

## **The complaint**

Mr W complains that when he bought his annuity from Legal and General Assurance Society Limited (L&G), L&G failed to advise him about reviewing the whole of the market to ensure he was being offered the best annuity rate and amount available. Mr W says that's caused him financial loss.

Mr W is represented in bringing his complaint.

## **What happened**

I issued a provisional decision on 4 December 2023.

I've recapped here what I said about what had the background to the complaint and my provisional findings.

*'Mr W had a pension fund with Alliance Trust Savings (ATS). In August 2012 Mr W bought a lifetime annuity from L&G using his accumulated pension fund with ATS. Mr W's annuity with L&G pays him £238 pm.*

*Mr W's representative says that L&G when selling the annuity to Mr W failed to advise him to review the whole of the market to ensure that the annuity L&G was offering was the best available. The annuity Mr W took out with L&G in 2012 may not have been the best annuity he could've got – he has medical and lifestyle conditions which may have meant that he could've got an enhanced annuity which would've paid a higher income.*

*Mr W's representative says L&G failed to comply with the requirements of COBS (Conduct of Business Sourcebook) 19.9.6AR and 19.9.7R. Given what I go on to say below I'm not going to set out those provisions here.*

*Our investigator didn't uphold the complaint. Essentially he said that Mr W's pension was held with ATS and the obligations Mr W's representative had pointed to fell to ATS, not L&G who had no prior relationship with Mr W prior to him buying his annuity with L&G in 2012. The investigator didn't think L&G had mis sold the annuity in consequence of not complying with COBS 19.9.7R and COBS 19.9.6A.*

*Mr W's representative didn't agree and said that the provisions referred to applied when providing a guaranteed annuity quotation which L&G had done.*

*There were further exchanges. The investigator's view remained that COBS 19.9.7R and 19.9.6AR didn't apply to L&G but Mr W's representative maintained they did.*

*As agreement couldn't be reached the complaint has been referred to me to decide.*

## **What I've provisionally 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.*

*I think Mr W's complaint is to do with the Open Market Option (OMO). It was introduced in 1975 to allow someone approaching retirement the freedom to shop around and compare annuities offered by other companies to see if any offered a better annuity rate or income option than the investor's pension provider was prepared to offer. The investor can choose and doesn't have to accept the annuity offered by their pension provider. As an annuity is usually an irreversible decision it's important to get the best deal.*

*Mr W's complaint is that the annuity he's got with L&G which he purchased in 2012 may not have been the best annuity he could've got, taking into account that he has medical and lifestyle conditions.*

*Mr W's pension fund wasn't held with L&G but with ATS. So ATS was the pension provider. I'm not sure if ATS offered annuities themselves – not every pension provider does. But I think the obligations as to making Mr W aware, as his retirement date approached, what his options were, including the right to shop around for the best annuity, fell to ATS.*

*Mr W's representative points to COBS (Conduct of Business Sourcebook) 19.6.6AR and 19.9.7R. I can't see those provisions are relevant here given that the sale of Mr W's annuity was in 2012 and COBS 19.9.6AR and 19.9.7R weren't introduced until 1 November 2019. The provisions aren't retrospective. L&G's obligation was to comply with the applicable COBS rules at the time. I can't uphold a complaint on the basis that L&G breached COBS rules that weren't in force at the time.*

*My understanding is that COBS 19.9 was introduced following the regulator's consultation (CP 18/7) about changes to the requirements for those approaching retirement to receive 'wake-up' packs. And to improve the effectiveness of the information prompt for consumers who might be eligible to buy an enhanced annuity. But the requirements fall to providers – that is the firm with whom the pension savings are held – not to firms that a consumer may contact to obtain a quotation as to what annuity their accumulated pension fund might buy with that company and how that compares with the annuity offered by their existing provider. But I mention that in passing as COBS 19.9 wasn't in force at the time anyway.*

*COBS 19.4 was the relevant provision at the time. COBS 19.4.1R (3) requires the provider to issue an open market option statement to the consumer – either the then regulator's factsheet – 'Your pension: it's time to choose' or a written statement that gives materially the same information. The 2012 statement (applicable from July 2012) lists (page 4) a large range of medical conditions and adds (page 5) that someone in good health who is overweight or smokes regularly may also be able to get a higher retirement income.*

*Those obligations clearly fall on the provider (which here isn't L&G). COBS 19.4.1R refers to using the proceeds of, amongst other things, a personal pension to purchase an annuity on the open market. Mr W didn't have a personal pension (or other pension arrangement) with L&G at the time. His pension savings were held by ATS. It was ATS' responsibility as the pension provider to make Mr W aware that he didn't have to buy the annuity that ATS offered and that he could shop around. If there's any suggestion that Mr W wasn't informed about the OMO, he'll need to make that complaint to Interactive Investor who took over ATS in 2019.*

*I'm not upholding the complaint. L&G wasn't responsible for complying with COBS 19.4 and making Mr W aware of the OMO. There's been no breach of COBS 19.9.7R or COBS 19.9.6A by L&G as, even if those provisions applied to L&G (and I don't think they did), they weren't in force in August 2012 when Mr W's annuity was sold.'*

*Neither Mr W's representative nor L&G has made any further comments in response to my*

provisional decision.

### **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.

In the absence of any further comments, arguments, information or evidence, my views remain as indicated in my provisional decision. I've set out what I said in my provisional decision in full above and it forms part of this final decision.

For the reasons I've explained I'm not upholding this complaint.

### **My final decision**

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 January 2024.

Lesley Stead  
**Ombudsman**