

## The complaint

Mrs M complains that Evelyn Partners Investment Management LLP (Evelyn Partners) delayed the arrangement of her immediate needs annuity (INA) and failed to arrange this on the terms advised, causing financial losses and inconvenience. She wants compensation for the losses caused.

Mrs M is represented by her sons who hold Power of Attorney for her. For ease of reading I will refer to Mrs M and Mr M as needed in this decision.

## What happened

Mrs M was living in a care home and had been a long-term client of Evelyn Partners, who advised her and her two sons as attorneys on her financial affairs. At a review meeting in September 2024, the rising care costs and the impact on Mrs M's capital were discussed as her pension income and Attendance Allowance payments were significantly below the level of the care fees. Mrs M was then 96 years old. Evelyn Partners said it could explore the options around arranging an annuity to meet the difference between the care home fees and her available income. Various illustrations from annuity providers were obtained over the next few months, reflecting Mrs M's medical position. With outstanding details confirmed, Mr M said they wished to proceed with the INA on 14 March 2025, by when Mrs M was 97 years old.

Much of the overall strategy was in place at this time which would involve cashing in investments managed by Evelyn Partners for Mrs M and purchasing an annuity to meet annual care costs of £125,827.20. The annuity would increase by 4% per annum to help meet rising care costs. The anticipated purchase price was around £452,000, with L&G offering the best rate. It was agreed that those investments subject to potential capital gains tax would be sold in two tranches before and after the end of the tax year, and those held in ISA's would be sold separately. Mr M says his family was anxious to proceed with the INA as soon as possible given they were funding care fees of around £12,000 a month from Mrs M's capital and the estimated cost of purchasing the annuity didn't appear to adjust to reflect that another month had passed.

Evelyn Partners say the adviser requested quotes and passed the task of drafting the necessary suitability report to Evelyn Partners paraplanning team. On 3 April 2025 the adviser confirmed the revised quotation from L&G was £460,768 and was valid until 15 May 2025. He said he expected things to be complete within two to four weeks. However, on 14 April 2025 the adviser confirmed the investment sale instructions planned before the end of the tax year hadn't been actioned, but if this had caused any "detriment", this would be addressed. And he said that it would be several more weeks before the suitability report was ready. The proceeds of the non-ISA investment sales of £210,431.54 were sent by CHAPS to Mrs M's bank account on 15 April 2025. The ISA sales were also completed realising £149,068.84 but weren't received by Mrs M until 21 May 2025.

During this period Mr M pressed for updates and the suitability report was provided on 15 May 2025. Mr M says they would have proceeded immediately, but as the ISA funds hadn't yet been received, they couldn't until these were available on 21 May 2025 and the annuity

commenced that day. Separately Evelyn Partners paid Mrs M £2,484.16 on 16 May 2025, to cover losses caused by the error in the sale instructions of the non-ISA funds.

Mr M raised a complaint on behalf of Mrs M. He said rather than the few weeks stated by the adviser it had taken nine weeks to produce the suitability report and release the investment sale proceeds to allow the annuity purchase, costing at least an extra month's care fees of around £12,000. He said the suitability report merely reconfirmed information already provided and clearly had the format of a template letter, meaning it should have been readily available. He said there had been a loss of investment return once Mrs M's investments had been sold during the delay. Mr M said the actual annuity arranged started on the date L&G received the funds, not the first of the month that Evelyn Partners had stated and the annual increase applied from the start date (21 May) not 1<sup>st</sup> January when the care home fees were increased. He said he'd queried this with the adviser in April 2025 who confirmed the increase applied from January. Mr M also said that the purchase of the annuity had been delayed by a further two days because Evelyn Partners had paid the ISA sale proceeds by BACS rather than a same day CHAPS payment as it should have. He said this alone had resulted in a loss of £344.73 per day, being the care home fees.

Evelyn Partners accepted the complaint in part. It said it had made an error over the sale instructions but had already compensated Mrs M for this. It said the error over the payment of the ISA proceeds through BACS hadn't caused a loss because as the annuity income was payable monthly it would cover the care costs for the coming month. It said it hadn't guaranteed to provide the suitability report in the timeframe the adviser had mentioned. And given this was a complex area of advice, requiring cash flow forecasts to be prepared, the period taken to provide the report wasn't excessive. It did offer Mrs M £300 for the inconvenience and poor communication, which Mr M rejected and this offer was increased to £1,000.

Mr M referred Mrs M's complaint to our service and our investigator looked into it and he said it should be upheld.

Our investigator said he thought Evelyn Partners had taken too long to issue the suitability report and arrange the annuity. He said this should reasonably have been achieved by 18 April 2025. He said that whether there were any losses through the investments being sold before the actual purchase of the annuity wasn't clear, but the actual loss was in any missed annuity payments. He said Evelyn Partners should calculate what income would have been available from L&G had an annuity been purchased on the same terms on 18 April 2025 and pay any income arrears with interest added at 8% per year simple. And that it should compare the actual annuity purchased to the one that should have been purchased and if this showed any loss, this to be paid as a lump sum to Mrs M. Our investigator said he didn't think Evelyn Partners had misled Mrs M around the 4% annual increase as this was a contractual term with L&G. And it did appear to have corrected any loss in respect of the sale instructions. He said that the £1,000 now offered in compensation for distress and inconvenience was fair in the circumstances.

Mr M accepted our investigators view in part. But he said the adviser had confirmed the annual increase would be in January, and this had been discussed with the care home (who the annuity income would be paid directly to) and an increase part way through the year complicated matters. He said Evelyn Partners hadn't seemed to be aware of this issue until after he'd raised the complaint, when it blamed L&G for misleading it. And he said Evelyn Partners had repeatedly said the income payments would be made on the first of the month. He said whilst this didn't have a significant impact, it showed Evelyn Partners didn't know the details of L&G's product.

Evelyn Partners also didn't accept our investigators view of the complaint. It said it had already explained that the timeframe indicated by the adviser for the suitability report to be issued (of two to four weeks) was "*mistaken and unrealistic*" which it didn't consider was "*binding*" on it. And it said this estimate was to issue the report, not to complete the purchase of the annuity. It said the adviser had confirmed on 14 April 2025 that the report would be "*started shortly and I would estimate a few weeks for writing and quality assurance to check it over*". It said it considered this new timeframe superseded the previous indication and was more realistic in respect of what actually happened.

As neither party agrees 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.

### **Delays**

I'm not persuaded by Evelyn Partners explanation and arguments of what it considers an acceptable timeframe to issue the suitability report and arrange the annuity. There is nothing particularly complex about arranging any annuity and third-party software systems make cashflow forecasts readily available and it had dealt with Mrs M and her attorneys for many years, so it knew the background. I think it took far too long to issue the report in the circumstances. If, as it has said, it always expected it to take eight to nine weeks to complete the suitability report, it should have confirmed this immediately, but it didn't and that wasn't treating Mrs M fairly or acting in her best interests as it was required to do.

And I don't think it should have proceeded with the investment sales (which it also got wrong) when it did, without first clarifying whether this remained appropriate given the likely delay. Neither is it clear why it retained the ISA funds for as long as it did post sale. The interest paid on the balance would be tax free in the ISA, potentially an advantage for Mrs M, but the suitability report doesn't mention this and both administration fees and ongoing advice fees were deducted from the ISA balance before it was paid to her. These charges might all relate to matters pre the disposal of the underlying investments, but that isn't clear.

Whilst the suitability report was required under the rules relating to the provision of financial advice, as Mr M has said, what was being proposed had already been comprehensively explained by the adviser over a period of months, with Mrs M's medical details assessed as early as November 2024. And the investment sale strategy and likely provider of the annuity agreed and in part actioned before the suitability report was made available,

As Evelyn Partners says, the annuity illustrations it was updating were typically guaranteed for six weeks. But that's only provided the actual purchase funds were received by L&G within that timeframe. So, not being able to produce a suitability report to recommend an annuity purchase before the guaranteed rate being recommended had expired, is a significant failing in my view. Particularly, as I've noted, investments to fund the purchase had already been liquidated. And what then did happen once the report was provided, was that the annuity was in place six days later. But for the further error by Evelyn Partners in sending the ISA funds by BACS rather than CHAPS, this could have been achieved in four days or sooner had those funds been released earlier.

So, Evelyn Partners wasn't starting this advice from scratch and had it provided the suitability report within what I consider to be a reasonably generous timeframe of within four

weeks of when Mr M confirmed they wished to proceed with the advice, this would have been the 11 April 2025. Meaning an annuity start date of 18 April 2025 would have been eminently achievable. So, I think the revised timeline proposed by our investigator is reasonable and it is possible that this delay in arranging the annuity has resulted in financial losses for Mrs M, if so, it's fair that she be compensated for that.

### **Investment losses**

I think the investments were likely sold too soon given the delays, but the actual investment loss here is the annuity income not paid due to the delay, given the reason for the sales was to fund the purchase of the annuity. But I think Evelyn Partners should also consider any charges levied after the investment sales were made, particularly around the ISA, to ensure that these only relate to agreed fees incurred to the point of those sales and reimburse with interest any fees that do not.

### **Annuity start date and escalation date**

Annuities generally start the day the funds are received by the annuity provider, although with some providers the actual income payment date might be set to start the following month, referred to as "*in arrears*". I haven't seen a copy of L&G's illustration but from the terms and conditions that have been provided the income payment was to be in advance and I'd expect that to be set out on the illustration too. The suitability report confirms that income payments will be in advance but is silent on what the start date would be, although I'd expect that to be confirmed on the illustration also.

Likewise, the terms and conditions confirm the annuity will be increased at the selected rate on "*the first anniversary*" of the plan start date. The suitability report just refers to an annual increase of 4% without stating when this would be, so this could have been made clearer. I think the evidence shows this issue was important to Mrs M and it was discussed with the adviser. A file note, which appears to refer to a meeting of 18 March 2025, between Mr M, his brother (as the two attorneys) and the adviser, states under the heading "*Follow-up tasks*" that the adviser was to;

***"Escalation Flexibility: Double check with Legal and General if they can include the flexibility of starting the escalation in January regardless of the start time."***

A subsequent email from the adviser confirms that this was what would happen. So, I think Evelyn Partners did misinform Mr M about what L&G offered. It has blamed this on the receipt of misinformation from L&G, although it's shown no evidence of this. But regardless of that, the adviser firm is responsible for the recommendations it makes, and it should understand the product. And I appreciate that increases in January would have been more efficient and convenient for Mrs M, given this is when her care home increased its fees.

It might be that other annuity providers could have offered this flexibility and perhaps also around a payment date of the first day of the month. Had they, it's likely this would have affected the annuity rate offered, by worsening it if the start date was backdated to the first of the month and improving it if delayed until the start of the following month. It's very likely that bringing forward the increase date would also negatively impact the rate offered. And if it was the case that L&G was offering the best "underlying" annuity rate, it's possible that opting for a provider that might offer more flexibility over these dates, but a lower annuity rate, wouldn't offer any actual financial advantage overall, so I think this issue is unlikely to have caused a quantifiable loss.

However, I think the lack of clarity and on the face of it, the further error over the “*escalation flexibility*” caused a loss of expectation for Mrs M, which further increased the inconvenience and frustration caused by the delays and other errors.

Taking everything together I think Evelyn Partners took too long to produce the suitability report and made other errors in arranging the annuity. This caused Mrs M inconvenience and potentially financial losses, and it hasn't treated her fairly, so I am upholding this complaint. But I think that the revised amount of £1,000 that Evelyn Partners has offered Mrs M is fair compensation for the distress and inconvenience that she has been caused.

### **Putting things right**

My aim in awarding compensation is to put Mrs M as closely as possible back into the position she would have been in but for the errors made by Evelyn Partners.

Evelyn Partners must,

- Calculate what INA income Mrs M would have been able to obtain from L&G (on the same basis, including 4% escalation and guarantee period) if the purchase had been completed by 18 April 2025.
- Calculate any missed INA income between that date and 21 May 2025, when the actual L&G annuity commenced. Then add interest at 8% simple per year to each missed payment from its due date until the date of settlement.
- Compare that earlier INA with the one actually purchased. If the same income would have required a lower purchased price, or if the income now payable is lower, pay Mrs M the difference on a gross, tax-free basis. If the income is lower this calculation should reflect the cost of purchasing an additional annuity on the same terms. Interest at 8% per year simple should be added in either case to the date of settlement.
- Reimburse any advice fees or plan charges following the sale of the ISA investments that didn't relate to fees or charges incurred up to the date of those sales, with interest to be added at the rate of 8% per year simple until the date of settlement.
- In each case Evelyn Partners must provide Mrs M with a simple calculation of how it worked out the figures.
- Pay Mrs M £1,000 for the distress and inconvenience she's been caused, unless it has already done so.
- Income tax may be payable on any interest paid. If Evelyn Partners deducts income tax from the interest, it should tell Mrs M how much has been taken off. Evelyn Partners should give Mrs M a tax deduction certificate in respect of interest if Mrs M asks for one, so Mrs M can reclaim the tax on interest from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against Evelyn Partners Investment Management LLP.

I direct Evelyn Partners Investment Management LLP to undertake the calculations set out above and pay any compensation due to Mrs M.

I further direct Evelyn Partners Investment Management LLP to pay Mrs M £1,000 for the distress and inconvenience she's been caused, unless it has already done so, which I consider this to be fair in the circumstances of the complaint.

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 March 2026.

Nigel Bracken  
**Ombudsman**