

Ombudsman's Determination

Applicant	Dr D
Scheme	Aegon Stakeholder Plan (the Plan)
Respondent	Aegon UK (Aegon)

Complaint Summary

1. Dr D has complained that Aegon transferring his investments into a cash fund when he reached age 75 led him to believe that he had to withdraw the cash to reinvest the funds, and this resulted in him incurring a financial loss.
2. He would like Aegon to compensate him for the losses he has incurred.

Summary of the Ombudsman's Determination and reasons

3. The complaint is partly upheld against Aegon because it has not yet paid Dr D appropriate redress for the period between the date that he invested the transferred cash into his funds with Fidelity and the date that Aegon offered him redress for placing his investments into a cash fund.

Detailed Determination

Material facts

4. In February 2004, Dr D became a member of the Plan. He told Aegon that he intended to retire in May 2008, at the age of 65. In light of this, Aegon set the monthly direct debit for his payments into the Plan to cease in May 2008.
5. In 2009, Dr D sent Aegon a new direct debit mandate, authorising the resuming of his monthly payments into the Plan.
6. In May 2010, Dr D informed Aegon that he was deferring his retirement to May 2018, when he would reach age 75. Because of this, his direct debit mandate expiry date was changed to May 2018.
7. On 9 November 2017, Aegon sent Dr D a letter notifying him that his retirement date was in six months. It advised Dr D to contact Pension Wise and an independent financial adviser (**IFA**) regarding his plans for retirement.
8. On 6 and 27 February 2018, Aegon sent Dr D a letter notifying him that his retirement date was in six weeks. In each of these letters, Aegon advised Dr D to contact Pension Wise and an IFA regarding his plans for retirement.
9. On 9 May 2018, Aegon sent Dr D a letter informing him that when he reached age 75, his benefits in the Plan would be converted into cash. Aegon asked Dr D to make contact, and went on to say:

“...no further regular contributions will be collected by direct debit. If you want to continue to pay by direct debit, please let us know.”
10. In May 2018, Aegon disinvested Dr D's benefits in the Plan and moved them into a cash fund.
11. On 7 November 2018, Dr D telephoned Aegon. He requested forms to take an uncrystallised funds pension lump sum (**UFPLS**) withdrawal from the Plan.
12. On 9 November 2018, Aegon sent Dr D a UFPLS withdrawal request form.
13. Aegon received no further contact from Dr D until 1 May 2020, when he telephoned it to ask for further forms to request a UFPLS withdrawal.
14. On 5 May 2020, Aegon sent Dr D a pension illustration and another UFPLS withdrawal request form.
15. On 21 May 2020, Aegon sent Dr D another UFPLS withdrawal request form after he contacted it again.
16. On 5 June 2020, Aegon received Dr D's completed UFPLS withdrawal request form (**the Form**). In the Form, Dr D stated that he wanted to take all of his pension benefits in the Plan, that he had not received financial advice regarding this request, and that he understood that there would be tax implications for the withdrawal.

17. On 10 June 2020, Aegon processed the payment of the cash (**the Payment**) into Dr D's bank account. The value of the cash was £95,773. £65,169.55 was paid to Dr D, of which £23,943.42 was tax-free cash. The remaining £30,604.15 was deducted for tax (**the Tax**), to be paid to His Majesty's Revenue and Customs (**HMRC**).
18. On 12 June 2020, Dr D telephoned Aegon and asked it to cancel the Payment. He said this was because he had changed his mind in light of the potential tax implications. Aegon informed Dr D that the Payment had already been made and could not be reversed.
19. On 15 June 2020, Aegon emailed Dr D, confirming the details of the Payment.
20. On 29 June 2020, Dr D sent a letter to Aegon, asking it again to cancel the Payment.
21. On 10 July 2020, Dr D telephoned Aegon and asked it to reply to his letter of 29 June 2020. He also sent Aegon another letter requesting cancellation of the Payment.
22. On 8 August 2020, Aegon emailed Dr D, informing him that it could re-open the Plan and reinvest the returned Payment into the funds it was previously invested in under the Plan. It said:

“These are the terms we'll re-open the plan under and we'll apply the money to the plan as a transfer-in on the date we receive your agreement to these terms.

The allocation rate will be 100%

The money will be applied to the funds your plan was invested in at the time it was transferred. If you haven't already done so, we strongly recommend you seek advice from an independent financial adviser as soon as possible.”
23. On 2 September 2020, Dr D sent Aegon £65,169.55 by cheque (**the Repayment**). In a letter attached to the cheque Dr D said:

“The enclosed cheque for £65,169.55 is my repayment of the funds withdrawn mistakenly from the above plan around 10 June 2020. I... requested a reversal of this repayment... Please acknowledge receipt of my payment... Please also inform me when HMRC have refunded...”
24. On 10 September 2020, Aegon emailed Dr D. It said it had received his cheque but would not apply it until he confirmed his acceptance of the terms set out in its email of 8 August 2020 (**the Terms**).
25. On 14 September 2020, Dr D emailed Aegon, confirming his acceptance of the Terms and asking it to allocate the repaid money to a cash fund. He said he had been informed by Aegon that the Tax would be reclaimed and paid into the Plan.
26. Aegon subsequently held the money from the Repayment in a suspense account and carried out internal investigations regarding it.

27. On 19 December 2020, Aegon sent Dr D a pension illustration which stated that the value of the Plan was £2.
28. On 4 March 2021, Aegon sent Dr D a letter. It said the cheque he had sent it on 2 September 2020 could not be applied to a reinstated pension plan and that the Tax could not be reversed. Aegon said it would return the Repayment to Dr D by bank transfer on 8 March 2021. Aegon proposed payment to Dr D of a financial award amounting to £3,024.03, to make up for the loss of investment growth caused by the money from the Repayment being held in the suspense account.¹ It also offered him £1,000 for the distress caused to him by the matter.
29. On 8 March 2021, Aegon returned the Repayment to Dr D. Dr D invested £20,000 of the Repayment into his individual savings account (**ISA**), £20,000 into his wife's ISA and the remainder into a general investment account (**GIA**). The ISAs and the GIA are with Fidelity.
30. Subsequently, Dr D referred his complaint to The Pensions Ombudsman (**TPO**). He explained that Aegon disinvesting his investments in the Plan and putting the proceeds into a cash fund resulted in him making the decision to withdraw the cash, and that he has suffered a financial loss, as he had to pay tax on the withdrawal.
31. On 28 March 2022, Aegon wrote to Dr D and said in summary:-
 - 31.1. It had carried out a review of the plan he previously held with it and identified that it had switched his investment into the cash fund when he reached age 75, when it should not have done so. It apologised that this had happened.
 - 31.2. To put matters right, it had calculated that he was entitled to £10,061.75 (**the Offer**). It had also added interest which increased the amount to £10,258.10. It would send him a cheque for this amount within the next ten days and if he did not receive a cheque by that time, he should let it know.
32. Following this, there were further exchanges between Dr D and Aegon concerning the redress Aegon had offered him. It was agreed that instead of Aegon paying him interest on the Offer, it would instead pay Dr D the investment growth on his investments with Fidelity (**the Additional Redress**).
33. Both Dr D and Aegon provided comments to TPO pre and post Aegon's 28 March 2022 letter. These comments have been summarised below.

Summary of Dr D's position

34. By disinvesting his benefits in the Plan when he reached age 75, Aegon led him to believe that his pension benefits could not appreciate unless he withdrew them from the cash fund and put them into an alternative pension arrangement.

¹ Aegon provided TPO with a breakdown of the redress it had offered to Dr D and explained that while the redress offer was made by email dated 4 March 2021, calculations were made to include a further period of a month to allow for the redress offer to be accepted and the payment made.

35. At age 75 he was busy on other matters and only gave attention to his and his wife's pensions when Covid struck. He knew his options were: (i) take an annuity, (ii) transfer the cash to a drawdown arrangement, or (iii) withdraw the proceeds. He had read that, for options (i) and (ii), it was advisable to shop around for best value as it was not necessary to remain with Aegon.
36. He thought Aegon's disinvestment policy may have been in place for the benefit of older Plan holders. He accepted what he saw as a paternalistic act and thought it was probably a universal policy. The logic being that investments may lose value suddenly with market fluctuation and so, if it was anticipated that a scheme was soon to be terminated, by any of the three options stated in paragraph 35 above, it might be wise to protect long term growth by switching to a cash fund some months before transfer/withdrawal.
37. He decided to withdraw the cash from the cash fund as he had felt a little pressured that he had not made any decision about the cash by age 77. He considered that he needed at that age, to tidy up his financial affairs, especially with Covid being rampant. He did not transfer his benefits to an alternative pension arrangement from age 75 although he was aware that Aegon had disinvested his investments, because he had no idea that it would have been possible to do so. He thought that other pension providers would have operated in the same way as Aegon.
38. He put on the Form that he had not consulted anyone about his pension choices. In light of this, Aegon should have telephoned him and made sure he was aware of what he was doing, otherwise, filling out that section of the Form was pointless. Aegon owed him a duty of care. It should have been more proactive. It had a duty to be more specific about the pension options available. Had it informed him about the highest tax rate, he would not have withdrawn all of the cash at once. He does not believe Aegon's claim that it could not stop the Payment. It was unfair that there was no cooling off period.
39. While the Form indicated that there may be undesirable consequences of a Plan member withdrawing all their cash at once, the Form suggested that this applied to people who had been subject to the standard tax rate, not the higher tax rate. It did not suggest that there was a third tax rate which was even higher.²
40. Because he was not informed that there was a third tax rate, he thought he had all of the information he needed to make his pension choices and so did not need to consult an IFA. Further, he had told his wife's IFA that he planned to take all of his cash in the Plan at once, and the IFA said this plan sounded fine.
41. The Tax was money he had planned to leave to his children and grandchildren. This was heavy on his conscience. Inheritance tax (IHT) and the seven-year rule were foremost in his thoughts. It was urgent for him to have a plan and schedule to gift one or more of their three jointly owned properties tax efficiently with regard to capital

² The additional rate: <https://www.gov.uk/government/publications/rates-and-allowances-income-tax/income-tax-rates-and-allowances-current-and-past>

gains tax. He decided to deal first with his and his wife's Stakeholder Plans and then subsequently contact an IFA about the properties.

42. Immediately after mailing the Form to Aegon, he telephoned an IFA and was alerted to the mistake he had made. He learned at the same time that, not only was it possible to invest within a self-invested personal pension (**SIPP**), but that the proceeds at death would be exempt from IHT.
43. Had Aegon not disinvested his funds he may have stayed invested in the Plan or transferred his benefits to an alternative pension arrangement, as it was his intention not to draw and use any cash because his other pensions were enough to cover his and his wife's living costs. If his investments had not been sold but had remained invested and continued to grow as they had for many years, he might have left well alone. This decision would have been reinforced had he known that the pension would not become part of his estate if held until death, and would therefore be exempt from IHT. He learnt about the position relating to IHT after he had made the costly mistake to withdraw all of the cash.
44. The actual IHT will depend on his longevity, the size of his estate at death, changes in IHT rates, market fluctuation and withdrawals that he does not intend to take, but that he cannot deny are permitted within a SIPP. So, it was not possible to determine the exact loss, but it was certainly very substantial.
45. Aegon denied responsibility for any IHT or losses on the investments he made with the transferred funds and offered him compensation of £1,000 for the traumatic experience he had suffered continuously since 2020.
46. After referring his complaint to TPO he was informed by Aegon that it had made an error when it disinvested his funds and it made him the Offer. He had assumed, until 2022, that Aegon's action was proper. In further correspondence Aegon explained that its aim was to put the plan holder in the position they would have been in had the mistake not occurred. In his case, he would not have needed to even consider withdrawing any cash. He would have taken the tax free sum and transferred the remainder to a SIPP where it would now be valued at £117,000 and in a tax shelter not liable for IHT.
47. He recently accepted the Offer trusting that the Additional Redress would be calculated when his case was settled by TPO.

Summary of Aegon's position

48. At the time that Dr D's Plan was set up it was legally required that all policyholders vest their pension by age 75, by taking an annuity. As such, the terms of Dr D's Plan did not anticipate any investment to be made after that age. It also did not allow further contributions to be made into it, or for policyholders to switch their investment choice after age 75. When the requirement to vest a pension at age 75 was removed in 2011, Aegon took the view that it was in the interests of customers who had

reached age 75 to be switched into the cash fund, so that their pension fund would no longer be at risk of loss due to ongoing investment movements.

49. It was anticipated that most policyholders would have sought to move their pension savings at that time to an alternative arrangement due to the loss of tax benefits and change in treatment of death benefits at age 75. So, the investment in cash was expected to be a short-term position for policyholders.
50. Aegon writes to policyholders prior to their 75th birthday to make them aware of the change in tax treatment that would occur at age 75, and it urges them to take financial advice from an IFA on their next steps. Information is also sent to policyholders in the run up to their selected retirement date, providing them with information about the options available to them on retirement.
51. It had made no errors in actioning Dr D's request to withdraw the cash from the cash account. When Dr D asked Aegon to cancel the Payment, the money had already left its account. So, while the money may not have reached Dr D's bank account by that date, it was too late for Aegon to cancel its transfer. Aegon repaid Dr D the money from the Repayment within the 2020/21 tax year, so he had enough time to reinvest it into his ISA if he wanted to.
52. It made an error in agreeing to reopen Dr D's pension plan and accept the Repayment. It could not reinstate the Repayment into the Plan.
53. It also made an error in holding the Repayment money in a suspense account for a long time. Because of this, and because the money was not immediately returned to Dr D, he missed out on investment growth during this period. It did not communicate well with Dr D regarding this. It offered Dr D £3,024.03 for financial loss and an additional £1,000 for the distress and inconvenience caused to him.
54. It provided adequate and clear warnings to Dr D about the tax implications of making a full UFPLS withdrawal. It also reiterated to him several times before he instructed the withdrawal that he should obtain independent financial advice. Dr D received some financial advice. This should have impressed upon him the value of taking such advice.
55. The Financial Conduct Authority Handbook's Conduct of Business rules list transactions to which cancellation rights apply. The list does not include UFPLS settlements. So, Dr D did not have a regulatory right to have the Payment cancelled.
56. Under section 166 of the Finance Act 2004, payments made in error by pension scheme administrators can be corrected. This does not apply to UFPLS payments or circumstances in which a pension scheme member changes their mind about the pension payment.
57. Aegon was under an obligation to deduct tax regarding the Payment.
58. In 2022 a review was carried out by Aegon into the practice of moving policyholders into cash at age 75 (**the Review**). At that time, concern was raised that some

policyholders had chosen not to transfer their funds at age 75, and had remained invested in the cash fund over a long period of time. The concern was that, as a result, policyholders may have suffered financial detriment in the way of loss of continued investment growth. As the switch to cash had not been driven by a customer instruction, the decision was made to switch policyholders back to their previous investment choice and pay compensation for any investment loss in the intervening period.

59. Aegon wrote to Dr D on 28 March 2022, and made him the Offer. The Offer represented the loss of investment growth between Dr D's 75th birthday and the date that he withdrew his pension. As Dr D no longer had a pension policy with Aegon, a further payment of £196.35 was offered as interest. A cheque was sent to Dr D in payment of this sum.
60. Dr D had asked that he be given investment growth on his investments with Fidelity, rather than interest. Aegon made repeated attempts to engage with Dr D and Fidelity to establish the value of this, but it had not been able to do so. Concerned at the length of time that the question of interest had delayed payment of the principal sum of the Offer, on 8 June 2023, Aegon emailed Dr D suggesting it paid the Offer immediately with the Additional Redress to be paid once that figure had been established.
61. Aegon does not agree that, had it not switched Dr D's investments to a cash fund, he would have remained invested in the Plan and not have withdrawn the cash so would not have incurred the Tax Charge. There were a number of options available to policyholders at retirement, with a full withdrawal using UFPLS being only one of those. While not offered within the Plan, those options were clearly set out in documentation issued to Dr D and could have been achieved by transfer of Dr D's pension to another pension provider. This would have allowed him to hold a pension policy which better met his needs at that time.
62. The tax charges which would be incurred as a result of taking a UFPLS were set out in the pack of information on options issued to Dr D. In addition, the Tax was highlighted in the application for the UFPLS itself. Both the information on the options documents and the application urged Dr D to take independent financial advice on this important decision.
63. Tax is due on all withdrawals from a pension. After age 75, many of the tax benefits on pension savings are lost, including on death benefits. Death benefits paid after a policyholder reaches age 75 are taxed at the recipient's marginal rate. Dr D said that his intention was to leave the pension fund for the benefit of his son, however, it was important to note that this payment would have been taxed at his son's marginal rate, so the same amount of tax may have been paid.
64. Dr D has also expressed concern that, as the pension benefits from the Plan now form part of his estate, they would be subject to IHT. Aegon is not responsible for providing tax advice to Dr D and if this was a concern to Dr D, it believes that he

should have considered this before electing to take a UFPLS. It also believes that his liability could be mitigated with tax planning. However, again it was not in a position, or able, to provide tax advice to Dr D on this. Upon receiving the net proceeds from his pension, Dr D's concerns were about the amount of income tax deducted, and this seems to have been the source of his regret about his decision. His decision to make a full withdrawal of his pension in this way would always have placed payment into his estate.

Adjudicator's Opinion

65. Dr D's complaint was considered by one of our Adjudicators who concluded that further action was required by Aegon. The Adjudicator separated her findings on Dr D's complaint into five separate sections and these have been summarised below, in paragraphs 66 to 81:-

Disinvesting Dr D's investments and placing the proceeds into a cash fund

66. Aegon explained that prior to 2022 it was its policy to switch its policyholders who had reached age 75 into a cash fund.

67. Aegon wrote to Dr D on 9 May 2018, and informed him that when he reached age 75 his investments would be disinvested and the proceeds held in a cash fund. Aegon asked Dr D to confirm whether he intended to proceed with this default arrangement or defer his retirement date. As Aegon did not receive any response from Dr D, it disinvested his investments in the Plan and put them into a cash fund.

68. In the Adjudicator's view, as the disinvestment of Dr D's funds and the proceeds being transferred to a cash fund when he reached age 75 was in accordance with Aegon's policy, there was no maladministration by Aegon in this regard. Further, Aegon had told Dr D what would happen, and had given Dr D the opportunity to contact it, if he did not want this to happen.

The withdrawal of the cash

69. Dr D said that Aegon's decision to leave the proceeds of the sale of his investments into a cash fund led him to believe that he had to withdraw the cash to reinvest it. Dr D made the decision to withdraw all the cash from the cash fund over two years after Aegon had placed the proceeds of his disinvested funds into that account. Dr D made the withdrawal following his own assumptions and did not check whether his assumptions were correct before he made the decision to withdraw the cash.

70. In several of the pieces of correspondence Aegon had sent Dr D between 9 November 2017 and 7 February 2018, Aegon had advised him to seek advice from an IFA. Dr D did not seek advice from an IFA before he made the decision to withdraw the cash. Had he done so, he may have been made aware of the other options that were available to him in relation to what he could do with the cash. Aegon did not owe Dr D a duty of care to ensure that it informed him of any tax implications of withdrawing all of the cash.

71. Dr D had said that he was aware of the tax implications of withdrawing the cash. In the Adjudicator's opinion, Aegon could not be held responsible for the tax consequences of Dr D's decision that resulted from his own assumptions.
72. Consequently, it was the Adjudicator's view that Aegon was not liable for the Tax that Dr D incurred as a result of withdrawing the cash from the Plan or for any IHT that his beneficiaries may have to pay following his death. This was because Dr D was not in this position because of any maladministration by Aegon.

The Review

73. Aegon explained that following the Review, it contacted Dr D to make him the Offer.
74. Dr D said that had his funds not been disinvested he may have remained invested in the Plan. Or he may have transferred his benefits to an alternative pension arrangement. He argued it was his intention not to draw and use any cash because his pensions were enough for his and his wife's living costs. He also said that had his investments not been sold and the proceeds transferred to a cash fund, but had remained invested and continued to grow as it had for many years, he might have left them invested indefinitely.
75. Further, Dr D said that he did not transfer his benefits to an alternative pension arrangement because he had no idea that it was possible to do so after they had been disinvested nor after age 75.
76. In the Adjudicator's view, based on what Dr D said, on the balance of probabilities, he would not have transferred his funds from the Plan to an alternative pension arrangement, had Aegon not disinvested his funds.
77. Aegon had recognised that some policyholders may have been disadvantaged by the sale proceeds of their disinvestments being held in a cash fund for a long period of time, so it offered them redress for any loss of investment they had incurred. This is why it made the Offer to Dr D.
78. In the Adjudicator's opinion it was correct for Aegon to offer Dr D redress for any investment loss he incurred while the proceeds of his disinvestment remained in cash.

Maladministration

79. The Adjudicator noted that Aegon had provided conflicting information to Dr D concerning the reinvestment of the Repayment. It had also kept the Repayment in a suspense account for several months while it investigated matters relating to Dr D's case.
80. In the Adjudicator's opinion, Aegon's actions in this regard amounted to maladministration. While the Adjudicator accepted that it was correct for Aegon to have offered Dr D redress for any investment loss he incurred while in the cash fund, it was also the Adjudicator's view that the loss calculation that Aegon completed in

this regard should have included the dates that the Repayment was held in a suspense account. This was because Dr D's cash was not invested during this period. So, it was the Adjudicator's view that Aegon should complete a further loss calculation to take these dates into account. If it was found that further redress was owed to Dr D, Aegon should pay the outstanding sum to him.

Distress and inconvenience

81. It was also the Adjudicator's view that this situation had caused Dr D non-financial injustice in the form of distress and inconvenience. TPO publishes guidance on its website concerning awards for non-financial injustice.³ Based on this guidance, it was the Adjudicator's view that this situation had caused Dr D serious distress and inconvenience for which he should receive an award. However, As Aegon had previously offered Dr D £1,000, which was in line with TPO's guidance for serious distress and inconvenience, it did not need to do anything further. If Dr D wanted to accept this award, he should contact Aegon directly.
82. Dr D did not accept the Adjudicator's Opinion. Aegon also did not accept the Adjudicator's Opinion as it disagreed with the Adjudicator's suggested redress. So, the complaint was passed to me to consider.
83. Dr D and Aegon provided post Opinion comments, and they also requested that I decide the date that the Additional Redress should be calculated to. Both Dr D's and Aegon's post Opinion comments have been summarised below.

Dr D's post opinion comments

84. Dr D provided copies of emails between him and Aegon concerning the date that the Additional Redress should be calculated to. He also made some additional comments which have been summarised below:-
 - 84.1. He did not recall being offered any alternatives to the transfer to a cash fund except possibly for termination of the pension with the standard three alternatives (see paragraph 35 above). At that time, he was not ready to think about any type of pension transfer if he could have left the fund as it was. There was no offer to continue investing while still with Aegon. At that time, he was apparently less anxious about investment as he had not become aware of the growth achievable by active fund management.
 - 84.2. The assumptions he made about what he could do with the cash in the cash fund were based on reading the financial press, letters from Aegon and Aegon's handling of his Plan. In particular, the disinvestment at age 75. He did not expect that an IFA would have had special privileged access to the rules governing a scheme that was fully accessible to the public. He repeatedly tried

³ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

to speak with an experienced pension expert at Aegon but was unable to do so.

- 84.3. He regretted not consulting Pension Wise. Had he done so and not received the new information he learned too late from his own IFA, Pension Wise would have been responsible for his losses.
- 84.4. He was aware that he would have to pay tax on the cash withdrawal at his marginal 40% rate. He was willing to pay that rate if it were necessary to enable him to invest the proceeds of his pension. Aegon disinvesting his investments made him believe that withdrawing the cash was necessary and it offered no guidance to the contrary.
- 84.5. He disagreed that Aegon was not liable for the Tax. He accepts that he must share part of the blame for the unnecessary Tax, but his mistake was caused solely due to Aegon's disinvestment policy. He would have remained in the Plan had continued investment been allowed.
- 84.6. He accepted that the redress offered by Aegon for his non-financial injustice was in line with TPO's guidelines. However, he hoped that Aegon would recognise that the size of his financial loss, the complexity of dealing with the fallout and the duration of the distress, all merited a more generous offer.
- 84.7. He was disappointed that the Adjudicator concluded that his complaint should be upheld only for the investment losses to date, as this had already been agreed with Aegon beforehand. He had expended multiple hours of effort to portray the complex situation in a completely open and clear manner needing to concentrate on much detail. The case had dominated his everyday life and disturbed his sleep for four years.
- 84.8. He believed the Additional Redress should be based on the investment growth on his ISA between 9 June 2020 and the date that his complaint is settled, and not up to the date of 28 March 2022 as Aegon has suggested.

Aegon's post Opinion comments

85. In the Opinion the Adjudicator states that, on the balance of probabilities, Dr D would not have transferred his funds from the Plan to an alternative pension arrangement had Aegon not disinvested his funds. It wished to point out that Dr D did not transfer his funds to an alternative pension arrangement, he chose to take a full withdrawal from his plan instead.
86. Its position is that it would have been reasonable for Dr D to have investigated and considered the options available to him before instructing a full withdrawal. Aegon repeatedly suggested that he did so.
87. The full withdrawal instructed by Dr D could only result in payment into his estate, yet he says that avoiding this was his key objective because of concerns about IHT. When Dr D realised that income tax had been levied on the UFPLS, his response

was to seek to return the payment to Aegon. At that point, Aegon's position was that any holdings after age 75 would be held in cash. So, it considered there was an inconsistency in Dr D's position in stating that he was motivated to make a full withdrawal because of the lack of investment growth, but then attempted to return the payment to Aegon.

88. Further, had investment in cash been a concern to Dr D, it would have expected him to have transferred or withdrawn his pension after he had become aware that he would no longer be actively investing in 2018. Instead, he did not take steps to move his pension until 2020.
89. It agreed that there was maladministration on its part, when it agreed to receive the Repayment and held it in a suspense account. However, its view was that the correct way to remediate Dr D for this maladministration was to put him into the financial position he would have been had there not been maladministration. That is, had it not accepted the Repayment.
90. Compensation was offered to Dr D on 4 March 2022, of £3,024.03 in interest for the period between the return of the Repayment to Aegon, and Aegon's return of the Repayment to Dr D. Dr D rejected this offer. Had Aegon changed its approach to investment after age 75 within Dr D's Plan before this redress offer was made, interest on the investment growth would also have been offered at that time.
91. Compensation for lost interest was offered to Dr D at the time of offering him redress for lost investment growth following Aegon's policy change. Dr D rejected this also, and efforts have been ongoing for some years to try to establish Dr D's lost investment growth so that it can remediate him for this element.
92. While the Adjudicator's finding in relation to the loss calculation may arrive at a similar conclusion, its concern with the Adjudicator's suggested remedy was that it treated the withdrawal as delayed for a year when Dr D gave a clear instruction to make the withdrawal resulting in payment to him on 10 June 2020. There was no delay to that payment. As a result, it was inaccurate for the redress to be calculated as if the withdrawal had never taken place.
93. With regards to the instruction to pay interest, on 2 September 2020, Aegon had received Dr D's cheque for £65,169.55. This payment was held in Aegon's suspense account until it was returned to him on 8 March 2021. Interest should only be payable for the period that Aegon held the monies, not until the present date. At most, interest could be levied on the interest payment but it was unfair for interest to be due on a sum that was returned to Dr D on 8 March 2021.
94. Further, in relation to the Offer, a cheque was sent to Dr D for £10,282.10 on 28 March 2022. This included interest on the additional payment of £196.35, relating to the period from June 2020 to March 2022. Dr D rejected that offer and returned the cheque on the basis that he did not agree with the interest payment. Aegon then entered into conversation with him to try to establish the investment growth he would have obtained elsewhere. Dr D was not able to demonstrate where he had invested

the money. In fact, he did not accept payment until 6 March 2024. It did not consider it appropriate for interest to be levied for the period during which Dr D could have had payment, but refused to accept it.

95. In his submissions to TPO, Dr D continually referred to his withdrawal being subject to a “special” rate of income tax. There is no special rate. As is required, Aegon deducted tax at the emergency rate and Dr D would have received a rebate of any overpaid tax following the tax year end. Whether or not he would be entitled to receive a rebate would depend on what other income Dr D was receiving and which income tax band this put the payment into.
96. As Dr D is over age 75, had he remained invested in the Plan at his death, the benefits would be taxed at the recipient’s marginal rate. The benefits would not be tax free as he seemed to believe.
97. Dr D had recently been in touch with it directly, regarding calculation of the Additional Redress on the Offer. It was agreed that this should be addressed as part of the complaint as there was disagreement as to the period over which investment growth should be calculated.
98. It had recently come to its attention that when the Offer was paid to Dr D, there was no deduction made for notional tax. Had this money formed part of his pension then at the time that he took benefits he would have paid tax of 40% on 75% of this sum (assuming 25% would have been tax free), as the sum withdrawn was calculated at Dr D’s notional tax rate.
99. So, it was likely that Dr D had already received a sum in excess of the loss calculated following the change in approach.
100. On 18 October 2024, I sent Dr D and Aegon my Preliminary Decision (**the Decision**), on this complaint.

101. Aegon accepted the Decision but added:-

101.1. It had calculated that the tax that would have been deducted, had the additional sum of £10,061.76 been paid on 10 June 2020, was £3,018.53. So, the net amount that should have been paid to Dr D was £7,043.23.⁴

102. Dr D did not accept the Decision. In response, he reiterated points he had previously raised to TPO.

Conclusions

103. Having considered all the information that the parties to the complaint have provided, including their pre and post Opinion and Decision comments, I agree with the Adjudicator’s findings concerning the elements of Dr D’s complaint that should not be upheld, for broadly the same reasons as the Adjudicator.

⁴ Aegon provided a breakdown of how the tax was calculated.

104. Dr D is of the view that it was Aegon's responsibility to ensure that he was aware of what he was doing, and that had he been informed of the tax implications he would not have withdrawn all of the cash at once. Furthermore, he says, it was unfair that there was no cooling off period.
105. However, I have been provided with copies of the Form sent to Dr D, originally on 9 November 2020, together with the 'cash lump sum risk leaflet' (**the Risk Leaflet**) that I am informed accompanied it.
106. The Form contains numerous warnings. For example:
- 106.1. In respect of Dr D's argument that it was unfair that the payment of the UFPLS could not be undone, it clearly states that "*this option has no cancellation rights – once we've made the payment to you it can't be reversed and paid back to us*".
- 106.2. In relation to Mr D's argument that he was unaware of the tax implications of the payment, the Form sets out that "*the actual amount you receive will be the value of your pension fund ... less any tax we have to deduct*", and that "*the amount of tax you pay will depend on your individual circumstances*".
- 106.3. Dr D was also asked whether he had "*received advice from an adviser*", and if he had not, Aegon recommended "*that you seek advice from a financial adviser if you aren't sure if this is the right option for you*".
- 106.4. It goes on to ask whether Dr D was "*aware that you'll pay tax if you take a lump sum from your pension savings and this may take you into a higher tax bracket*", and that "*There's a risk that after tax is deducted you may not get as much as you were expecting. The amount you withdraw and any other income that you receive may result in you paying higher rate tax or even owing additional tax.*"
- 106.5. By signing the declaration contained in the Form, Dr D confirmed that he had read these risk warnings and still wanted to go ahead and take the option of a full lump sum.
107. The Risk Leaflet also sets out, very clearly, the need to take proper advice, and the potential implications of Dr D's decision. For example:
- 107.1. It asks if Dr D had "*taken advice or guidance from a financial adviser or Pension Wise*", and that if the answer is no, "*there's a risk that you may choose an option that doesn't suit your needs. This is an important decision and Aegon would always recommend that you seek advice or guidance to ensure that you fully understand your options.*"
- 107.2. Again, as with the Form, the Risk Leaflet asks Dr D whether he was "*aware that you will pay tax on this option and this may take you in to a higher tax bracket*", and that if the answer is no, "*there's a risk that after tax is deducted you may not get as much as you were expecting. The amount you withdraw*"

and any other income that you receive may result in you paying higher rate tax or even owing additional tax”.

108. So, it is clear to me that Dr D was properly warned of the implications of his decision to take an UFLPS, and the need to take advice prior to making that decision. He did not do that. While he has made a decision that he subsequently regrets, and that there have been, for him, unexpected tax consequences, I am not of the view that was the fault of Aegon.
109. I do not agree with the Adjudicator that Dr D’s complaint under the heading “Maladministration” should be partially upheld.
110. There is no dispute that there was maladministration by Aegon when it held the Repayment in the suspense account. However, in recognition of this error, Aegon offered Dr D redress (what was termed as interest), for the period that the Repayment was not invested. This was based on Dr D having taken sums from his (and his wife’s) ISAs in order to make the Repayment, and then calculating the investment returns lost from having had those sums out of those ISAs (together with interest on the remaining amount). I consider that Aegon’s offer of redress was appropriate. This is because it effectively put Dr D in the position that he would have been in, had Aegon not kept the Repayment in the suspense account but had returned it to Dr D, sooner than it had, and he was able to keep the Repayment invested in those ISAs.
111. As I find that Aegon’s redress offer in this regard was appropriate, I am in agreement with Aegon that any loss in this regard should not be calculated up to the date that this complaint is resolved. This is because it was Dr D’s decision not to accept Aegon’s offer at the time it was initially made. So, Aegon should not be penalised for his decision not to accept the redress offer sooner.
112. In relation to the Additional Redress, Aegon accepted Dr D’s suggestion that instead of interest to be applied to the Offer, that the Additional Redress should be based on the investment growth of Dr D’s ISA with Fidelity. However, Dr D and Aegon dispute the period that should be used to calculate the investment growth.
113. In its submission to TPO, Aegon said that it had made repeated attempts to engage with Dr D and Fidelity, to establish the value of the investment growth of Dr D’s ISA but it had not been able to establish the value. It provided a timeline⁵ of the events that occurred between itself, Dr D and Fidelity following its agreement to pay the Additional Redress.
114. I consider that Aegon offered Dr D appropriate redress for the disinvestment of his investments on 28 March 2022 and, had Dr D accepted this redress offer, the payment would have been made to him shortly after that date. While Aegon did not have to agree to pay Dr D the Additional Redress, it did agree to do so. I find that it should not be penalised for this.

⁵ This timeline is set out in the Appendix.

115. In addition, after reviewing the timeline, I am unable to conclude that the delay in Aegon obtaining information concerning investment growth within Dr D's ISA resulted from its maladministration. Accordingly, I consider that the Additional Redress should be calculated from the date Dr D invested the funds into his ISA with Fidelity until 28 March 2022, as this is the date that Aegon had made the original offer of redress to Dr D.
116. Regarding the tax that should have been deducted from the Offer that was paid to Dr D, I consider that this needs to be taken into consideration. This is because, the purpose of the Offer was to put Dr D in the financial position that he would have been in and not in a better financial position. So, I have taken this into consideration in my directions below.
117. I appreciate that this situation has caused Dr D serious distress and inconvenience. However, I consider that the offer of £1,000 that Aegon made to Dr D in this regard is sufficient. So, I do not direct Aegon to make a higher award to Dr D for the distress and inconvenience that this situation has caused him. Dr D may wish to contact Aegon directly, if he wishes to accept the £1,000.

Directions

118. Within 28 days of the date of this Determination, Aegon shall:
- 118.1. Calculate the investment growth on Dr D's ISA between the date his transferred cash was placed in his ISA and 28 March 2022.
 - 118.2. Deduct £3,018.53⁶ from the figure in paragraph 118.1 above.
 - 118.3. If after deducting £3,018.53 from the figure in paragraph 118.1 there is a positive balance, this balance should be paid to Dr D.
 - 118.4. If after the deduction of £3,018.53 from the figure in paragraph 118.1 there is a negative balance, Aegon does not need to make a further payment to Dr D as he would have already been adequately compensated.

Dominic Harris

Pensions Ombudsman
19 December 2024

⁶ This figure is the tax that Aegon said should have been deducted from the Offer paid to Dr D.

Appendix

Details of the timeline Aegon submitted to TPO

28 March 2022	Letter sent by Aegon to Dr D offering redress and enclosing cheque for redress plus interest from date of withdrawal to date. Dr D returned the cheque, uncashed, and so it was cancelled on 17 June 2022.
18 July 2022	Aegon received an email from Dr D asking for investment growth as per his Fidelity account.
19 July 2022	<p>Email from Aegon to Dr D advising that Aegon would be happy to match the lost investment growth however it would need the figures. The email advised that Dr D would need to write a letter of authority in order to ask Fidelity for his investment growth figure for comparison.</p> <p>Dr D emailed Aegon saying he and his wife both gave their authority to Aegon to receive information about his investments. He then signed the email and sent it in the post to Aegon. Aegon received the email on 22 July 2022. Unfortunately, the email did not give any details about Dr D's Fidelity policy number or other identifiable details.</p>
6 September 2022	Aegon wrote to Dr D enclosing a draft Letter of Authority (LOA) and asking that he complete and return it.
11 October 2022	Aegon wrote again to Dr D to say that it had not received a response from him and provided him with a further copy of the draft LOA for completion.
2 November 2022	Aegon wrote to Fidelity enclosing a letter of authority signed by Dr D. The letter referred to a Fidelity SIPP because the incident redress team wrongly believed that Dr D was seeking to make a comparison to the performance of another pension arrangement. No response was received from Fidelity.
16 February 2023, 17 March 2023 and 17 April 2023.	Aegon sent chasers to Fidelity, but no response received.
7 June 2023	<p>Aegon received an email from Fidelity rejecting the LOA because it had been dated 2021, rather than 2022.</p> <p>Aegon sent an email to Dr D attaching a replacement LOA and asking him to sign it again.</p>
19 June 2023	Aegon sent a letter to Dr D offering to pay him the principal sum of the Offer as an interim payment, with interest or growth

	payment to follow. No response was received. Aegon also did not receive the return of the replacement LOA.
13 September 2023	Aegon wrote to Dr D again, offering the interim payment of £10,085.75.
16 October 2023	Aegon sent a further letter to Dr D to offer the interim payment and also to ask that the LOA be signed and returned so it could contact Fidelity again.
24 January 2024	Aegon sent a further letter to Dr D regarding the interim payment.
9 February 2024	Aegon received an email from Dr D accepting the interim payment and attaching the LOA addressed to Fidelity.
14 February 2024	Aegon wrote to Fidelity requesting details of the performance of Dr D's ISA. It believed that Dr D would have already used his full ISA allowance during the 2021 and 2022 tax years (because it understood that this was where he had deposited part of his pension withdrawal monies). So had Dr D received the monies when he made his original withdrawal he would not have paid them into the ISA. However, it had not been given any other comparator at this point and wished to resolve the issue.
20 March 2024	Aegon received an email from Fidelity providing a statement of transactions, but not the relevant growth information.
26 March 2024	Aegon received an email from Dr D confirming that he had banked the cheque for the interim payment.
18 April 2024	Aegon wrote to Fidelity again advising that Fidelity had provided the wrong data and asking again for the relevant growth information to be sent.
26 June 2024	Aegon sent a chaser to Fidelity.