

The complaint

The estate of X, represented by Mrs B, complains that Aviva Life & Pensions UK Limited (Aviva) failed to provide the joint life annuity quote X had requested. She says that this led to a single life annuity being incorrectly set up. She'd like Aviva to honour the original joint life request.

What happened

X had a pension with Aviva. His wife, Mrs B, said that in 2011, he'd decided to use his pension fund to buy an annuity which would provide her with half of his annuity payment on his death. Mrs B said her husband had always assured her that she would receive half his pension. And that he believed that the policy had been set up on a joint basis. She said this had been especially important to him given he had a heart condition. She said that Aviva had received his request for a joint life annuity. And that they'd allocated a policy number to it. But that they'd then failed to register the request.

Mrs B said her husband wasn't aware of Aviva's oversight. So when he received further options he ticked the same option (option three) that he'd previously submitted. The option he'd ticked was for a single life, not a joint life, annuity with a ten-year guarantee and 3% each year pension increases.

Mrs B said that at the time, her husband was on medication for his heart condition and was confused about having to submit his request again.

X died in July 2020. Mrs B said that after his death she was shocked to discover that the annuity her husband had purchased wasn't a joint life annuity. Therefore she'd receive no further payments after the end of the guarantee period.

Mrs B felt that if Aviva had registered her husband's original option, he would've bought a joint life annuity. She told this service that her late husband had several other small pensions and there had been no issues with her spouse's pension elsewhere. Mrs B complained to Aviva. She said they told her they'd made an error during the set-up process by failing to provide joint-life quotes.

Aviva issued their final response on the complaint on 30 September 2020. They didn't uphold it. While they agreed that they'd failed to provide joint life quotes to X, they said that the quotes they had initially issued in January 2011 had stated that additional quotes could be provided if required. They said X hadn't requested any further quotes. Aviva said they'd shared the quotes with X's financial adviser. And had suggested that he sought financial advice. But said that X had chosen to set up the annuity without any financial advice.

Aviva said that on 1 March 2011, they'd received X's options forms choosing option three of the quote, which didn't include a dependant's pension after his death. They said that after they'd set up the annuity, they'd written to X to confirm it. They said this letter had included a cancellation form which he could've used to cancel the annuity. But that he hadn't contacted them to do this. Nor had he ever queried the information they'd given him about the payments that would be made in the event of his death.

Mrs B was unhappy with Aviva's response. She said that the reason her husband hadn't gone back to Aviva to ask for a different option was because he'd already requested a joint life annuity. She said that Aviva had given this option a policy number, but that they had failed to register it. And that her husband wouldn't have known that they weren't dealing with the option he'd originally submitted to them. She said he'd chosen option three from the January 2011 quote because he'd originally chosen option three. Mrs B felt that her husband was confused by the subsequent options Aviva sent him, given he was on medication for a heart problem.

Aviva replied to Mrs B. They said her husband had sent them a personal information form in February 2011, which had included details for Mrs B, before they'd sent the retirement pack, which had only included single life options. They shared a copy of this form with Mrs B. But said they had no documents from him selecting a joint life annuity under option three. They asked Mrs B to share any further paperwork if she thought X had submitted anything else.

Aviva confirmed to this service that the single life annuity they set up for X was enhanced based on the information he gave them on his personal information form.

Aviva acknowledged that X had asked to see quotes for a joint life annuity. And apologised for not providing them. They felt that although this had been an oversight on their part, it was reasonable to assume that X would've got in touch with them to ask them for a joint life quote before returning any forms. They said that it didn't matter what previous paperwork a customer had submitted, because they would always act on the instructions provided to us on the "*I want a retirement income with Aviva*" form that they'd included in the retirement pack.

Unhappy, Mrs B brought the complaint to this service. Our investigator felt it should be upheld. She felt that Aviva's error had led to X's annuity being set up incorrectly. And that if the joint life quote he'd requested had been provided, that he would've chosen to provide an income for his wife. To put things right, she felt that Aviva should assume that the annuity would've been set up on the same basis as the option X had selected, but on a joint life basis. And that an annuity should be set up for Mrs B going forward on this basis. She felt that any missed payments should now be paid to Mrs B, with 8% simple interest gross from the date each payment should've been made to the date the settlement is paid. She also felt that Aviva should also pay Mrs B £200 for the inconvenience the situation has caused.

Our investigator didn't consider that Aviva should adjust the spouse's annuity to reflect the fact that higher payments would've been made when the annuity was paid on a single-life basis.

Aviva didn't agree with our investigator. They made the following points:

- X had not only one, but two, opportunities to tell them that they'd failed to provide joint life quotes. These were when he received the quotes on a single life basis, and when they'd written to him to confirm that a single life annuity had been set up. He hadn't done so.
- They said that when X had completed and signed the maturity forms he'd confirmed he wanted his annuity set up with option three of the quote. They said that the quote had clearly explained that option three did not provide a spouse's pension.
- They acknowledged that X had requested joint life quotes. But felt that X had a duty to ensure he'd reviewed the paperwork, given the importance of what he was agreeing to. They said he had clearly reviewed the options as he'd chosen to have a

ten-year guarantee and 3% yearly increase which provided a lower initial income compared to the other options on the quote.

- Aviva said that their letter dated 9 March 2011 had clearly stated to X that they'd continue to pay his income to the estate or beneficiary until the guarantee ended. And that payments would stop if he were to die outside of this period. They said there was no mention of a spouse's pension.
- They also said that X had the option to cancel the annuity and choose another option, but this wasn't exercised, despite the accompanying correspondence clearly explaining there would be no spouse's income on his death.
- Aviva didn't feel that our investigator had considered that they'd written to X to confirm the details of his annuity and his right to cancel and set up another option instead. They felt this showed that X had all the information he needed to understand the annuity he was going to receive. And that it wasn't fair or reasonable to assume, based on all the above, that X would've opted for a spouse's pension or that he was under the impression it was not available to him.

Our investigator considered Aviva's points, but didn't change her opinion. She accepted that the paperwork had stated that the options didn't include a dependent's income. But still didn't consider that Aviva had made it sufficiently clear that this option was available. She felt that as a layperson, X wouldn't have understood that he hadn't received the quotations he'd requested.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 26 August 2022. It said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't intend to uphold Mrs B's complaint about the annuity. I understand this will be extremely disappointing. I don't agree with our investigator that Aviva's error directly led to X's annuity being set up incorrectly. While I acknowledge that X may have intended to set up the annuity on a joint life basis, I consider that Aviva provided enough information for him to have been able to realise that he had requested a single life annuity.

However, I do intend to uphold this complaint as I'm satisfied that Aviva haven't correctly explained what happened. I consider that this has caused Mrs B distress and inconvenience. I'll explain why.

To help inform my decision, I produced a timeline of the correspondence that took place between Aviva and X in early 2011.

Timeline

Aviva have recently provided this service with a retirement options pack dated 23 February 2011. From what I've seen, this hadn't previously been provided to this service. Aviva had also previously acknowledged that although X had expressed an interest in joint life quotes, they hadn't been provided at the time due to an oversight on their part. Furthermore, Aviva's response to further issues Mrs B raised after they issued their final response letter failed to indicate that this pack had ever been produced or sent to X.

13 January 2011: Retirement quote. Quote reference 614-104-733/1. Includes three options,

all of which are single life annuities.

24 January 2011: X signed his completed personal information form. This contained some information about his wife as well as himself.

20 February 2011: X completed a form requesting both single and joint life quotes.

23 February 2011: Retirement Quote. Quote reference 296-410-816/2. Includes three options. Option 1 is a single life option. Option 2 and 3 are joint life options.

28 February 2011: X completed a "I want a retirement income with Aviva" form, selecting Option 3. This form contained the Quote reference 614-104-733/1, relating to the January 2011 pack and the single life annuity quoted in that pack.

9 March 2011 Aviva sent X a set up letter for his chosen annuity.

Both retirement packs were sent to the same address.

Mrs B told this service that the first form that Aviva sent to her husband had one option for a single life annuity and two for a joint life annuity. She said that Aviva had then sent her husband another quote with three options, all of which were for a single life annuity. She questioned why Aviva had only provided single life annuity quotes when her husband had requested both single and joint annuities.

But, based on the timeline I outlined earlier, the first pack Aviva issued – in January 2011 - contained only single life options. The second pack Aviva issued - in February 2011 - contained both the single life and joint life options X had subsequently requested.

Based on the evidence I've now been provided with, I'm satisfied that the first pack that Aviva sent to X was the one dated 13 January 2011, which included only single life options. After that, X provided personal information about himself and his wife and requested that both single and joint life options be provided. Aviva acted on this instruction and produced a second pack dated 23 February 2011.

I next considered if there's any evidence that X directly asked Aviva to set up a joint life annuity.

Did X ask Aviva to set up a joint life annuity?

Mrs B considers that X believed that the policy had been set up on a joint basis. She told this service that after the expiry of the 10 year guarantee she'd called Aviva. She said the agent she'd spoken to had told her that Aviva had received X's request for a joint life annuity. She said the agent also told her that this had been given a policy number, but hadn't been registered. And that the agent had admitted that Aviva had made an error.

Aviva told this service that the initial retirement options sent to the X only included single life options because the total pension was made up of non-protected rights. They said this meant a spouse's pension wasn't compulsory.

I asked Aviva if they'd received any request from X for a joint life quote other than on the form he'd sent to them in February 2011. They said that they hadn't received any other request than that included on that form. And that this had caused them to issue a second quote pack which included both single life and joint life quotes on 24 February 2011.

I also asked Aviva if they'd allocated a policy number to any joint life request from X. They

said they had not. But said that Mrs B had been given a client reference when she'd called them to let them know her husband had died and the commencement of the guarantee period payments.

I also asked Aviva why their agent had told Mrs B that her husband had chosen an option which included a dependant. They shared their notes from the call, which they said took place in September 2020. They said that their agent had told Mrs B that X had: "signed for an option that doesn't have spousal benefit on it. There were two quotations issued. Complaint logged".

Aviva also told this service that it's common for people applying for an annuity to have multiple options and multiple illustrations. They said that was why their illustrations had a quote reference number, which is detailed at the bottom of each page. And that the declaration section contained tick boxes to select the option from the illustration and the quote reference number. They said that this allows the team setting up the annuity to set up the correct option from the correct quote. And that X had ticked option three on the illustration they'd issued in January 2011, asking them to set up a single life annuity. They said they'd also issued a confirmation of the set-up of that annuity, which had given X the option to cancel. They said that they'd followed X's instructions and that he never challenged the set-up of the single life annuity.

From what I've seen, the only evidence that X requested a joint life quote was on a form he sent to Aviva in February 2011. X ticked the boxes requesting quotes for both single and joint life annuities.

I acknowledge that Mrs B considers that X had asked Aviva to set up a joint life annuity. She questioned why her husband would've provided her details on the personal information form if he was intending to buy a single life annuity. She considers that X provided Aviva with enough information for the annuity to have been set up on a joint basis. But from what I've seen, the only time X requested a joint life quote was within the February 2011 form. This also requested single life quotes. So it's clear that additional information would've been needed before X had specified exactly what annuity he wanted and before it could be set up.

Aviva have also confirmed that X was always going to have to complete the retirement pack forms to get an annuity set up. So although Mrs B considers that X had already made his choice clear to Aviva – this couldn't be done just by sending in the personal information form.

The only signed "I want a retirement income with Aviva" form I have evidence of is the one dated 28 February 2011. This form contained the Quote reference 614-104-733/1, relating to the January 2011 pack and the single life annuity quoted in that pack. I've seen no evidence that X asked to purchase a joint life annuity.

I acknowledge that Mrs B said that X had always assured her that she would receive half his pension. And I understand why she considers that he believed that the annuity had been set up on a joint life basis, given his heart condition. But I'm not persuaded that Aviva are responsible for X choosing the single life option. Based on what I've seen, I'm satisfied that when X submitted a request for both single and joint life quotes he hadn't yet decided what sort of annuity to buy.

As our investigator noted, X's annuity was set up on a non-advised basis. This meant that Aviva wasn't required to make a personal recommendation to X, but they did have to provide sufficient clear information to him - in a way that was fair and not misleading – so that he could make an informed choice when setting up his annuity.

Before Aviva had provided this service with the 23 February 2011 retirement pack, I had

given some thought about whether the information Aviva provided to X was sufficient for him to have realised that they did offer joint life annuities, despite the fact that they hadn't done so, even though he'd requested both single and joint life quotes.

However, as Aviva have now provided evidence that a second quote was issued in February 2011, and that it did provide the requested joint life quotes as well as a single life quote, I'm satisfied that X was aware that joint life annuities were available with Aviva. I say this because after he requested a quote that included joint life annuities, it was provided, alongside a quote for a single life one.

Right to cancel

Aviva said that they didn't feel that our investigator had considered that the retirement pack confirmed his right to cancel the annuity he'd just selected and set up another option instead. It said:

If you want to cancel

Please remember, your retirement choice is important so you need to be sure you've got it right. You're able to cancel for up to 30 days after you've received this letter. I've enclosed a form which you can use to tell us if you want to do this.

Our investigator considered Aviva's point, but felt that X, as a layperson, wouldn't have understood that he hadn't received the quotes he'd requested. Therefore she didn't feel he would've felt the need to use his cancellation rights.

However, it has now become clear that Aviva did, in fact, issue the joint life quotes X requested. And I'm satisfied that Aviva gave X enough clear information in the retirement pack that he had the right to change his mind.

After he received both the initial retirement pack in January 2011, and the second pack, containing joint life quotes, in February 2011, X completed the paperwork attached to the first pack and asked for the single life annuity shown under option three to be set up. While I acknowledge that Mrs B felt that X had intended to purchase a joint life pension, I've not seen any documentary evidence of that. I have seen evidence that X asked for both single and joint life quotes AFTER he received the initial retirement pack which contained only single life quotes. And I've also seen that X requested joint life quotes, as well a single life quote, after that.

Aviva have acknowledged that they made a mistake, but I've seen no evidence that they did. They were under no obligation to provide joint life quotes in the initial retirement pack. And they provided joint life quotes alongside a single life one after X requested them. From what I've seen, X had all the information he needed to make an informed decision on the annuity he wanted to buy. And if he hadn't had all the information he needed, he could've asked for further quotes to be produced.

Therefore I'm not persuaded that Aviva caused X to choose an incorrect annuity, or set up the wrong annuity. I've seen no evidence that X ever requested a joint life annuity be set up. I know this will be extremely disappointing to the estate of X, but under the circumstances, it wouldn't be fair or reasonable for me to uphold the complaint about the set-up of the annuity.

However, I intend to ask Aviva to pay Mrs B compensation for the distress and inconvenience they've caused her by providing her with an incomplete, and sometimes incorrect, version of events. I consider that when they accepted that they hadn't issued a quote containing joint life options, this would've caused a great deal of confusion and

mistrust from Mrs B. It wasn't true. She knew that X had received such a pack. But she thought he'd received that pack first.

I've no evidence that X ever returned the forms from the February 2011 pack, so I don't consider that Aviva set up the wrong annuity. But I am persuaded that their poor response has led to further distress and inconvenience. Therefore I intend to uphold the complaint. And I intend to ask Aviva to pay The estate of X £300 compensation for the distress and inconvenience they've caused.

Response to my provisional decision

Aviva accepted my decision.

Mrs B said that although she found my provisional decision depressing, it was what she was expecting. She acknowledged that there was no other evidence, apart from her own recollection, of the conversation she'd had with Aviva in which she said she'd been told her husband had chosen the joint life option. She maintained that her husband would've wanted her to get a pension.

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.

I acknowledge that Mrs B still feels that her husband wanted her to share his pension. I understand why she feels this way. But I've seen no evidence that he told Aviva this was what he wanted.

No new information has come to light to change my opinion. So I remain of the view I set out in my provisional decision.

Putting things right

I require Aviva Life & Pensions UK Limited to pay The estate of X £300 for the distress and inconvenience they've caused.

My final decision

For the reasons given above, I uphold this complaint. I require Aviva Life & Pensions UK Limited to pay The estate of X £300 for the distress and inconvenience they've caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of X to accept or reject my decision before 7 October 2022.

Jo Occleshaw
Ombudsman