision. He has said that the financial advisor he originally spoke to had not come across this problem before. Mr H has also said that his pension plan was invested in the wrong fund by Aegon and therefore he believes that Aegon could have tried to correct the position instead of leaving it for him to do so. Mr H has also said that he thinks that Aegon has drawn out the time that it has dealt with his complaint.

In its response Aegon has said that it disagrees with the dates that I'd set out in my provisional decision for calculating any financial loss. Aegon goes on to say that this is because the annual statement it sent to Mr H in May 2022 showed that his fund had dropped from the previous year's value. Aegon say that as a result, it would have been reasonable for Mr H to have raised concerns about the investment of his pension plan in May 2022, instead of waiting a further year before he brought his complaint to Aegon.

Aegon has also said that it hasn't looked at the performance of the two funds concerned in this complaint, but in June 2023, when Mr H raised his complaint, Aegon say that Mr H said he expected his funds to be invested in a low-risk account, not its Cash Fund. Aegon say that it thinks that Mr H is now using hindsight to help his complaint, rather than relying on what he said at the time.

I've carefully considered these responses to my provisional decision when reaching my final decision.

I said in my provisional decision that I thought Aegon had given Mr H incorrect information about the investment of his pension plan by the Aegon representative that he spoke to on 17 December 2021. I've not received any additional evidence to persuade me that this was not the case. I therefore remain of the view that Aegon gave Mr H wrong and incorrect information about the investment of his pension plan during his telephone call with Aegon on 17 December 2021.

During this telephone call Mr H was told that at his NRA the investment of his pension plan would be switched to Aegon's Cash Fund, which wasn't correct. In its response to my provisional decision Aegon says that when Mr H complained to it in June 2023, Mr H said that he'd expected his pension investment to be in a low-risk fund. Aegon add that Mr H didn't say that he expected his pension investment to be in Aegon's Cash Fund.

Mr H was told by Aegon on 17 December 2021 that his pension investment would be switched to its Cash Fund. I therefore think it reasonable to assume that Mr H would have understood from this that his pension would be switched to Aegon's Cash Fund, as this is what Aegon told him would happen, and this is therefore likely to be what Mr H was referring to when he said a low-risk fund.

Aegon has also said that because it sent an annual statement to Mr H on 6 May 2022, and this showed his fund had dropped from the previous year's value, Mr H could've complained at that time. Aegon has also said that because Mr H suffered from a serious illness in July 2022 then as this happened after he'd received his May 2022 annual statement, then his illness would not have stopped him from complaining in May or June 2022.

But Mr H has said that the May 2022 statement said that his pension was still invested in Aegon's Universal Fund, which caused him confusion. And then, two months later he had a serious illness. When Mr H received his 2023 statement and saw that the value of his pension had fallen significantly, and that his plan's investment had been switched to Aegon's Retirement Fund, he then raised his concerns through a complaint to Aegon.

Aegon has also said that the annual statement sent to Mr H in May 2022 showed that the value of Mr H's pension plan had dropped by over £2,000 from the previous year's value and that because of this Mr H should have realised that his pension wasn't invested in its Cash Fund. But Mr H didn't reach his pension plan's NRA until January 2022. I think that this would have meant that Mr H would've expected his pension plan to be invested in Aegon's Cash Fund from January 2022 to May 2022 only, and not for the whole twelve-month period covered in the annual statement.

I therefore wouldn't think it unreasonable that Mr H didn't complain to Aegon at that time about the fall in the value of his pension between May 2021 and May 2022. I think that when Mr H received his annual statement in 2023, then he would've expected his pension plan to have been invested in Aegon's Cash Fund for the whole of the twelve-month period covered by this statement. I think that on then seeing the fall in the value of his pension plan over that twelve-month period, Mr H then complained to Aegon.

In his response to my provisional decision Mr H has said that Aegon should compensate him for any losses he has incurred to date, and not just until 6 June 2023 as I'd said in my provisional decision. Mr H has added that his financial adviser hadn't come across this problem before, and he thinks that Aegon has drawn out the time that it's been dealing with his complaint.

But I don't think it would be fair or reasonable for Aegon to be responsible for Mr H's financial adviser not having come across this problem before. Instead, I think that by June 2023 Mr H was aware that the value of his pension plan had significantly dropped in value and that it wasn't invested in Aegon's Cash Fund, and this was why he complained to Aegon.

Mr H has also said that Aegon should have changed the investment of his pension plan to its Cash Fund, and that it shouldn't have been down to him to do this himself. But as I said in my provisional decision, Aegon are the administrators of Mr H's pension plan and do not provide Mr H with investment advice. I therefore I think it's reasonable that any changes to the investment of Mr H's pension plan needed to be provided by Mr H.

I therefore think that as Mr H became aware by June 2023 that his pension plan wasn't invested as he believed and had taken advice on the investment of his pension from his financial adviser, it would have been reasonable for him to have then instructed Aegon to switch his pension plan's investment into Aegon's Cash Fund.

Therefore, on balance, whilst I don't think it would be reasonable for Aegon to be responsible for any losses incurred by Mr H after June 2023, I also don't think it's reasonable for Mr H to be responsible for any losses incurred on his pension plan between his NRA and June 2023.

I therefore don't think that any of the further information provided by either Aegon or Mr H in response to my provisional decision has persuaded me that I should change my view as I'd set out above. I am therefore still upholding Mr H's complaint. Also, for the reasons given above, I'm satisfied that Mr H has potentially suffered a loss in his pension plan due to Aegon's error, so it's reasonable for Aegon to put Mr H back in the position he would have been in now, as far as reasonably possible, had it not been for Aegon's failings.

I will now set out how I think Aegon should put things right for Mr H.

Putting things right

My aim in awarding fair compensation is to put Mr H back into the position he would likely have been in, had it not been for Aegon's error. I think this would have meant his pension plan would have been invested in the Aegon Cash Fund at his NRA.

As I've explained above, I think that Mr H should be compensated for any losses that he incurred on his pension between the date of Mr H's pension plan NRA and 6 June 2023. In this decision I will refer to 6 June 2023 as the "*end date*".

Any loss Mr H has suffered should be determined by Aegon firstly obtaining the notional value of Mr H's pension plan on the end date on the basis that his pension plan had been invested in its Cash Fund from Mr H's NRA through to the end date. This is figure "*X*".

Aegon should then obtain the actual value of Mr H's pension plan on the end date. This is figure "*Y*".

If the figure "*Y*" is greater than figure "*X*" then there's a gain and no redress is payable. However, if the Figure "*X*" is greater than figure "*Y*" then there is a loss and Aegon should compensate Mr H for that loss.

Aegon should provide Mr H with a copy of its calculations in a simple and straightforward format.

The compensation amount should if possible be paid into Mr H's pension 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. However, Aegon has said that it isn't its policy to pay compensation into a pension plan and Mr H has said that his preference is that any compensation is paid directly to him.

Therefore, if a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr H has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.

Interest should also be added to any compensation payment at the rate of 8% per year simple calculated from the end date to the date of settlement.

Income tax may be payable on any interest paid. If Aegon deducts income tax from the interest, it should tell Mr H how much has been taken off. Aegon should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

In my provisional decision I'd said that Aegon also need to pay Mr H £300 for the distress and inconvenience he has suffered because of its errors. Mr H has claimed that any compensation for the distress and inconvenience he's suffered should be significantly more than this amount.

I think that Aegon's error has caused Mr H more than the levels of frustration and annoyance he might reasonably expect from day-to-day life, and the impact has been more than just minimal, so I think it reasonable that Mr H is compensated by Aegon for the distress and inconvenience he's suffered. Considering all the circumstances in this complaint though, and recognising the level of distress and inconvenience suffered by Mr H, I think that an award of £300 is fair and reasonable. Aegon therefore now need to pay Mr H this amount in compensation for the distress and inconvenience he's suffered due to its errors.

My final decision

My final decision is that I uphold Mr H's complaint and that Scottish Equitable Plc trading as Aegon should now compensate Mr H as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 December 2024.

Ian Barton
Ombudsman