

Ombudsman's Determination

Applicant	Mrs T
Scheme	Canada Life Lifetime Annuity (the Annuity)
Respondent	Canada Life Limited (Canada Life)

Outcome

1. I do not uphold Mrs T's complaint and no further action is required by Canada Life.

Complaint summary

2. Mrs T has complained about the incorrect information Canada Life provided in relation to her late husband's (**Mr T**) annuity. As a result of this, she was expecting to receive guaranteed payments until 2024. To resolve the complaint, she would like Canada Life to honour the incorrect quote of guaranteed payments to 2024 or offer a higher award for the distress and inconvenience caused.

Background information, including submissions from the parties

3. Mr T set up an annuity with Canada Life in 2014, with a payment start date of 25 February 2014. The Annuity had been set up on a joint life basis, meaning Mrs T would receive a 'Second Annuity' in the event of his death, and contained a 'Continuing Instalment Guarantee'. He died in 2015.
4. On 14 April 2015, after Mr T had died, Canada Life sent Mrs T a letter (**the 2015 Letter**) to confirm that the guaranteed payments from the Annuity were due to be paid. It included a 'Claim Information Form' to be completed by all close relatives and anyone else wishing to make a claim on the remaining guaranteed payments. This was because Canada Life had the discretion to decide who to pay the guaranteed payments to. Canada Life also provided the following information:-
 - The Annuity payments were guaranteed for the first 10 years.
 - The last payment was due on 25 January 2024.
 - The gross monthly payment was £235.43, before tax.

- Payments of the Second Annuity that Mrs T was entitled to, would then start from 25 February 2024. This would amount to £141.02 a month, before tax.
5. On 12 May 2015, Canada Life wrote to Mrs T, saying that it would be paying the guaranteed payments to her, but it did not reconfirm the sums, or the timeframes involved.
 6. On 21 January 2019, Canada Life wrote to Mrs T to advise that the guaranteed payments had ended, but that her payments would continue to be paid under the Second Annuity. It confirmed that she would receive £1,692.35 a year, before tax, from 25 February 2019.
 7. On 3 April 2019, Mrs T telephoned Canada Life to question the duration of the guaranteed payments. The following day, Canada Life wrote to Mrs T to apologise for the incorrect information it provided in the 2015 Letter and any inconvenience this caused. It said that the policy had been taken out on a joint life basis with a five-year guarantee and enclosed a copy of the policy schedule for Mrs T's information. As payments had started on 25 February 2014, the guaranteed period expired on 25 January 2019.
 8. On 25 April 2019, Mrs T contacted Canada Life to complain about the incorrect information. She said she relied on the guaranteed payments but did not specify what for.
 9. Canada Life issued its response on 2 May 2019, where it again apologised for the error in the 2015 Letter. It said:-
 - It had incorrectly advised her that the guaranteed payments would be paid for 10 years. The Annuity had a guaranteed period of five years and Mr T had selected for the policy to continue with Mrs T after he died (the Second Annuity).
 - It explained that Mr T had selected this option with no overlap, meaning that the guaranteed payments were paid first. When the guaranteed period expired, payments would then continue to be paid to Mrs T under the second annuitant's part of the policy. This could be seen on the policy schedule and the personal example of Mr T's annuity (see Appendix A for the wording).
 - It accepted responsibility for the error, but as the Annuity's documents confirmed that Mr T had purchased a five-year guarantee period, it could not pay the guaranteed payments for a further five years.
 - It apologised and offered Mrs T £500 in respect of any distress and inconvenience caused.

Mrs T's position

10. She does not accept the £500 offer.
11. The sum in question appears to have been brushed off as an administrative error. While it may be an "inconsequential amount of money to Canada Life", she says it makes a big difference for her.
12. Since receiving Canada Life's letter in January 2019, she has been worried about her finances.
13. She questioned whether she is entitled to receive a lump sum payment from the pension.

Adjudicator's Opinion

14. Mrs T's complaint was considered by one of our Adjudicators who concluded that there had been maladministration by Canada Life, but no further action was required. The Adjudicator's findings are summarised below:-
 - Canada Life provided incorrect information in the 2015 Letter, so maladministration had occurred. After reviewing the actions of both parties, the Adjudicator concluded that the necessary elements for a legally binding contract were not present.
 - The evidence demonstrated that there had been a clear representation that was unequivocal, as Canada Life had said in the 2015 Letter that the Annuity payments were guaranteed for the first 10 years. It did not say that this could vary or change. Canada Life owed Mrs T, the beneficiary of the guaranteed payments a duty of care, particularly as it knew or ought to have known that Mrs T would have relied on the 2015 Letter.
 - Although, the misstatement could not have been made by somebody exercising reasonable care, it was the Adjudicator's view that there was no successful claim for negligent misstatement. This is because while Mrs T may have relied on the 2015 Letter, there was nothing to suggest that, had Canada Life provided her with correct information, she would have done anything differently. So, there had been no financial loss in that regard.
 - It may have appeared as if Mrs T had experienced a financial loss on the basis that she was not going to receive guaranteed payments for as long as she thought. However, Mrs T was never entitled to receive guaranteed payments until 2024. As the Annuity provided guaranteed payments for a five year period, Canada Life could only make payments in accordance with the Annuity's terms and conditions, so, Mrs T was only ever entitled to guaranteed payments until January 2019. But for Canada Life's error, Mrs T would not have anticipated guaranteed payments until 2024. As a result, her loss was a loss of expectation.

- Canada Life can only pay the benefits to which Mrs T is entitled, and having reviewed Canada Life's offer, the Adjudicator thought this was adequate and in line with my Office's guidance for non-financial injustice. The Adjudicator noted that Canada Life could have identified its error at any time between the 2015 Letter being issued and January 2019. In addition, that it would have been helpful had it done so by the time it confirmed that the guaranteed payments were going to be paid to Mrs T. However, the incorrect information had only been provided once and Canada Life had taken reasonable steps to put matters right. So, the Adjudicator's view was that the circumstances did not warrant a higher award.
 - With regard to an entitlement to a lump sum, the Adjudicator reviewed the Annuity's provisions (see Appendix B). There is no reference to a lump sum being applicable in Mrs T's circumstances, so the Adjudicator was satisfied that it was not an available option.
15. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T's further comments are summarised below:-
- The additional money would have helped her to do urgent repairs to her house and have a little more heating during the winter months. She also planned to save money for a trip to visit her son and grandson.
 - She relied on the guaranteed payments for general living as she was experiencing some difficulties with her finances. The guaranteed payments reassured her that she would be able to cope.
 - Canada Life had a number of years to notice that it had made a mistake. Instead it sent her a letter in January 2019, to say that her payments were due to be approximately £100 less a month, which was a shock. As a result, she believes that Canada Life should honour the payment period stated in the 2015 Letter.
 - She believes that when the pension loss is calculated, it qualifies her for a severe if not exceptional distress and inconvenience award.
16. I note the additional points raised by Mrs T, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

17. Canada life can only pay the benefits due from the Annuity in accordance with the policy provisions. In this case, the guaranteed payments should only have been paid for a period of five years. Mrs T claims that Canada Life should honour the incorrect 10-year period as otherwise she experiences a financial loss. However, a direction to Canada Life to cover the financial loss resulting from the incorrect 2015 Letter, can only be made if there is a successful claim of negligent misstatement or a contract had been established.
18. The requirements for contract formation are: offer and acceptance; consideration; intention to enter legal relations; and certainty, as set out in *Carlill v Carbolic Smoke*

Ball Co (1892) and reaffirmed in *Blue v Ashley* (2017). Having reviewed the circumstances in this case, I do not consider that a contract has formed. While the guaranteed payments may be seen as an offer that Mrs T accepted, I cannot see that there was any consideration between Mrs T and Canada Life nor an intention to enter legal relations.

19. For a claim of negligent misstatement to succeed in this case, it requires the following:-
 - A clear, unequivocal, incorrect representation, such as the incorrect 10-year guaranteed payment period in the 2015 Letter.
 - Canada Life must have had a duty of care owed to Mrs T. As she was a beneficiary, Canada Life did owe her a duty of care.
 - The duty of care must have been below a reasonable standard. Canada Life produced an incorrect letter that it knew Mrs T would have relied on. In doing so, its duty of care was of an unreasonable standard.
 - Lastly, Mrs T must have reasonably relied on the incorrect information and, in doing so, experienced a reasonably foreseeable, irreversible loss that she would not have suffered had Canada Life provided the correct information. This is where the negligent misstatement claim fails.
20. I appreciate that Mrs T was relying on the additional five years' worth of guaranteed payments for house repairs, general finances and a holiday. However, these cannot be considered as financial losses that she would not have incurred had she received the correct information. I say this as, had she been correctly informed of the five-year guaranteed payments period, she would be in the same financial position as she finds herself in now. Instead, Mrs T has experienced a loss of expectation as she thought she was more financially secure and in a position to pay for house repairs as well as a holiday. As a result, Canada Life is not required to honour the extended guaranteed period and has correctly paid the guaranteed payments as set out in the Annuity's provisions.
21. I acknowledge that Canada Life could have identified its error earlier. I also appreciate that the realisation that there had been a mistake, and that she was not going to receive as much money as she had expected, must have been distressing for Mrs T. Nevertheless, I do not agree that circumstances warrant a higher award than the £500 that Canada Life has already offered. There was only one instance of maladministration and, when identified, Canada Life quickly apologised and subsequently offered £500 for the distress and inconvenience caused. If Mrs T wishes to accept the offer she should contact Canada Life directly.

CAS-32284-M7X0

22. I do not uphold Mrs T's complaint.

Anthony Arter

Pensions Ombudsman
30 September 2020

Appendix A

Wording from the personal example of Mr T's annuity

Second Annuitant's Pension	The Second Annuitant's Pension would become payable in the event of the First Annuitant's death. It would be payable without overlap. [...]
First Payment Date	The first payment will be made on 25/02/2014.
Payment Frequency	The payments will be made monthly in arrears. No final proportional payment will be made at the date of death.
Guaranteed Payments	The First Annuitant's pension [...] is guaranteed for 5 years, and for life thereafter. In the event of the First Annuitant's death within this period, the payments will continue to be made until the end of the period.

Appendix B

Lifetime Annuity Policy Provisions

4. Death benefits

4.1 Subject to death the provisions in section 4.2 relating to Guaranteed Payments on GMP and/or Protected Rights Annuity Elements to a surviving spouse or civil partner, all benefits under this section will be paid either to or as requested by you. If you are the Annuitant, it will be paid to or for the benefit of any one or more of:

- any person, charity, association, club, society or other body (including trustees of any trust whether discretionary or otherwise) nominated in any written expression of wishes by you or, if you die before any Second Annuitant, we will also consider the requests of the Second Annuitant;
- your widow, widower or surviving civil partner;
- your grandparents and their descendants and the spouses, widows, widowers and surviving civil partners of those descendants;
- any of your dependants;
- any person, charity, association, club, society or other body (including trustees of any trust whether discretionary or otherwise) entitled under your will, (or if you die before any Second Annuitant, under the Second Annuitant's will), to an interest in your estate (or the Second Annuitant's estate) (but not including the Crown, the Duchy of Lancaster or the Duke of Cornwall); and/or
- your legal personal representatives (or the legal personal representatives of any Second Annuitant if you die before the Second Annuitant),

as we shall in our absolute discretion decide.

4.2 Guaranteed Payments

Where the policy schedule shows Guaranteed Payments on an Annuity Element, the Annuity will continue to be paid, until the end of the period specified, as if the Annuitant were still alive, even if the Annuitant dies. If the Annuitant is survived by a spouse or civil partner any Guaranteed Payments shown on any GMP and/or Protected Rights element will be paid to the spouse/ civil partner.

4.3 Annuity Protection Lump Sum

If an Annuity Protection Lump Sum percentage is applicable and the Annuitant dies before his or her 75th birthday, a lump sum will be payable after the death of the last to die of the Annuitant and any Second Annuitant.

The lump sum payable will be calculated as follows:

- the Purchase Money multiplied by the Annuity Protection Lump Sum percentage, less
- the total of all instalments of the Annuity Elements which have been paid to the Annuitant before the date of his or her death;
- any payments due in accordance with section 4.2 (Guaranteed Payments), but excluding any future Changes at LPI or RPI; and
- the total of all instalments of the Second Annuity (if any) which have been paid to the Second Annuitant before the date of his or her death.