

Ombudsman's Determination

Applicant	Mr A
Scheme	The Jim Lea Music Limited No 2 Retirement & Death Benefits Scheme (the Scheme)
Respondent	Aegon (formerly Scottish Equitable plc) (Aegon)

Outcome

1. I do not uphold this complaint and no further action is required by Aegon.

Complaint summary and background

2. Mr A has complained that Aegon switched the funds in the Scheme from With-Profit funds to a Cash fund on his 65th birthday without his authority or consent to do so. Aegon then failed to notify him that it had done so. As a result, Mr A lost the difference between the negative yield of the Cash fund and positive investment return he would have obtained had the money remained in the With-Profits funds or been transferred into equivalent funds.
3. The Scheme, an occupational pension scheme, was set up with Scottish Equitable Life Assurance Society, now Aegon, on 1 June 1993. The Principal Employer of the Scheme is [Mr A] Music Ltd (**the Company**). The Company is the sole trustee of the Scheme (**the Trustee**). Mr A is a director of the Company.
4. The Scheme had two members, Mr A and his wife Mrs A.
5. Mr A had one policy (**the Policy**) under the Scheme. The terms are set out in the Policy booklet and schedule, both of which were sent to Mr A's financial advisor at the time. The contributions paid into the Policy were invested in with-profit endowment funds.
6. The Policy schedule shows Mr A's normal retirement date (**NRD**) as 14 June 2014, his 65th birthday, and states that 100% of the regular premiums are to be applied to the "WPE Fund". This meant a with-profit endowment fund.
7. In 1999, the WPE Fund was closed to new investment and Mr A's future contributions were invested in the WP2 (High Equity WP) Fund.
8. The Policy Booklet states:

“The conditions in this Policy Booklet together with the attached initial Schedule which refers to this Policy Booklet, and any subsequent Schedule relating to that initial Schedule, and any endorsement to any Schedule and/or the conditions in this Booklet (as endorsed from time to time) shall constitute a Policy and a contract of assurance between the Trustees of the Scheme specified in the initial Schedule and Scottish Equitable Life Assurance Society (“the Society”).”

9. Section 11(E) of the Policy Booklet states:

“All Units of the Endowment Fund shall be cancelled at Bid Price on the Pension Date if not previously cancelled, and if the Employee does not retire on that Date the total of their Bid Prices shall be applied under Conditions 5 in or towards paying or securing any benefits falling to be paid or secured on that date. Any balance shall be reinvested in Units of the Cash Fund at Bid Price or otherwise as the Society may reasonably determine.”

10. The Policy Booklet defines the Endowment Fund as the Series B Endowment Fund.

11. On 9 March 2013, Aegon issued an annual statement to the Trustee. The statement was addressed to the Company’s address, which is different to Mr A’s personal address. The statement showed the units held in the High Equity WP Fund and the WP Endowment Fund and stated:

“If the plan continues to your pension date we’ll switch your with-profits investments into a cash fund.”

12. On 23 January 2014, Aegon sent a letter to EFG Independent Financial Advice Ltd (**EFG**), Mr A’s financial advisers at that time. The letter provided Mr A’s retirement options and said:

“Please note that, under the terms of the policy conditions, it is not possible to continue any investments in our with-profits type funds after the retirement date which was originally selected. If the member is deferring their retirement they must switch to one of our other unit-linked funds.

If with-profits units are to be switched at the originally selected retirement date (other than to our cash fund), please write to our Individual Servicing Department.

If we do not receive confirmation by the selected retirement date, the with-profit investment will automatically be switched to our cash fund. The Trustees can switch to another unit-linked fund later, again by writing to our Individual Servicing Department.”

13. On 11 March 2014, Aegon issued Mr A’s 2014 annual benefit statement. The statement was sent to the Company address and repeated the warning that the funds would be switched to the Cash fund from NRD.

14. On 28 April 2014, Aegon says it sent an early warning letter to Mr A's financial adviser, which also reminded it about the fund switch. Aegon does not have a copy of the letter but has provided a system note to show it was sent.
15. On 8 May 2014, Mr A called Aegon for a valuation of the funds invested in the Policy.
16. On 17 June 2014, Mr A's funds were switched to the Cash fund. Aegon did not write to inform Mr A, the Trustee or Mr A's financial adviser of the switch.
17. On 26 June 2014, Aegon was informed that Mr A had appointed The Private Office to act as his financial adviser (**the IFA**).
18. On 4 July 2014, Aegon sent the IFA a letter with attached documentation relating to the Policy which indicated that a switch from the With-Profit funds to the Cash fund had occurred on Mr A's NRD.
19. On 10 July 2014, the IFA said that he telephoned Aegon to ask questions about the attachments, but the Aegon adviser could not find them on its system.
20. On 22 January 2015, Aegon wrote to Mr A's personal address concerning the options available to him. The letter said:

"This letter provides details of the options available to the member as they approach their selected retirement date of 14 June 2015.

Please note that, under the terms of the policy conditions, it is not possible to continue any investments in our with-profits type funds after the retirement date which was originally selected. If the member is deferring their retirement they must switch to one of our other unit-linked funds.

If with-profits are to be switched at the originally selected retirement date (other than to our cash fund), please write to our Individual Servicing Department.

If we do not receive confirmation by the selected retirement date, the with-profit investment will automatically be switched to our cash fund. The trustees can switch to another unit-linked fund later, again by writing to our Individual Servicing Department."

21. The letter misstated Mr A's NRD and did not mention that his funds had already been switched into cash funds.
22. On 12 February 2015, Mr A wrote to Aegon to say that he had decided to defer taking his retirement benefits, and "would like his pension fund to remain investment in the current investment fund until further notice". The funds remained in the Cash fund.
23. On 13 February 2015, the IFA emailed Aegon requesting further information including clarification of whether the switch from the With-Profit funds to the Cash fund was automatic or instructed.
24. Aegon wrote to the IFA on 3 March 2015, and stated:

“The switch from With Profits to Cash in June 2014 was automatic as NRD was reached.”

25. On 20 March 2015, Mr A rang Aegon and asked whether his funds would be earning interest. Mr A was told that:

“All the funds are invested on the stock market, so there is interest”

26. On 1 July 2015, Mr A’s accountant complained to Aegon on his behalf. He said “We understand Aegon has switched [Mr A]’s pension fund to cash recently despite the fact that [Mr A] has written to Aegon on 12 February 2015 informing Aegon that he did not wish to take benefit when his scheme matured on 14 June 2015 and also instructed Aegon to keep the investment fund as it was until further notice.”

27. On 7 July 2015, Aegon wrote to Mr A in response to the complaint raised by his accountant. It said:

“...the NRD on this Policy was 14 June 2014, your 65th birthday. On this date we switched your investment out of the With-Profits Endowment fund and the High Equity With-Profits fund to Cash, in line with the policy conditions. Following the NRD you’re unable to keep your policy invested in our With-Profits funds.

When you wrote to us on 12 February 2015 you advised that you didn’t want to take your benefits on 14 June 2015 and would like us to keep your policy investment the same. This did happen as by this time you were already invested in Cash...”

28. Mr A referred the matter to his legal adviser, who wrote to Aegon about the matter on 3 November 2016. In summary, he complained that Aegon had switched the Policy funds from the With-Profit funds to the Cash fund without any authority or permission to do so, causing Mr A a loss of rights and benefits to which he was otherwise entitled to under the With-Profit funds. He also said that Aegon had not informed Mr A that the fund switch had occurred and had incorrectly told him that the Policy was still invested in the With-Profit funds when he spoke to Aegon.

29. Aegon replied to the legal representative on 3 January 2017. It highlighted clause 11(E) of the Policy booklet, which according to Aegon states that the Policy would be switched to the Cash Fund at NRD. It also said that it had issued various early warnings and annual statements which ought to have brought Mr A’s attention to the fact that the Policy funds would switch from the With-Profit funds to the Cash fund at his NRD. Therefore, Mr A’s complaint was not upheld.

30. Mr A remained dissatisfied and brought his complaint to us, claiming a loss of £85,569.69.

Main Submissions made on behalf of Mr A

31. Mr A never received a copy of the Policy booklet, containing Condition 11E, and even if the Policy booklet was made available to him, disputes that Condition 11E allows Aegon to have carried out the fund switch.

32. Condition 11E provides that "Any balance shall be reinvested in Units of the Cash fund at Bid Price or otherwise as the Society may reasonably determine".
33. Taken in its ordinary meaning, this would have placed a self-imposed duty on the Society to make a reasonable determination as to how the disinvested money would be reinvested, whether in the Cash fund or otherwise. If the Society or Aegon failed to make a determination and the investments were automatically transferred to the Cash Fund, that was a breach of the contract which Aegon allege applied. If Aegon, which is not admitted, did make a determination in favour of the Cash Fund, that was unreasonable given that the Cash fund had a negative yield.
34. According to Mr A, Aegon does not dispute that there was a reasonable determination on its part. However, Aegon say this was on a collective basis, not an individual one, applying to all Policies to which the Condition applied.
35. The Policy booklet might have represented the then standard terms of the Society. But these terms do not form part of the individual contract in this case. The meaning of a contract is to be determined individually and not on some form of collective basis. It is determined by what an independent observer would consider the parties intended the words to mean at the time they entered into the contract, taking into account the information reasonably attributable to those particular parties.
36. Nevertheless, even if the decision by Aegon whether to invest in the Cash fund or some other investment were applied generally, the above does not matter. If the Society's duty was to determine reasonably how to reinvest any Policy funds at NRD, the duty would have been to all those Policy holders and each would have had a cause of action against Aegon for loss resulting in its failure to make a reasonable determination that any Policy funds should not be reinvested in the Cash Fund, given the net negative yield.
37. Aegon's contention that the purpose of switching the Policy funds to Cash was to protect the customers from any potential market movements as they reached their NRD and would be looking to secure an annuity, does not take into account the fact that the Government removed the obligation to purchase an annuity, which came into effect from 27 March 2014, three months before the fund switch. So, this supports the argument that the fund switch was inappropriate.
38. Mr A's interpretation of Condition 11E is correct according to contract law; the cost to Aegon of an individual case by case review would not be disproportionate as argued. The requirement to determine reasonably would not have had to involve a detailed analysis of Mr A's financial position, but to consider whether a switch to the Cash fund was an appropriate alternative to the existing investments. It is asserted that it was not an appropriate alternative.
39. The Policy booklet refers to the Series B Endowment Fund which is different from the two funds (WP Endowment and High Equity WP Fund) in which Mr A's investments were held. The Condition refers expressly to the Series B Endowment Fund, and Aegon has been unable to show that that was the same fund as the two differently

named funds that were liquidated on 14 June 2014, or that the policy booklet applied to those two differently namely Funds.

40. There are four letters that Aegon says it sent to Mr A directly or to his advisers or to the Trustee which mentioned the fund switch. These were:
- A letter dated 9 March 2013, addressed to Company's address, enclosing a seven-page annual statement;
 - A letter setting out Mr A's retirement options dated 23 January 2014, addressed to EFG;
 - A letter dated 11 March 2014, again addressed to the Company, enclosing a seven-page annual statement, and
 - An early warning letter sent to Mr A dated 28 April 2014 and addressed to EFG.
41. It is accepted that the first three letters refer to a possible fund switch, but it is noted that Aegon does not have a copy of the fourth letter dated 28 April 2014.
42. It is not known whether the annual statements sent on 9 March 2013 and 11 March 2014, were received at the Company's registered office. But Mr A does not have copies of these letters. Regardless, the notices warning that the fund switch would occur at NRD were not sufficiently prominent in the context of the seven-page statement and covering letter.
43. Aegon has belatedly produced a copy of the letter sent on 23 January 2014, containing Mr A's retirement options and further notification of the fund switch. The letter was addressed to Mr A's IFA, not to him directly. There is a system note which Aegon has produced to show that it was sent, however this does not prove that it actually was. The key issue is whether this letter was actually received. EFG has stated that it has no copy of the letter and no record of the letter being received.
44. Aegon has no copy of the early warning letter it sent on 28 April 2014. It is unable to say who it was addressed to. All Aegon can state is that "our system records indicated that an early warning case was completed on 28 April 2014 which meant that a letter should have been sent on that date. Therefore, this letter cannot be relied upon."
45. Mr A's comment about his wife's much smaller pension fund that, "I think that this went to cash some years ago" during his telephone call of 8 May 2014, does not show that he knew that for sure, or that he knew the reason for it. In the intervening years Mr A had been seriously ill and the words, "Yes she is in cash the Fund" were spoken by Aegon to Mr A, contrary to the assertion by Aegon that they were spoken by Mr A.
46. It was not unrealistic to have expected the Aegon adviser to have alerted Mr A to the position regarding the switch during the call on 8 May 2014.

Submissions from Aegon

47. The Policy booklet states that a contact was formed between Mr A, as beneficiary and Trustee, and the Society. Aegon automatically sends Policy terms and conditions to an IFA or Trustee when a Policy is taken out. It had no reason to doubt that a Policy booklet was issued when Mr A took out the Policy in 1993.
48. Aegon received no instruction from either Mr A or his advisers to invest the Policy monies elsewhere, either before or after his NRD.
49. Under the policy terms and conditions, Aegon was entitled to transfer all units invested in Mr A's pension fund from the With-Profits fund to the Cash fund on his NRD. This was clearly set out in the technical specification which was available to Mr A's financial adviser.
50. Condition 11E is not an unusual clause for this type of policy, and Mr A's financial adviser should have been aware of it. Aegon would have expected Mr A to be aware of this condition at the outset.
51. The reference to "or otherwise as the Society may reasonably determine" set out in the Condition reflected scope for a general change in approach being considered and taken if appropriate by the client. There was no need for an individual case by case review of the position, which would have been disproportionate in terms of cost and would have introduced an element of discretion into the management of funds not expected for a policy of this nature.
52. Aegon issued correspondence on 15 January 2014 to EFG, who were appointed as financial advisers of the Scheme, which came with a warning that the fund switch would occur at NRD. EFG did not contact Aegon about the contents of this correspondence. However, Mr A contacted Aegon on 30 January 2014, enquiring about the value of the Policy. Further correspondence was issued to EFG which contained the same warning in April 2014.
53. During a call on 8 May 2014, between Mr A and Aegon, it was clear that Mr A was aware that his wife's Policy, which has been set up on the same basis as his own, had been switched to a Cash fund. This shows that Mr A had an understanding of how the Policy worked and that the funds would switch to Cash. The call also made clear that he had the benefit of a financial adviser to help explain the terms and conditions of the Policy.
54. Aegon also referred to the switch to the Cash fund in its annual statements for the years 2013 and 2014.
55. The fund switch was processed in accordance with the contract terms and conditions. The switch was automatically created by the system, as Aegon had not had any instructions from Mr A to invest the monies elsewhere.

56. Aegon did not write to Mr A to confirm that the switch had taken place, however this was clear in the contractual documentation and correspondence that had been issued to Mr A.
57. When Mr A telephoned Aegon on 20 March 2015, he was told that the funds were invested on the stock market. This was incorrect; however, this does not change the contractual position that Aegon was entitled to switch the funds to Cash and that notice had been given in advance of this.
58. It is not clear upon what basis Mr A is claiming a loss of £85,569.69. He has not given Aegon instructions to transfer his funds to an alternative fund and they have remained in the Cash fund.

Adjudicator's Opinion

59. Mr A's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Aegon. The Adjudicator's findings are summarised below:-
 - Mr A's complaint was that Aegon switched the funds in the Policy from With-Profit funds to the Cash fund on his 65th birthday without his authority or notice of its intention to do so.
 - The Policy Booklet stated that it shall constitute a Policy and a contract of assurance between the Trustees of the Scheme specified in the initial Schedule and Scottish Equitable Life Assurance Society ("the Society"). Therefore, the contract that exists, in relation to the Policy, is between Aegon and the Trustee of the Scheme, which in this case is the Company. Mr A argued that Condition 11E of the Policy booklet did not form a part of the individual contract as the policy booklet was never received, meaning that Condition 11E did not give Aegon the required authority to switch Mr A's funds to the Cash fund.
 - The Policy booklet also stated that "Subject to the provisions of the Policy and the payment of premiums the Society will pay the benefits in the Schedule to...the Employee named in the Schedule...". The Employee is Mr A. The Trustee is required to ensure Mr A receives the benefits in accordance with the Policy conditions. Therefore, as Aegon had received no alternative instruction from the Trustee, in the Adjudicator's view, Condition 11E was applied correctly at Mr A's NRD.
 - Mr A contended that the wording in Condition 11E, "Any balance shall be reinvested in Units of the Cash Fund at Bid Price or otherwise as the Society may reasonably determine", when taken in its ordinary meaning would have placed a self-imposed duty on Aegon to make a reasonable determination as to how the money would be reinvested, whether in the Cash fund or otherwise.

- In the view of the Adjudicator, when the whole of Condition 11E is taken into consideration, rather than a selected sentence, it is clear that any determination Aegon may make is in relation to the Bid Price rather than the underlying investment fund. Condition 11E clearly provided Aegon with the ability to carry out the fund switch and reinvest the units in the Cash fund and then “reasonably determine” whether that should be at the Bid Price or otherwise.
- Mr A argued that the purpose of switching the Policy funds to the Cash fund was to protect the customer from any potential market movements as they reached NRD, and would be looking to secure an annuity, does not take into account the fact that, with effect from 27 March 2014, the obligation to purchase an annuity was removed. He said that the obligation was removed three months before the fund switch, and this further supported the argument that the fund switch was inappropriate.
- The Policy was taken out in 1993, at which time purchasing an annuity at NRD would have been the only option. Be that is it may, the purpose of the fund switch was to protect the overall value of the fund from potentially detrimental movements in the financial market. Therefore, in the Adjudicator’s view, it was irrelevant whether the fund was used to purchase an annuity or taken in some other form as it was the value of the fund that was being protected.
- Mr A argued that Condition 11E referred expressly to the Series B Endowment Fund and said that Aegon had been unable to show that this was the same fund as the two differently named funds (WP Endowment and High Equity WP Fund) in which his investments were held.
- As explained in the letter dated 9 May 2017, from Aegon’s legal adviser, the Series B Endowment Fund was a generic term for a number of with-profit funds. These included the WP Endowment (WPE) fund and the High Equity WP Fund or WP2. It was clear, therefore that switching Mr A’s investments from the WPE and WP2 Funds into the Cash fund was in accordance with Condition 11E.
- Mr A claimed that he was not given notice of the intention to switch the Policy funds to the Cash fund. Aegon said that it issued four pieces of correspondence, all of which warned that the investments would be switched to the Cash fund at NRD. Mr A said that, although Aegon’s system notes show that this correspondence was sent, the key issue was whether it was actually received.
- While the Ombudsman would take the view that the responsibility to prove that the correspondence was sent lay with the sender, in this case Aegon, he does not generally expect the sender to take responsibility that the letter was received. Aegon should not be held responsible for the vagaries of the postal system or, for that matter, the possibility that the letter was received but was overlooked.
- It was acknowledged that incorrect information about the investments was provided by Aegon to Mr A on 20 March 2015, during a telephone call. However,

by this time the switch to the Cash fund had already occurred, and Mr A's IFA had been made aware of this. Further, it is difficult to conclude that this misinformation prevented Mr A from taking particular action given that the Policy funds had remained invested in the Cash fund.

- In summary, in the adjudicator's view, Aegon was correct to switch the Policy funds to the Cash fund at Mr A's NRD, and it should not be held responsible if any of the correspondence advising that this was to happen either did not reach Mr A or was overlooked by him or his advisers.

Ombudsman's decision

60. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A and Aegon have provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Aegon and Mr A for completeness.

61. Mr A's representative made the following final submissions:–

- It noted Aegon's very belated provision of page two to the Trustee Proposal and Members Application document, which should have been provided years ago in response to Mr A's Data Subject Access Request (**DSAR**), pursuant to which page one was provided. Despite it pointing out the absence of page two, Aegon failed to produce this until this very late stage.
- Aegon had breached data protection legislation and failed to cooperate with it and had caused significant unnecessary legal expense.
- Aegon's failure to produce page two, despite reminders, demonstrated, at least, the slapdash nature of its administration of paperwork. This was part of a recurring pattern and should be considered when assessing its assertions as to what it or its predecessor would or should have done.
- It did not accept that the wording on page two, on which Aegon relied, supported its argument for the incorporation of the then applicable Policy Booklet. The document was a proposal and application and not an agreement between the parties. The wording merely requested Aegon to do something in the future, namely, to issue a policy.
- Now that Aegon had belatedly revealed the contents of page two, it could see for the first time the crucial wording beneath the Proposer's signature box, namely that:

“Copies of the appropriate standard Policy form or particulars of the Policy to be issued and of this proposal will be supplied by the Society on request”

- This showed that Aegon's assertions, as set out in its email, that "the policy terms and conditions would have been sent to the adviser and or the trustee..." lacked substance.
- It was clear from the documentation that the statement that the policy documentation was to be sent out was incorrect. What the belatedly produced page two in fact showed was that the established procedure was not to send out the Policy booklet unless specifically requested to do so.
- The fact that Mr A did not have, and could never recall having, a copy of the 24-year-old policy booklet was thus entirely consistent with a copy of it not having been requested and Aegon not having provided a copy of it. Whatever the position when the Policy was initiated by Aegon's predecessor, now well over 24 years ago, it did not meet with current regulatory requirements, or proper practice, for a pension provider to leave it to the customer to request a copy of the terms and conditions on which the pension provider wished to rely. It was the duty of the pension provider to ensure that the customer had been provided with those terms and conditions and/or enough information as to make the customer aware of their contents before reliance was placed upon them. This, Aegon conspicuously failed to do.
- It would have expected, given the changing regulatory environment and the transfer to Aegon, that amended, or replacement terms and conditions would have been – or should have been – provided. It suspected that, as a result of poor administration, Aegon may simply have failed to provide them to its customer.
- It had previously pointed out the evidential inadequacy of Aegon relying upon the assertions of what it or its predecessor "would" or "should" have done. The total inadequacy of such assertions was highlighted by the matter addressed above, namely of Aegon claiming that documentation proved what its predecessor would have done, when in fact the documentation showed that the practice was the reverse.
- As also pointed out above, Aegon's administrative incompetence, as demonstrated by its failure to produce page two of the Proposal and Application until very recently, meant that assertions as to what letters and statements would or should have been sent out in recent years were wholly unreliable as evidence.
- As already stated above, the absolute reverse was made clear by page two of that document. It was not accepted that the alleged statement on page five of the Technical Specification, which refers to "late retirement ", was applicable to the situation applying when Mr A's funds were transferred into the Cash Fund. The situation was simply that the NRD had passed without Aegon obtaining its customer's instructions as to future investment of those funds.
- Furthermore, the Technical Specification was not alleged to be a contractual document. On Aegon's own case, it was a document that would have been sent

some 24 years previously, with the intention that it would be for an IFA, rather than the customer. There was no proof that it was in fact sent then, and it was not alleged that it was sent either to Aegon's customer, or the customer's IFA, as the NRD was approaching.

62. Aegon made the following final submissions:–

- As had been explained in previous correspondence, its evidence showed that the statement of benefits was sent in 2013 and 2014, to the trustees of the Scheme at the address that it held for them in Pratt Mews, London NW1 0AD. The early warning letters were sent to the adviser, EFG, in January and April 2014. None of these letters or statement of benefits were returned to Aegon as incorrectly addressed or addressee gone away. If the letters had been returned this would have created a new job on the system and the letters would have been re-issued to an alternative address or Aegon would have made a note that it no longer held an address for the policy holder.
- The IFA telephoned Aegon on 13 February 2015, to clarify the information which had been sent to them on 4 July 2014. It was clear from this email that the IFA could see that Mr A's funds had already been switched to cash.
- The practice of sending out Policy terms and conditions in the form of a Policy booklet referred to current and historic practice. It was clear from the Trustee Proposal and Member's Application that the Policy booklet was to be sent out following acceptance of the proposal.
- The Technical Specification stated on page 5 "on late retirement all units will be switched into the Cash Fund at NRD".
- The back page of the Trustee Proposal form, which had been signed by Mr A, refers to the Policy and states:
 - "We ask you to accept this proposal and to issue to us a policy in your current terms".
- Aegon's branch office would have forwarded the completed documentation to Aegon's head office in Edinburgh to set up. A policy number would have been generated. This would have triggered the creation of the schedule and this and the policy terms and conditions would have been sent to the Adviser and or the Trustee. Aegon could not comment on the Adviser's record keeping but said it was clear from the documentation that policy documentation was to be sent out and from the Policy Schedule that the correct Policy booklet was EPP3.

63. I note that several arguments have been put forward by Mr A's representative, including whether the automatic switch to cash formed part of the contract, questioning both the meaning and operation of the reasonable determination as to how the money would be reinvested by Aegon at NRD. Challenges have also been as to the delivery of the Policy booklet and subsequent correspondence, along with

the effect and applicability of the wording of that booklet and correspondence, and that the warnings were buried in the depths of them.

64. Irrespective of any these arguments, which have already been addressed to my satisfaction by the Adjudicator, the key point is that Mr A should have been aware that his fund would be switched to cash at NRD. He should have known this both from the correspondence sent to him and his former financial advisers, and also because of his wife's policy within the same Scheme, which had been set up on the same basis and already switched to a cash fund at NRD.
65. Considering the information sent to his advisers, and his working knowledge of the Policy through his wife's experience on reaching NRD in the same Scheme, with some basic diligence on the part of Mr A or his advisers, any potential loss would have been preventable.
66. Irrespective of the wording on page two of the Trustee Proposal form, which I address in paragraph 75 below, Aegon has confirmed that it was its usual practice to send out the Policy booklet at the same time the Policy Schedule was sent out to the Trustees, and what evidence there is indicates that this and other correspondence was sent.
67. Mr A's representatives have made much of the wording that: "Copies of the appropriate standard Policy form or particulars of the Policy to be issued and of this proposal will be supplied by the Society on request". I take this to mean that the Policy form or particulars of the Policy would be issued automatically, and it is a copy of the Trustee Proposal that will be supplied on request.
68. Prior to this, the financial adviser would be provided with the Technical Specification, which although it did not form part of the contract, did set out the key terms. It would then be for the financial adviser to explain these to Mr A. If the policy booklet was not received by the Trustee, it could of course have requested a copy of it at any point during the term of the Policy.
69. I accept that the procedure was for the policy document to be posted, and if it had not been received, it would have been reasonable for Mr A, or his financial adviser at the time, to have chased it.
70. Overall, it was unreasonable for Mr A or his financial advisers not to be aware of how the Policy worked, and it is not acceptable for them not to familiarise themselves with the Policy, reading all the documentation provided. Especially as the mechanism to switch to cash at NRD was an industry wide practice at the time that the Policy was taken out.
71. When Mr A spoke to Aegon on 8 May 2014, unless explicitly asked, there would have been no reason for Aegon to have reminded him what happened at his NRD as he ought to have already known this. Given he was approaching his NRD this would have been the stage to consider and review his retirement options, asking for information from Aegon, or more detailed guidance from a regulated adviser.

72. Instead, it was not until roughly eight months after his NRD that Mr A wrote to Aegon with his instructions to remain invested in his previous fund, by which time the switch to a cash fund had already taken place.
73. It follows that Mr A's complaint could also be outside my jurisdiction on the basis that Mr A ought reasonably to have been aware many years prior to his NRD that the fund would automatically switch to cash at his NRD, and if this went against his investment wishes, could create a problem.
74. I will determine the complaint on the basis that had Mr A wished to take advantage of the changes made shortly before his NRD to allow for a more flexible retirement, then it would have been for him to apply to do so, taking advice if necessary.
75. Finally, Aegon has apologised for not releasing page two of the Trustee Proposal form earlier, and explained that because this document was held in paper form it was likely missed when Aegon's dealt with the DSAR. In the circumstances, I do not consider that this omission was sufficiently serious as to justify making any award to Mr A.
76. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
1 May 2020