

The complaint

Mr D complains that Scottish Equitable Plc, trading as Aegon, failed to provide him with sufficient information about the regulatory requirement to take advice before he could transfer his pension benefits to an alternative provider.

What happened

Mr D held pension savings with Aegon. Mr D has been resident overseas for a number of years, and took some financial advice regarding pension savings he held in the UK from a financial advisor in his home country. The advisor recommended that Mr D should consolidate his pension savings by transferring his individual pension plans (I understand he had several UK based pension plans at that time) into a Qualifying Recognised Overseas Pension Scheme ("QROPS") that he held in his home country.

Mr D was approaching his 75th birthday. He says that the transfers of his other pension plans ran smoothly. But he says that due to the poor information provided by Aegon he was unable to complete the transfer of the pension savings he held with that firm into the QROPS. So he says he was forced to take a UK based annuity. And although that annuity was provided on an enhanced basis due to some problems Mr D faces with his health, he says it is unlikely that an annuity will provide him with value for money.

The pension savings that Mr D held with Aegon provided him with a guaranteed annuity rate when he took his benefits. In March 2022 Aegon told Mr D that the guarantee meant that the annuity it was offering was more than double that he could receive on the open market. And, since Mr D's pension savings were valued at more than £30,000, the relevant legislation required Aegon to ensure that Mr D had taken regulated advice before giving up that guarantee.

Aegon says that it regularly explained to Mr D over the years that he held guaranteed benefits. And it says that, when he asked to transfer his pension benefits, it provided him with a link to information provided by the UK Government about the need to take regulated advice. It says that it was unable, under the relevant legislation, to accept confirmation that Mr D had instead received advice from a financial advisor in his home country. So it wasn't able to transfer Mr D's pension savings to the QROPS.

Mr D's complaint has been assessed by one of our investigators. She thought that Aegon had acted in line with its regulatory responsibilities. And she thought that the information Aegon had given to Mr D about the need to take regulated advice had been clear and sufficient. So she didn't think the complaint should be upheld.

Mr D 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 Mr D and by Aegon. Where the evidence is unclear, or there are conflicts, I have made 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.

The requirement to take regulated advice from a authorised independent adviser before transferring safeguarded benefits worth more than £30,000 is not set by Aegon. It is a requirement set out in section 48 of the 2015 Pension Schemes Act. And that act further defines an authorised independent adviser as being a person who has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations made by the Secretary of State. So Aegon has no latitude in how that requirement is implemented. It simply needs to ensure that any affected transfers are supported by advice of the nature I've set out above.

It seems to me that Mr D generally accepts that Aegon has simply followed the regulations here. But it appears that he is unhappy with the way Aegon has communicated that requirement to him at the time of his transfer and over the previous years. So I've looked carefully at what Aegon has told Mr D about his pension benefits.

I think it is likely that Mr D might not have fully appreciated the nature of the pension benefits that he held with Aegon. I can see that his local financial advisor wrote to Aegon in March 2022 asking for information about Mr D's pension plan. In that request the advisor incorrectly said, *"We are of the understanding that this pension plan does not include any safeguarded benefits such as guaranteed annuity rates (GAR) and thus, you do not require the member to receive UK FCA advice as a pre-requisite to transfer the funds."* But I do think that statement also shows that Mr D and his advisor might have been aware that regulated advice was required in some circumstances.

Aegon has sent us copies of a number of letters that it has sent to Mr D about his pension savings over the years. Generally those letters make it clear that his pension savings would benefit at retirement, subject to some conditions, from a guaranteed annuity rate. And that guarantee would be lost if the pension savings were transferred to another provider. But some of the information that Aegon sent to Mr D went further, and discussed the regulated advice that he might need to take.

I have seen a letter Aegon sent to Mr D in March 2017 as he was approaching the retirement age he had set. That letter provided him with a link to some information published by the government about the requirement to take advice. And it specifically told Mr D that the requirement applied to his pension savings. And similar information was provided to Mr D when he requested a transfer quotation in March 2022.

In the alternative I accept that some of the letters Aegon sent to Mr D were not as specific about the need for him to take regulated advice. I don't think any of them specifically told him that he wouldn't need to take advice. But at times Aegon didn't explain in any detail that advice would be required.

But I'm not persuaded that was unreasonable. In many cases similar to this Aegon's customers would simply use their pension savings to purchase retirement benefits using the guarantee they incorporated. Providing information about taking regulated advice – when such advice would not be needed if the pension savings were simply being used to purchase an annuity – would be confusing for many customers. I think it reasonable that Aegon only provided detailed information about the advice requirement once it had been made aware that a consumer was considering transferring their pension savings to an alternative scheme.

I appreciate that Mr D took financial advice from a local advisor before contacting Aegon. And that he says that he had taken regulated advice in the UK in previous years, but found that advice to be of poor quality. But neither of those steps were sufficient for Aegon to be satisfied that it would meet its regulatory responsibilities of ensuring appropriate regulated advice had been taken by Mr D. By failing to ensure advice was taken Aegon would be opening itself and its staff to the risk of civil penalties being applied.

I appreciate that my decision will be disappointing for Mr D. I understand that he had other pension benefits that transferred to his QROPS in a straightforward manner – although I assume those pension savings did not comprise safeguarded benefits. But I don't think that Aegon had any choice but to insist that Mr D took appropriate advice before it could agree to the transfer. And I think that Aegon communicated those requirements appropriately, both during the time that Mr D held his pension plan, and when he asked to transfer his pension benefits to the QROPS.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 August 2023.

Paul Reilly
Ombudsman