

## **The complaint**

Mr and Mrs S complain that Aviva Life & Pensions UK Limited (Aviva) incorrectly set up Mr S's pension annuity as a single life pension, rather than the joint life pension he said he asked it to set up. He wants Aviva to cover the cost of replacing his existing annuity with a joint life annuity.

Although Aviva isn't the business which set up Mr S's annuity, that business is now part of Aviva. It is therefore responsible for the complaint. And I'll only refer to it in my decision.

## **What happened**

Mr S had a pension with his former employer. In 2008 he wanted to take the benefits from that pension as an annuity.

On 10 April 2008, Aviva sent the trustees of Mr S's employer's pension scheme an annuity quote as Mr S had asked for an immediate retirement quote and it didn't have the authority to deal with him directly. The quote said that Mr S should read it carefully and consider taking advice about which annuity was most suitable for him.

Aviva also wrote to Mr S on 10 April 2008 in response to his benefits enquiry. It said it'd sent the information he'd requested to his scheme's trustees.

On 21 May 2008, Aviva received Mr S's completed lifetime allowance and tax-free cash questionnaires. It then sent him a retirement quote on 22 May 2008. The quote was for a tax-free cash lump sum of £22,626.77 and a reduced annual pension for Mr S of £7,167.96. The pension would be paid monthly from Mr S's retirement date. And would be paid throughout his lifetime. It was guaranteed for at least five years, even if he died in that period.

Aviva said Mr S should carefully read the Key Features and "*Your right to think over your options and change your mind*". It said he had 30 days from the receipt of its letter to consider the options and, if he wanted to, change his mind. It also said that if it set up an annuity for Mr S that he subsequently cancelled, any money it'd already paid out would have to be returned. The 22 May 2008 letter also explained Mr S's retirement options.

On 1 June 2008, Mr S completed and signed a payment authority form and a pension payment form for his annuity. He noted on the payment authority form that he'd received financial advice when making his decision about retirement benefits. Mr S included information about Mrs S on the second page of the pension payment form.

On 9 June 2008, Aviva sent annuity documents to Mr S's employer. The documents included a copy of the pension payment form Mr S had signed on 1 June 2008 which included Mrs S's name and date of birth. They also showed that Mr S had elected to receive a tax-free cash lump sum of £22,626.77 and an annual annuity of £7,167.96.

On 7 July 2008, Aviva wrote to Mr S to tell him his annuity had been set up. The letter stated that his annuity would start on his retirement date and end on the later of his death and the

five-year guarantee period. Aviva separately confirmed that it'd sent Mr S a cheque for his tax-free cash and that it'd set up his annuity for £7,175.28 a year. It also sent Mr S a schedule of his annuity benefits.

This stated that Mr S's pension would be paid by monthly instalments for the rest of his life. And noted that the pension was guaranteed to be paid for at least five years. It said that the pension would therefore be paid up to and including the May 2013 instalment even if Mr S died before that date.

Aviva wrote to Mr S's financial adviser the same day to explain that it was now paying him the retirement benefits he'd requested. And enclosed the completed forms.

I understand that Mr S contacted Aviva in 2020 to confirm that it held all the documents it needed for his annuity. He said he was reassured to receive a copy of the form he'd signed on 1 June 2008 to request a spousal benefit.

I also understand that Mr S then asked Aviva to double check its files in early 2025. It was at this point that Aviva told him that his annuity was a single life annuity.

Aviva then re-sent Mr S copies of all the documents it held in relation to the annuity set up, including the 1 June 2008 signed form.

On 10 February 2025, Aviva wrote to Mr S to confirm that it'd set up his annuity correctly as a single life annuity. It said this is what it'd quoted for and what he'd accepted. Aviva said that if Mr S had felt that his annuity had been set up incorrectly, he should've queried this within the 30-day cancellation period. Given that had now passed, Aviva said it couldn't change his annuity to a joint life annuity.

Aviva issued its first final response to this complaint on 11 February 2025. It acknowledged Mr S was unhappy that Mrs S hadn't been included in his annuity. And that he believed he'd asked it to set up a joint life annuity for them both in 2008. But it said that it'd checked the claim forms from 1 June 2008 which showed that Mr S had requested a single life annuity. Aviva said that as the 30-day cancellation period had ended, it couldn't add Mrs S to the annuity.

Mr S felt he'd completed the necessary paperwork in 2008 for a joint life annuity. So Aviva issued a second final response letter on 7 March 2025. It said the multiple quotations it'd sent him in 2008 were for a single life annuity. Aviva also confirmed that, having reviewed the original quotes issued, the tax-free cash paid and pension had been calculated on a single life basis. It said that if Mr S had asked for a joint life quote, his annuity would've been lower.

Aviva said it would be happy to allow Mr S to change his single life annuity to a joint life one if he wanted to. But it noted that as he'd received considerably more monthly payments from the single life pension than he would've received from a joint life pension, he'd first have to return the difference. It said this would be:

£41,572.95 if he would've elected a 50% joint life annuity, or

£47,652.82 if he would've elected a 100% joint life annuity.

Aviva said it couldn't waive this cost, despite Mr S's request for it to do so.

Aviva also said that the form Mr S had completed for a spouse's benefit had been included in a generic pack. It said that while he had completed this form, it hadn't been applicable to

his single life annuity quotes. Aviva said it should've queried his completion of that form with him at the time given the completed forms contradicted the quotes provided. It apologised and said it'd paid Mr S £100.

Mr S still felt that he'd asked Aviva to set up a joint life pension for him and Mrs S when he'd signed the form on 1 June 2008. He felt Aviva was responsible for not correctly following his instructions at the time. He also felt that as Aviva had sent him his signed document on three occasions, it'd reassured him that his request to set up a joint life annuity had been implemented. He felt it should be liable for putting matters right.

Aviva issued its third final response letter on 13 March 2025. It still didn't think it'd set up the annuity incorrectly, so said it couldn't waive the cost of converting the annuity to a joint life annuity. It repeated the points it'd made in its first two complaint responses. And noted that it'd issued a policy schedule when the annuity was set up. It said this had clarified the 30-day cooling off period.

Mr and Mrs S were unhappy with this response, so referred their complaint to this service.

Aviva provided its complaint file. But also raised a time bar objection as it felt that the complaint had been brought to this service too late for us to consider its merits.

Our investigator felt that the complaint had been brought to this service in time for us to consider its merits. While he acknowledged Aviva's concerns on this point, he felt that Mr S had only become reasonably aware that he might've had cause for complaint about the set up of his annuity in 2025, when he contacted Aviva and received paperwork that stated he held a single life policy.

Our investigator felt that Aviva had set up the annuity correctly in 2008. He said that Mr S had received advice from his financial adviser when he set up the annuity. And that it was that adviser who had arranged for the annuity quotations and checking the correct paperwork was completed. He acknowledged Mr S's completion of the 1 June 2008 form. But said this hadn't applied to the quotes he'd received.

Our investigator noted that Aviva accepted that it should've asked Mr S about the 1 June 2008 form on receipt. But agreed with its argument that Mr S's financial adviser would've been aware that the quotes he'd received were for a single life annuity. He therefore felt it was reasonable for Aviva to have deemed that Mr S was happy to proceed with the single life annuity.

Our investigator said that Aviva had also offered to amend the annuity from a single life to a joint life policy if Mr S repaid the overpayments he'd received under the single life annuity since 2008. He felt that this offer was fair and reasonable.

Mr S made the following points:

- Aviva should've checked it was paying him the correct annuity when it'd taken over his policy from the previous business. He questioned why it hadn't.
- He wanted to know why the form he'd signed on 1 June 2008 had included the section for him to request his spouse to be included on his annuity. And why Aviva hadn't then set up a joint life annuity. He also questioned why Aviva had retained a copy of that signed form, subsequently sharing it with him more than once.
- Mr S felt that Aviva had never shown him a signed document in which he'd agreed to the single life annuity. He felt Aviva should be responsible for the cost of setting up

the correct joint life policy.

- Mr S felt that Aviva's offer had been designed to intimidate him into giving up the argument.

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 done so, I'm not going to uphold it. While I understand Mr and Mr S's frustration, I think it's more likely than not that Aviva set up the annuity Mr S asked it to set up in 2008. Given that, there's no evidence that Aviva isn't providing Mr S with the annuity he requested.

Before I consider the merits of this case, I agree with our investigator, and for the same reasons, that the complaint hasn't been brought to this service too late. I've therefore gone on to consider its merits.

I first considered whether there's any compelling evidence that Aviva set up the annuity incorrectly.

#### *Was the annuity set up incorrectly?*

Aviva has provided this service with some documents from the time the annuity was set up. But I've not been provided with any paperwork showing the type of annuity Mr S himself selected in 2008.

This isn't surprising, given the sale took place almost 20 years ago. I've gone on to consider any other evidence provided about the set-up of the annuity. The evidence shows that Mr S had an adviser at the time of the annuity set up. And that Aviva sent some of the annuity documentation, including the annuity schedule, to that adviser. I'd therefore have expected the adviser to have noticed if an annuity different from the one Mr S wanted had been set up.

Aviva has provided copies of calculation documents and correspondence between it and Mr S from the time it was generating annuity quotes. None of these documents refer to a joint life annuity. They all reference "SLP" – single life pension. And all have the spouse's date of birth information field empty and crossed out.

The 22 May 2008 quote Aviva sent to Mr S stated:

*We will pay your pension monthly starting on your retirement date. It will be paid throughout your lifetime and we guarantee to pay it for at least 5 years, even if you should die within that period. Your pension will be level in payment.*

I think this is clear that the quote wasn't for a joint life pension. I say this because if it was, the quote would've stated that the pension would continue to the second life if they outlived Mr S, even after the five-year guarantee had expired.

The 22 May 2008 letter also stated that: *"If an annuity is set up and subsequently cancelled, any money already paid out will have to be returned."*

Mr S agreed to this quote when he signed the pension payment form on 1 June 2008. Although I acknowledge Mr S's point that there's no documentary evidence of him

specifically signing a document agreeing to a “single life annuity”, I’m satisfied that the documentation Aviva sent Mr S and his financial adviser in 2008 clearly related to a single life pension. I’m also satisfied that Mr S had more than one opportunity to cancel that single life pension within the 30-day cancellation period if he was unhappy that a single life pension had been set up.

I also acknowledge that when Mr S signed the pension payment form on 1 June 2008, he provided Mrs S’s name and date of birth on the second page of that form. While I understand that Mr S considers that this signed and dated form represented his request for his spouse to be included in his annuity purchase, I can’t fairly agree.

I say this because although I can see that Mr S did provide Mrs S’s name and date of birth in the second page of the 1 June 2008 pension payment form, under the section which states: *“If you have decided to include a spouse’s benefit, please would you provide your spouse’s date of birth”*, I wouldn’t have expected him to have completed this part of the form given each of the quotes Aviva had provided had been on a single life basis.

The second page of the pension payment form only needed to be completed in certain circumstances. It wasn’t needed in Mr S’s case as the evidence shows he’d only received single life quotes in every case.

If Mr S had changed his mind and now wanted a joint life annuity, I would’ve expected him to have asked for quotes on a joint life basis, rather than agreeing to start the single life pension Aviva had quoted. As I’ve noted earlier, the documentary evidence doesn’t show what Mr S actually requested, but the quotes provided were clearly for single life pensions. Therefore, if Mr S had wanted to set up a joint life pension, I would’ve expected him and/or his adviser to have asked Aviva to provide different quotes. I can’t fairly expect Aviva to have recalculated the annuity on a joint life basis simply because Mr S had completed the spousal section of the pension payment form. I say this because at this point, Mr S had already accepted the single life quote he’d been sent and was already at the payment stage of his annuity.

The 7 July 2008 paperwork Aviva sent Mr S when his annuity was set up included a Schedule of Pension which stated that the annuity was: *“guaranteed to be paid for at least 5 years. The pension up to and including the 8 May 2013 instalment will still be paid, even if you die before that date.”* I’m satisfied that this clearly showed that the annuity was set up as a single life annuity.

Given the above, I can’t fairly agree with Mr S that Aviva should be responsible for the cost of setting up a joint life annuity.

Aviva has apologised and paid Mr S £100 for not having queried the inclusion of Mrs S’s details on the 1 June 2008 form at the time, although it has also told this service that it’s possible that it did contact Mr S about this at the time. Mr S has questioned why Aviva included this part of the form for him if it felt he’d chosen a single life annuity. So I’ve gone on to consider this point.

#### *The pension payment form*

Aviva’s pension payment form allowed for the payment of a customer’s chosen pension, whether that was a single life pension or a joint life pension. The form wasn’t completed by the customer until they’d received and accepted quotes on whichever basis they had requested and were ready to accept their preferred quote and move to payment.

As such, the form needed to allow for both single life and joint life pensions, depending on

the quotes requested and the decisions customers then went on to make about the payment of their benefits.

I therefore can't reasonably say that Aviva did anything wrong when it sent Mr S its usual pension payment form for completion once he was ready for his pension to start.

I also acknowledge Mr S has questioned why Aviva retained a copy of his signed pension payment form, and why it shared it with him more than once. But I wouldn't expect Aviva to remove documentary evidence of this type. The payment form was a required part of the set up of the annuity Mr S had chosen.

I've also considered Mr S's point that Aviva should've checked it was paying him the correct annuity when it took it over from the previous business. But I can't reasonably say that it should've taken such an action. I say this because Aviva continued to pay Mr S the annuity he'd been receiving without complaint since 2008. And I can't fairly expect it to have gone through the sale paperwork for each policy being transferred unless it had reason to believe there was anything wrong, which I'm not persuaded was the case here.

Overall, I'm satisfied that the £100 Aviva has paid Mr S for not having asked him why he included Mrs S's details on the pension payment form is fair under the circumstances of this complaint.

Aviva has offered to set up a joint life annuity for Mr and Mrs S, but only if Mr S pays it back for the additional single life annuity payments he's received since 2008. So I've gone on to consider Mr S's point that Aviva's offer was designed to intimidate him into giving up the argument.

#### *Aviva's offer*

The evidence shows that the annuity was set up as an advised sale. As I explained above, I don't consider that Aviva is responsible for incorrectly setting up a single life annuity instead of a joint life one.

I say this because I'm satisfied that the documents Aviva sent to both Mr S and his adviser at the time made it clear it was a single life annuity, and as it was advised, his adviser would've also known this. Therefore, if Mr S wasn't happy with the basis quoted, he could've changed it at the time.

While I'm happy to see that Aviva has offered to allow Mr S to change the basis of his annuity if he wants to, I'm of the view that the offer it has made is fair. I say this because the evidence shows Mr S has been receiving the benefits he selected since 2008. And because when those benefits were selected, Aviva explained that if Mr S subsequently cancelled his annuity, any money it'd already paid out would have to be returned.

Overall, I'm satisfied that Mr S instructed Aviva to set up an annuity on a single life basis. I therefore don't uphold this complaint. And I don't require Aviva to take any further steps to put things right.

#### **My final decision**

For the reasons I've explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 30 October 2025.

Jo Occleshaw  
**Ombudsman**