

## **The complaint**

Mr M, through his representative, has complained about advice he received from Age Partnership Limited (APL). This advice was to purchase a fixed term annuity using the benefits held within a Friends Life Section 32 (s32) plan. Mr M states the advice was unsuitable and has caused financial loss.

## **What happened**

Mr M's first contact with APL was in 2012. APL could not assist Mr M as his s32 plan held guarantees with no advisory service available at that time.

There was further contact in 2013 with an advised process commencing in early 2014.

APL provided Mr M with a letter of authority to sign which would enable them to contact Friends Life and get accurate information on the s32 policy value and benefits.

The fact-finding call between Mr M and APL was conducted in February 2014. Discussions during this call included:

- The existing s32 policy and its benefits were discussed. The level of income which could be provided of around £1,600 per year was confirmed as well as the possibility of inflationary rises in future. Other benefits including the spouse's pension were also discussed.
- Mr M confirmed he has no savings or other pensions. His home was rented, and income was confirmed as minimal.
- Mr M had not worked permanently for five years and had been in receipt of pension credit of around £75 per week.
- Mr M was only months away from reaching his 65<sup>th</sup> birthday and would then be in receipt of his state pension. This in combination with Mrs M's state pension would cover the majority if not all of household expenditure.
- Mr M had received his state pension forecast with the income provided by the s32 policy resulting in a reduction in state pension of broadly the same amount.
- Objectives were confirmed as being to "front load" the benefits available to Mr M from the s32 policy.
- Given the presence of state pension, and the relative low value of the any benefits which would be provided by the s32 policy (or any recommended alternative) a spouse's pension was not required for any alternative to the s32 plan.
- The provision of tax-free cash (which was not available with the s32 policy should it remain in situ) would be used to repay some credit card debt. Mr M confirmed this was currently costing around £60 per month but when asked, chose not to disclose the outstanding balances owed.
- Guarantees and features of s32 were discussed again alongside the various types of income solution that could be available as an alternative (drawdown, annuity, investment

backed annuity and fixed term annuity).

- The options available from the s32 were considered by Mr M as being “of no benefit”.
- The estimated income available from an annuity was discussed with 25% of the fund value being taken as tax-free cash. The annuity income was slightly lower than would have been provided by the s32 policy but despite this Mr M confirmed he was “happy with what is being discussed” as he wanted to “maximise as much as I possibly can in the shorter term”. Options discussed but dismissed by Mr M for any annuity included a spouse’s pension and indexation. Both were rejected on the basis that they would reduce the initial income level.

There was a follow up call between Mr M and APL a few days later once actual quotes had been received from APL’s recommended annuity provider.

This annuity quote included a 10-year guarantee period with the overall recommendation providing tax-free cash of around £8,400 and income of around £1,750 – slightly higher than the income of around £1,600 which would have been provided by the s32. Again, during this call, the adviser confirmed that the s32 policy income could rise in line with inflation and did include a spouse’s pension – benefits which would be lost upon transfer – however Mr M reconfirmed that he wanted to “front load” the benefits available to him.

Following this, paperwork was issued and the process of commencing the transfer and implementing the new annuity was started. However, following the announcement of pension regulation changes, Mr M asked for his application to be paused and then withdrawn.

A further call between APL and Mr M took place in April 2014. This concerned the rule changes around access to pension funds typically called ‘Pension Freedoms’. These allowed people more flexible access to their pensions. As such a new proposition was discussed whereby Mr M would still gain access to 25% of his pension fund as a tax-free lump sum with the remainder utilised to provide a guaranteed level of income for one (or three) years after which the remainder of the fund could be accessed as Mr M saw fit.

After discussion, Mr M chose a 1-year fixed term annuity whereby after tax-free cash his level of income would be set at £2,263 for the following year. After this a guaranteed maturity value of £22,888 would be available for Mr M to use as he saw fit. As tax-free cash had already been taken the adviser explained that any further withdrawals would be taxed as income.

The suitability letter documenting the above recommendation was issued on 29 April 2014. This suitability letter reconfirmed Mr M’s circumstances and objectives, detailed the product being recommended as per the above, and again laid out the features and benefits of the s32 policy which would be lost upon transfer.

The application form for the fixed term annuity was completed on 1 May 2014.

As the end of the 1-year term was approaching, Mr M contact APL in February 2015. Another call took place in early March 2015 where it was agreed Mr M would contact APL nearer to the end of the term.

No further contact between APL and Mr M took place.

In September 2022, through his representatives Mr M complained to APL about the advice he had received.

APL investigated but did not uphold the complaint. APL stated that they considered Mr M had been made fully aware of the features and benefits that would be lost upon transfer of the s32 policy before the transfer was completed. APL noted that Mr M had been in contact with them since 2012 looking at his options for the s32 plan with the content of both his calls with their adviser and the documentation issued being clear that Mr M's objectives were to maximise his short-term benefits from the pension fund rather than maintain longer term benefits such as inflation proofing and a spouse's pension.

Mr M did not agree and as such the complaint was referred to this service.

As part of their submissions to this service APL noted that given the date of advice and timelines involved, they considered the complaint to sit outside of our jurisdiction.

Our investigator looked into things and concluded that whilst the advice had been given in 2014, they still considered the complaint to have been made within the timeframes allowable and as such the case was one which we could look at.

Following this, the investigator went on to consider the complaint itself and concluded the advice was suitable. The investigator noted that the recorded telephone meetings and documentation issued at the time of advice showed Mr M was out into an informed position regarding the s32 policy and the benefits that would be lost upon transfer. It was clear that Mr M wished to "front load" the benefits available as access as much as possible in the early years of retirement with tax-free cash (unavailable within the s32 policy) to be used to repay credit card debt.

Whilst the complaint stated that APL did not discuss alternative ways of Mr M accessing capital to repay his debts our investigator noted that Mr M was already in a debt management plan and as such there were unlikely to be any other viable sources of capital available.

Overall, our investigator concluded the advice was not unreasonable.

It was also noted that the chain of events, as detailed above, also support the idea that even if APL had advised against the transfer, Mr M would most likely have found a way to access the funds in any case.

APL did not respond to the findings issued whilst Mr M disagreed with the findings issued. In response to the findings Mr M repeated the fact that he was an inexperienced individual who had relied upon the advice of APL, that alternative methods of accessing capital (other than his pension tax-free cash) had not been discussed and that if they had, he would not have transferred his pension. Mr M also noted that if APL had advised him to retain his pension he would have followed that advice.

As no agreement could be reached the case has been passed to me.

### **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.

As part of the evidence provided to this service by APL, they have stated they consider the case to be outside of our jurisdiction. With no response from them following our investigator's findings, I have firstly considered the outcome our investigator reached in relation to our jurisdiction in this case.

The rules which govern our jurisdiction are laid out in the Financial Conduct Authority (FCA) handbook. The relevant section states:

*DISP 2.8.2 states:*

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

- (1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*
- (2) more than:*
  - (a) six years after the event complained of; or (if later)*
  - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:*
- (3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or*
- (4) the Ombudsman is required to do so by the Ombudsman Transitional Order; or*
- (5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the Act).*

It is clear that the event being complained about was more than six years ago and as such the focus of my decision in this regard has been when Mr M became, or ought reasonably to have become aware he has reason to complain.

Having looked at the chain of events above, I can see no event which would have alerted Mr M to the possibility the advice he has received in 2014 was unsuitable, until he was informed of such by his representatives.

As such I have reached the same conclusion as our investigator and have decided that this complaint is one which this service can consider further.

Having reached this conclusion, I have gone on to consider the merits of the complaint and assess the suitability of the advice given to Mr M.

As part of the complaint registered with APL and this service Mr M has stated he was not put into a fully informed position regarding the benefits of the s32 policy. As per the findings issued by our investigator, I have concluded that APL did in fact make Mr M fully aware of the benefits of the s32 policy.

The fact that the income provided included inflationary rises was discussed on more than one recorded call and fully documented in the suitability letter issued by APL. Mr M has stated that APL did not take any steps to ensure he understood the content of the suitability

letter before the s32 policy was transferred, however the issue had already been covered in more than one telephone conversation where Mr M's understanding was confirmed.

On those calls Mr M explained that he was aware any income from the s32 could rise with inflation but that this was not important to him, indeed when discussing a potential annuity as an alternative to the s32 plan, indexation was discussed and rejected as an option by Mr M as he wished to have the highest possible benefit in the short term.

The same can be said of the spouse's pension which was also lost upon transfer of the s32 policy. This was also fully discussed on more than one call and rejected by Mr M as an available option on an alternative annuity, also based on Mr M's objective to maximise the short-term benefit achievable.

It is clear from all the evidence from the time of advice that Mr M was primarily concerned with the short term benefits he could gain from his s32 policy rather than what may be most financially beneficial over the long term. At the time of the advice calls Mr M was less than two months away from receiving his state pension (with this being in payment by the time the actual fixed term annuity commenced) and as such Mr M did have an accurate picture of what income and expenditure would look like long term with and without the s32 policy.

Income and expenditure figures were discussed with the adviser, with state pension covering the majority if not all the household expenditure. Mr M commented himself that the levels of income that would be provided by the s32 policy (either directly to him or by way of a spouse's pension in the event of his death) were not of great value. As such, I do not consider it unreasonable for Mr M, in these circumstances, to prioritise short term goals over the greatest long-term benefit.

Whilst alternative courses of action may have provided Mr M with greater longer-term returns, the decision to prioritise short term benefit was Mr M's to make. APL put Mr M into an informed position regarding the consequences of this before advice was given and as such, I do not consider their actions unreasonable.

As part of the short-term gains Mr M was seeking, it was the provision of 25% of the fund value as tax-free cash which was of key importance to Mr M. This could not be provided by the s32 policy and was a key driver in prompting Mr M to transfer.

The cash released (around £8,000) was to be used to repay credit card debt which would then reduce monthly outgoings. I do not consider this an unreasonable course of action to take.

As part of the complaint Mr M has stated that APL did not consider or discuss with him any alternative ways he could have raised capital in order to repay these debts and that had they done so, he may not have transferred the s32 policy. In addition, it has been noted that the tax-free cash released was not in fact used to repay debts and was actually used to support day to day expenses and purchase a car.

On the recorded advice calls it was Mr M who stated that the cash released was to be used to repay debt. Whilst the cash may have been used for other purposes once received, an adviser is entitled to rely on the information given to them by their client and as such I do not consider it reasonable to hold APL accountable for Mr M's decision to use the cash for other purposes once it had been received.

Whilst possible alternative ways to repay these debts were not specifically covered, Mr M's wider circumstances were fully discussed, and the information gathered would support the conclusion that there would have been no other options available. It was confirmed that

Mr M had no other savings or investments which could be used and that there was no spare income which could be used to make additional debt repayments each month. In addition, the family home was rented and as such there were no re-mortgage options available.

Whilst not documented at the time, subsequent information provided to this service also confirmed that the credit card debt was in fact in a debt management program at the time, as such I do not consider it reasonable to conclude other borrowing options to repay the debt would have been viable at that time.

I note and have fully considered the point that there is limited information on the file as to the actual debt to be repaid. The only information available is that the debt cost Mr M £60 per month and ideally there would be additional information covering on the debts themselves. However, Mr M was clear on the fact-finding call that he did not wish to provide the adviser with information on the level of debt held. As such Mr M needs to bear responsibility for the lack of information regarding his debts.

A final point our investigator made was that they considered Mr M would have insisted on a transfer way from the s32 policy (even if the advice had been to retain it) to access his benefits in the way he saw fit.

Here it is important to note that it is impossible for me to know exactly what Mr M would have done had different discussions taken place with APL. As such I can only base any conclusions here on the evidence available and the balance of probabilities.

It may have been the case that had APL advised Mr M to retain the s32 plan he would have followed this advice, however, it is clear from the timeline of events that Mr M had been looking to access this pension in alternative ways since 2012 – over two years before it was transferred.

Additionally, documentation provided by Mr M's representatives states the pension funds were indeed accessed flexibly after the fixed term annuity term had ended and as such I do not believe our investigators conclusion that Mr M would have transferred in any case is unreasonable.

Overall, I have reached the same conclusions as our investigator and have decided that the advice provided by APL was suitable. As such I am not upholding this complaint.

### **My final decision**

As per the rationale above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 August 2023.

John Rogowski  
**Ombudsman**