

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Section 226 Pension Annuity Contract ( <b>the Plan</b> )
Respondent	Royal London ( <b>RL</b> )

## Outcome

1. I do not uphold Mrs S' complaint and no further action is required by RL.

## Complaint summary

2. Mrs S is unhappy that the Plan did not include a joint annuity. She has said that the Co-operative Insurance Society Limited (**CIS**) failed in its duty of care to make Mr S aware of this option, so that he could make provision for her after his death.

## Background information, including submissions from the parties

3. Mrs S was married to Mr S. In May 1965, Mr S took out the Plan with CIS. This was written to 1 May 1998.
4. On 24 April 1995, Mr S completed an 'Option Form' (**the Option Form**) electing a pension of "£5736.08 per annum payable quarterly, in advance, guaranteed 5 years. No lump sum."
5. The other option available on the form, which Mr S had crossed out, was as follows:  
"Pension of £4272.20 per annum payable quarterly, in advance, guaranteed 5 years. Lump sum of...."
6. CIS was subsequently acquired by RL, so from here on for ease and consistency, CIS will be referred to as RL.
7. On 20 April 2013, Mr S died.
8. On 24 April 2013, Mrs S sent RL Mr S' death certificate and asked whether Mr S' pension continued after death.
9. On 1 May 2013, RL paid an annuity instalment to Mr S' bank account.
10. On 2 May 2013, RL wrote to Mrs S saying:

"Further to our previous letter dated 26 April 2013, having now reviewed our file, I can confirm that under the terms of the annuity, payments cease upon death, i.e. there are no further monies payable.

Our records show that the direct credit payment we sent to Lloyds TSB for £1254.22 representing the payment due on 1 May 2013, has been paid into the account.

As monies are only payable if the payee is alive on the due date, this sum will need refunding to us. I would be grateful if you could make your cheque payable to "CIS Ltd."

Please note that under HM Revenue & Customs (formerly known as the Inland Revenue) tax legislation, overpayments following the death of the payee are classed as unauthorised payments, and the recipient of the unauthorised payment may be liable to a tax charge of up to 55% of the overpayment."

11. On 10 June 2013, RL chased Mrs S for repayment of the overpaid annuity. Mrs S has said these demands caused her distress at a time when she was already feeling upset and worried. The overpaid annuity was repaid to RL on 8 July 2013.
12. Mrs S came to realise that the Plan did not provide for a widow's pension.
13. Mrs S' son, Mr Y, subsequently volunteered to look into Mr S' pension on her behalf, where Mrs S had not been in the position to previously. On 2 July 2018, He wrote to RL requesting details of Mr S' pension and copies of the letters sent to Mrs S following Mr S' death.
14. On 17 July 2018, RL replied to Mr Y. RL said:

"We can confirm that this was a retirement annuity contract which commenced payment on 1 May 1995 and ceased upon death.

It was based on a single life option as no spouses [sic] option chosen.

Paid quarterly in advance with no escalation.

No death benefit payable.

We have enclosed copies of the payslips"
15. On 31 July 2018, RL provided Mr Y with copies of the paperwork Mr S signed when selecting an annuity and the letters sent to Mrs S. Following this, Mr Y made a series of requests/asked various questions to RL; its replies are outlined in paragraphs 16 to 18 below.
16. On 11 October 2018, RL wrote to Mr Y saying that at the time Mr S selected an annuity, financial advice was not a requirement for a retirement claim. It said Mr S may have sought independent financial advice but it did not have any details. It provided a copy of the current retirement guide issued to customers.

17. On 18 December 2018, RL wrote to Mr Y and said it did not have a copy of the original leaflet that would have been sent with the Option Form.

18. On 26 February 2019, RL sent Mr Y a copy of the terms and conditions (**Policy Document 1**) pertaining to the Plan. A selection from this is copied below:

"The annuity is payable by quarterly instalments in advance for five years in any event and thereafter during the life of the annuitant. There is an option at the selected pension age, subject to evidence of health, to take a reduced annuity to provide a life annuity for the widow of the annuitant after his death."

19. On 3 March 2019, Mr Y complained to RL. He said:-

- He had now received the Plan's terms and conditions. Contrary to what he was told over the telephone, there was a clause enabling a widow's pension to be paid.
- He wished to make a formal complaint that this option was not offered to Mr S, a married man, when he took his annuity. The annuity options offered were both single life options.

20. On 7 March 2019, RL replied to Mr Y. It said:-

- It had now enclosed the correct policy document (**Policy Document 2**) for 1965 when the Plan was taken out, the one previously sent was a later version, although the wording was only slightly different. Under conditions and privileges, clause 9, in relation to a widow's pension it stated: "the said request shall be made in writing by the Annuitant to the Society at its Chief office." The document also made clear that a spouse's pension would reduce the amount of the annuity received.
- It wasn't standard practice to include a spouse's option on the claim form at that time. As per the policy document clause, a request for a spouse's option had to be made by the Annuitant in writing. As this was not received, it processed the annuity in line with the Option Form.

21. RL's position is as follows:-

- Mr S took out the Plan at age 32 and it was written to the plan anniversary prior to his 65th birthday, 1 May 1998. Mr S took his pension benefits as an annuity in April 1995.
- As per clause 9 of the Plan's Conditions and Privileges document, a spouse's pension had to be "requested by the Annuitant in writing to the Society at its Chief Office..." The clause also stated that a spouse's annuity would have reduced the annuity amount payable to the annuitant.
- Mr S chose a single life annuity.
- Due to the time that had elapsed, it was unable to provide copies of the leaflets that would have been sent with the options sent to Mr S in 1995.

22. Mr Y's position is as follows:-

- Mrs S was greatly distressed when Mr S died. When she realised that Mr S' pension did not provide for her as his widow, this caused her further grief.
- This was further heightened by the repeated demands from RL that she repay the advanced annuity or risk referral to HMRC. She was so distressed by these demands that she burned these letters at the time.
- In terms of RL's response to the complaint, from the internal correspondence it had provided, it seemed that RL itself was surprised that the Option Form did not include a widow's option. Additionally, the internal correspondence inferred that such an option was generally included in such a form.
- RL had not addressed the fact that the Option Form did not state that Mr S was choosing a single life pension which excluded his wife. Therefore, it did not adequately inform him of the option he was choosing and thereby enabled him to choose a totally unsuitable pension.
- RL had not provided the policy document that Mr S actually signed even though it said it had located this. Policy Document 1 had distinctly different wording to the one RL quoted. It (this being Policy Document 1) stated that: "There is an option...to provide a life annuity for the widow of the annuitant after his death." This was "a very different emphasis" where the obligation was on RL to provide such an option.
- The lack of a definitive policy document from RL and absence of the actual one that Mr S signed precluded any reliance by RL on the clause quoted to reject the complaint. Therefore, it had no concrete evidence to reject the claim that it did not offer the appropriate pension to Mr S.
- RL also had provided no evidence that Mr S knew the consequences of the option he had chosen, or that it had informed him of the terms of a single life pension option.
- The letter Mrs S sent to RL, enquiring about whether Mr S' pension was still payable after his death, confirmed the ignorance of his pension choice and how he had not been informed of the actual reality when he chose it.
- RL's investigation had highlighted how poorly his pension was managed and due to a lack of information, on both his actual choice and the appropriate options available, he had opted for the incorrect pension. RL mismanaged Mr S' pension and should now provide Mrs S with the appropriate options.

23. It should be noted that clause 9 of Policy Document 2 states:

"Subject to the consent of the Commissioners of Inland Revenue and in lieu of the annuity specified in the said Schedule or the revised annuity provided for in Special Provision No. 1 hereof the Society on the request of the Annuitant

will pay a smaller annuity, such smaller annuity being paid during the life of the Annuitant and continuing in whole or in part during the lifetime of the wife or husband of the Annuitant after the death of the Annuitant. The said request shall be made in writing by the Annuitant to the Society at its Chief Office for the time being not more than three months and not less than one month before the Pension Date or the Revised Pension Date as the case may be and shall specify the name of the wife or husband of the Annuitant and be accompanied by proof satisfactory to the Society of (1) the date of birth of the wife or husband of the Annuitant and (2) the good health of the Annuitant at the time the request is made. The amount of such smaller annuity will be determined according to the practice of the Society at the time the said request is made.”

## **Adjudicator’s Opinion**

24. Mrs S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by RL. The Adjudicator’s findings are summarised below:-

- The crux of Mr Y’s complaint, which he had brought on behalf of Mrs S, was that:  
1) RL failed to make it clear to Mr S that a spouse’s pension was an available option when he chose an annuity; and 2) that Mr S did not make an informed decision on the annuity he had chosen.
- Policy Document 2, which RL said was the correct terms and conditions document applying to the Plan, stipulated that such an option was available. The Option Form did not set out such an option, so on the basis of this form alone, it was arguable that Mr S did not know that this option was available.
- RL had said it did not know whether Mr S sought advice when choosing his options and that, due to the time that had elapsed, it no longer had a copy of the leaflet/guidance that would have been sent at the time. From the evidence available, it was unclear whether RL made Mr S aware that there was also the option to select a spouse’s pension (and any conditions for doing so).
- Mr Y had said that Mr S was a happily married man who would have provided for Mrs S through the Plan had he known it was possible to do so. Mr Y believed Mrs S should now be offered the appropriate options. There were two difficulties with such an outcome. The first was that there was no definitive/written evidence that Mr S would have opted for an annuity with a spouse’s pension attached. Mr Y’s comments were not sufficient proof of the option Mr S would have chosen. Mr S would have had to consider that, with an attached spouse’s option, the annuity paid to him would be reduced, and it was possible that he would have preferred the benefit that a higher annuity provided, to both him and Mrs S, during his lifetime.
- The second point was that as Mr S was provided with a higher annuity on a single life basis, providing alternative options now would involve re-writing the Plan.

Should a spouse's pension be offered to Mrs S now, she/Mr S' estate would be required to repay any excess monies received since 1995 as a result of the higher annuity.

- It was unclear whether Mr S was aware of the spouse's option, and in the absence of evidence that any guidance sent included such information (and of it being received by Mr S), this would remain the case. If it could be proven that RL had omitted this information in its literature, it remained uncertain whether Mr S would have selected such a choice. For these reasons, the complaint could not succeed.
- Mr Y had said RL seemed "surprised" that such an option had not been included in the Option Form. It was possible that a change (to include all available options in such a form) was made in the years that followed. Clause 9 of Policy Document 2 required such a request to be made in writing to the company, so it appeared a spouse's pension was not a standard option. These were policy decisions for RL (CIS at the time) to make. It was not identifiable maladministration which The Pensions Ombudsman's Office (**TPO's Office**) would now seek to remedy. In addition the challenge of proving whether Mr S would have elected this option remained.
- Mr Y had also argued that the Option Form did not state that Mr S was choosing a single life pension which excluded his wife. The absence of any reference to a spouse's pension would have made this point sufficiently clear and there did not appear to be any contradictory information on this form which would have led Mr S to believe that a spouse's option might be included. Hence, Mr S was not misled on this point.
- Mr Y had compared the wording in Policy Document 1 and Policy Document 2, and suggested that the former put a greater obligation on RL to make a spouse's option available. There was no benefit in comparing the wording in the two documents as it did not help answer the question of whether Mr S was made aware of a spouse's option.
- Mrs S was distressed by RL's letters in which it requested repayment of Mr S' overpaid annuity. Such a request would have arrived at a very difficult time for Mrs S. However, these letters were not worded in such a way that it would be foreseeable to RL that it would cause the recipient distress, nor was its request for repayment unreasonable. These letters did not amount to maladministration on the part of RL.

25. RL accepted the Adjudicator's Opinion. Mr Y, on behalf of Mrs S, did not accept it and made the following comments:-

- The Adjudicator's decision rested on the fact that there was "no definitive/written evidence that Mr S would have opted for an annuity with a spouse's pension attached." While they could not disagree with that statement in itself, they felt it missed the further point of their complaint, which was that RL did not provide

sufficient detail in its documentation to: (a) alert Mr S to the option of a joint pension; and (b) inform him as to the type of pension he chose.

- In fact, RL had not provided any documentation from the time Mr S selected his pension to counter the first point, this being that it had not alerted him to the option of a joint pension.
- The Adjudicator had objected to their claim that Mr S had not been informed as to the type of pension he chose by saying that the absence of any reference to a spouse's pension would have made this point sufficiently clear and that Mr S was not misled on this point. However, the options on the Option Form did not state whether Mr S was choosing a single or joint life pension, so he was not to know what he was in reality choosing. The fact that it did not mention 'spouse' was "equally countered" in that it did not mention "single life", so there was no definitive proof either way which confirmed their claim that Mr S was not informed as to his actual choice.
- Further, there was evidence that Mr S did not understand what pension he actually chose and an indication that he might have chosen a joint life pension if he had been made aware of his options. When the Adjudicator said that there was "no definitive/written evidence that Mr S would have opted for an annuity with a spouse," it presupposed that Mr S understood that what he chose did not include this. The Adjudicator had used the fact that a joint pension would have been reduced to indicate that he may have chosen the single pension to achieve the higher income.
- However, when a happily married man did not request a quote for what the reduced joint life pension would be, it was strong evidence that: a) he did not understand the difference between single/joint life pensions, b) he did not understand the consequences to his family of his choice, c) RL had not informed him of the basic details of his pension choice, even on his selection form, and d) he was not aware of his options.
- Given these points, it was a reasonable assumption that if they were all addressed, on balance Mr S would have chosen a joint life pension or at the very least, requested a quote for one. Hence, the lack of such a request was sufficient evidence that RL did not comply with their duty to suitably inform him of his pension options and the details of his pension choice.
- The fact that the Adjudicator had to make personal judgements in the case with statements such as, "in my view" and "in my opinion" added weight to their argument. Specifically, that the whole pension undertaking by Mr S was not clear and transparent and that RL failed in its responsibility to adequately, clearly and unambiguously inform Mr S, both of his options and his choice. Life changing financial decisions should not have to rely on supposition and opinion.

- Additionally, they were supported in their opinion of the Option Form as unclear by the fact that RL itself was surprised by this form's lack of clarity, and subsequently changed it to add all available options transparently.
  - They were well aware that a joint life pension would have reduced the payments. They would of course make a financial decision on which pension to choose based on actual figures, life expectancy and so on, similar to that which Mr S would have done had he been aware of all his options. They were willing to make any financial payments necessary with their decision.
  - The Adjudicator did not judge the repayment demands from RL to be punitive but as a matter of fact, Mrs S did. There should be some acknowledgement on the part of the Adjudicator and RL of the real life consequences of written demands.
  - The demands for repayment were illegal; Mrs S was not responsible for the repayment as it would be due from Mr S' estate. This was no doubt an illegality which TPO's Office would wish to correct with RL.
26. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y.

### **Ombudsman's decision**

27. I appreciate that this is an important and sensitive matter for Mrs S and Mr Y. Mr S died without leaving Mrs S with an entitlement to a widow's pension.
28. The Option Form which Mr S completed did not make reference to a joint life annuity. RL appears to have included this option in later option forms, but at the time Mr S chose his policy, should he have wished to select a joint annuity, he was required to request this. It is unclear whether Mr S was aware of such an option as RL no longer has a copy of the original leaflet that it says would have been sent with the Option Form.
29. However, I agree with the Adjudicator that it is not possible to make a finding that RL failed to make Mr S aware of the option of a joint pension. The evidence on this point is unclear, yet had this not been the case, offering Mrs S a remedy now to correct this would involve being certain that had such an option been put in front of Mr S, he would have selected it. It is not possible to gain this confirmation with any certainty.
30. Mr Y also argues that Mr S would not have been aware of the option he had chosen when he completed the Option Form. However, as the option for a single life annuity does not contain any ambiguous wording that might lead the reader to infer that this was a joint annuity, I cannot agree that this form misled him or contained any misstatement which RL should be liable for.
31. Mr Y has said that in the same way that the Option Form did not make reference to a joint life annuity, it could be argued that neither did it state that Mr S was choosing a single life pension. I understand this point, however, I think the stronger argument



here is that the two options set out in the Option Form set out the amount payable, the guarantee period, and whether there was a lump sum available. So had any of these options been a joint pension, this would have been set out in the same way that the other details were set out.

32. Mr Y has also said that the Adjudicator's statement that there was "no definitive/written evidence that Mr S would have opted for an annuity with a spouse" presupposed that Mr Y understood that what he chose. Unfortunately, it is impossible to know now whether Mr S fully understood the option he selected. Instead, the correct approach here is to apply an objective test of whether a reader considering the options on this form would have been misled into thinking that they were selecting anything other than a single life annuity, I do not make such a finding (see paragraph 30 above).
33. Mr Y contends that the absence of any evidence that Mr S requested a quote for a joint life pension stands as evidence that he did not understand the choice he had made. I do not agree with this statement. Overall, I am not persuaded that the Option Form misled Mr S and there is not sufficient evidence for whether Mr S was provided with information on all of his options, and, whether his selection would have been any different as a result of considering this information.
34. Lastly, although I bear in mind the impact which RL's demand for repayment had on Mrs S, at a time when she would still be grieving over the death of her husband, I do not consider that RL's actions in this respect amount to maladministration. Although, I acknowledge that legal responsibility for the overpayment would likely have rested with Mr S' estate, it would still have been necessary for this amount to be repaid and it is likely that Mrs S received this payment in a joint bank account.
35. I do not uphold Mrs S' complaint.

**Anthony Arter**

Pensions Ombudsman  
26 October 2020