DRN-5762581

The complaint

Miss S and Miss S complain that Ascot Lloyd limited trading as Bellpenny (AL), misadvised their late father (Mr S) to purchase an annuity despite his poor health resulting in financial losses on his death. They want compensation for the losses.

What happened

Mr S met with AL in June and July 2016 for advice around his pensions and some debt problems he had. He was 66 years old, recently widowed and retired as he suffered from a number of health conditions, including diabetes and a heart condition. He was receiving a State Pension of around £7,650 per year. AL's fact find recorded that Mr S had credit card debts of around £25,000, which he wanted to clear as he was finding it difficult to meet the minimum payments. The fact find recorded that Mr S wanted an income of around £9,600 per year to meet his regular outgoings but also wanted to be able to leave some benefits to his daughters (Miss S and Miss S) in the event of his death.

In November 2016, AL issued a suitability report making two recommendations. First, that Mr S use his Standard Life pension plan worth around £60,355.09 to purchase an underwritten (or enhanced) annuity for £45,266.32 after the payment of £15,088.77 tax-free cash with a provider called Just. The annuity offered a guaranteed income for life of £2,613.00 per annum. And the tax-free cash, along with proceeds from the sale of some shares Mr S owned, would be used to pay off the credit card debt. Second, that he switch his Aviva pension plan worth around £70,000 to a Parmenion Self-Invested Personal Pension (SIPP) and invest in AL's own model portfolio investment funds. This SIPP could provide benefits flexibly if required, including through income drawdown. Mr S accepted the recommendations, and the new arrangements were in place by January 2017.

Unfortunately, Mr S died in January 2018. Miss S and Miss S were the executors and beneficiaries of his estate and subsequently complained to AL about the advice to purchase the annuity. They said their father's health was such that it was never likely to provide good value as he would need to live around twenty years to recoup the funds paid into the annuity, and his life expectancy had been less than five years.

AL didn't accept the complaint. It said the annuity had been underwritten to reflect Mr S's health and lifestyle and met his objectives by providing a guaranteed income on top of his State Pension to meet his ongoing living expenses. It said the tax-free cash paid had helped him pay pressing debts. AL said the annuity payments were guaranteed for the first five years, and all the risks had been explained in the suitability report, which Mr S had signed to confirm he understood. It said the transfer to the SIPP offered flexibility as well as providing for Mr S's beneficiaries, as he'd also wanted.

Miss S and Miss S referred their complaint to our service and our investigator looked into it, and she said it should be upheld in part.

Our investigator said the annuity purchase was suitable advice for Mr S at the time because he had limited capacity for loss and it guaranteed to provide the additional income he required. But she said the transfer of the Aviva plan to Parmenion wasn't suitable advice because the charges, including AL's for initial and ongoing advice, were much higher than the existing plan, part of which also offered a guaranteed return of 4% per year. She said it was unlikely that the new plan would provide better return than the Aviva plan and lower costs alternatives, such as Stakeholder plans appeared to have been dismissed out of hand despite the requirement that these be fairly considered. She said AL should compare the value of the SIPP to what the original Aviva plan would have been worth, and if this showed a loss it should pay compensation with interest added to date.

Miss S and Miss S didn't agree that the annuity purchase was suitable, and said AL hadn't contacted Mr S's doctor for any medical information and had only copied details from a repeat prescription form. They said Mr S was vulnerable due to his health conditions, which were worse than AL had said, as he also had problems with alcohol and wasn't managing his diabetes properly. They said he'd been hospitalised following a fall, culminating in his big toe being amputated (on 10 October 2016) due to complications of diabetes. They said this had been between the meetings with AL but Mr S's deteriorating health didn't seem to have been considered. They also said that investments belonging to their late mother could have been realised which would have cleared the credit card debts.

AL said Miss S and Miss S hadn't complained about the transfer of the Aviva plan to Parmenion, only about the annuity purchase. Our investigator said our service had an inquisitorial remit to get to the bottom of complaints, and this complaint was about the suitability of the advice given by AL. She said AL had addressed the transfer to Parmenion in its final response as being part of the overall advice. And she asked AL some further questions about the circumstances at the time, which it responded to.

Our investigator reconsidered the evidence and said her view hadn't changed and the complaint should be upheld in part. She said the AL adviser had recognised Mr S was potentially vulnerable and asked if he wanted someone present at the meetings, which he'd declined. And that Mr S had been engaged at the meetings, positive about the future and understood what was being discussed and no deterioration in his health was noted or mentioned by him after the initial meetings. At a review meeting in December 2017, the adviser had noted his health appeared to have declined but was still shocked to learn of his death only a month or so later. AL said the Just annuity offered the best rate available at the time and the advice provided had met Mr S's objectives. It said the adviser had assisted Mr S in trying to deal with his late wife's financial affairs, but he'd been unable to locate the necessary documents, such as their marriage certificate to progress this further.

Miss S and Miss S said they still felt AL hadn't acted in their father's best interests and had left him in more debt than he started with as he hadn't used the tax-free cash to pay off credit cards, only to fund the monthly payments. They said they didn't believe AL had provided Just with full details of Mr S's health and the total income available to him of just £800 per month once the annuity was arranged was still too low for him to live on.

As neither Miss S and Miss S or AL agree with our investigator's view it has come to me to decide.

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 upholding the complaint in part, along the same lines as our investigator.

I understand how upsetting everything must have been for Miss S and Miss S with their parents passing away soon after each other, and their concerns about their father's vulnerability and physical and mental health when AL was providing the advice. At the same time, I appreciate the difficulty in providing financial advice to people in poor health or who have debt problems in real time, without the subsequent benefit of hindsight. In this case I think the overall plan of using some pension to provide for debt repayment and a secure income and leaving the balance invested wasn't unreasonable. But I think there were short comings in the execution of it which may have resulted in losses for Mr S's beneficiaries. If so, it's fair that they be compensated appropriately.

I've considered all the comments and points made by both sides and I've thought carefully about what the available evidence shows about what happened and AL's responsibilities at the time. It seems clear that Mr S was seeking advice, which is how he came to be referred to AL. Miss S and Miss S agree this was around his debts and retirement income. They've made several points about their late mother's assets, which could have been used to repay the debt. AL's notes do refer to these assets and to delays that were impacting claiming them. The notes also confirm that Mr S considered the credit card debts to be pressing as he was eroding his remaining savings meeting the minimum payments due. AL's notes from the review it carried out in December 2017 confirm it asked Mr S why he hadn't cleared these debts as planned. He advised that as these were now on interest free deals, they weren't as pressing as previously.

The regulations in place required AL to provide Mr S with advice suitable for his needs and objectives and for it to have enough information to have reasonably identified what these were. But it isn't reasonable to expect AL to have subsequently ensured Mr S went ahead and cleared the debts as had been discussed. Likewise, I don't think it was unreasonable for AL to have accepted Mr S's explanations around his health. As well as the specific medical details provided, Mr S also completed and signed AL's retirement fact find document, ticking a box against the following statement,

> *"I have significant health problems which are likely to affect my life expectancy."*

I think it would be unusual for a financial adviser to go on to seek specific medical information from a client's doctor or to question what they were being told, unless there were signs of mental impairment, which AL says there weren't, although Miss S and Miss S disagree. The prescription renewal attached to the medical information provided to the annuity provider (Just), does on reflection, indicate Mr S wasn't managing his diabetes and other conditions as he might have been, with him not having obtained repeat prescriptions on many items for some time. But that was provided to show Just what medications were prescribed, and I'm not persuaded it was AL's responsibility to challenge Mr S on how he managed his health issues. His answers on the medical questionnaire about specific details or indicative readings around blood pressure, cholesterol and blood sugar levels and so on, are consistently given as not known or not tested. And the subsequent evidence provided by Miss S and Miss S from Mr S's GP indicates this was of a long-standing nature. It maybe that Just approached the GP for further details after the annuity application was submitted, but it wouldn't have necessarily done so. And it wasn't AL's role to do this.

The annuity rate Just offered after the medical questionnaire was completed was around 21% higher than the best standard rate in the open market at the time, although this was during a period when annuity rates were at relatively low levels historically. As Miss S and Miss S have said even with the enhancement, Mr S would need to live for many years for the capital committed to be returned as gross income. Around 17 years compared to over 21 years from the best non-enhanced open market rate at the time. At current rates that recovery time would be much less. But the annuity arranged did provide certainty of income, which met an important financial objective recorded for Mr S, of him not wanting to take any risk around this.

I also understand Miss S and Miss S's comments that what AL recorded as Mr S's annual income requirement appears low at only £9,600, with only £100 per month budgeted for food and no entry against Council Tax. However, the figure for utility bills seems relatively high in comparison and may have included other committed expenditure. But I don't think these discrepancies are sufficient to make an annuity unsuitable as part of an overall financial plan. Because I think it is clear that Mr S did need to increase his income from its current level to meet his living expenses.

So, the evidence shows that Mr S's health was considered, and a superior income than typically available was secured consequently. This was guaranteed to be paid for five years from the start of the annuity in the event of Mr S's death. That is a commonly used basis for an annuity. It might have been possible to select a longer guarantee period, which may have offered an improved death benefit position. But a longer guarantee period or other options like value protection, could be expected to reduce the income offered, potentially significantly so on an enhanced annuity. Whereas opting for no guarantee period at all would have increased the available income.

Therefore, Mr S's competing financial objectives of providing a secure income for himself and funds for his beneficiaries would need to be balanced with what was reasonably known and expected at the time. Obviously only Mr S and the adviser were party to the full discussions between them and providing financial advice from a range of potential solutions always has a degree of subjectivity to it, without the benefit of hindsight. AL did consider income drawdown as an alternative route to providing retirement income. This option leaves funds invested, which might potentially result in superior death benefits. But it also means both ongoing costs and investment risk and the income that could be provided wasn't guarantee, which as I've noted, was an important consideration for Mr S. So, I don't think it was unreasonable for AL to have dismissed drawdown as being a suitable solution for Mr S, and arranging an annuity was appropriate in the circumstances.

So, viewed as a whole, the advice to preserve some pension fund for the future, which offered a potentially attractive death benefit position, a tax-free lump sum to assist with debt repayment and a guaranteed risk-free income from the annuity was a reasonable approach. But I'm not persuaded it was also necessary for the Aviva plan to be transferred to achieve this.

The recommendation to invest in the Parmenion SIPP

As explained by our investigator in her view, the new plan had significantly higher costs overall than the existing arrangement with Aviva, considering product, fund management and AL's own costs. Even excluding AL's initial 3% and ongoing advice fees of 1% per annum the new plan was more expensive than the Aviva arrangement. The suitability report states that overall additional investment growth of 1.59% per annum was required each year to age 75 for the new plan to match the Aviva arrangement. Given that Mr S was appraised as being a low to medium risk investor, I think that would be a challenging level of outperformance to sustain. Particularly as Aviva would very likely offer investments with a similar risk profile, with similar underlying asset allocations at a lower cost, which could have been switched into if the existing investment funds didn't meet Mr S's attitude to risk and investment objectives.

So, there was no guarantee that the new plan would provide superior returns, which it needed to, given the extra costs. And Mr S didn't seem to have a particular need for active investment management, online access and other features highlighted as being advantages.

AL has argued the new plan provided more flexibility, although that isn't entirely clear as a comparison with the Aviva plans features hasn't been provided. But Mr S didn't appear to have then required more flexibility as he wasn't going to access benefits immediately and had that changed in the future, the position could have been reconsidered. Whilst the fact find and the suitability report refer to the importance of ongoing advice and reviews (which AL did provide), it isn't clear to me that it was necessary for the existing Aviva plan to have been replaced with a more expensive solution to facilitate this.

Long standing regulatory guidance around pension advice, emphasises that switching to a pension plan with higher charges, or from one offering some type of guaranteed return, without good reason is unlikely to be in the interests of the consumer, meaning the advice wouldn't be suitable. And I'm not persuaded it was here. I think many of the supposed benefits of the new plan set out in the suitability report are stock phrases, and not particularly appropriate to Mr S's needs and objectives at the time.

So, I don't think the advice to switch to the Parmenion SIPP was suitable for Mr S, and it maybe that his beneficiaries have lost out because of the extra costs incurred. I think it is fair that AL undertakes calculations to compare the value of the Parmenion SIPP to the Aviva plan had that remained in place. If these calculations show a loss has been caused, then AL should pay compensation accordingly.

Putting things right

My aim in awarding compensation is to put Mr S's beneficiaries back into the position they would have been in but for the errors made by AL.

I think Mr S would have remained with his previous provider, Aviva, and losses may have been suffered because of the transfer. So, a comparison between the Parmenion SIPP and the previous Aviva plan should be made. If it isn't possible to obtain a valuation from Aviva, I've set out an alternative option using a benchmark appropriate to Mr S's objectives and attitude to investment risk which I consider to be fair and reasonable in the circumstances.

AL must;

- Compare the performance of Mr S's SIPP investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- AL should also add any interest set out below to the compensation payable.

- If there is a loss, AL must pay this to the actual beneficiaries of Mr S's Parmenion SIPP, understood to be his daughters. It should be paid as a lump sum after being reduced to notionally allow for any tax that would otherwise have been paid after Mr S's death, if applicable. It's likely that no tax deduction will be necessary in the circumstances.

- Provide the details of the calculation to the beneficiaries in a clear, simple format.

Income tax may be payable on any interest paid. If AL consider that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss S and Miss S how much it has taken off. AL should also give them a tax deduction certificate in respect of interest if they ask for one, so they can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Parmenion Retirement Account	No longer in force	Notional value from previous provider	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mr S's investment had it remained with the previous provider until the end date. You should request that the previous provider calculate this value.
Any withdrawal from the Parmenion Retirement Account should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if you total all those payments and deduct that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, AL will need to determine a fair value for Mr S's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr S wanted Capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr S's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

The information about the average rate can be found on the Bank of England's website by searching *for 'quoted household interest rates'* and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk

My final decision

My final decision is that I uphold this complaint against Ascot Lloyd limited trading as Bellpenny.

AL should undertake the loss redress calculations I've set out above and pay any compensation due to Miss S and Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S and Miss S to accept or reject my decision before 21 October 2025.

Nigel Bracken
Ombudsman