

## **The complaint**

The estate of Mr M complains about the setting up and administration of his annuity plan by Aviva Life & Pensions UK Limited (Aviva). It complains that Mr M had initially chosen an annuity with a dependant's benefit, but Aviva allowed Mr M to change his annuity to a sole life annuity. It says Mr M didn't understand the impact of that change and it complains that his instructions were taken over the telephone.

## **What happened**

In August 2019 Aviva wrote to Mr M in response to his request to provide him with retirement options. These included transferring the value of his benefits to another provider, receiving a tax-free lump sum and going to the open market with the remaining value of his plan, and three annuity plan options from Aviva based on a tax-free lump sum and an annuity.

On 13 November 2019 Mr M returned the completed form to Aviva having selected option 3 which was an annuity plan with a dependant income. The dependant section was signed by his son.

On 13 January 2020 Aviva acknowledged receipt of the benefit payment form and issued a retirement benefit schedule which confirmed Mr M would receive a yearly pension of approximately £3,651 for his lifetime and a spouse's income of the same amount in the event of his death. It also confirmed he would receive a tax-free lump sum.

On 14 January 2020 Aviva wrote to Mr M confirming it had set up the payments under the annuity.

Shortly after Mr M contacted Aviva and in summary, indicated that the schedule was incorrect as he wanted the dependant income to be for his son, rather than his spouse.

On 29 January 2020 Aviva contacted Mr M by telephone. It gave him a quote for the dependant income if he were to add his son as the dependant. The customer representative noted that because his son was under 55 years of age, the pension income would reduce to approximately £2,411 per year.

Mr M indicated that he didn't want to go ahead and would instead take out the pension on a sole life basis without a named dependant or spouse. He asked how much the pension income would be in those circumstances and the representative said she would need to check with the relevant team and get back to him.

Later that day, the representative from Aviva made another telephone call to Mr M and gave him the pension income figure on a sole life basis, which was approximately £4,330 per year. The representative asked Mr M if he was happy to go ahead on that basis. Mr M confirmed that he was, and the representative indicated he would receive an email confirming the terms of his annuity plan.

On 29 January 2020 Aviva sent Mr M correspondence confirming that his tax-free cash had been paid to his nominated account and enclosing a retirement benefit schedule which indicated he would receive approximately £4,330 per year payable throughout his lifetime. There was no reference to any dependant or spouse income.

Annuity pension payments were made to Mr M by Aviva on a monthly basis.

In February 2022 Mr M sadly passed away.

Mrs M contacted Aviva in May 2022 to notify it of Mr M's death.

The monthly payments continued to be paid by Aviva.

Aviva contacted Mrs M in October 2023 and at the end of October 2023, Mrs M spoke to Aviva. It explained that no further payments were due under the plan and that it had made an overpayment of approximately £3,247. Mrs M told Aviva that she believed she was entitled to a spouse's pension under the annuity plan and made a complaint on behalf of the estate of Mr M.

Aviva upheld her complaint in part. It acknowledged that it had received notification of the death of Mr M in February 2022, followed by written confirmation from Mrs M in May 2022. It apologised that it hadn't contacted Mrs M until October 2023 and said its processing team had been dealing with higher-than-normal workloads. It acknowledged that this had caused Mrs M distress and inconvenience particularly given the difficult circumstances and paid £150 compensation. Aviva also said that it would write off the overpayment of £3,247 and cover any tax charge the overpayment may incur.

Aviva didn't however uphold Mrs M's complaint (brought on behalf of the estate of Mr M) about the spouse's pension. It said although the annuity plan was originally set up with a spouse's benefit, naming Mrs M as the beneficiary, it had been contacted by Mr M shortly after the plan had been set up asking it to rewrite the plan with their son as the beneficiary. There had then been a telephone call with Mr M where Aviva's representative had given him the updated figure. Mr M had then said he didn't want to choose that option and would like the plan to be set up on a single life basis with no dependant or spouse. So Aviva said it had rewritten the plan in accordance with his instructions.

The estate of Mr M didn't agree with Aviva's conclusions and referred the complaint to our service. In summary it said:

- Mr and Mrs M's son had poor health and was therefore unable to work. So Mr M had been looking at a joint life annuity with his son as the surviving beneficiary.
- It said, having listened to the call recordings between Mr M and Aviva's representative, it didn't think that Mr M understood what he was doing, he was distressed, and unable to make a rational decision.
- It believed Aviva had failed in its duty of care and sold an unsuitable product to Mr M.
- It gave an example of Mr M being confused by different bank accounts and said he didn't have any financial knowledge and made mistakes.
- It said Aviva had sold him an annuity for around £88,000 which had only paid out about £8,000. It complained the payments were only guaranteed for one year and said the amount of income did not seem to take account of the increased risk of death due to Mr M being a former smoker.
- It said Aviva shouldn't have offered Mr M this sole life annuity as it knew he was married.
- It said it was typical for spouses to receive half of their partner's pension when they passed away.
- It said it had taken a lot of hard work and effort for Mr M to build up this pension pot, but he had not received the benefit of all his hard work.
- It said Mrs M and their son had been deeply affected by Mr M's death and left in a difficult financial position.

Our investigator considered the complaint and didn't think it should be held. He considered the contact between Mr M and Aviva including the telephone conversations in January 2020.

Having done so, he thought that Mr M had understood that adding his son to the plan would reduce the amount of income he would receive, and he made it clear that he no longer required the spouse's or dependant's pension.

The investigator was satisfied Mr M had asked for the plan to be calculated on a sole pension basis. He noted that in the second phone call Mr M had confirmed he was happy with the new quote and confirmed he wanted to go ahead with that option.

The investigator said he couldn't see any reason for Aviva to question that decision as Mr M had clearly expressed his wishes. He also noted that Aviva was the annuity provider it could only follow the instructions it was given, and it couldn't give advice to Mr M on what he should or shouldn't go when setting up his pension.

The investigator the delay by Aviva in contacting the estate of Mr M and considered the £150 compensation it had paid for the distress and inconvenience caused together with the overpayment of approximately £3,250 and its agreement to cover any additional tax that may need to be paid because of the overpayment, was fair and reasonable compensation in the circumstances.

Overall, the investigator didn't think Aviva had done anything wrong in the way it had carried out Mr M's instructions in setting up the annuity and didn't think it had treated Mr M unfairly.

The estate of Mr M didn't agree and in summary said:

- It referred to correspondence from Aviva where it had given Mrs M a client number. It said Aviva hadn't protected her interest or advised her of any potential adverse action in relation to the annuity plan.
- It was normal for a spouse to receive ongoing payments after the death of the plan holder.
- Mr M had not kept a complete file of correspondence, so the situation had not been clear to them. It understood that Aviva also didn't have a complete file.
- It didn't think that Aviva had fully taken into account the likely reduction in life expectancy for Mr M as a result of his having been a smoker, then a vaper, since his early teens. It also noted Mr M's close relative had died at an early age. It said the payments offered by Aviva did not reflect those factors.
- It understood that a minimum guaranteed period of five years was typical, whereas Mr M's plan only had a guaranteed period of one year.

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.

I am very sorry to hear of the death of Mr M and the impact on Mrs M and her son, and the difficulties they have experienced. I also appreciate it would have been distressing for them to find out that no further income was to be paid from Mr M's annuity plan following his death.

The estate of Mr M has said that it doesn't think Aviva has complied with its duty of care and that it sold an unsuitable product to Mr M. So, I think it is important to consider Aviva's role here. Aviva wasn't acting as an adviser to Mr M, it provided an execution only service. So, it

wasn't providing Mr M with advice about the best option for his retirement. Instead its role was to provide him with information and then carry out his instructions.

Aviva had to provide Mr M with information that was clear, fair and not misleading and sufficiently detailed to enable Mr M to understand what was being offered by Aviva and also provide general information intended to assist him with his choice, for instance by reminding him that he could shop around for other options and by pointing him to other sources of information.

I am satisfied that Aviva wrote to Mr M in 2019, following a direct request for information from Mr M, and it set out a number of options for his retirement including three annuity quotes. I am also satisfied that within that information Aviva highlighted to Mr M that he could seek advice or information from other sources and that he didn't have to take out an annuity with Aviva, he could instead look at the open market for his income requirements or transfer the value of his benefits to another provider.

At the beginning of the letter Aviva wrote:

*"Your next steps*

- Read through the information we've sent you.*
- Think about your options — there are useful contacts in the enclosed pack, and you should take advice if you need to.*
- You will also have the option to access free, impartial guidance. This is known as Pension Wise. There are more details of how to access this in the enclosed pack, or you can visit [gov.uk/pensionwise](http://gov.uk/pensionwise).*
- Get the best deal — remember you don't have to buy a retirement income from the company that provided your pension. Shop around! You will find a guide on how to do this enclosed.*
- If you haven't already, you can find plenty of information on our website [aviva.co.uk/retiring-soon](http://aviva.co.uk/retiring-soon)."*

I also note that the quote provided by Aviva referred specifically to the risk of the annuity paying out less than it cost, if the plan holder died in the early years. Under the title "Information you need to know" and sub-title "Important" it said:

*"If you die in the early years after taking out your annuity, the payments received from your annuity could be less than the amount you paid for it."*

The estate of Mr M has pointed out that there is documentation which indicates the annuity plan was set up with a spouse's income and that Mrs M, as the spouse, was given her own client number. The estate says this indicates that she had rights under the plan and that Aviva should have protected those rights. However, I think any rights would only have been established as a result of the instructions given by Mr M and I am satisfied that those instructions changed.

I have carefully considered the telephone calls between Aviva and Mr M on 29 January 2020, and the correspondence and contact prior to that. I consider that Mr M contacted Aviva because he didn't think it had followed his instructions to set up the plan with his son as the dependant, as he had set out in the Benefit Payment form, he had completed.

As Mr M was married, the quotations that Aviva provided to him were based on the dependant being his spouse, so any instruction to name his son as the dependant would impact the income he would receive. Therefore once Mr M raised this issue with Aviva, I think it acted correctly and fairly by contacting him to explain this and clarify his instructions.

Aviva explained to him in the phone call, that if he made his son the dependant under the plan, the pension income he would receive would be significantly reduced because his son was under 55 years of age.

Aviva's representative then gave him the relevant figure and it was at that point that Mr M changed his instructions and said he wanted the plan to be set up on a sole life basis with no dependant or spouse income.

I think he was able to do this because under the terms of the annuity he had a period of 30 days to change his mind. This was set out in the correspondence enclosing the Retirement Benefit Schedule which said:

*"You can change your mind within 30 days of receiving this pack, to let us know complete and return the enclosed Cancellation form. Details of your right to cancel this In-house Annuity can be found in your Key Features document which was issued with your illustration"*

And I also note that Mr M's initial instructions to Aviva were given on a mistaken understanding of what he would receive if he named his son as a dependant.

So, I think his new instructions were given in time to cancel the original annuity plan within the cooling off period and set up a new annuity plan on a sole life basis.

I note the points raised by the estate about the impact of poor health on Mr M's decision making and his lack of financial knowledge. It has given examples of instances where he had misunderstood matters or recorded items incorrectly.

However, I take into account that here it was Mr M that raised the issue of the sole life basis - not Aviva's representative. And Aviva's representative checked that she had understood his instructions by asking him whether he wanted the spouse's pension. immediately after he raised the sole life basis and then again on two other occasions. I think the way Mr M responded to her questions and the wording he used indicating he wanted "a 100% payment of annuity for myself" and he would just have the annuity "all to myself" indicates he understood the impact of changing his instructions. I also think he gave his instructions in a clear way, without hesitation and I don't think the representative tried to lead him to any option, she merely clarified his instructions with him.

I also note that on the second phone call, later that day, Mr M was provided the relevant annual income figure on the sole life basis and the basis for that figure was reiterated again to Mr M by the representative. He confirmed he was happy to go ahead, and Aviva's representative explained he would receive a letter of confirmation.

I can see a letter was issued on 29 January 2020 which set out the basis of the annuity plan and the amount that would be paid to Mr M for life. I think that letter set out clearly what he would receive and the benefits under the plan and so if Mr M hadn't agreed with this or had reconsidered, he could have contacted Aviva again.

I am satisfied therefore that Aviva took reasonable and sufficient steps to ensure that it had Mr M's instructions and I note it could only act on instructions. So, as Mr M had told Aviva in clear terms that he wished to cancel the original plan and take out a new annuity plan on a new basis and he had done so within the 30-day period provided, I don't think Aviva acted incorrectly or unfairly by accepting those instructions over the telephone and following this up by confirming them in writing.

Overall, I am satisfied therefore that Mr M instructed Aviva to set up an annuity plan on a sole life basis where he would receive an annual income of approximately £4,330 for life. I can see there was a clear basis for Mr M selecting this option, because it provided Mr M with a higher annual income than if he had included a dependant or spouse income.

I note that the estate of Mr M has provided an illustration for his personal pension plan issued several years before the annuity plan was set up. That illustration gives a projected pension income together with what is referred to as a “widow’s pension” of half that amount. It is important to note the figures quoted there are projected figures based on different assumed rates of investment growth. The illustration says: “*What might the benefits be at my chosen retirement age?*” so those figures are not guaranteed.

In addition, whilst this illustration suggests that Mr M’s plan had the facility to provide a widow’s pension, I am not persuaded on balance that the illustration demonstrates that it was guaranteed. I am satisfied that Mr M decided that he wanted to take the larger annual income instead of taking out an annuity with a spouse income because if he had selected an annuity plan with a spouse’s pension included, that would have reduced the amount of income he would have received.

### Health and lifestyle

The estate of Mr M has questioned whether Aviva gave sufficient allowance for Mr M’s health and life expectancy when it calculated his annuity.

I can see the quotes in the correspondence from 2019 set out that Aviva had taken into account the information Mr M had provided about his health and lifestyle when it had calculated his quote. It said:

“Your personal details used to work out this quote:

*We’ve used the personal information you’ve given us to work out your quote. If anything has changed or is incorrect, please tell us as soon as possible. The details we’ve used are shown in the “Your health and lifestyle details” section later in this document.”*

It then went on to say that the quote was based on an enhanced pension because of Mr M’s health and lifestyle:

*“Enhanced Pension: This is an illustration of what you might get from your plan and should be read with the Key Features. These amounts aren’t guaranteed, but we’ll stand by them for ten working days after any change in our pension rates. (This illustration is better than our normal terms because of your and your dependants health and lifestyle).”*

It was recorded that Mr M had reported lifestyle and medical conditions. The quote said:

“You told us about the following conditions:

*Your health and lifestyle:*

*Your Smoking Status: Used to smoke”*

and

“You’ve also told us you have or have had the following special conditions:

*Other: Yes “*

The quote also highlighted the impact of health and lifestyle on the annuity that could be paid. It explained under the annuity quote in a section entitled “Did you know.”

*“If you’ve not already been asked questions about your health or lifestyle answering those could get you even more income.*

*For example - if you’ve smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment – you may be entitled to more income than is quoted above.*

*Visit [moneyadvice.service.org.uk/annuityquotes](https://moneyadvice.service.org.uk/annuityquotes) or call 0800 1387777 to find out more.”*

This information, together with information about shopping around to try to obtain a better quote, was repeated several times in the information provided by Aviva.

So, I think Aviva made it clear that if there was additional information about Mr M's health and lifestyle, that information should be provided to Aviva, or Mr M could shop around to see if he could obtain a better income from another provider.

I note the estate has also queried the guaranteed period of Mr M's annuity plan which was one year and questioned why it wasn't longer. I can see from the correspondence that the guaranteed period was set out very clearly by Aviva and the annuity quotes said on each occasion: *"This is the quote option that you told us you would like to see"* which I think suggests Mr M asked for the quotes on those specific bases in previous contact with Aviva.

In addition the quote correspondence indicated that:

*"If you'd like a quote with different options, you can use our online Pension Annuity Calculator, call us on 0800 953 17 77 or speak to a financial adviser".*

So, I think Mr M could have asked for a quote for an annuity plan with a longer guarantee period if that was what he was looking for.

I am satisfied therefore on balance that Aviva provided a quote following contact from Mr M and the quote was based on his request and clearly set out the guaranteed period of one year.

In any event, even if Aviva had included an option within the quote with a longer guaranteed period, I do not consider it more likely than not, that Mr M would have selected that option because I consider his objective was to obtain the highest level of personal income, which was why he had decided against a dependant or spouse income. And I think it is more likely than not, that a longer guaranteed period would have reduced the annual income Mr M would have received from the plan.

#### Delay in response to notification of death

Aviva has acknowledged that it took too long to respond to the notification of Mr M's death and that it incorrectly continued to make income payments from his annuity plan. I consider that caused Mrs M and her son distress and inconvenience particularly given the sad and difficult circumstances. However, I think the payment of £150 together with the overpayment of £3,247 and Aviva's confirmation that it will pay any tax incurred as a result of the overpayment, is fair and reasonable compensation in the circumstances. So, I don't intend to ask it to do anything further.

#### Summary

I appreciate that for the estate of Mr M, not being paid any further income from this annuity plan seems a harsh and unfair outcome, because sadly Mr M only lived for a few years after setting up the plan. However, that is the nature of these plans, if the plan holder lives for a long time, the provider has to pay out the yearly income for many years and conversely, if the plan holder only survives for a short period after taking out the plan, the provider pays out a lot less. And as I have said, this risk was outlined to Mr M in the correspondence.

It is ultimately the plan holder's choice, as was the case for Mr M, whether they opt for a larger annual income which only covers themselves, or they choose a smaller income which also provides a benefit for their spouse or dependant. However, even with the latter option, there is still a significant amount of uncertainty as the plan holder won't know, at the time of making that decision, whether their spouse will survive them or not.

As I have said, I consider that Aviva provided Mr M with information which was clear, fair and not misleading and it followed his instructions. So I don't think it has acted incorrectly or treated Mr M unfairly.

**My final decision**

I don't uphold the estate of Mr M's complaint against Aviva Life & Pensions UK Limited

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 21 March 2025.

Julia Chittenden  
**Ombudsman**