

The complaint

Miss P complains that the time taken by Scottish Equitable Plc, trading as Aegon, to exercise its discretion in the payment of some pension death benefits was excessive. As a result she says that her share of the benefits was subject to income tax.

What happened

Miss P was a minor at the time of her father's death. She has been assisted in making this complaint by her mother. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Miss P herself.

I issued a provisional decision on this complaint in May 2023. In that decision I explained why I thought that the complaint should be upheld, and what Aegon needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

The father of Miss P, who I will call Mr X, sadly passed away in March 2020. He had a valid will that had been completed in August 2000, before the birth of Miss P. The will left the entire estate of Mr X to his mother. The will was administered by Mr X's sister. At the time of Mr X's death, the executor informed Aegon that he had two dependent children, Miss P and her half-sister who I will call Miss Y. Miss Y was also a minor.

Mr X held pension benefits with Aegon. Under the terms of his plan Aegon was responsible for determining to whom any death benefits should be paid. It doesn't seem that Mr X had provided Aegon with any expression of his wishes in that regard before his death. Aegon received Mr X's death certificate in May 2020 and sold his pension investments the following week in line with the plan rules. It then started its investigations to inform its decision about the allocation of any death benefits.

Aegon wrote to Miss P, and Miss Y, in June 2020. Around that time Aegon was made aware that Mr X was also the father to a third adult daughter, who I will call Ms Z. So Aegon wrote to Ms Z asking for further details of her claim on the death benefits. But Aegon didn't receive the requested information until December 2020. Aegon has told us that from that time it had all the information it needed from the potential beneficiaries.

Previously, in September 2020, the executor of Mr X's estate had told Aegon that Mr X's mother intended to obtain a Deed of Variation to the will that would provide for each of his daughters to receive an inheritance instead. Aegon asked for a copy of the Deed once it had been completed.

There was then an extended period of time between September 2020 and March 2022 before the Deed of Variation was provided. Initially an unsigned copy was sent to Aegon in March 2022, before a signed copy was received by the firm on 5 April. But Aegon accepts that it then failed to complete its decision process for some time. It didn't issue settlement forms to Miss P until August 2022, and received

the completed forms back early the following month. Payment of the benefits was made to Miss P on 27 October 2022, but given more than two years had passed since Mr X's death, that payment was subject to the deduction of income tax.

Miss P complained to Aegon about the delays, and that they had caused the payment to become subject to income tax. Aegon accepted that it had caused some delays after the receipt of the Deed of Variation. But it said that the Deed was only received after the two-year period had expired. So it said its delays hadn't been the cause of the income tax liability. Aegon paid Miss P £400 for the inconvenience she had been caused and some interest for the delayed payment. Miss P didn't accept that offer so brought her complaint to us.

As I have explained earlier in this decision, there are a number of different parties that have been involved in the matters of this complaint. But this complaint only relates to the benefits that Aegon paid to Miss P. It isn't right that I should make findings about delays caused by the other parties. So here I will only look at the actions Miss P took, or needed to take, and those similarly taken by Aegon in relation to the payment of her benefits.

When Mr X sadly died, he left pension benefits with Aegon that it needed to distribute. Under the relevant terms of Mr X's pension plan it was for Aegon to decide how, and to whom, those benefits should be paid. And Aegon confirmed that in an email to the executor of Mr X's estate in September 2020 when it confirmed a phone call it had by saying;

"It is Aegon as the scheme administrator to decide who will be the beneficiary(ies), we discussed who can be considered a potential beneficiary under our scheme rules and what individuals we class a dependant."

And Aegon provided the executor with some further information about how it would reach its decision in an email sent in April 2021 that said;

"Although the pension does not usually form part of an estate, we'd like to have a copy of will and any associated deeds of variations as we factor these in when we make our decision."

From the evidence I have seen, Aegon appears to have concluded, by December 2020 at the latest, that there were three beneficiaries to whom it should pay the benefits – Mr X's three daughters. It saw banking evidence that Mr X was making regular monthly payments to the mothers of his two youngest daughters. And it had, what seems to me to be, plausible testimony from Ms Z that he was making regular cash payments to her to assist with her day to day living expenses.

It seems to me entirely reasonable, in the exercise of its discretion, that Aegon would want to gather sufficient information about the family circumstances of Mr X to inform its decision. So I don't think it was unreasonable for Aegon to request copies of Mr X's will, and to seek more information about the proposed Deed of Variation.

It seems that the completion of the Deed was protracted. My understanding is that Mr X's mother sought to link the completion of the Deed with an agreement to provide her with formal access arrangements to one of his daughters. So Aegon wasn't provided with the signed Deed until more than two years after it had been notified of Mr X's death.

But I think there is a very important distinction between the documentation that Aegon might prefer to receive, and that it must receive, before exercising its discretion. As I have noted above the pension benefits do not form part of Mr X's estate, and so do not need to be distributed in the same manner. If they did form part of the estate, Aegon could not have paid them until the Deed was complete.

It seems to me that, from the outset, the information that Aegon was given indicated that Mr X's mother wished to use his estate to provide for his three daughters. I haven't seen anything that makes me think there was any suggestion that there would be additional family members, or dependents, identified at a later date. And it seems that the terms of the Deed were relatively straightforward, in passing benefits to the three daughters. Although there might have been a lack of clarity at the start about the proportions in which the inheritance might be divided, I don't think that prevented Aegon from reaching its own, discretionary, decision.

At the end of the day, the way in which the inheritance was divided by the Deed of Variation was only a representation of the wishes of Mr X's mother. It would be improper to say that distribution must be followed by Aegon. It was entirely for Aegon to make its own assessment of how the death benefits should be divided between the parties it identified as being appropriate recipients.

So I don't think Aegon treated Miss P fairly by delaying its decision about the payment of the benefits arising from Mr X's pension plan. I haven't seen anything that makes me think Aegon had any reasonable expectation that the final completion of the Deed of Variation would provide material new evidence to influence its decision-making process. I think Mr X's mother's intentions were clear from the outset, and it was entirely for Aegon to decide to what extent her proposals should influence its decision. But I think that Aegon had sufficient information to make its decision by the end of 2020.

And I have noted that benefits from two other pension providers, and an occupational death in service payment, were made to Miss P and her half siblings much earlier than the payment from Aegon. Whilst it is natural that each provider should have its own processes and evidence requirements, I think the earlier payments from three other parties might suggest that Aegon fell outside what might be considered normal industry practice.

It is reasonable that, after acquiring sufficient information, Aegon should be allowed a period of time for its decision to be made. And then there is the process of issuing claim letters and receiving a reply. So I think it reasonable, based on the timeline that Aegon has suggested would be applicable in 2022, that Miss P should have received her payment two months later – that is by 1 March 2021. And receiving the payment at that time would have meant no income tax would be deducted.

As I said earlier, Aegon has already paid some interest to Miss P. I will take account of that in the redress I propose below. And Aegon has paid Miss P £400 for the inconvenience she was caused. I think that award is in line with what I would normally expect in circumstances such as these, so I am not making any further award in respect of the inconvenience caused to Miss P.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Miss P said that she agreed with my provisional findings. Aegon did not agree and provided us with some further comments. Although I am only summarising here what Aegon has said, I want to confirm that I have read, and carefully considered, the entire response.

Aegon says that it has reviewed its processes in relation to what happened here. It says that it still thinks that its approach of waiting for the completed Deed of Variation was the correct thing to do. Since it held no Expression of Wish for Mr X it needed to consider all the available information to allow it to exercise its discretion.

Aegon says that when it first received information about potential beneficiaries from Mr X's executor there was no mention of a third daughter, Ms Z. So it says the Deed of Variation then became a key piece of evidence within its death recording process. It says that without the Deed it couldn't make a fair decision. And that meant payment could not be made to Miss P before the two-year mark, meaning that it had no choice but to deduct income tax from the payment.

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.

As I explained in my provisional decision, 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 Miss P 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.

And again 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.

Having thought carefully about the additional comments made by Aegon I am not persuaded that I should change the conclusions I reached in my provisional decision. But I would like to take this opportunity to provide some further explanations on the points that were raised.

As I said in my provisional decision, it is entirely right that Aegon should gather whatever information it thinks is necessary to inform its discretionary decision making process. In making its decision Aegon isn't bound by the Will of Mr X, by any expression of wish that he might have completed, or in fact by any other documentation. Aegon is entirely free to assess any information it obtains, and reach its own assessment of who should benefit from Mr X's pension savings.

I understand that the completion of the Deed of Variation was protracted. But as was explained to Aegon at the time, that delay wasn't due to any suggestion that Miss P, Miss Y, and Ms Z, weren't the daughters of Mr X. I accept that in the initial information sent to Aegon, Ms Z wasn't identified as a potential beneficiary. But I think that is simply a reflection of the complexities of modern-day relationships, rather than any suggestion of a dispute over the authenticity of Ms Z's claim. And the existence of Ms Z's claim, and the acceptance of its validity by the executor of Mr X, followed relatively shortly afterwards.

In my provisional decision I made the distinction between the information that Aegon might like to hold before making a decision, and the information I think that it needed to hold. In cases such as these it could be argued that there might be reasons to wait for an indefinite

amount of time before making a decision on the beneficiaries, and the proportions of any payment that should be made. That is clearly an untenable situation.

I don't think that, by December 2020, Aegon had any reasonable expectation that it would receive further information about other possible beneficiaries of Mr X's pension savings. I think that by that time Aegon had a clear understanding of the complex family relationships, and that Mr X's mother, who was the sole beneficiary of his will, wished to make provision instead for Mr X's daughters. So I still think it would have been proper for Aegon to exercise its discretion at that point.

So the conclusions I reached in my provisional decision remain unchanged. I think that Aegon should have paid the benefits to Miss P by 1 March 2021. And receiving the payment at that time would have meant no income tax would be deducted. So Aegon needs to pay Miss P some compensation.

Putting things right

I think that Aegon should have paid the share of the pension benefits it determined were due to Miss P by 1 March 2021. That would mean that no income tax would have been deducted from the payment. So, to put things right, Aegon should;

- Pay compensation to Miss P equivalent to the income tax that was deducted from the payment made to her on 27 October 2022.
- Pay simple interest at a rate of 8% per annum on the total amount that should have been paid to Miss P for the period between 1 March 2021 and 27 October 2022. Aegon may deduct from this amount the total interest it has already paid to Miss P for the period between May and October 2022.

HM Revenue & Customs requires Aegon to take off tax from this interest. Aegon must give Miss P a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Miss P's complaint and direct Scottish Equitable Plc, trading as Aegon, to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 9 August 2023.

Paul Reilly
Ombudsman