

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Aviva Personal Pension Plan ( <b>the Plan</b> )
Respondent	Aviva Life and Pensions Ltd ( <b>Aviva</b> )

## Outcome

1. I do not uphold Mrs N's complaint and no further action is required by Aviva.

## Complaint summary

2. Mrs N has complained that:-
  - Following the death of her husband, Mr N, she has not been paid a pension.
  - The annuity from the Plan should be amended to include her as a dependent as the information issued to Mr N by Aviva in 2013 was not in "Plain English".

## Background information, including submissions from the parties

3. In 1988, the Plan was set up on the advice of an independent financial adviser (**the IFA**). The Plan was contracted-out of the State Earnings Related Pension Scheme (**SERPS**). This meant that rebates of National Insurance contributions were received into the Plan. The benefits provided by the Plan replaced the SERPS benefits and were called "Protected Rights". In 1988, the Protected Rights had restrictions on how benefits could be taken, including the requirement for a spouse's pension.
4. The documentation issued to Mr N when the Plan was set up said that any annuity purchased with the Protected Rights should include a 50% spouse's pension.
5. On 31 March 2008, Aviva wrote to Mr N explaining that his chosen retirement date was 31 August 2008, and provided illustrations of the retirement benefits available from the Plan, which included a spouse's pension.
6. On 16 April 2013, Aviva issued the information about the Plan to both the IFA and Mr N, which included the benefits available to Mr N. This included explanatory notes which explained Mr N's options at retirement, including that an annuity could be set up on a single life basis or on a joint life basis with a spouse's pension.

7. In August 2013, Mr N asked Aviva for further annuity illustrations.
8. On 13 August 2013, Aviva sent Mr N two annuity illustrations, one with and one without a spouse's pension. The illustrations set out:-
  - Mr N could take an annual pension of £3,349.20, beneath which it said:

“This illustration assumes that the pension would be payable by regular monthly instalments starting from 7th August 2013. The pension would be payable for life, with a guarantee that the instalments will be paid for 5 years in any event. On death or after 5 years if later, instalments would continue to be paid for the lifetime of the widow. For the purpose of this illustration we have assumed that your wife's date of birth is 6 May 1950”.
  - Mr N could take an annual pension of £4,489.44, beneath which it said:

“The illustration assumes that the pension would be payable by regular monthly instalments starting from 7th August 2013. The pension would be payable for life, with a guarantee that the instalments will be paid for 5 years in any event.”
9. On 27 August 2013, Mr N completed and signed the application form and requested the annuity be set up with a guaranteed period of five years (meaning the annuity would be paid for five years even in the event of Mr N's death). Under the option of “Would you like some income to be paid to a dependent after you die?”, Mr N ticked the box “I do not want a dependent's annuity”. The application form listed the dependants as husband, wife, civil partner or other.
10. Mr N returned the completed application form to the IFA.
11. On 3 September 2013, Aviva acknowledged the annuity application form and said:-

“We enclose a Post Sales Information sheet for your information and would also like to remind you that you have 16 days to change your mind. If you do decide to change your mind, please return the cancellation notice issued with your Retirement Benefits package. You must also return the Post Sales Information sheet and any instalments of annuity you have already received.”
12. The Post Sales information sheet confirmed the pension from the Plan would be £4,563.36 per year and payable in monthly instalments to the date of death. In the event of Mr N's death before the end of the five-year guarantee period, the instalments would continue until the end of the guarantee period.
13. On 15 April 2015, Mr N asked Aviva for details of his annuity.

14. On 22 April 2015, Aviva replied to Mr N setting out the details of the Plan which confirmed:-

“Benefits on Death

On your death, payments would continue at the same rate to the end of the guarantee period on 29 August 2018. There are no further benefits due at the end of the guarantee period.”

15. Mr N died in September 2017.

16. On 26 July 2018, Mrs N returned the beneficiary payment form to Aviva.

17. On 7 August 2018, Aviva confirmed to Mrs N that the first amount of the guaranteed pension had been paid and a final payment was due on 29 August 2018.

18. Mrs N telephoned Aviva to query why a spouse’s pension was not going to be paid.

19. On 29 August 2018, Aviva confirmed the annuity was guaranteed for five years from 29 September 2013 to 29 August 2018 and no spouse’s annuity was due.

20. Mrs N complained to Aviva in September 2018 and said:-

- She was unhappy that she was not receiving a spouse’s pension as the original Plan documentation said she would receive a 50% spouse’s pension when Mr N died.
- Mr N misunderstood the annuity application forms as he had crossed out a number of items.
- By comparison to another annuity set up with another provider at the same time which included a spouse’s pension, the information and forms provided by Aviva were not in “Plain English.”
- She considered the annuity was set up in error and that it should be reset back to 2013 to recognise her as a dependent.

21. On 14 September 2018, Aviva replied saying the Plan had been set up as per Mr N’s instructions.

22. Mrs N remained unhappy and telephoned Aviva.

23. On 24 October 2018, Aviva replied and said, when the annuity was put into payment:-

- It was set up in accordance with the signed instructions received from Mr N.
- Mr N was sent a cancellation notice which allowed him to change his mind if he felt a mistake had been made.
- In 2015, the details of the annuity were confirmed again, and Mr N did not challenge these at the time.

24. Mrs N remained unhappy and telephoned Aviva again.
25. On 7 March 2019, Aviva replied to Mrs N and said:-
  - The information sent in 2013 and 2015 provided the opportunity for Mr N to highlight if any errors had been made when setting up the annuity.
  - The IFA provided advice on the Plan and Mr N would have spoken to him before deciding how to take his benefits.
  - As the annuity was set up on a single life basis, the annual amount was at a higher level than would be due if a dependant's option had been requested.

### **Adjudicator's Opinion**

26. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
  - When the Plan was set up in 1988, any annuity that was purchased using Protected Rights had to include a spouse's pension and this is why it was in the original Plan documentation. The requirement for providing a spouse's pension was removed with effect from 6 April 2012, so Aviva was correct to offer Mr N a choice of an annuity with no spouse's pension in 2013.
  - Aviva would have been unable to provide Mr N with advice on what type of benefits he wanted from the Plan and whether a spouse's pension should be included.
  - Mr N could have asked further questions of Aviva or the IFA if he did not understand the annuity application form.
  - The Adjudicator did not agree that Mr N did not understand his choices, as he did not challenge how the benefits were set up when he was told that annuity did not have a spouse's pension in 2013 and 2015.
  - Mr N received benefits in accordance with his instructions to Aviva.
27. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
28. Mrs N provided significant submissions, including a copy of another provider's application forms, to demonstrate that Aviva's application forms were misleading in comparison. In summary, Mrs N said:-
  - As a "layman", Mr N would not have understood the poorly worded annuity application form which she feels did not ask the basic questions.

- There was no tick box for Mr N to choose whether he wanted a single life or joint life annuity.
- Aviva did not provide support to its policyholders and had poor business practices.
- Aviva made assumptions on Mr N's instructions instead of checking with him or the IFA whether the annuity should have been on a joint life or single life basis. This would not have been "financial advice" as Aviva would just have been checking it understood Mr N's wishes.
- In 2008, Aviva confirmed to Mr N that the Plan had reached maturity and that his benefits would include a spouse's pension. Mr N then deferred his decision to take benefits until 2013. She considered that Mr N would have therefore expected the annuity to be set up on the terms at maturity in 2008 with a spouse's pension.

29. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mrs N for completeness.

### **Ombudsman's decision**

30. I appreciate that this matter is difficult for Mrs N as she was expecting to receive a spouse's pension from the Plan after her husband had died.
31. Mrs N contends that the Plan's original documentation from 1988 said a 50% spouse's pension would be provided, as did the illustrations sent in 2008. Mrs N also says that Mr N must have misunderstood the information and annuity application form sent in 2013, as they were not in "Plain English".
32. The restrictions on Protected Rights were abolished by the Pensions Act 2008, with effect from 6 April 2012. Having considered the information, I am satisfied that Aviva acted correctly in offering Mr N a choice on the format of the annuity payments from the Plan in 2013. Aviva was right to offer Mr N the option of an annuity with no spouse's pension in 2013.
33. Mrs N has argued that Aviva does not support its policyholders or operate "good business practices". However, it is not Aviva's role to provide advice on suitable options at retirement, that would be the IFA's role. I am satisfied that Aviva made Mr N aware of his options when taking his retirement benefits from the Plan, as he was sent explanatory notes and illustrations showing both a single life and joint life annuity. If Mr N did not understand the options available or how to complete the annuity application form, he could have asked for clarification from Aviva. As a "layman" he also had access to the IFA, who would have been an expert in this area.
34. Mr N returned the annuity application form and, once it was received, Aviva was obliged to set up the retirement benefits in accordance with Mr N's instructions. It was not for Aviva to then double check Mr N's choice with him. Mr N selected an annuity

with a five-year guarantee with no spouse's pension. It is clear that Mr N received benefits in line with his instructions to Aviva and Mrs N received the remainder of the five-year guarantee payment when Mr N died.

35. Mrs N contends that Mr N did not understand his choices as the documents were not clear, and that Aviva should have recognised this as he had crossed out some areas of the annuity application form. However, Mr N did not challenge Aviva on how the annuity had been set up when he received the cancellation notice in 2013. Nor did he raise questions in 2015 when Aviva reconfirmed there was no spouse's pension payable from the annuity. I find that the information given to Mr N was clear and accessible. Based on Mr N's communications with Aviva, it is reasonable to state that he knew there was no spouse's pension payable on his death.

36. I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 July 2020