

The complaint

Mrs L complains, via her representative, that her late husband took out annuities via Walker Vallance And Company ("Walker Vallance") which included no spouse's or widow's pension so the income stopped when Mr L sadly passed away. Mrs L has been left without the income and would now like it to be paid.

What happened

Mr L had five private pensions from which he wanted to take benefits in 2003. The total value of the pensions was around £100,000. Walker Vallance helped him to arrange the annuities.

One policy with Norwich Union (now Aviva) had a Guaranteed Annuity Rate (GAR) that was more generous than what was available on the open market. The quote on file shows an income of £1,850 a year was available from a fund of £16,654, which was 11%. This income would be payable for Mr L's lifetime, or five years, whichever was longer. There was no option to add a spouse's or widow's pension and still benefit from the GAR.

Mr L combined the other four pensions (from three different providers) to buy an annuity with Friends Provident (also now Aviva). He took 25% as tax free cash with the rest buying a level annuity on Mr L's life only with a 10 year guarantee period. So the annuity would be paid as a guaranteed amount for his life, or ten years, whichever was longer.

Walker Vallance ceased trading shortly after arranging Mr L's annuities. The clients were transferred to another firm, where the Walker Vallance adviser worked until 2012 when he retired.

In August 2021 Mr L initiated a complaint with Aviva, which was now the provider of both annuities. There were four main parts to the complaint: the annuity was not right for his circumstances; he was not warned that the amount was not guaranteed; it had not been considered that he had a financially dependent spouse; and no explanation had been given about the right to shop around. Since these issues related to the advice to set up the annuities, which was not Aviva's responsibility, they referred Mr L to Walker Vallance.

Sadly Mr L passed away before the complaint was resolved. Now Mrs L has brought the complaint to this service via her representative. She says that she should have been included as a beneficiary. Walker Vallance no longer have the files from the time of the advice but have provided a response, rejecting the complaint.

Our investigator did not uphold the complaint. Since Mrs L did not accept that outcome, the case was referred to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The events which are the subject of the complaint happened in 2003, which could potentially

mean the complaint was time barred. And Walker Vallance have asked us to decide whether the complaint should be time barred. Walker Vallance say that Mrs L was present at the first meeting. But I don't think she would have known that she potentially had cause for complaint until at least when her husband made the complaint. Since the complaint was brought within three years of this, I find that this is a complaint I can consider.

As a result of the time that has elapsed, one of the outstanding characteristics of this case is the lack of hard evidence from both parties. We have application forms and other correspondence from when the annuities were set up. Walker Vallance have destroyed their records, which they were perfectly entitled to do, and it appears that Mrs L no longer has copies either. Both sides have provided us with statements setting out their respective cases although clearly these date from long after the events in question.

I have therefore made my decision on the balance of probability and based on the evidence that I have available.

Of the four main elements of the complaint, one is relatively straightforward as there is hard evidence to support a conclusion.

Mrs L says that Mr L was not told of his ability to shop around, the open market option.

But the open market option was exercised for the four non-GAR policies to buy an annuity with Friends Provident. If it had not been, then Mr L would not have had the Friends Provident (now Aviva) annuity, but separate annuities from the existing providers. And Walker Vallance's details are clearly shown on the Friends Provident application form so we know this was done with their involvement.

A letter from Norwich Union on 15 January 2003 has a section headed "What is the open market option?" An illustration dated the same day and sent along with his letter was signed by Mr L and Walker Vallance, so I think it is highly likely that he saw the letter.

So I find that Walker Vallance did make Mr L aware of the open market option in relation to these policies. I am therefore unable to agree that Mr L was not made aware of the ability to shop around.

Mrs L also says that they were not warned that the amount of the pension was not guaranteed. With an annuity, guaranteed generally means that the income is the same each month or year. So in those terms, the payments from these two annuities were guaranteed. But I think that what Mrs L means is that neither she nor Mr L knew the payments would stop on Mr L's death.

The Friends Provident application form asks on page three whether a spouse's or dependant's annuity is required. The 'No' option has been selected, and there are no spouse's details entered where Mrs L's details would go if the intention was to provide a widow's benefit for her. I think this section of the application is clear and the overall application was signed by Mr L, which would tend to support the view that he was, or ought reasonably to have been, aware of the options that he selected. But Mrs L's representative has said that the Walker Vallance adviser encouraged Mr L to sign without fully explaining. But if Mr L had any cause for concern then it is unlikely that he would have proceeded. He would also have had the benefit of the cooling off period if he had any doubts. So I think, on balance, that it is more likely than not that Mr L knew that no spouse's benefit was included in the annuities.

Mrs L says that the annuities were not suitable because she was financially dependent on Mr L. She says that the annuities should have included a widow's pension so the income

would have continued after Mr L's death.

If I am to hold Walker Vallance responsible for this, first I have to establish whether advice was given. Because if Mr L made the decision himself then it would not be fair to hold Walker Vallance responsible.

Walker Vallance has said it advised Mr L in relation to his GAR, but did not advise Mr L whether to take a widow's benefit for the open market annuity. The adviser says he just gave Mr L details of the various options available to him and allowed him to choose. Mrs L also told us, via her representative, that Mr L "was given no advice". But I'm satisfied advice was given in relation to both annuities. I say this because Mr L took out the annuities with the help of an adviser. The adviser had some knowledge of their personal and financial circumstances so I think on balance Mr L was entitled to believe that both of the annuities he purchased carried the approval of the adviser and that both sales should therefore be judged on the higher standard that advised sales entail

The Norwich Union policy offered a GAR which was higher than the rate available on the open market. Norwich Union did not offer the option to add a widow's pension. Given that the Norwich Union policy made up only a small percentage of the available pension funds, I think it is more likely than not that it was suitable to take the GAR in this case compared to shopping around.

In respect of the open market option on the other policies, Walker Vallance say that Mrs L was not dependent on Mr L. They have referred to other assets of £11,000 and a personal pension worth £15,709. Walker Vallance also say that Mrs L had her own florist business. I can't verify the exact amount of all Mrs L's financial arrangements at the time. But I note that Mrs L's representative has seen Walker Vallance's research and hasn't disagreed with what it has found in this respect. I can also see the printouts provided by Walker Vallance, which do indicate Mrs L was financially catered for outside of Mr L's pension. I don't agree that this is enough, in isolation, to show conclusively that Mrs L was not dependent on Mr L, although I'm satisfied it does show that she had some resources of her own.

Furthermore, Mr L's Will, made in 2004, provides for Mrs L in two ways. It leaves assets to a trust, the beneficiaries of which are Mrs L and her children. The Will also contains Mr L's wish that Mrs L should be considered the main beneficiary of the trust. Secondly, the Will leaves the rest of Mr L's assets, that do not go to the trust, directly to Mrs L.

So we know that Mr L made provision for Mrs L by leaving assets to her outside of his pensions and that Mrs L appears to have had some resources of her own.

In that context, I'm satisfied that taking an annuity without a widow's pension was suitable. It offered a higher income that Mr and Mrs L could enjoy together, with other assets then available to provide for Mrs L on Mr L's death. A ten year guarantee also meant that a decent proportion of the fund would have been paid out as income regardless of the time of Mr L's death so this provided further protection for Mrs L. The ten year guarantee would have reduced the amount of income received by Mr L and wasn't a default option, so the fact that it was added also strongly suggests that Mr L and Walker Vallance carefully considered the trade-offs between income and spouse's benefits; it doesn't suggest to me that Mrs L's situation was overlooked.

Furthermore, in giving advice on the open market option, I see no reason why Walker Vallance wouldn't have been paid the same commission regardless of the options selected (guarantee period, spouse's pension and so on), given the commission would usually be

based on the size of pension fund. So there wouldn't have been, as far as I can see, any financial reason for Walker Vallance to favour one shape of annuity over another. That doesn't preclude Walker Vallance making a mistake of course. But, for the reasons given above, I can't reasonably say that applies here.

So on balance, and based on the available evidence, I find that it is more likely than not that Walker Vallance acted fairly in relation to Mr L's annuity sales.

Therefore I do not uphold the complaint.

My final decision

For the reasons given above I do not uphold Mrs L's complaint against Walker Vallance and Company. I do not require Walker Vallance to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 17 August 2023.

Martin Catherwood
Ombudsman