

complaint

Mr P complains, as representative for Mrs M, (executor of the late Mrs P's estate) about the advice Care Asset Management Limited gave Mr M in 2011 to commence an immediate care needs plan for his late aunt, Mrs P.

Mr P complains the adviser failed to explain the risks, and the advice didn't meet the stated objectives, to preserve capital. He said Mr M was led to believe that the annuity purchased would provide capital protection so that on Mrs P's death a proportion of the single premium would be refunded. When Mrs P passed away in 2012, no refund was made.

background

Mr M took advice from Care Asset Management in 2011 about meeting the shortfall in paying his aunt's on going care fees. Mrs P was 83 years at the time, living in a nursing home and her care costs were around £31,000 per annum. In May 2011 the adviser noted there was a shortfall in her income of just over £27,000 per annum. She owned a house valued at around £188,000 and had savings/investments of around £196,000. He set out various options and listed the advantages and disadvantages.

Option 1 was for the total capital of around £384,000 to be invested. Mr M was advised that the investment would need to return 7.06% per annum to avoid the capital being eroded. This option allowed control of Mrs P's capital to be maintained. But, the main disadvantage was the level of return required and the risk that because of this, over time, it may not be possible to cover the shortfall in income.

Option 2 involved purchasing an immediate needs care plan from a product provider. In exchange for a single premium, a guaranteed income would be provided for as long as Mrs P needed care. The adviser said in his report that on death, the capital cost of the immediate need care plan was lost *"and during the early years, death could result in a significant financial loss"*. The adviser referred to an annual benefit of around £27,000 in return for a capital cost of around £191,000.

Option 3 was a deferred care plan. In return for a single premium Mrs P's care fees would be met, but payment of these would be deferred for, typically, 24 months. The benefit of this was to protect against death in the short term.

Option 4 was a partial care plan. The care fees would be covered by both a care plan and investment returns on capital investment.

Care Asset Management wrote to Mr M again in August 2011. By that time Mrs P's income shortfall had reduced to around £24,000 per annum (before any rental income). Her total estate was valued at around £374,000, and the value of her house was unchanged. It was intended that her house would be rented out.

An immediate care plan with a specific provider was discussed. For a single premium of around £162,000, M P's care home fees would be covered to the value of around £24,000 (just over £2,000 per month). This would increase by 5% per year.

Care Asset Management said that they also sent Mr M a key features document about the plan. In that it said, in summary:

- the plan had no cash in value at any time;

- one of the risks of the plan was that the total payments made by the date of death may be less than the single premium paid; and
- the plan would cease on death and no additional payments would be due on death;

Mrs P passed away in April 2012. After being told that her estate wasn't entitled to a partial refund of the premium on her death, Mr M complained to Care Asset Management about the advice he was given. It didn't uphold his complaint and so it was referred to us.

Mr M said that it was not made clear to him that on Mrs P's death there would be no refund in premium, and he recalls being provided with tables which showed there would be a refund in premium if she died early.

Mr M said he knew the benefit payable would cease on Mrs P's death, but the comment about the lack of encashment value in the future didn't alert him to the fact that the premium, or part of it, wouldn't be refunded if she died early.

Our adjudicator looked into it, but didn't uphold it. She was of the view that the adviser had explained the features of the lifetime care plan in a clear and fair manner. He provided a range of quotations and Mr M agreed, in August 2011, to proceed with an immediate care plan which provided an immediate care benefit of around £2,000 per month for a single premium of around £162,000.

Our adjudicator said that although it was possible to purchase a premium protection option, so that a lump sum would be paid on death, this wasn't taken out. However, this would only have applied had Mrs P died within six months from the start of the plan. As she died outside this timeframe, the premium protection option wouldn't have applied, even if taken out.

Mr P didn't agree with our adjudicator's decision, so the complaint has been passed to me to consider.

my findings

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 agree with the conclusions reached by the adjudicator, and for much the same reasons.

The key questions I need to consider here are:

- Did Care Asset Management make sure the advice it gave Mr M, as representative for Mrs P, was suitable for her needs?
- Did it give him the information he needed to make an informed choice about whether to take its advice?

If there was a problem with the way the advice was given then I need to consider if the late Mrs P's estate is worse off as a result, because something different would've been done.

suitability

I sympathise with Mr M and the late Mrs P's estate. With the benefit of hindsight taking out the immediate care plan option resulted in a sizeable chunk of her estate being used, with minimal return. But, this couldn't have been known at the time.

Based on the information I have been given I can't see that the plan was clearly unsuitable for Mrs P's needs. It guaranteed that her nursing home fees would be paid during her lifetime for a single premium of around £162,000. If she lived for more than six years after taking out the plan, likely the plan would have paid out more than her single premium. Her house could be kept and rented out, preserving the capital in it. The adjudicator concluded that it wouldn't have been possible to generate the level of income needed to meet her care home fees from investing the value of her liquid assets alone.

informed choice

Looking at the information Mr M was given at the time I think it was made clear that there would be no refund of premium when Mrs P died, irrespective of how soon this was after she took out the policy.

I also think Care Asset Management fairly pointed out the risks involved by telling Mr M if death occurred in the early years, it could result in significant loss.

my final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M, as representative on behalf of the late Mrs P, to accept or reject my decision before 5 February 2016.

Kim Parsons
ombudsman