

## **The complaint**

Mr C complains that Aviva Life & Pensions UK Limited (Aviva) misrepresented to him the spouse's benefits payable from his policy on death.

## **What happened**

Mr C said his financial adviser received confirmation in 2012 that in the event of his death his long-term partner would receive a spouse's pension. In 2021 Aviva backtracked and said that this was not correct as he and his partner were not legally married. Mr C said it would cost him to buy an annuity to provide similar cover. Aviva paid £350 which was not enough.

Aviva said the plan had been set up to secure a Guaranteed Minimum Pension (GMP). This was earned from his employment and contracting out of the state earnings related pension scheme (SERPS). It carried a spouses pension payable on the death of Mr C to any legally married spouse or civil partner in accordance with HMRC rules and provided the marriage took place at least six months before death.

Aviva accepted that in 2012 it had wrongly said a spouse benefit of 50% of Mr C's annuity would be paid to his partner, who it named in its confirmation letter. In 2021 it clarified that this was incorrect as Mr C was not legally married to his partner. In the light of the error it sent Mr C a cheque for £350 for distress and inconvenience.

The investigator said the annuity was set up in November 2011 and included a spouse's benefit for the GMP element. He said that the HMRC rules determine who the spouse's pension would be payable to and these clearly referred to a married man. It wasn't possible for the spouse's pension to be paid to Mr C's unmarried partner.

He accepted that wrong information was supplied in 2012 and in that situation this service would seek to reflect the loss of expectation. He thought that the £350 was fair and reasonable. He didn't expect Aviva to amend the annuity to reflect the incorrect information. There was no evidence Mr C had suffered a financial loss due to the mistake.

Mr C didn't agree and his IFA said it was unacceptable that Aviva were now going back on their findings in 2012. It was hiding behind HMRC rules that remained the same as they were in 2012. He thought Aviva should stand by its statement made in 2012 that there would be a spouse's pension payable to Mr C's partner of over 40 years. If they couldn't pay the spouse's pension, they could pay something else. He also asked if the payment conflicted with recent liberalisation of laws concerning common law partnerships.

## **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.

It is not disputed that a mistake was made in 2012 stating a spouse's pension would be payable to Mr C's partner.

Where there is a mistake this service would follow the law and seek to put Mr C as close to the position, he would have been in, but for the mistake. The law would not seek to put him in the position he would have been in had the mistake been correct.

Where there is a mistake, I can make an award for financial loss and distress and inconvenience arising from that mistake. That is what I have considered below.

### *Financial loss*

I have seen the retirement preparation letter issued in June 2011 advising of his forthcoming retirement. The form attached asked him to indicate whether he was single, married, separated divorced, co-habiting, widowed or in a civil partnership.

I have also seen the '*retiring now form*', and can see that Mr C selected Options 1(Non-GMP) and 1G (GMP) which had to be taken together, so that all of his pension (both GMP and Non GMP) was secured in the same way. Option 1G carried a pension with a 50% spouse's pension but option 1 did not.

The other option he could take was an open market option to take his funds to another insurance company. It seems there was a small excess over the GMP (creating a yearly pension of £4.08). The form asks if Mr C is *married or has a civil partner*? He has replied *yes* and provided details for his partner. The form was signed and dated by Mr C in October 2011.

The '*important notes*' to the form contain a section headed '*Spouse's options*'. This says, '*If you are not married, the spouse's pension is not payable*'. (my emphasis)

It seems clear to me that the policy terms at the time Mr C took them out were clear that there would not be a spouse's pension if Mr C was not legally married.

It may well be that Mr C didn't appreciate this at the time and this is why he included details of his partner on the form. However that does not make him entitled to something that was never promised or offered. I note also that he had a financial adviser at the time who was paid commission for advising on the product he selected (I say that because details of the commission are included on the form). So it would have been for the financial adviser to ensure the product was appropriate for Mr C and his personal circumstances.

I can see that in early 2012, the IFA requests confirmation that the spouses pension would apply to Mr C's long-term partner to whom he was not married. Aviva wrote to the IFA on 13 June 2012 and confirmed that on the death of Mr C a spouses benefit of 50% of Mr C's annuity would be paid to his partner. We know, in the light of the original policy documents, and what Aviva has since said, that this statement was not correct and Aviva confirmed that in 2021.

To put Mr C back in the position he would have been in, but for the mistake ( which was telling him he would get a spouse's pension for his partner), would mean that he reverted to the correct 2011 position i.e. without a spouse's pension for his partner to whom he says he is not legally married.

The position would be different if Mr C had placed reliance on the representation made in 2012 and changed his position and suffered financial loss. But I don't think he did. I say that because he entered into the annuity contract in 2011 based on correct information, that no spouse's pension would be paid unless married.

When the mistake was made in 2012 Mr C didn't change his position, as he had already

taken out the policy before the statement was made, so there was no reliance to his detriment. I accept that had he known the correct position he might have taken out separate insurance to provide a pension for his partner. But he didn't do that and in effect he saved the money that would have been needed to buy that cover.

Thankfully Mr C didn't die during that time. So I don't think he changed his position to his detriment in reliance on what he was told in 2012 , and did not suffer any financial loss.

I don't think that Aviva are hiding behind any HMRC rules, I think they are following them, as they are required to do.

Mr C also referred to recent liberalisation of laws concerning common law partnerships. He did not specify which laws he meant. I am not aware of any laws relevant to this specific situation, but that is a matter Mr C can take up with Aviva directly should he wish to.

The investigator asked what Mr C would have done had he had the correct information. Mr C replied that he would have got married. I don't know the details of Mr C's personal circumstance and whether that option remains open to Mr C. If it does, he may wish to get Aviva to confirm that such a marriage would mean his new wife would be entitled to a spouse's pension under the policy, assuming he didn't die within six months of the marriage. I say that because there are some references to the treatment of marriages after leaving employment and leaving the scheme which should first be clarified to make sure a legal marriage will bring with it the spouse's pension Mr C would like to have.

#### *Distress and inconvenience*

It is however clear that a mistake was made and I can consider an award for distress and inconvenience. Such an award is intended to reflect the impact on Mr C not to punish Aviva nor to provide financial compensation for loss of expectation, which I have dealt with above.

I can see the mistake caused confusion and while for a time Mr C was reassured, he is now concerned by the lack of provision. However it does not seem that Aviva had a choice as they are following the rules applicable to GMP's and Mr C never was entitled to the spouse's pension. I accept that he was disappointed when he understood the true position and has suffered a loss or expectation. I think the amount of £350 is fair and reasonable in the circumstances and had I made an award it would have been of a similar amount.

For those reasons I do not uphold this complaint.

#### **Putting things right**

I think the award made by Aviva was fair and reasonable. So I am not making any further award and don't uphold this complaint.

#### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 September 2022.

Colette Bewley  
**Ombudsman**