

The complaint

Mrs B, as the executor of the estate of Mr B, has complained about the way Aviva Life & Pensions UK Limited (Aviva) has handled Mr B's annuity.

What happened

Mr B set up this pension plan in 1998. At the time the plan documentation stated that the annuity would include a 50% spouse's pension.

When the plan was set up regulations stated that the annuity that was purchased using Protected Rights had to include a spouse's pension. However, this changed in 2012 when the Pensions Act 2008 removed the restrictions relating to Protected Rights, including the requirement to provide a spouse's pensions. These changes came into effect on 6 April 2012.

In March 2008 Aviva wrote to Mr B to explain that his chosen retirement date was approaching and provided illustrations of his retirement benefits available from the plan which included the spouse's pension. Mr B didn't choose to retire at this time.

In April 2013 Aviva issued plan information to Mr B and his independent financial adviser (IFA) incorporating the changes which came into effect in April 2012. It told him that the annuity could be set up on a single life basis (without provision for a spouse's pension) or on a joint life basis with a spouse's pension.

Later in 2013 Mr B decided to set the annuity up with guaranteed period of five years. He also completed the relevant application form to confirm that he didn't want to set up any provision for his spouse upon his death.

Mr B sadly passed away in September 2017. On 26 July 2018 Mrs B returned the beneficiary payment form to Aviva. In August 2018 Aviva informed Mrs B that the annuity had been set up to provide guaranteed payment for a period of five years (with the final payment being due on 29 August 2018) and no spouse's pension was due.

Mrs B then complained to Aviva in September 2018. She said that the original paperwork of the plan confirmed a spouse's pension would be paid so Aviva should honour that. She said Mr B had misunderstood the annuity application forms because he had crossed out a number of items on the form. She said the annuity application forms were not written in plain English and the annuity was set up in error so the plan should reset back to 2013 to recognise her as a dependant.

Aviva didn't uphold the complaint, so Mrs B referred it to The Pension Ombudsman (TPO) in 2020. The complaint was not upheld. TPO stated that Aviva was correct in offering Mr B a choice in 2013 after the change in legislation on the format of the payments from the plan. And it was right to offer Mr B the option of an annuity without a spouse's pension.

Mrs B then brought her complaint to this Service raising the following complaint points:

- The annuity application form was not in plain English.
- Aviva didn't carry out adequate due diligence when setting up Mr B's pensions.
- Aviva didn't consider Mr B's vulnerabilities when setting up the pension in 2013.
- Copies of important letters weren't sent to Mr B's financial advisers.
- Aviva sent letters about Mr B's pension to two different IFAs thereby breaching Mr B's confidentiality.

The complaint was assessed by one of our investigators who felt it couldn't be upheld. He explained that because of the final decision from TPO he wasn't able to consider all of the points Mrs B had raised. So all he could consider were the points around Mr B's vulnerability and what Mrs B feels was Aviva's breach of Mr B's confidentiality.

Having done so he wasn't satisfied that Mr or Mrs B had made Aviva aware of any potential vulnerabilities. Therefore, without being told, it wasn't reasonable to expect Aviva to have known or taken them into consideration in the way Mrs B had said she had expected. He also found that the two IFAs had both been involved with Mr B's pensions arrangements as either pension advisers or administrators. Therefore, in Aviva sending documents about Mr B's pension to either or both no breach of confidentiality had taken place.

Mrs B didn't agree with the assessment and responded with the following comments:

- Her original complaint was only about the annuity policy and Aviva not allowing her the monies. However, she has now discovered that Aviva made Mr B delay his retirement which he initially wanted to do in 2008. She has reasoned that had he been able to do this the annuity would have been able to provide her with the lump sum because at the time the original instructions would have been valid.
- Mr B's employer, who had established the pension, went into liquidation in 2004 and the communications to Aviva from this time mentioned all of Mr B's policies. So Aviva would have known about all of his pensions and what provisions they made in the event of his death. Therefore, as the other plans had provided her with a spouse's pension Aviva would have known about Mr B's intention for the plan in question and should have looked at all the plans as a whole. The three policies were all part of Mr B's total pension provision through his employer. So the annuity must be considered within that context.
- Pension application forms should be witnessed or countersigned by IFAs/ pension administrators.
- She reiterated the points she had previously made, that:
 - The application form in 2013 was not in plain English.
 - Aviva didn't carry out due diligence.
 - Aviva didn't consider the vulnerabilities of Mr B when setting up 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 outcome reached by the investigator.

As the investigator already stated, given a formal determination has already been carried out by another Ombudsman Scheme (TPO) I cannot decide the points TPO has already decided upon.

Therefore, this decision will cover the following complaint points:

- Whether Aviva should have treated the annuity in the same way and Mr B's other pensions plans which did provide for a spouse's pension.
- Mr B's purported vulnerability at the time of signing the annuity applications forms in 2013.
- Aviva alleged breach of confidentiality by corresponding with two different advisers about Mr B's pension.
- Aviva apparently forcing Mr B to delay his retirement from 2008.
- Pension application forms should be witnessed or countersigned by IFAs/ pension administrators.

In terms of Aviva considering Mr B's annuity within the broader context of Mr B's other pensions, it is important to make clear that despite a number of policies being provided by Mr B's employers each plan would always remain separate. Therefore, each plan contains its own provisions and instructions therefore it would be wrong for Aviva's to make its decisions on the annuity payment based on the broader context. Its duty is to act upon the instructions the policyholder provided at the time of setting up or updating each separate plan. Which from the information I have seen Aviva did.

If Mr B was vulnerable at the time then it was his responsibility to make Aviva aware of this. And it was for him to let Aviva know if he had difficulties in understanding the form. The evidence I have indicates Mr B didn't do this therefore it isn't reasonable for Aviva to have known this. Also, Mr B had IFAs involved and so he could have asked them for clarity if he needed it.

Furthermore, having looked at the application form from 2013 I don't think anything on there reasonably should have caused Aviva to question Mr B or his understanding. Yes, there are crossings out but nothing indicates to me Mr B had capacity issues.

In terms of Aviva breaching Mr B's confidentiality, I have seen that Mr B had two different IFAs involved in his pension arrangements therefore it doesn't seem unreasonable to me that Aviva wrote to both or either of them during the time it was working on Mr B's annuity. Therefore, I don't think Aviva breached any confidentiality in writing to them because the IFAs were already involved in the matter.

With regards to Aviva blocking Mr B's retirement in 2008, I have seen no evidence of this and I think this would be very unlikely. If the suggestion was that his pension didn't have a large enough value to allow for Mr B to have received a decent income at that point in time then this is reasonable and the sort of thing I would expect from an administrator of a pension.

In terms of what Mrs B has said about having pension applications countersigned, while I can appreciate why she has said this, this isn't something that I can comment on and isn't within my remit to address. The application forms and processes for pensions are not established by this Service and Mrs B should approach a different organisation such as The Pension Regulator should she want to pursue this point.

Overall therefore, while I appreciate how difficult this has been, my conclusion is that Aviva hasn't done anything wrong. I can't comment on the complaint points TPO addressed in its

final decision. And I can find no evidence to substantiate the additional points Mrs B for the reasons I have detailed above.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 28 March 2024.

Ayshea Khan
Ombudsman