

The complaint

Mr A has complained to Legal and General Assurance Society Limited (Legal & General) that he was mis-sold his annuity as it doesn't increase on a yearly basis. Mr A has asked that he be able to encash his annuity instead.

What happened

Mr A had a "Section 32" pension policy which incorporated a guaranteed minimum pension (GMP). These types of policy usually represented pension benefits from previous occupational pension schemes run by employers, and contained commitments which must be honoured by the pension provider. In Mr A's case, this included providing a guaranteed pension of £3,354.60 annually and also a spousal pension of 50% in the event of him predeceasing his wife.

In order for the provider of the policy, Aegon, to provide enough funds to Legal & General to buy the guaranteed annuity, it had to top up Mr A's existing fund of £34,008.09 with an additional £52,209.68 to make a total of £86,217.77 to be able to fund the annual guaranteed pension.

Legal & General's records show that Mr A's completed application for an annuity was received on 10 September 2019, which set out that he'd selected a pension annuity with that business. Legal & General said policy documents were sent to Mr A on 24 October 2019.

In the application form Mr A completed for the annuity, dated 7 September 2019, section nine was entitled "Financial adviser details". The second part of this section said it was "*To be completed by your financial adviser*". It said that, in order to meet FCA regulatory requirements, Legal & General had to record whether a personal recommendation was provided regarding the sale of the annuity. However this section and all sections about financial advice were left blank. And so there was no evidence of third party financial advice being provided.

Mr A then spoke to Legal & General on 3 September 2019 when the call handler said that he could run through the annuity quote process. Mr A confirmed that he'd received a quote pack from Aegon. The call handler said that they strongly recommended that Mr A seek guidance and/or advice before making decisions about retirement. They also asked whether Mr A was aware of "PensionWise" – a free and impartial service - and Mr A said that he was, but didn't think he needed advice.

Mr A was also asked whether he'd sought advice from a financial adviser and he replied that he didn't think that was necessary as he was going to receive a guaranteed minimum pension.

Mr A then said that he was aware of other options, such as transferring out of the Aegon plan and cashing in its value, but Mr A said that he would lose the benefits associated with his policy and so had decided to take the annuity. The call handler then signposted Mr A to the Money Advice Service – and offered to provide details of its website, but Mr A declined.

The call handler also said that they couldn't provide any advice or make any recommendations, but that they would send out the Key Features documentation and associated risks along with the quotes produced. He advised that Mr A should fully read through everything before proceeding.

Mr A complained to Legal & General in April 2025 and it sent him its final response letter dated 8 May 2025. It explained that, when Mr A established his annuity in 2019, the option to have an escalating annuity wasn't available for the type of pension plan he held with Aegon. This was because of the time period (pre-1988, after which rules changed around particular pension benefits increasing in payment) over which Mr A had accrued his GMP. Instead, the annuity was established on a five-year guarantee basis, with a 50% spouse's benefit.

In the same letter, Legal & General said that Mr A couldn't cash in his annuity as it was no longer in the cooling off period. It added that there was no cash in value for his policy.

Mr A then referred the matter to this service. One of our investigators considered the complaint, but didn't think it should be upheld, saying the following in summary:

- When Mr A bought his annuity, he exchanged a sum of money for guaranteed regular payments for life. There wasn't a depleting pot of funds that still belonged to Mr A – rather, he had a guaranteed income stream for the rest of his life.
- If an annuity had a cash in value greater than £10,000, then according to current legislation, providers don't have discretion to cash that policy in. As the capital value of Mr A's policy was greater than £10,000, Legal & General had no discretion to cash in his annuity.
- At the time of setting up the annuity, if Mr A needed clarification about any points, he could have spoken to the business or sought independent advice.
- Whilst Mr A may be disappointed that the annuity value wasn't growing and that he couldn't cash it in, he was benefiting from a valuable pension guarantee.

After initially rejecting the investigator's findings, Mr A then accepted what he'd said about him not being able to encash the annuity. But he wished to pursue the claim of being mis-sold an annuity which didn't increase in value.

In response to that specific matter, the investigator said that the available evidence indicated that Mr A was informed about the prospect of seeking advice several times and it was made clear to him in the telephone call of 3 September 2019 that Legal & General wasn't providing advice in this process. Therefore, he was unable to uphold the complaint about the annuity having been mis-sold.

However, as agreement couldn't be reached on the outcome, it's been referred to me for 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.

And having done so, whilst I'm sorry to disappoint Mr A, I've reached the same conclusions as the investigator, and for similar reasons.

As set out by the investigator, now that Mr A's annuity is in payment, it can't be cashed in.

This isn't something that Legal & General has itself decided, but is based on current legislation around the way that pension benefits can be accessed.

And with regard to whether the annuity was mis-sold to Mr A in 2019, I can see that Mr A himself made the decision to accept the annuity for the sake of the valuable guarantees attached. He was signposted to guidance services, along with the possibility of seeking financial advice, to ensure that he was making the right decision, but Mr A declined these opportunities.

As such, as no advice was provided by Legal & General on how he should take his pension benefits, it wouldn't be fair or reasonable to hold it responsible for the decision to take the annuity.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 February 2026.

Philip Miller
Ombudsman