

## **complaint**

Mrs G has complained about the advice given to her late husband, Mr G, by Chadney Bulgin LLP (Chadney Bulgin) to buy an annuity when he was terminally ill. She is seeking compensation for the monies lost as a result of the advice.

## **background**

I issued a provisional decision on 4 January 2016. In summary the background was:

Mr G had been a client of Chadney Bulgin for a number of years. Details of his personal and financial situation were recorded in a document often referred to as a fact find. A summary of the background and Mr G's objectives was given in a report produced by the adviser. In summary these were:

- Mr G had retired and was receiving pension income of about £16,000 a year.
- He also had a pension fund of about £350,000 from which he had taken tax-free cash, but no income.
- He owned his own home with no mortgage.
- He had cash savings of about £180,000.
- He also owned some other assets. These were valued at about £200,000.
- His attitude to life had changed over recent years after being diagnosed with an illness.
- Mr G's objective was to be financially secure in retirement. He wanted to be able to draw income in addition to the pension income of £16,000 a year. He wanted to spend more on his hobby; holidays and travel.
- It was noted that Mr and Mrs G had separate finances.

Flexible drawdown was recommended. In order to use this Mr G had to increase his pension income by £4,000 to bring his annual income to £20,000. He would then be able to draw as much as he wanted from his pension fund. An annuity was recommended to provide income of £4,000 a year. This included a spouse's benefit for two thirds of the initial income. The cost of that annuity was about £76,000. After the application had been made there were a number of delays and Mr G decided to buy an annuity on a single life basis. That was for about £40,000.

It took some time for the annuity to be arranged. It eventually started in about October 2013. Sadly Mr G died in January 2014. Mrs G did experience some problems with the payment of the pension after her husband's death. She took advice from the new adviser who has been assisting her with the complaint.

In my provisional decision I explained why I intended to uphold this complaint. I also set out how Chadney Bulgin should compensate Mrs G. In summary, my reasons were:

- The adviser knew that Mr G had been diagnosed with a serious illness at the time of the advice.
- I thought that the adviser's notes of Mr G's objective to provide more income were inconsistent with the information contained in his report. Mr G had a large cash deposit and a pension fund from which he could have taken income. I was satisfied that he did not need the added flexibility from flexible drawdown. It follows that he did not need to buy an annuity for the additional £4,000 a year income.

- At the time the adviser met with Mr G it was noted that his illness was advanced. Medical information supplied indicates that although Mr G was taking part in a clinical trial this was not going to be a cure. It is understood that the adviser had been made aware of Mr G's declining health. I thought that the adviser should have taken this into account before giving his advice. The enhanced annuity application clearly noted the advanced stage of his disease and that it was ongoing.
- I also noted that information recorded by the adviser was inconsistent. Initially he had recorded that Mr G wanted to make provision for his wife who had little pension income and that this was an important priority to Mr G. Later correspondence indicated that Mrs G had her own arrangements. I noted that an original suitability report appeared to have been updated with hand written comments.
- A considerable passage of time passed between Mr G receiving the initial advice to the point flexible drawdown policy started in October 2013. During this period, Mr G was not receiving the income therefore this did not support the view that any additional income was needed by him. Indeed if he required additional income he could have taken this from his existing SIPP.
- However, I consider it clear that Mr G did not need an income or a lump sum. No income had been taken from his SIPP since he took his tax free cash some years earlier. It is clear that he also had a sum of £180,000 should he have wanted to make any significant purchases.
- At the time the annuity and flexible drawdown were arranged I thought the adviser should have reassessed Mr G's circumstances and health. The original advice to enter flexible drawdown was given in April 2012.
- I was satisfied that the advice given to Mr G was unsuitable. That's because he had enough income and capital for his needs and did not need the annuity or a need to enter flexible drawdown. He had access to all the capital and income he appeared to need.

Chadney Bulgin responded. It disagreed that the complaint should be upheld and gave the following reasons:

- Mr G was a good friend of the adviser and as such was best placed to understand the needs and objectives of Mr G which were discussed in some depth. The adviser was clear on the level and severity of Mr G's illness and the relevance of his advice to Mr G.
- Mr G had great plans for the future and wanted unfettered access to all his available funds and knew the benefits and risks of this. He wanted the annuity on a single life basis knowing the consequences to his wife as protecting assets to benefit Mrs G was not Mr G's priority. His objective was to raise £20,000 of annual income.
- It was not the adviser's role to require that Mr G 'use up' his existing cash funds instead of having access to his pension funds.
- The adviser was not aware Mr G's condition was terminal and as such the adviser could not act on information he did not have. Although there was a delay in the start of the flexible draw down, there was no evidence Mr G's health circumstances had changed. The fact no income had been taken was irrelevant. Mr G wanted lump sums to buy capital items and the adviser acted on this.

Chadney Bulgin also provided a file note dated 4 October 2013 which was not included in the original submissions to this service. The file note said that Mr G was undergoing treatment and was unable to travel or meet with people at that time. It continued that the adviser discussed Mr G's portfolio with him and discussed transferring to flexible drawdown and the adviser would organise the transfer to flexible draw down.

## **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, my views remain the same as set out in my provisional decision.

I will deal with the points which have been raised in reply to the provisional decision.

I understand the friendship the adviser and Mr G may have had. But, what I have to consider is the advice and whether or not it was suitable in the circumstances at the time.

Mr G may indeed have had great plans for the future. He had unfettered access to £180,000 of funds. At the very least I consider the benefits of using these accessible funds should have been brought to his attention.

Chadney Bulgin have argued that Mr G wanted the annuity to enter flexible drawdown and that they only facilitated this. However, I haven't seen any evidence that this was an execution only sale. The submissions from Chadney Bulgin clearly show that advice was given to Mr G.

I understand the reasons put forward as to why Mr G required £20,000 of annual income and ultimately why the annuity was bought. But, the issue is not whether a single or joint annuity should have been bought. I consider the main issue is whether an annuity or flexible drawdown should have been recommended and actioned. That was at a time in Mr G's life where there was uncertainty about what the future held.

The file note submitted by Chadney Bulgin clearly demonstrated to me how ill Mr G was. He was unable to travel or meet with people at the time due to his treatment. This ought to have been a clear indication that no further action should have been taken at that time. I also think that this would have raised doubts about Mr G's travelling goals or making significant purchases at that time or shortly after his treatment.

The enhanced annuity application clearly noted the advanced stage of Mr G's illness and that it was ongoing. It seems to me that the adviser ought to have been aware that Mr G was very ill. Buying an annuity at that time did not make sense.

The adviser has said he was not aware that Mr G's condition was terminal however I am satisfied that he would have been aware Mr G was seriously ill.

In my view, the advice to buy an annuity and enter flexible drawdown was unsuitable for Mr G at the time. I do not think there was any urgency to buy the annuity or enter flexible drawdown until Mr G actually needed the capital funds or an income; especially as the adviser was aware of the level and severity of his illness. I think my view is also supported by the passage of time between the initial recommendation and when the annuity and flexible drawdown started.

## **fair compensation**

I think that there has been a loss to Mr G's pension fund. That loss was caused by the advice given by Chadney Bulgin, which I have found to be unsuitable. The benefits of Mr G's SIPP were transferred to a SIPP in Mrs G's name following his death.

My aim is to put Mrs G's SIPP back in the position it would be in now if Mr G had received suitable advice. I think that Mr G would have kept his SIPP with his original provider and remained invested in the same funds.

Chadney Bulgin should therefore calculate any loss and pay compensation. To do that it should calculate the following:

A = The notional transfer value of the original SIPP at the date of my decision, assuming that the SIPP remained invested in the same funds.

B = The actual transfer value of Mrs G's SIPP at the same date.

To make things simpler it should be assumed that the same income would have been paid to calculate the values in A and B.

The loss is the difference between A and B. If there is a loss, Chadney Bulgin LLP should pay an amount into Mrs G's pension, so that the values are equal. If the plan provider will not accept redress payments, the sum should be paid direct to Mrs G. However, payments of compensation are not subject to income tax. If the payment was made to a pension it would be taxed as income when Mrs G was paid income. The compensation should therefore be reduced by her marginal rate of tax. I assume that this will be 20%.

Mrs G has been caused some distress because of the advice Mr G received. I think that an award of £200 should be made for the distress and inconvenience caused.

Mrs G's new adviser has asked that her costs of £1,000 plus VAT should be paid by Chadney Bulgin. Our normal approach to the payment of fees to third parties is that consumers do not need help to bring their complaint to us. But, I think this is a case involving complex financial advice. Mrs G was not included when the advice was given to her late husband. She has therefore had to deal with matters after his death. In this situation I think it is reasonable for her to ask for advice to establish what has happened and whether that advice was suitable. That's all at a time when she was coming to terms with her husband's death. Unusually, I think that an award is justified for the payment of fees that Mrs G has reasonably incurred. I therefore make an award for the £1,000 plus VAT.

### **my final decision**

I uphold the complaint. Chadney Bulgin LLP must pay compensation to Mr G as set out above.

Under our rules, I'm required to ask Mrs G to accept or reject my decision before 11 April 2016.

Roy Milne  
**ombudsman**