

complaint

Mrs G complains that her late husband was advised by The Wright Financial Consultancy (WFC) to buy an annuity and failed to investigate 'enhanced rates' or to include provision for a widow's benefit. Mrs G has also complained that WFC failed to respond to her complaint in a timely or substantive manner.

background

Mr G had a drawdown plan and, on approaching age 75, was told that his provider was unable to offer an Alternatively Secured Pension which would allow him to continue income withdrawals. The provider suggested alternatives, including an annuity or transfer, and suggested that Mr G seek financial advice. Mr G approached WFC for advice and as a result, an annuity was purchased with the fund from his drawdown plan.

When Mr G later died, Mrs G found that the annuity had not been set up on an 'enhanced' basis or to include a widow's pension she complained to WFC and then to us.

One of our adjudicators investigated the complaint and wrote to WFC setting out his reasons why he considered that the complaint should succeed. He concluded that:

- WFC had intended to set up an annuity with a widow's pension but failed to do so.
- WFC had failed to establish Mr G's poor health and therefore not explored enhanced annuity options.
- WFC should compensate Mrs G by establishing the spouse's pension that she would now be entitled to receive.

WFC disagreed with the adjudicator's findings and said that it had done everything in its power. It could not be responsible if Mr G had not provided medical details. Mr G said that other money was available for his wife and he needed the most income he could get as he had downsized the property and money was running low. Further submissions have been made by both parties for me to consider along with the evidence already provided to the adjudicator.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator and for broadly the same reasons.

WFC says that Mr G told the adviser that he had other funds available to provide for his wife and wanted the best pension for himself as he had already downsized in property and that money was running low. WFC has not provided me with any documentary evidence to support its submission and the asset values shown in legal documents provided to me valuing Mr G's estate do not show the funds referred to by WFC.

I have not been provided with a fact-find, suitability letter or evidence of any discussion between WFC and Mr G about the features of an annuity or any other product. I accept that there are occasions and circumstances where an individual wishes to maximise their income rather than provide for their spouse but I cannot establish whether Mr G was such a person.

The documentary evidence of discussions that I do have are telephone notes covering a period of over seven months from Mr G's initial contact with WFC, through what appear to be

calls from Mr G requesting action from WFC. The last telephone note appears to be notifying WFC that Mr G had had a stroke, after which an annuity application form was signed and submitted. It is not clear why WFC proceeded in setting up an annuity after being notified of Mr G's stroke without further discussion or revisiting its advice. I cannot therefore find that WFC offered suitable advice to Mr G.

In saying that, I note the adjudicator's view that in lieu of a fact-find, WFC had provided a telephone note that records Mr G's date of birth, that he did not smoke and that he took medication for arthritis. In fact, Mr G was also a diabetic and had already suffered a stroke. WFC has commented that it should not be held responsible for Mr G not providing information. I do not agree with this view, as WFC's own records show that it was aware Mr G had suffered a stroke just before proceeding with an annuity. WFC had a responsibility to establish Mr G's circumstances and it did not do so. The evidence indicates that WFC did not ask for this information.

I have noted that the annuity application form had been completed to include a "*dependant's lifetime annuity*" and that prior to this application being sent to the provider, WFC requested birth certificates for Mr and Mrs G, a copy of their marriage certificate and NI numbers. It is not clear to me whether the certificates were required by the drawdown provider or the annuity provider but I note that the drawdown plan provider only required certificates from a spouse "*if the annuity is on a joint life basis*". I conclude that an annuity with a widow's provision was proposed and applied for by Mr G.

On balance, I find that WFC made an error in setting up Mr G's annuity as it did not meet his needs, health or circumstances.

We have established from the annuity provider that it would have provided to a joint life non-escalating annuity payable without reduction on Mr G's death and without guarantee based on the annuity rates prevailing on 17 February 2009, the date of the final illustration which established the annuity currently being paid. The annuity would have been £6,895.92 (gross) a year or £574.66 (gross) a month. That compares to the single life annuity provided to Mr G of £8,780.28.

I am satisfied that if Mr G had been provided with suitable advice to consider an enhanced annuity and to provide for his wife that he would have bought the joint life annuity. In particular, it appears from the evidence available that he intended to provide for his wife because copies of birth and marriage certificates had been requested.

During the period Mr G was receiving payments, he received more income than he would have received from the joint life annuity. I am satisfied that Mr G spent that income on day to day living. That additional income should not therefore be taken into account in calculating the compensation due to Mrs G.

I have considered Mrs G's comments on the manner in which her complaint was dealt with by WFC. Whilst I note that Mrs G's complaint was raised via her solicitors and have considered WFC's comments on retrieving documents and its own adviser's health concerns; I am not satisfied that it acted in a timely manner or kept the complainant informed, resulting in Mrs G bringing her complaint to us before a final response had been issued by WFC.

Mrs G has suffered significant distress and inconvenience as a result of not having the income available from the annuity following her husband's death. I agree with the adjudicator that a payment of £400 is appropriate in the circumstances.

my final decision

My final decision is that I uphold Mrs G's complaint. I order The Wright Financial Consultancy (WFC) to arrange and pay compensation to Mrs G as follows:

1. We have established from the annuity provider that they would have provided to Mr and Mrs G for a joint life non-escalating annuity payable without reduction on Mr G's death and without guarantee based on the annuity rates prevailing on 17 February 2009, the date of the final illustration which established the annuity currently being paid. The annuity would have been £6,895.92 (gross) per year or £574.66 (gross) per month.
2. We have established that the cost of purchasing an annuity of £6,895.92 per annum for Mrs G from the same provider as 1. where the annuity is, payable monthly in advance without escalation or guarantee, would be £70,155.

I order that, in full and final settlement of the complaint, WFC pay Mrs G compensation of A + B + C, where:

A = £70,155 being the cost of the annuity described in 2. above.

B = The value of missed income payments from the last annuity payment on 23 December 2013 to the date of payment of the redress, calculated daily, on the revised joint life annuity basis.

C = Interest on the missed payment at 8% per annum simple calculated from the date each payment fell due to the date of settlement.

In addition, I order that WFC pay Mrs G compensation of £400 for the distress and inconvenience caused through the loss of a significant proportion of her income and for the time taken in resolving the complaint.

Roy Milne
ombudsman