DRN-4577066

The complaint

Mr D complains that Aviva Life & Pensions UK Limited purchased an annuity with the benefits accrued under his Personal Pension Plan (PPP) after he turned 75 years old, contrary to his wishes.

Mr D is represented in his complaint by Mr W, who holds a Power of Attorney (POA) for Mr D. Because of this, Mr W has been in contact with Aviva on Mr D's behalf and has referred Mr D's complaint to our Service.

What happened

In 1990, Mr D took out a "rebate personal pension plan" (the PPP). Mr D was contracting out of the State Earnings Related Pension Scheme (SERPS).

In October 2022, Mr D turned 75. Aviva wrote to Mr D about purchasing an annuity with the benefits held within Mr D's PPP ending 2790. Aviva included a document which said, in bold text:

> *"We will only set this annuity up if we don't hear from you. In that case, we have to assume that you have no lifetime allowance available, and we won't be able to pay you any tax free cash."*

The document went on to give a quote for a single-life annuity on a level-term basis, with a guarantee of five years. Mr W got in contact with Aviva as he held POA for Mr D. It later emerged Mr W had problems registering his POA with Aviva in relation to this PPP, which was the subject of a separate complaint.

On 3 March 2023, Aviva sent the following email to Mr W:

> *"Many thanks for your time today.*
>
> *As discussed, the plan that [Mr D] holds with Aviva is not able to be left past the age of 75. If he is wanting to leave it invested he will need to transfer the money to a different pension.*
>
> *Most pension providers use an online transfer system called Origo. This allows the transfer to be completed electronically and it shouldn't require any paperwork to be filled in."*

On 3 May 2023, Aviva sent Mr W a copy of another letter sent to Mr D, which said:

> ***"You need to make a retirement decision on this plan as you are now 75.***
>
> *We've explained later in this letter what will happen if you don't tell us what you want to do with this plan…*

What happens if I don't make a choice?

Government rules mean we must assume you don't have any lifetime allowance left. This means we cannot pay any tax free cash and we'll use all your fund to buy an annuity which will:

- *pay you a monthly income for your lifetime only*
- *be guaranteed to be paid for at least five years*
- *have no yearly increases*
- *be paid in arrears*

Once we've set this annuity up, it can't be changed at a later date. You'll also miss the chance to shop around other providers for the best income possible."

Later that day, Aviva sent Mr W another email that said:

"As discussed, the plan that Mr. [D] holds with Aviva is not able to be left past the age of 75. If he is wanting to leave it invested he will need to transfer the money to a different pension."

On 2 June 2023, Aviva wrote to Mr D again with a letter containing the same information as I have quoted above. It also sent Mr W an email copy of the letter. This letter also went on to say:

"*Once we've set up a standard annuity, it can't be changed at a later date. You'll also miss the chance to shop around other providers for the best income possible. This letter explains how the annuity will be set up. If we haven't heard from you by* ***28 July 2023*** *we will set this up for you. Please contact us as soon as possible if there is another option you would like to take."*

Mr W complained to Aviva about what had happened in August 2023. On 30 August 2023, Aviva issued its final response to Mr D's complaint. It said:

- It sent letters explaining the process on 13 April 2022, 18 August 2022 and 6 September 2022.

- It resolved the issue about Mr W's POA in April 2023. It emailed Mr W on 3 May 2023 explaining the process and what would happen if no decision was given.

- Aviva wrote again on 2 June 2023 explaining the position and gave 28 July 2023 as a final date to respond.

Overall, Aviva felt it had given sufficient notice about the process it followed and it did not uphold Mr W's complaint. Mr W did not accept Aviva's final response and referred Mr D's complaint to our Service to consider in September 2023. Mr W provided a copy of a letter he sent to Aviva enclosing his POA. In it, he said:

"Please confirm all 3 policies are updated and.. taxes applied are returned immediately. [Mr D's] pension fund is less than £100k on all funds."

Mr W also made a subsequent complaint, to which Aviva sent its final response on 2 October 2023. That complaint has not been considered as part of this complaint.

One of our Investigators reviewed this complaint but did not uphold it. Our Investigator thought Aviva was entitled to purchase the annuity under the terms of the policy and had given Mr W sufficient notice about its process. Mr W disagreed, reiterating the terms of the policy were not explained to Mr D at the time he sold the policy. Mr W said he had told Aviva Mr D did not want to purchase an annuity and other 'sections' of Aviva had not compulsory purchased annuities with his other PPPs. Mr D was currently in terminal care and Mr W believed Aviva's actions were a deliberate attempt to deprive Mr D and his estate from the fund. So, this complaint was referred to me for a decision.

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 am sorry to read that Mr D is in palliative care and would like to acknowledge Mr W has gone into great detail when making this complaint, in very difficult circumstances. I have considered everything he has said, though I have not addressed every point here. This is because of the informal nature of our Service. Instead, I have addressed what I consider to be the key points that affect the outcome of this complaint.

Mr W has said Mr D has a number of PPPs and Aviva has used only this one policy to purchase an annuity and paid a lifetime allowance charge on it. It may be that the other PPPs have different policy terms or those products work differently and have the facility to allow Mr D to remain invested beyond age 75. But in any event, I have only considered Aviva's handling of this PPP to purchase an annuity, as this is the issue complained about.

In doing so, I have considered the terms and conditions of the PPP used to purchase the annuity. These say:

> *"11.13 If the member reaches age 75 and has not provided instructions to the scheme administrator as to how they wish to take their benefits, then in the absence of any express provision in the terms of the applicable arrangement(s) to the effect that benefits may start later than age 75, and subject to rule 11.14, the scheme administrator may, at its sole discretion, arrange for the purchase of a lifetime annuity for the member."*

I think the terns are clear that Aviva is able to arrange the purchase of an annuity if Mr D did not provide instructions about how he wished to take his benefits once he'd reached age 75. So even though Mr W told Aviva Mr D did not want to purchase an annuity, Aviva told him the policy could not remain invested after Mr W turned 75 and he would need to arrange for the policy proceeds to be transferred elsewhere.

I cannot see Aviva was given any instruction about how Mr D wished to take his benefits as an alternative to the annuity purchase – he did not arrange to transfer the benefits to another product or provider, as an example. And even if Mr D's other PPPs have remained invested, the terms of this PPP allow Aviva to do as it did and purchase an annuity on Mr D's behalf in the absence of instructions about how else he wished to take his benefits (as opposed to leaving them invested in the PPP).

Mr W asked Aviva if Mr D was aware of this policy term when he was sold the policy. I have reviewed the application form Mr D completed in 1990. The application form shows Mr D signed to declare he agreed to be bound by the rules of the scheme.

In his submissions to our Service, Mr W said Mr D's policy must have been mis-sold because Mr D was not aware of the above term. I have not further considered Mr D's complaint that his policy was mis-sold, other than to say I am satisfied Mr D signed to agree to be bound by the policy's terms. I have not considered any complaint about whether the policy sold was suitable for Mr W as I cannot see this potential aspect to the complaint was referred to Aviva as part of this existing complaint.

Overall, I am satisfied the terms of the policy allowed for Aviva to purchase a lifetime annuity after 28 July 2023, having received no instructions on how else Mr D wished to take his benefits. I note Mr D says it was pointless for Aviva to continue to write to Mr D about his options as he could not read the letters and often forgot to pass them on. But Aviva has provided evidence it gave Mr W notice of the process on a number of occasions, including to Mr W directly by email. I also think it gave clear warnings about what would happen, over a period of over 12 months before it purchased the annuity. So, I think Aviva gave reasonable notice about what would happen after 28 July 2023. And Mr W hasn't offered any explanation why he couldn't meet Aviva's deadline.

I know Mr W was unhappy Aviva told him a LTA charge was applied to Mr D's PPP, given he had told them the LTA would not apply to him. In September 2023, Aviva said no Lifetime allowance charge was deducted from Mr D's policy, but it has given contradictory information here. But as Aviva has also said it is happy to assist in the reclaiming of any charge, as I would expect it to do, it does not appear Aviva needs to take further action here at present.

My final decision

Whilst I realise my decision will disappoint Mr D, and Mr W, I do not uphold this complaint for the reasons explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2024.

Victoria Blackwood
Ombudsman