

The complaint

Mrs M's representative, her son and (joint) Power of Attorney (POA) Mr M complains on her behalf about Baker Jenness Financial Management, referred to as "*BJFM*" or "*the business*".

In summary, he says that she was given unsuitable investment advice by BJFM. He's unhappy that her care home fees increased at a different time to the plan escalation date, and she was left with a shortfall in the monthly cost until the annuity increase on its anniversary amounting to a total of £3,242, which needed to be paid from other sources.

So, to put things right she'd like a refund of the premiums paid.

What happened

In a meeting with an BJFM dated 19 September 2022, Mr M completed the necessary documentation including a confidential fact find in which it was recorded that his main financial objective at the time was to obtain a secure income to ensure that Mrs M's long-term care costs were met as he was concerned that her funds would soon be depleted by cost of care.

BJFM says that Mr M wanted to ensure a guaranteed income to pay for the costs that wasn't reliant on investment performance. And wasn't concerned about any residual funds for any inheritance purpose as he/they considered the funds were solely for Mrs M's benefit.

BJFM didn't uphold the complaint. In summary, it said that the Immediate Needs Care Annuity (INCA) was suitable for her. This was primarily because the recommendation matched her needs, and the business isn't responsible for when the care home increases its costs. In any case, the reserve was there to cover such issues, should they occur.

BJFM also confirmed that Mr M favoured some kind of indexation to the benefits to offset future increase in costs. It also said the adviser recommended that Mr M discuss with the care home to establish the likely amount of escalation that would be required, after which an escalation amount of 8% a year was decided upon. Mr M made no mention that any future costs would be increased by the care home on any particular date.

A policy was recommended with a third-party provider, which was sufficient to meet the shortfall in costs at the time of advice and would escalate at 8% a year on the policy anniversary to account for future increase in costs, and the benefit would be directly paid to the care home.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he made the following key points:

- He understands that Mr M is concerned that the escalation feature of the long-term care plan he purchased to cover the cost of Mrs M's care home, only becomes effective on the anniversary of the plan. Although the care home has increased its charges before the anniversary – which is why there's a shortfall in the costs – it's not something he can blame the business for.

- Although Mr M says that the escalation policy/feature was purchased to cover for every eventuality for any increase in care home fees, he's not persuaded that this was the basis upon which the plan was sold.
- Having reviewed the point-of-sale documents he found nothing to persuade him that BJFM misled him about how the escalation feature worked. He also found no evidence that Mr M was told that the escalation would take effect whenever the care home fees increased.
- The policy schedule made clear the following:
 - The policy started in September 2022, with a monthly annuity of £4,377 and the rate was 8%.
 - The escalation month was 'Policy Anniversary'.
- In a letter dated 11 September 2022, under the heading 'Escalation', the adviser confirmed the following:
 - *"We have discussed the option of indexing the benefit so that it increases at each policy anniversary. I have recommended that your mother's annuity includes indexation of something that might broadly represent inflation. Whilst inflationary pressures are currently higher than this, we have obtained quotes which included 8% escalation per annum as including this option will help the income from the annuity to combat the likely annual increase in care home costs. You felt that this was a realistic figure based on your discussions with the care home and their pattern of fee increases recently."*
- The report also warned about the following:
 - *"Care fees may increase. If this is the case, then a new gap between care fees and income will occur"* which is what happened.
- The adviser also recommended a cash contingency fund so that:
 - *"should fees increase or Mrs M's income reduce, or indeed any other contingency occurs, then there would be some cash available to help meet any additional costs which occur as a result"*. This doesn't suggest that cash was recommended as an alternative.
- Despite what Mr M says, it's important to understand that any increase in the care home charges and the date it occurs is something that BJFM has no control over.
- BJFM's role is to recommend a plan that's suitable based on the information provided, and that's what it did.
- If it wasn't what Mr M wanted, it was his responsibility to either raise the issue with the adviser or cancel the policy within the cooling off period.

Mr M disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he said:

- BJFM was instructed by them as experts in the field with a proven record. It was tasked to find a suitable policy for Mrs M as a layperson, to ensure that she was protected for the rest of her life.
- They've no issue with the policy itself, they're satisfied it was the best policy. However, it wasn't explained to them that the percentage escalation portion of the policy wasn't matched with the care home increase in fees, so it doesn't cover the whole annual increase in care home fees.
- The contingency fund was only recommended in case they didn't take out the care fund policy.
- The business should've known that care homes increase fees every financial year in April. The policy started six months after the April fee increase, but this was never raised with them.
- The text highlighted by the investigator was exactly the reason why they wanted the policy in the first place and is the reason why they'd agreed with the care home that any fees will be fixed to a maximum of 8% to match the escalation element that they

took out.

- BJFM was made aware of this but didn't mention the escalation policy wouldn't match the care home annual increase date.
- Perhaps BJFM wanted to increase their commission by including the escalation element to the policy.

The investigator having considered the additional points wasn't persuaded to change his mind.

As no agreement has been reached, the matter has been passed 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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr M says, I can't safely say that BJFM behaved unreasonably in this instance, because the care home fee increase – when it occurred and by how much it occurred – didn't match with the escalation policy anniversary.

But before I explain further why this is the case, I think it's important for me to note I very much recognise Mr M's (and Mrs M's) strength of feeling about this matter. Mr M has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he/they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made. My role is to consider the evidence presented by Mr M and BJFM, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. Despite what Mr M says, I don't need any further evidence to make my decision.

I don't uphold this complaint, in brief, for the following reasons:

- On the face of the evidence, and on balance, I'm satisfied that Mrs M was provided with key policy documentation that made clear the nature and operation of the policy, including emphasising the risk that care fees may increase and a gap between the costs and income may occur. Furthermore, that the escalation month was the policy anniversary.
- Although the recommendation was designed to avoid this shortfall where possible, I don't think this was an absolute guarantee. In any case, the issue regarding the care home fee increase, and the anniversary of the policy is a separate issue.
- The adviser can only provide advice based on the information provided. There was no information sought or supplied about whether (or not) the policy should be set up with a particular date in mind, in this case to align with the policy increase.
 - The date was evidently an important issue for Mr M – who was liaising with the care home – so I don't know why this wasn't raised by him with BJFM as an important consideration for how this policy should be set up.
- In any case, the fee increase – date and amount – is down to the care home and outside of the control and influence of BJFM. In other words, the business has

nothing to do with it. And although Mr M says the increase usually take place once a year in April (at beginning of the financial year), the care home is ultimately at liberty to decide when this increase happens.

- I agree with BJFM that it has no control or influence over when a care home may or may not increase its costs or by how much. On the face of the evidence, and on balance, the business could only recommend a policy suitable to meet the requirements at the point of sale, with a suitable level of escalation to meet future increases which I believe it has done. Based on what he says, I don't think Mr M seeks to disagree with this specific point.
- I note it was made clear that it would be 8% (as agreed by the parties) on the policy anniversary. I note in relation to the percentage, BJFM said that Mr M felt that this was a "*realistic figure*" based on his discussions with the care home and its pattern of fee increases recently. So, on balance, I'm satisfied that Mr M made an informed decision in relation to this figure increase.
- I note the adviser recommended that £50,000 was retained on deposit for unforeseeable needs and/or emergencies which I believe was suitable. I note it was specifically noted:
 - "*This will ensure that, should the fees increase...then there would be some cash to meet any additional costs*".
 - Contrary to what Mr M says, this doesn't suggest that the contingency was recommended as an alternative to taking out the policy in question.
- I'm aware that the care home couldn't or wouldn't delay an annual care home fee increase, despite Mr M advocating for it, but that's not something I can blame BJFM for. As I mentioned above, it wasn't a party to any discussions with the care home that were being led by Mr M. It's not clear if the care home made clear to Mr M when it was likely to increase its fees and why he didn't pass this information on if it did.
- Even if I was to consider BJFM as "an expert" in the field, I can't say that it ought reasonably to have known how individual care homes would operate and when they'd increase their fees and by how much. Even if it has been working with these sorts of policies for a long time, I think this is outside of its purview.
- I don't think the business has done anything wrong by not, of its own volition, aligning the policy, to the care home fee increase at the start of each financial year. That's not what it was specifically asked to do. And it not doing so doesn't make the recommendation is unsuitable.
- If Mr M was unclear as to how the policy would work in practice, he ought to have sought clarification. But despite what he says, it appears he may have assumed it would operate in a particular way, but if that was the case, that's not something I can blame the business for.
- If the start date was crucial to Mr M, he ought reasonably to have made this clear to BJFM when seeking advice, especially as the policy started six months after the annual increase. It was reasonable to assume that's how the policy would operate going forward and Mr M had no issue with that.
- Despite what Mr M says about BJFM's motivation for recommending this policy, I can't say that its motivation for recommending the policy was purely to make additional commission.

I appreciate that Mr M on behalf of Mrs M will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he/they want to hear. Whilst I appreciate their frustration, I can't safely say that BJFM is responsible for refunding the premiums.

In other words, on the face of the available evidence, and on balance, I can't give him/them what he/they want.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 December 2023.

Dara Islam
Ombudsman