

The complaint

Mr M complains that Legal and General Assurance Society Limited (L&G) will unfairly apply a Young Spouse Reduction (YSR) to the pension his widow will receive if he dies before her. He says there was no YSR in the original policy he took out with L&G. And said it hadn't previously made him aware that the YSR could apply.

To put things right, Mr M would like L&G to remove the YSR clause from his policy.

What happened

I understand that Mr M joined his then employer's Occupational Pension Scheme (OPS) in October 1983. And that it was administered by a business I'll refer to as business G. I also understand that Mr M retired from his OPS in October 1993 and started to take his pension from the scheme at that time.

Mr M said that he married his wife in 1982 and that she is 16 years younger than him.

In 1996, the employer behind the OPS ceased trading and so the scheme was secured by L&G through a Bulk Purchase Agreement (BPA) which started in May 1998. Mr M said that the scheme was fully funded at the time. From May 1998, L&G paid Mr M's pension to him.

L&G said it issued policy documents to members after the buyout was finalised in 2008. It said that while it no longer held the full individual documents sent, it had retained the generic benefit schedule that had been enclosed. And this had outlined the YSR clause.

Mr M said he never received policy documents from L&G.

On 18 January 2016, Mr M asked L&G how much pension his widow would receive on his death. He said he thought it would be around £34,500.

L&G replied on 4 February 2016 to tell Mr M that his spouse at the time of his death would get £34,593.12.

The evidence suggests that Mr M also asked L&G to confirm the pension his widow would receive on his death in July 2002, but I've not been provided with a copy of that request.

On 4 March 2024, Mr M asked L&G how he could find out what paperwork would be required if he died before his wife, so that she could get the payments due to her. L&G replied on 12 March 2024 to confirm that in the event of Mr M's death, his spouse would receive a pension that was currently £51,109.92 (before tax) each year. It said the spouse's pension would be paid by monthly instalments in advance and increase at a fixed rate of 5% each year on 1 October.

L&G also stated:

The rules for this scheme state that should your spouse be more than 10 years your junior, the above spouse's pension will be reduced by 2.5% for each complete year in excess of the 10-year age difference.

Mr M replied to L&G on 20 March 2024, telling it that it was wrong about the YSR. He said he'd been one of the directors responsible for setting up the original pension scheme. He felt that as he was already married to his wife at this time he would've noticed such a clause.

Mr M said he had letters from business G from 1993 and 1995 which clearly stated that the spouse's benefit would be 50% of the member's pension, excluding any Tax-Free Cash taken. He also said that business G had confirmed in a letter dated 9 April 1988 that his pension would be taken over by L&G with no changes.

Mr M also said that L&G's letters from 19 July 2002 and 8 February 2016 hadn't mentioned the YSR. He asked it to look at this matter again.

Mr M asked L&G to provide him with a copy of the original trust deed and rules for his OPS. He said his copy had become illegible.

L&G told Mr M that it didn't hold a copy. It said that in any event, it would be obsolete, as Mr M's contract was now with L&G.

L&G replied to Mr M's 20 March 2024 letter on 16 April 2024. It said it had thoroughly investigated whether there were any exceptions to the YSR clause. It said:

While there may not have been any spouse reduction when the original scheme rules were drawn up, I can confirm that this clause was included when the new agreement was drawn up between Legal & General and the Trustees in 1998.

Mr M complained to L&G. He wanted it to explain why members hadn't been told about the new agreement that it said had been drawn up in 1998. He asked it what legal right it had to change an agreement some 15 years after the original scheme had been set up. He felt that the scheme rules had been legal and binding.

Mr M said that his pension had been in payment since 1993, 5 years before L&G said the new agreement had been drawn up. He felt a change had been made at this point and asked it if it had the legal right to change the terms of a pension in payment. He felt that business G's letter from 9 April 1998 had confirmed that his level of pension payments wouldn't change once L&G had taken over. He also said that he had four letters from business G and two from L&G which had all confirmed the standard widow's entitlement, with no mention of the YSR.

L&G issued its final response to the complaint on 3 May 2024. It didn't think it'd done anything wrong. It said it hadn't changed Mr M's entitlement. It said that the conditions within the BPA had been set and agreed by the original OPS's Trustees and were designed to mirror, as closely as possible, the entitlement provided under the original rules. And while it didn't have a copy of the original OPS's rules, it believed that – as the OPS had been fully funded - benefits had been secured on an equal basis. L&G said it had no discretion about the payment of benefits as these had to be made in line with the conditions confirmed within the BPA.

L&G also said that the OPS's Trustees would've written to all members throughout the buyout process to make them aware of the upcoming buyout. It therefore felt that Mr M would've been informed of the change in the OPS's status. L&G apologised if its previous correspondence hadn't made it clear that a YSR clause existed, but said that the absence of confirmation didn't mean that it didn't apply

L&G also said that once it'd finalised members' benefit details, it'd issued individual policy documents to all secured members in 2008. While it didn't retain copies of the documents

it'd issued, given the time that had passed, it had retained the Schedule section of the policy document it said had been sent, which outlined the conditions applicable to Mr M's entitlement. It said it'd confirmed the YSR within that document. It therefore felt that Mr M had been informed that the YSR would apply.

L&G acknowledged that it'd issued letters to Mr M that included the standard spouse's benefit. It said it wasn't uncommon for historical correspondence to only provide the full spouse's pension entitlement details. It also said that it didn't hold Mr M's spouse's details on file, so it wouldn't have been aware that the YSR was applicable in his case.

Unhappy, Mr M brought his complaint to this service in May 2024. He made the following complaint points:

- L&G had changed, or allowed to be changed, the terms and conditions of his OPS. He felt that it wasn't possible to make changes to schemes in payment without consultation, so he felt L&G had acted illegally and unfairly.
- Mr M said that he'd been involved in the set-up of his OPS and he had no recollection of any mention of a YSR during negotiations. He acknowledged that he couldn't remember every detail of the discussions. But said he was certain that there was no YSR clause. He felt he would've known if there had been as he was already married to his wife who is 16 years younger than him.
- Mr M said neither he, nor one of his co-directors at the time the OPS was set up, had received the letter L&G said it'd sent in 2008. He said if he had ever received anything mentioned a YSR clause he would've immediately challenged it. He said he'd only found out about the YSR clause in L&G's March 2024 letter.
- Mr M didn't agree with L&G that it didn't need to have made it clear that his spouse's pension would be impacted by the YSR clause. He felt that it was extremely important to know what the surviving spouse might expect to receive.

To put things right, Mr M wanted L&G to remove the YSR clause.

L&G shared a complete copy of the BPA with this service, but asked us not to share this with Mr M given the commercial sensitivity of the document. However, I consider that I am able to include an extract from that document, as follows:

1.2 Contingent annuity

...

Amount payable

The current amount of contingent annuity payable as at 1 May 1998 is as listed under the heading Spouses Pension at 01/05/1998.

If the surviving spouse to whom the contingent annuity becomes payable is more than 10 years younger than the current annuitant, then the contingent annuity will be reduced by 2.5% for each complete year in excess of the 10 year age difference.

Mr M told this service that he didn't have any of the original documentation from his OPS.

Our investigator asked L&G if it consented to this service considering Mr M's complaint, given it might have been outside of our jurisdiction on the basis that L&G felt that he

would've been made aware of the YSR clause in 2008 when it issued policy documents to him. And this would've meant that the complaint could be considered to have been brought out of time.

L&G said we could consider this complaint.

Our investigator didn't think that the complaint should be upheld. She felt that under the BPA, a YSR did apply. And that as L&G had to comply with the terms of the BPA, it hadn't done anything wrong. She also said that L&G had explained that it wasn't its process to request a spouse's details until the policyholder had passed away and it then received a claim for a spouse's pension. Therefore, while it was aware that a YSR might apply to the spouse's pensions of former members of Mr M's OPS, it wouldn't have been aware that a YSR applied to Mr M's spouse's pension until it knew his wife's personal details.

Mr M didn't agree with our investigator. He made the following points:

- He questioned whether business G had definitively drawn up the BPA.
- He felt that pensions in payment couldn't legally be changed unless all parties agreed. He felt that L&G had a duty to inform members about proposed or actual changes.
- He said he'd never been notified of the terms and conditions of his pension. He felt this was because L&G didn't know the terms.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having considered all the circumstances of this complaint, I'm not going to uphold it. I know this will be disappointing to Mr M. I'll explain the reasons for my decision.

I first considered whether there's any evidence to show that L&G changed the terms of Mr M's pension.

Did L&G change the terms of Mr M's pension?

Mr M felt that L&G had changed the terms and conditions of his OPS. Given he understood that it wasn't possible to make changes to schemes in payment without consultation, he felt L&G had acted illegally as it hadn't informed members about any proposed or actual changes to their pensions.

Mr M was also involved in the set-up of his OPS. He said he couldn't recall any mention of a YSR at that time. And said he would've remembered if there had been, as his wife would've been affected by it.

Mr M has also told this service that L&G had previously got his pension benefits wrong.

L&G said that it was paying pensions in line with the BPA.

While I understand why Mr M feels the way he does, given what he's said about L&G's apparent failure to have understood his pension scheme previously, I've not found any

evidence that is the case with the YSR clause.

I acknowledge that Mr M doesn't remember the YSR clause being included in his OPS during its set-up. But that doesn't persuade me that there wasn't such a clause. However, as I've not been provided with a copy of the OPS's rules, I've no way of confirming with any degree of certainty whether the YSR clause was part of the original OPS's rules. But I note that they were common at the time.

I agree with Mr M that it isn't normally possible for pensions in payment to be amended without consultation. Therefore I'm persuaded that if the terms of Mr M's pension were changed by the Trustees when it secured it with L&G through the BPA, then the Trustees should've made him aware of any changes at that time.

I can't reasonably say that L&G has any responsibility for informing Mr M about any changes to his OPS. I say this because it didn't set the terms under the BPA. These would've been set by the Trustees of that scheme. L&G didn't have to know anything about the original scheme rules as these no longer applied. Instead, L&G is responsible for applying the terms of the BPA. From what I've seen, L&G has done that. I therefore can't reasonably say that it's acted unfairly.

Mr M has also questioned whether business G had definitively drawn up the BPA.

I can confirm that the document that's been shared with me, from which the extract shown under "*1.2 Contingent annuity...*" above is taken, is an agreement between business G and L&G. Therefore I'm satisfied that business G was party to the drawing up of the BPA.

I next considered the communication Mr M has received about his spouse's pension.

Communications about the spouse's pension

Mr M said that he had four letters from business G and two from L&G which had all confirmed the standard widow's entitlement, with no mention of the YSR.

I haven't been provided with the four letters from business G, but I don't doubt that they also only confirmed the standard widow's entitlement.

The evidence shows that L&G's 4 February 2016 reply to Mr M's 18 January 2016 query about how much pension his widow would receive on his death didn't account for the fact that his wife was 16 years younger than him. From what Mr M has told this service, L&G provided similar information when he asked the same question again in July 2002.

From what I've seen, it wasn't until L&G's 12 March 2024 reply to Mr M's 4 March 2024 query that it mentioned the YSR clause.

L&G has apologised for not making it clear in its previous correspondence that a YSR clause existed. It said that it didn't hold Mr M's spouse's details. Therefore it hadn't been aware that the YSR applied when it responded to Mr M's queries. L&G said that it wasn't its process to request a spouse's details until the member's death and the subsequent receipt of a claim for a spouse's pension.

While I think it would've been better service if L&G had asked Mr M for his spouse's details when he'd asked what pension she'd get on his death, I agree with it that it wasn't uncommon for historical correspondence to only provide the full spouse's pension entitlement. This is supported by the fact that Mr M said that business G's letters also only confirmed the standard widow's entitlement.

I'm also satisfied that L&G didn't hold details of Mr M's spouse. And that this was in line with its normal process. Therefore it didn't know whether the YSR clause would apply to Mr M's widow or not. In the absence of those details, I think it wasn't unreasonable to fail to include an explanation of the YSR clause. I say this because it's relatively rare for a spouse to be more than 10 years' younger than a member.

I acknowledge that Mr M didn't agree with L&G that it didn't need to make it clear that his spouse's pension would be impacted by the YSR clause. I agree with him that it's extremely important to know what his surviving spouse could expect to receive.

However, I agree with L&G that the fact that it didn't always make it clear that a YSR might apply, didn't mean that it wouldn't apply. I say this because I've not seen any evidence that L&G has changed the terms of the pension that Mr M was already being paid when the responsibility for paying that pension transferred to it.

I acknowledge that Mr M said he'd never been notified of the terms and conditions of his pension. He felt this was because L&G didn't know the terms. So I've gone on to consider this point.

Should L&G have notified Mr M about the terms and conditions of his pension?

Mr M said that neither he, nor one of his co-directors at the time the OPS was set up, had received the letter L&G said it'd sent in 2008. He said he'd only found out about the YSR clause in L&G's March 2024 letter.

L&G said it'd issued individual policy documents to all members in 2008. But it no longer held copies, due to the amount of time that had passed. However, it had kept the Schedule section of the policy document it'd sent. Section 3.3 of this schedule outlined the YSR:

"If the spouse to whom the spouse's pension becomes payable is more than 10 years younger than yourself then the spouse's pension payable will be reduced by 2.5% for each complete year in excess of the 10 year age difference."

L&G therefore felt that it'd informed Mr M that the YSR would apply.

While it's disappointing that Mr M didn't receive the 2008 letter, I can't fairly hold L&G responsible for the fact that it wasn't delivered. In any event, regardless of whether Mr M received this communication or not, the YSR clause applied as it was part of the BPA.

It's natural for Mr M to want to ensure his wife would be well looked after if he should predecease her, so I understand his desire to understand the benefits she would get from his pension in that case. But I haven't found any evidence that L&G changed the spouse's benefit in his pension. Instead, I'm satisfied that L&G has provided Mr M with correct details about the young spouse reduction that would apply.

Overall, I can't reasonably ask L&G to remove the YSR clause as there's no evidence that it added it. I'm persuaded based on the evidence provided that it is simply applying the terms of the BPA, which were agreed between it and the Trustees of the OPS, as it is required to.

My final decision

For the reasons I've set out, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2025.

Jo Occleshaw
Ombudsman