

## The complaint

The estate of Mr M complains about the administration of his annuity policy by Rothesay Life Plc (Rothesay) and specifically its determination that the late Mr M's spouse isn't entitled to any benefits under the policy.

The estate says that as Mr M was married, his spouse should be entitled to death benefits available under his policy. It also says that when Rothesay took over the administration, Mr M was informed he wouldn't need to do anything further as his benefits would remain the same.

## What happened

Mr M was a member of an occupational pension scheme (OPS).

Mr M completed various expression of wish forms while he was a member of that scheme. In 1995 Mr M completed an expression of wish form indicating he wished for his cohabitee (who was later to become his wife) to be treated as a beneficiary of his pension benefits in the event of his death.

In 1997 he took his benefits under that scheme by way of an annuity.

In 1998 he married Mrs M.

In 2021 Rothesay wrote to Mr M to inform him that it had taken over the administration of his pension benefits from the trustees of his OPS, as it bought out the benefits formerly held under that scheme. It said it was responsible for the payment of the benefits provided by the annuity policy.

Rothesay issued a policy document to Mr M which detailed his pension benefits as agreed with the trustee of his former OPS. Term 5 of that policy set out the benefits payable upon death. At 5.1 it said:

*"No further benefits will be payable on the death of the Policyholder."*

In 2023 Mr M contacted Rothesay to ask about his wife receiving benefits from his annuity policy in the event of his death.

Rothesay informed Mr M that in the event of his death, his wife wasn't entitled to continuing benefits under the policy.

Mr M then complained to Rothesay and said his wife should receive death benefits under his policy.

Rothesay responded to Mr M and didn't uphold his complaint.

It said that there were three criteria to be met in order to qualify for a spouse's benefit. Rothesay said Mr M would've needed to have been married to the same spouse both at the time of his retirement and at the time of death and have provided sufficient evidence of the

marriage within six months of retirement. It clarified that retirement was the point at which Mr M began to receive payments from his policy.

Rothesay said there was an alternative way for a benefit to be payable which was if Mr M had applied to have Mrs M nominated as a specified dependant within six months of retirement.

Rothesay enclosed the plan booklet and referred to the definitions for a surviving spouse and a specified dependant. It said that as Mr M and Mrs M weren't married until 1998, *after* his retirement date, she didn't meet the surviving spouse criteria and as Mr M hadn't nominated her as a specified dependant within six months of retirement, Mrs M didn't meet those criteria either.

Mr M disagreed with Rothesay's determination and referred his complaint to our service. He acknowledged that perhaps he "did not do it all perfectly" but explained there was a lot going on at that time and asked the trustees to use some discretion to provide benefits to Mrs M. Mr M said he felt that Rothesay was being harsh in the circumstances and that his wife should receive something in the event of his death.

Sadly Mr M passed away shortly after he referred his complaint. So his complaint was taken over by his estate, on the same basis as made by Mr M.

Mrs M brings the complaint as the executor of the estate and the beneficiary of Mr M's will. Mrs M is also seeking pension death benefits under the policy by virtue of being his spouse and dependant.

Our investigator considered the complaint but didn't think it should be upheld. She outlined that we weren't the regulator of financial businesses. The investigator noted the role of our service wasn't to instruct businesses as to the terms and conditions they should put in place in order to determine the benefits payable under a policy.

The investigator noted the definition of surviving spouse set out in the plan booklet and the date Mr M took his retirement benefits, which was before the date Mr M and Mrs M were married. So she didn't think that Rothesay had applied its criteria incorrectly.

The investigator also considered whether Mrs M would qualify for death benefits under the category of specified dependant but noted that Rothesay had examined its records and hadn't found any evidence that Mr M had nominated Mrs M as a specified dependant.

So the investigator didn't think that Rothesay had acted incorrectly or treated Mr M unfairly when it determined that death benefits were not payable to Mrs M.

The estate of Mr M didn't agree with the investigator's conclusions. It said Mr M was informed when his pension was taken over that he "did not have to do anything" regarding the changes.

The estate also said it understood that following the divorce settlement from his first marriage, provisions were put in place for a 25% distribution to each of Mr M's children on his death.

In addition the estate said it was unhappy that Mr M's pension couldn't be passed on to his wife of 27 years and common law wife of over 35 years.

As no agreement could be reached the estate of Mr M's complaint was referred to me for review.

## 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.

Mr M held an annuity pension policy which was administered by Rothesay following a buy-out of the benefits formerly held in his Occupational Pension Scheme (OPS).

In 2021 Rothesay wrote to Mr M to inform him that it had taken over the administration of the benefits under the scheme. In that document it explained that it was responsible for the administration of the benefits held under his old scheme as agreed with the Trustee of that scheme. So his policy would in effect mirror the terms under that Scheme which are set out in a plan booklet. Rothesay set out the benefits payable to Mr M in a policy document and that document also indicated that there were no death benefits payable under the policy.

Rothesay has indicated to Mr M that there are no death benefits payable under his policy. As the investigator has outlined, my role is not to tell Rothesay how it should draft its terms and conditions with regards to the benefits payable under the policy. However, I do have to consider whether it has acted in line with the terms of the plan and the annuity policy and whether it has treated Mr M fairly here.

Rothesay has provided the plan booklet from Mr M's former OPS. In that booklet it outlines when benefits are payable on death. As Mr M started taking his pension benefits in 1997, the section relating to "After commencement of pension" is the relevant one here.

That section refers to a number of potential beneficiaries. The first being a surviving spouse of the policyholder.

### Surviving Spouse

At " a) *pension for **surviving spouse***

*If you die while receiving a pension under the Plan and leave a **surviving spouse**, a pension will be payable for life to your spouse.*

*The amount of pension will be one half of your Plan pension (as it would have been had you not taken cash, or adjusted your pension to provide additional spouse's or dependant's pension).*

*Any adjustment chosen by you to apply between retirement date and State pension age (see page 5) will be disregarded for this purpose."*

Surviving spouse is defined in the glossary in respect of a pensioner as follows:

*"In relation to a pensioner or deferred pensioner, the person who was his only spouse when his pension began or when he attained age 65 (whichever was earlier) and remained his only spouse until his death.*

*However, if they are no longer permanently living together, the spouse will not qualify if the member nominates a specified dependant.*

*An unmarried member may nominate a specified dependant before commencement of pension or age 65 (whichever is earlier.)"*

I can see from the marriage certificate supplied that Mr M married Mrs M in 1998, which was the year after he took his pension benefits in 1997. So although Mrs M was married to him at the date of his death, they weren't married when he retired, which for the purposes of this policy means when he started taking benefits from it.

So I don't think that Rothesay has applied its criteria incorrectly or unfairly where it has determined that Mrs M does not fulfil the criteria for surviving spouse.

### Specified dependant

There is a second criteria which could potentially apply to Mrs M, that of a specified dependant. That is set out in b) which says:

*“b) Pension for specified dependant*

*“If there is no personal entitled described in a) above, you may ask the Trustee to provide a corresponding benefit to some other **specified dependant**. Formal application must be made before the commencement of your pension and your 65<sup>th</sup> birthday, whichever is earlier, and a form for this purpose, available from your Personnel Department, should be completed shortly in advance of either of those events occurring.”*

A specified dependant is defined as follows:

*“Specified Dependand*

In relation to a member or pensioner, who dies without leaving a **surviving spouse**, a person nominated by him before attaining 65 and before his pension commences, who was financially dependent on him at the time of nomination and remained so at his death, and who was accepted as such by the **Trustee**. “

I can see from the documentation provided that Mr M did complete an expression of wishes form in November 1995 indicating he wanted his partner to be treated as a beneficiary by the Trustees of the plan. However that was not a binding document for the purposes of the payment of death benefits because an expression of wish, was just that, something that would be considered but not be definitive. And notably here, I am satisfied on balance that this was different to a formal application to nominate a specified dependant.

I can see in the plan booklet it set out what was meant by an expression of wish and how it would be treated by the Trustee of the OPS. In the section entitled “Expression of Wish” it explained that:

*“In the event of your death, the Trustee will consider your wishes in exercising its discretionary powers. To guide the Trustee in the payment of benefits, you are invited to complete the form P7 at the back of the booklet entitled “Disposal of Death Benefits” and return it to the Trustee via your Personnel Department. You should complete a new form, P7 if your personal circumstances change.”*

In addition, the expression of wishes form included a section that stated: *“I understand that this expression of my wishes is not binding on the Trustee.”*

Rothesay has explained that an expression of wish could change, as occurred in Mr M's case as he made several different expressions over the course of his plan. Rothesay has explained that function was there to assist the Trustee in the event of the death of the member prior to retirement.

I consider that this is supported by the terms of the plan which indicate the Trustee has discretion in relation to the payment of benefits to dependants in the event of the death of the member prior to retirement. Whereas once pension payments were being paid, as was the case with Mr M, a formal application had to be made shortly before or within six months of retirement. The nominee's birth certificate would be required to be supplied, and the Trustee of the OPS would have to accept the individual as a nominated specified dependant.

I am satisfied that it is more likely than not, that no formal application was made by Mr M as Rothesay has searched its records and been unable to locate any application and acceptance. And I think given the formal nature of the application, if such an application had been made and accepted, that it would have been present in the file records. I also note that Mr M wasn't able to provide any evidence to demonstrate that he had made an application

and it had been accepted and he appears to have acknowledged in his complaint that he hadn't done everything required by the terms of his OPS.

So, I don't consider that Rothesay has acted outside the terms of the policy or treated Mr M or Mrs M unfairly in determining that she doesn't fall within the criteria for a specified dependant, set out in the plan terms and accordingly reciprocated in the annuity policy terms.

I note the point made by the estate that Mr M was informed in effect that his policy terms wouldn't change when Rothesay took over the benefits under the plan, and that he didn't have to do anything. However, I don't think that is at odds with what happened here, as Mr M was required by the terms of the plan (which are mirrored in the policy) to act many years before that date, at the time he took his pension benefits in 1997.

I also note what has been said about the length of their relationship and of their marriage. However, the determination of Rothesay is based on the terms of the OPS and the annuity policy and those require Mr and Mrs M to have been married at the point of him taking his retirement benefits for her to meet the definition of surviving spouse, irrespective of the length of their marriage and relationship.

So, while I do appreciate it must have been very disappointing for Mr M and for Mrs M to be informed that no benefits were payable upon his death, I consider that Rothesay has simply followed the terms of the policy, so I won't be asking it to do anything further.

### **My final decision**

My final decision is that the estate of Mr M's complaint against Rothesay Life Plc is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 18 November 2024.

Julia Chittenden  
**Ombudsman**