

The complaint

The estate of Mrs L complains that abrtn Client Management Limited arranged an annuity without a spouse's pension in contradiction of Mrs L's wishes.

What happened

The late Mrs L held a personal pension with Standard Life, subsequently abrtn. In September 2009 she met with a Standard Life adviser to discuss what annuity options she could purchase with her pension fund.

This meeting on 16 September 2009 was followed by a letter the next day documenting the advice provided, to take the maximum available tax-free cash and purchase an annuity with the remaining funds from Scottish Equitable. The annuity should have the maximum available guarantee attached and a 50% widow's pension. The letter went on to quote an annual income of £11,305.20.

A revised illustration produced at this meeting on 16 September 2009 for an annuity purchase with Scottish Equitable with only a ten-year guarantee showed an income of £11,581.80.

The illustration included a 'detailed breakdown of your annuity' section which noted the purchase price, retirement income, escalation and guarantee period with no spouse's annuity option included. The business hasn't been able to provide any other illustration from this date.

Mrs L signed an application form for the annuity with Scottish Equitable on 23 September 2009 – this gave an illustration basis and reference matching the revised illustration mentioned above. Within section 1.2 of the application Mr L's details had been input, this section requested a dependent's details if a pension/annuity is to be provided upon the annuitant's death. This section was crossed out and marked 'Not Applicable'.

Standard Life forwarded the completed application, illustration and identity documents to Scottish Equitable on 1 October 2009 which was received on 5 October 2009.

On 14 October 2009 a second illustration for a Scottish Equitable annuity was produced on the same basis of the previous illustration but for the current fund value which gave a guaranteed annuity of £11,643.72.

On 16 October 2009 Scottish Equitable wrote to Mrs L with a welcome pack confirming the annuity that had been set up to pay £11,643.72 a year. The enclosed annuity schedule confirmed the policy details. The fund had been used to purchase the annuity on a non-escalating basis, guaranteed for 10 years, payable monthly in advance.

When Mrs L sadly died in February 2020, Mr L became aware that there was no provision for a spouse's pension included with the annuity, as the guarantee period had also expired no further payments were due from the policy. Mr L complained to the business that the annuity had not been set up correctly.

The business did not uphold Mr L's complaint and as an agreement couldn't be reached the matter has been referred to this service for review.

Our investigator looked into matters but didn't uphold the complaint. She concluded that the evidence supported that the annuity was setup by Mrs L without a spouse's pension and this was the choice made by Mrs L.

Mr L disagreed, in summary he believes the application form was altered after it was submitted by Mrs L – and that she had wished to have a spouse's annuity attached to the pension.

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 agree with the investigator's findings and broadly for the same reasons.

I appreciate Mr L will be unhappy with this, but I don't agree with his position that the application form was altered to reflect something Mrs L hadn't requested.

The evidence doesn't give a clear picture of how Mrs L went from wishing to have a spouse's pension to having an annuity without one. In situations such as these, I need to decide on the balance of probabilities (using the evidence we do have), what likely happened. I appreciate Mr L strongly believes something untoward occurred that meant Mrs L had an annuity without a spouse's pension. But I don't agree, I think it's most likely that Mrs L simply chose not to include a spouse's pension. Mrs L would've had different illustrations to look at on the different basis's and I think she chose one without the spouse's pension – in turn receiving a higher annuity. I say this because there is no incentive or motive for the adviser (or the product provider) to alter the annuity against the wishes of Mrs L. They will still receive the same payment regardless. And secondly, Mrs L was given information confirming the basis of the annuity on more than one occasion – without a spouse's pension – and she didn't look to correct this. This suggests it was in line with her choice.

Removing the spouses pension meant that the amount of annuity paid each year would increase and with a ten-year guarantee in place there was still protection for Mr L in place if Mrs L was to pass away within that period.

The annuity schedule showed there was no spouse's pension, and the accompanying letter asked Mrs L to call immediately if any of the details were incorrect. It seems no call was made.

I appreciate that the original recommendation letter included a recommendation for a 50% spouse's pension. But there was a revised illustration produced on the day the recommendation letter was dated, which didn't include a spouse's pension. I think it is clear that at the very least, the option of an annuity without a spouse's pension was discussed. And it was this illustration that was included and referenced in Mrs L's application for the annuity.

The application form did include Mr L's details within the joint life section – although marked non applicable. And the annuity form (sent out after the annuity was in payment to confirm Mrs L's personal details) included Mr L's details in reference to a joint annuitant. But it's not unusual for changes to be made following a recommendation letter. And it's also not unusual for customers to include information on forms that aren't relevant – especially as pension's is

not an area in which many people are certain in their understanding.

The form sent after the annuity was setup was a standard form and it said a second annuitants' details only need to be completed if the annuity was paid on a joint-life basis. At this point Mrs L had already received confirmation of the annuity basis which didn't include a spouse's pension, but this section was completed in any event. Mrs L had selected a ten-year guarantee, which Mr L could benefit from, and it might well be that this is why it was thought Mr L's details needed to be included.

Ultimately, based on the evidence we have I don't think there is enough to conclude that the business did anything wrong. There are gaps in the evidence that have to be filled in using the balance of probabilities – and so I can understand why Mr L might feel aggrieved at my decision. However, the evidence shows an illustration produced and referenced in the application form without a spouse's pension. Mrs L didn't say at the time that the basis was incorrect when she received on two occasions confirmation of the annuity basis without a spouse's pension. And there is no rational explanation as to why the adviser would go against Mrs L's wishes. I think its most likely that after the initial conversation, Mrs L perhaps in discussion with the adviser changed her mind about the basis of her annuity and the adviser (and the pension provider) arranged the annuity in line with her wishes.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs L to accept or reject my decision before 28 September 2023.

Simon Hollingshead
Ombudsman