

Ombudsman's Determination

Applicant	Mr L
Scheme	Aviva Retirement Annuity Contract (the Policy)
Respondent	Aviva

Outcome

1. Mr L's complaint against Aviva is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Aviva should pay Mr L £600 in recognition of the significant distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L applied for his benefits as a lump sum due to his ill health. After submitting the forms and chasing this with Aviva, he was informed that this could not be paid due to a bankruptcy charge on the Policy. Mr L is dissatisfied that Aviva failed to inform him that it was speaking to a third party about the Policy and for delaying in informing him that he could not have the funds paid from the Policy.

Background information, including submissions from the parties

4. The Welfare Reform and Pensions Act 1999 (**the Act**) made an exemption of pension assets under approved pension arrangements from 29 May 2000, including those claimed as part of bankruptcy. However, any petitions for bankruptcy before this date meant that the Government's Official Receiver would appoint a Trustee in Bankruptcy to take control of the assets, and pension schemes during that time were considered assets.
5. According to The Gazette (the Government's official public records site), Mr L made a petition for bankruptcy on 11 October 1999, which was before the changes introduced by the Act. CGU Life (the former provider of the Policy, eventually taken over by Aviva) wrote to the Insolvency Service on 13 September 2000 to confirm that the new legislation did not apply to Mr L and accepted that the Trustee in Bankruptcy had a claim on the Policy. However, it only had the same right as the member and could not access the policy until Mr L's 60th birthday.

6. The Official Receiver wrote to Aviva on 15 April 2015 enquiring about the Policy. Aviva replied on 29 April 2015, asking for a copy of the Bankruptcy Order. Aviva have provided no further correspondence between the parties until 2019.
7. Mr L telephoned Aviva on 16 January 2019 requesting details of the Policy. He was informed that he had not yet reached his retirement date. He was also informed that on his death, the funds would be paid to his estate and that a spousal benefit could be set up with the annuity purchased. No mention was made of Mr L's ill health or any former bankruptcy.
8. On 28 January 2019, the Official Receiver wrote to Aviva requesting details of the Policy. Aviva provided basic details of the Policy, including a quotation of the fund value to the Official Receiver on 30 January 2019. The same letter, with the same details, was also sent to Mr L. Mr L was not informed that the Official Receiver had been in contact.
9. Mr L called Aviva on 7 February 2019 and requested to take the Policy on the grounds of serious ill health. He also wanted to complain that he had previously been informed by Aviva that it would keep the unclaimed fund on his death as "that's how Aviva makes its money". Aviva agreed to escalate and sent out the relevant quotation and forms the next day.
10. Aviva received the completed claim forms on 25 February 2019, which included a declaration from Mr L's doctor. Mr L called Aviva on 27 February 2019 to chase the payment and asked for it to be escalated.
11. Mr L called Aviva a number of times on 4 March 2019. The first was to chase payment and Aviva confirmed to Mr L that it was looking into a Bankruptcy Order on the Policy. Mr L argued that the bankruptcy had been discharged in 2015, but Aviva noted that this related to a Bankruptcy Order in 1999. In the second call, Aviva confirmed to Mr L that it could not release the funds to him without a letter of no further interest from the Insolvency Service. Mr L asked Aviva to sort this out for him, but it stated that it could not give legal advice, but would act on any court order provided. Mr L asked for an official complaint to be raised. In the third call, Mr L raised his unhappiness with the funds being potentially paid to a third party. He did not consider that the bankruptcy should apply and that the law prevents it from being paid due to a bankruptcy. He said he would sue Aviva if it paid it to a third party.
12. Aviva wrote to Mr L on 29 March 2019, in response to his complaint. It apologised for raising his expectations and offered Mr L £400 (a cheque was sent to Mr L). It said:

"After discussing with you, I understand you are no longer in bankrupt status. While this means the assets currently under your ownership are yours, the above policies are held by a Trustee and Insolvency Practitioner. Until they discharge the policies back to you, we are unable to make payment to you.

I've enclosed a copy of the bankruptcy order as per your request. While the date it was published came after the cut-off date of 29 May 2000 where afterwards

pensions were protected from being claimed via bankruptcy proceedings; the bankruptcy occurred before this and so the claim on your policy by the Insolvency Practitioner is still valid.

... Regrettably, at this stage we cannot accept a claim from yourself for the funds on these policies, but we recognise that by sending you claim forms we've given you a false expectation."

13. Mr L remained dissatisfied and made a complaint to this service.
14. As part of the investigation, Aviva increased its offer from £400 to £600 to take into account the additional distress and inconvenience caused to Mr L due to his severe ill health and having to get a doctor to also complete part of the claim forms. Mr L rejected the offer and asked for a minimum of £1,200. Aviva declined to increase its offer further.

Adjudicator's opinion

15. Mr L'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 briefly below:-
 - that the Act did not apply to his circumstances and therefore Aviva were correct that the Policy could not be paid to him.
 - However, the Adjudicator agreed that additional distress and inconvenience had been caused to Mr L because Aviva had failed to inform him that it was also in contact with the Official Receiver and had asked him to gather irrelevant information. She agreed that an award should be made to recognise this. She felt that the increased offer of £600 was reasonable and above the award that the Ombudsman would make of £500 in these circumstances.
16. Mr L did not accept this and remains unhappy. He made clear in his telephone conversations with the Adjudicator that he is aggrieved by the way he was treated by Aviva, including that he is dissatisfied that information was shared with a third party and the comments in relation to what would happen to the funds on his death. He feels that the offer of £600 is derisory.
17. As Mr L did not accept the Adjudicator's Opinion the complaint was passed to me to consider, however, his further comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

18. It is unfortunate that parts of Aviva's organisation failed to communicate with each other. Aviva knew that a Bankruptcy Order was in place and ought not to have raised

Mr L's expectations that the Policy could be paid out to him, particularly as it was aware of his severe ill health.

19. However, Aviva are correct that the Act does not apply to Mr L's situation and the Policy cannot be paid. Therefore, all I can consider is Mr L's non-financial loss, in other words, the distress and inconvenience caused because of his raised expectations.
20. Mr L first asked to take the funds from the Policy in the telephone conversation on 7 February 2019. The forms were sent on 8 February 2019 and returned on 25 February 2019. Mr L was first informed of the issue with the bankruptcy on 4 March 2019. All of this occurred within a period of less than four weeks. While I empathise with Mr L's situation, given the time between when Mr L requested the funds to when he was made aware of the bankruptcy, Aviva's offer of £600 is reasonable. If Mr L considers that the Insolvency Service should now release the charge he should contact them and request them to issue a letter of no further interest.
21. Mr L also raised that he said he was told by Aviva that the funds would revert to it on his death. Based on the telephone calls provided, there is no evidence that Mr L was informed of this. Instead, in the first call to Aviva in January 2019, he was informed that any funds would be paid to his estate on his death. Regardless of this, it is irrelevant, as the funds could not be paid to him, or his estate, because of the Bankruptcy Order. Should Mr L die before the funds are claimed by the Official Receiver, it is then up to it to claim the money from Aviva.
22. Therefore, I uphold the complaint in part.

Directions

23. Within 21 days of the date of this Determination, Aviva shall pay Mr L £200, making a total payment to Mr L of £600.

Karen Johnston

Deputy Pensions Ombudsman
16 August 2019