

Ombudsman's Determination

Applicant	Mr T
Scheme	Sunar Inc Retirement & Death Benefit Scheme (the Scheme)
Respondent	Aegon

Outcome

1. I partly uphold Mr T's complaint
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T's complaint against Aegon is about the reduced value of his benefits in the Scheme. Mr T says he was not told that his contributions were invested in 'initial units', and that Aegon failed to send annual statements which would have alerted him to the decreasing value of his benefits.

Background information, including submissions from the parties

4. In 1987, Mr T joined the Scheme and, following advice from a financial adviser (the **Financial Adviser**), whom I assume was appointed by the Scheme Trustees, his contributions were invested in the Mixed Fund (the **Fund**).
5. Mr T made contributions into the Fund from June 1987 to April 1988, when he left the Scheme. In June 1988, the value of his account in the Fund was about £750.
6. In 1993, the Scheme was wound up and Mr T's account in the Fund was assigned to him on 6 August 1993. In 1998 and 2004, Mr T updated his address with Aegon but, despite this, he was not sent any statements. Aegon says that they should have started sending regular statements from August 1993, when a policy (the **Policy**) was assigned to Mr T, but they did not have a system in place to do so.
7. Mr T approached Aegon in 2016 about taking his benefits. Aegon informed him that the value of the Policy in June 2016 was about £430. He complained that he had not received any statements from Aegon since the Policy was assigned to him, and that he was not told all the contributions made in the first year of membership were invested in initial units, which have a lower value than accumulation units.

8. Aegon explained that initial units are part of how they charge for the administration of the Fund. In addition, the Fund is classed as medium risk and other administrative charges have been deducted, which have led to the decreasing value of the Policy over the years. Aegon accepts that they ought to have sent Mr T statements each year, and have paid £400 to him in recognition of the error and the mishandling of his complaint.

Adjudicator's Opinion

9. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by Aegon. The Adjudicator's findings are summarised briefly below:-
 - Mr T was a member of the Scheme for less than a year and his contributions only purchased initial units in the Fund, not accumulations units. It was not an unusual practice at the time for initial units to be purchased in the early years and used as part of the charging mechanism for the investment.
 - The Financial Adviser that sold the pension plan to Mr T should have explained how initial units work. In any event, Aegon did not provide any direct advice to him regarding the Fund.
 - The pension plan was set up by the Trustees of the Scheme on Mr T's behalf and, although it appears the Financial Adviser may not have provided him with an information pack, Aegon is not responsible for the omission. The Adjudicator was not persuaded that awareness of the initial units would have made a material difference to Mr T's decision to join the Scheme and invest in the Fund.
 - Although he did not receive statements, Mr T could have tracked the performance of the Policy by contacting Aegon directly to find out the value of his investment. The failure of send statements did not prevent him from being able to find out about the value of his Policy.
 - Nevertheless, the complaint should be partly upheld because Aegon should have sent regular statements to Mr T. It would have been very upsetting for Mr T to find out about the reduced value of the Policy at such a late stage and an award of £500 would be more appropriate in the circumstances. Aegon is prepared to make a payment of £100, in addition to £400 already paid. This is more in line with what the Ombudsman would award, and Mr T should contact Aegon directly if he is prepared to accept the offer.
10. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T has provided his further comments but these do not change the outcome. Mr T says that the initial units are subject to secret charges and Aegon is unwilling to provide details of the charging mechanism. He asked if the only opportunity to explain how the charging mechanism works was when he took out the Policy in 1987, and whether Aegon has an obligation to explain the scope and

mechanism of the charges. He maintained that he should receive an appropriate level of compensation of not less than £5,000. In response, Aegon provided an explanation of the initial units and said that this would have been set out in the Policy. Aegon said that the offer of compensation is reflective of their acceptance that there were shortcomings in its response to Mr T's query.

11. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

12. Mr T considers that the charging mechanism of initial units is designed to wipe out the value of that investment over the lifetime of the Policy. He has asked again if the only opportunity to explain how the charging mechanism works was when he took out the Policy in 1987, and whether Aegon has an obligation to explain the scope and mechanism of the charges.
13. It is clearly not the case that Mr T only had one opportunity to get an explanation of the charging mechanism for the Policy. However, the first opportunity available to him would have been when the Financial Adviser sold the Policy to him. For its part, Aegon was unable to satisfactorily explain to Mr T's understanding, until now, why the Policy had not grown as much as he expected. It is not the case that Aegon refused to do so, it was unaware until Mr T's complaint that he did not understand how the short tenure of his membership in the Scheme would affect the value of the Policy.
14. Aegon does have an obligation to provide information regarding the charges applicable to its investments. However, that does not mean that every policyholder will immediately understand the effect of those charges on the value of their policy. It has taken a while for that to happen in this case, and I am glad to hear that Mr T now considers that he understands how the initial units in the Policy differ from accumulation units. However, it is not my view that the charging mechanism is designed to wipe out the value of the Policy; it is more the case that the costs of setting up the Policy are largely recovered from the initial units. Therefore, they are priced accordingly and are only purchased in the first year of the Policy.
15. Aegon has already admitted that it should have sent regular statements to Mr T. While those statements would have allowed him to easily track the performance of the investments in his Policy, it would not have explained the difference between initial and accumulation units. That was something that the Financial Adviser should have explained to him at the time Mr T joined the Scheme.
16. Aegon now accepts that when Mr T joined the scheme in 1998, the Financial Adviser had not yet prepared an information pack about the Scheme for the trustees. The failure to explain charges to him at the point of sale is a matter for Mr T to take up with the Financial Adviser or trustees of the Scheme, neither of whom are party to this complaint. However, I accept that because Mr T was unaware of the terms of the

policy relating to the use of initial and accumulation units he had no means of predicting that his fund would have performed very differently to the published performance data for the mixed fund which was based on the performance of accumulation units.

17. The only way Mr T had to understand his actual fund performance was receipt of accurate valuation statements.
18. Aegon make the point that Mr T could also have tracked the value of the Policy at any time by contacting them for more details. Of course, this does not relieve Aegon of the obligation to provide annual statements. Mr T kept Aegon updated of his address and the statements should have been sent to him since 1993. Aegon admit this did not happen because they had no system to make it happen. That is plainly maladministration. The question is whether the payment of £400 made by Aegon is sufficient to remedy the injustice caused. Mr T says not, that if he had known about the way the fund was performing he would have moved his money into one of his other pension pots and Aegon have therefore caused him financial loss.
19. I have considered this argument but do not consider that it is sustainable. The fact that he did not seek further information about fund performance since leaving the Scheme in 1988, suggests that the actual performance of the Policy was not crucial to him at the time and that he was content to rely on his own assumptions regarding the value of the Policy. In any event, proving financial loss would depend upon Mr T demonstrating that he would have decided to transfer funds on a particular date, and a comparison with the performance of any funds into which he would have moved the money. There is no evidence on any of these issues. I conclude that Mr T cannot prove financial loss.
20. I am satisfied that Aegon's maladministration caused significant distress and inconvenience and an award which recognises that fact is correct in principle. However, I do not agree that £400 is adequate in these circumstances.
21. I bear in mind, that when Mr T discovered his fund value and questioned how it had come to be valued in the way that it was, Aegon were unable to explain the reasons to him. I also bear in mind that when he questioned why he had received no statements Aegon initially claimed that these had been sent, but after many months and more thorough investigation by a senior manager admitted that this was not the case. Aegon admitted that they had been operating on a mistake about date of policy assignment and had not given him an accurate explanation of why his funds had not performed in line with published fund data.

22. Mr T questioned the explanations he was initially given on 28 October 2016 and received a correct substantive reply many emails later, on 14 July 2017. Mr T was unusually persistent in challenging the explanations that he was given and his questioning was pointed. He should not have had to make the efforts that he did to obtain information about how his fund had been valued. I find that the incorrect information given to Mr T in response to his queries and the time it took to correct those replies also constituted maladministration.
23. Aegon have submitted that distress and inconvenience is typically considered significant where there has been financial loss, or where the complainant has reasonably placed reliance, and made lifestyle decisions, based on erroneous information and that is not the case here. Although higher awards may sometimes be given where these factors are present, awards for distress and inconvenience are not an alternative source of compensation for financial loss.
24. Aegon say there was no question of Mr T losing his investment and point out that the value of the pension fund was modest. Mr T observes that this supports his argument that my focus should be on the erosion of the fund by charges. I take those points into consideration when considering the extent of the distress incurred.
25. Aegon say Mr T should not be compensated for disappointment about the performance of an investment. I agree with this point and am not making the award on that basis.
26. My reasons for considering that Mr T suffered significant distress and inconvenience are that he was deprived of the opportunity to plan his financial affairs over a prolonged period of time. The fund itself was not large, but the effect of charge erosion on that fund over a long period of time was very substantial. Mr T was certainly deprived of the opportunity to notice the effect of erosion by charges and to consider mitigating his long term exposure to them.
27. In the circumstances, I consider that an additional award of £100, making a total of £500, is more in line with the level of distress and inconvenience suffered.
28. Lastly, I turn to Mr T's comment concerning other members potentially affected by the same issue. My role is to deal with individual complaints of maladministration; it is not for me to make directions beyond individual cases brought to me. Although I would hope that AEGON will now act to deal with any similar cases. I do not regulate the pensions industry and it is a matter for AEGON's commercial judgment to decide how to train its staff.
29. Therefore, I partly uphold Mr T's complaint and make a direction aimed at remedying the injustice.

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Directions

30. Within 28 days of the date of this Determination, Aegon shall pay £100 to Mr T, in addition to the earlier payment of £400, in recognition of the significant distress and inconvenience caused to him by their administrative error.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2018