

## The complaint

Mrs W complains that Aviva Life & pensions UK Limited (Aviva) is only paying a small proportion of her late husband's pension to her and she is dissatisfied with Aviva's explanation of how it arrived at the figure payable.

## What happened

Mr W purchased a pension annuity with Aviva in 2009. He passed away in December 2022 and had been receiving a pension of around £370 per month. But Aviva said the dependent's pension payable to Mrs W would only be £14.68 per month. Unhappy about this Mrs W complained to Aviva.

Aviva didn't uphold the complaint. It said Mr W's pension plan had comprised two parts. A smaller protected rights part and a larger non-protected rights element. It said when the annuity was set up the protected rights part provided a pension for Mr W of £29.36 per month with a mandatory 50% spouse's pension of £14.68 which was now due to be paid. It said the larger non-protected rights element hadn't provided for any spouse's pension, which was why payments had stopped.

Mrs W wasn't happy with this explanation and referred her complaint to our service. She said her husband had saved thousands of pounds into his pension and only received around £400 per month in payments.

Our investigator looked into the complaint, but she didn't uphold it.

She said unfortunately Aviva didn't have full records. But it had provided a copy of a confirmation letter dated 25 November 2009, sent after it had set the annuity up. And based on this, it appeared to have been set up correctly. She said Mr W's pension had in part been contracted out of the State Earnings Related Pension Scheme (SERPS) and this had given rise to the protected rights element in his plan. The original rules about contracting out had stated that a dependant's pension of 50% had to be provided from protected rights funds.

The confirmation schedule confirmed that Mr W's pension was split £93,888.86 in non-protected rights and £8,422.80 in protected rights. From the non-protected rights fund Mr W had taken tax free cash of £23,472.22 and purchased an annuity on his life only with the balance. This provided a pension of £4,442.88 per year before any income tax. But because no dependant's pension had been selected this income stopped on his death. The protected rights element provided tax-free cash of £2,105.70 and an income of £352.32 per year (£29.36 per month). With a 50% dependant's pension of £14.68, which was now due for the rest of Mrs W's life.

Our investigator said whilst Aviva hadn't been able to locate copies of the application forms completed by Mr W, she thought it fair to conclude things had been set up properly. Because Mr W hadn't raised any queries after he'd received the confirmation schedule or tried to cancel the setting up of the annuity as he could have done. She said the confirmation schedule confirmed the annuity couldn't be cashed in at any time or have a surrender value. So, she said she didn't think Aviva had made any error.

Mrs W didn't agree. She said it was unfair that Aviva only had to pay her £14.68 a month which was too little to live on. She said it didn't have enough evidence to justify this, and that her husband had received only a small amount of money that had been in the pension.

Our investigator said she would query why Aviva didn't have the application paperwork completed by Mr W. Aviva searched its records and did locate some application details which it provided. This didn't set out details of the annuity profile that Mr W had selected. Our investigator said whilst this didn't confirm the type of annuity Mr W had wanted to set up, she still didn't think Aviva had made an error.

As Mrs W doesn't agree it has come to me to decide.

### **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.

Having done so I am not upholding the complaint.

I understand how distressing all this must be for Mrs W, but I don't think Aviva has made an error or treated her unfairly. I'll explain why.

Aviva wasn't providing Mr W with advice about his pension plan or setting up the annuity. As our investigator has explained when a pension annuity is purchased various options are available. And at the time Mr W purchased his annuity these could only be selected at outset. Options included whether a dependant's pension would be paid if the person buying the annuity died or whether the pension will increase in payment. Adding options like these will reduce the amount of income the annuity pays. And at the time it wasn't possible to guarantee that the annuity would return the full amount paid into it. So, the longer a person lived the better value the annuity would be. And until 2012, when the rules changed, protected rights benefits had to provide for a 50% spouses pension if the person buying the annuity was married.

It's frustrating that Aviva doesn't hold full records, but that isn't surprising given the time that has passed since Mr W set the annuity up. Data protection laws have increasingly discouraged the retention of records that are more than six years old. But the records it does have confirm that Mr W did apply for an annuity. These include an application form signed by both Mr and Mrs W dated 15 October 2009.

This form doesn't ask for the specific annuity options required to be entered. Instead, it asks for a quotation reference to be given in a section titled:

*"Quote ID of how benefits are to be set up printed on the bottom of each page of your illustration."*

And a handwritten reference number has been entered. The form also has a section for the approximate pension values split between protected and non-protected rights to be entered. With £8,116.00 and £92,672.00 have been entered respectively. I think it's likely that these values were taken from the illustration provided to Mr W.

I did note that the Quote ID noted on the confirmation letter differed from that on the application form. So, I asked Aviva about this.

It said that annuity illustrations were only guaranteed for a certain period of time and if a requote was prepared on the same basis the second part of the Quote ID number would be updated. And that the number would also be updated each time the quote was recalled on the system, for example when the funds were received to set the annuity up. The confirmation schedule dated 25 November 2009 confirmed the application date was 15 October 2009, so it's likely the original quotation Mr W would have received would have expired and been updated more than once between him receiving it and the annuity being set up. So, I think this is a reasonable explanation for the different number.

And once the annuity had been set up Aviva did send Mr W confirmation details setting out what was to be provided. It would also have provided him with cancellation documents giving him the right to change his mind if the arrangements weren't what he wanted. As Mr W didn't contact Aviva, I think it is reasonable to assume he was content with what had been arranged.

I asked Mrs W if she'd been able to locate any more records from the time, but she hasn't responded. So, from the evidence available there is no indication that Aviva has made any error and it simply set up the type of annuity profile that Mr W applied for. That means I can't uphold this complaint and Aviva needn't do anything further.

### **My final decision**

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 20 December 2023.

Nigel Bracken  
**Ombudsman**