

The complaint

Mr A complains that Hargreaves Lansdown Asset Management Limited (HLAM) mis-sold an annuity to him. He said he had medical conditions at the time of the sale which may have meant he could've purchased an enhanced annuity. But HLAM didn't make him aware that might be a possibility.

Mr A is represented in his complaint by a claims management company (CMC). But I'll only refer to him in my decision.

What happened

Mr A had a pension with another provider. I understand that HLAM was put into contact with Mr A to provide Open Market Options for his retirement in 2009.

HLAM said that Mr A used its service on an execution only basis. And that when it acted in this capacity, it didn't provide any advice – it simply executed the instructions it was provided with.

HLAM said it contacted Mr A as part of its Retirement Annuity Service in the second half of November 2009. It said it sent him quotes on 16 November 2009. And that it had made him aware that if he or his spouse had any medical conditions, they should complete the medical questionnaire that was sent with the quotes.

HLAM said it didn't receive a completed medical questionnaire from Mr A. So his annuity had proceeded on a non-enhanced basis.

Due to the length of time which has elapsed, HLAM don't hold copies of the specific letters sent to Mr A. But it has provided this service with details of its letter templates from that time. HLAM said that part of the quotation pack sent to Mr A stated:

"Enhanced rates due to health or smoking – pension funds over £5,000

If you or your spouse or partner smoke or have medical conditions you should complete and return the medical questionnaire. It could result in a higher income. Even minor conditions such as high blood pressure can qualify, as can more serious conditions where you have been given the all clear.

This letter and the service we offer are not advice. If you are not sure of the suitability of an annuity for your needs you should seek independent financial advice".

HLAM said it issued its annuity summary to Mr A on 30 November 2009. This included the following statements:

- *Check that one of the options shown meets your requirements.*
- *Please read the booklet "Important Information about Annuities" sent in your original annuity summary pack, which contains our terms and conditions and important*

investment notes. Choosing your options is an important decision as once set up; an annuity cannot normally be cancelled or amended. If you would like help in understanding the various options please give us a call.

HLAM also said that the “enhanced rates” statement was repeated.

HLAM said it provided Mr A with a document “Important information about annuities”. This included the following statements:

- *This guide is provided solely to help clients make their own investment decisions and does not constitute a personal recommendation. It should not be seen as personal advice and if you are unsure of an investment’s suitability, or how to proceed, you should seek advice.*
- *Your annuity quotation is based on the fund values and pension information you supply*

Under “Important Investment Notes”, the document also stated:

- *Unless explicitly stated in writing, [HLAM] does not provide individuals with any specific advice regarding the suitability of any of the products mentioned for their personal circumstances.*
- *The information is provided solely to enable individuals to make their own investment decisions.*
- *The individual and/or trustee is responsible for deciding which features the annuity will include, for instance any dependant’s pension, guarantee period, increases or value protection. An annuity is a long term investment as it cannot normally be cancelled or transferred to another provider once it has been set up.*
- *Should you have any doubts as to the suitability of an investment for your circumstances, you should seek independent financial advice.*
- *We provide a summary of some of the most competitive providers in specific response to the criteria you gave us.*

HLAM also said it provided Mr A with a document “Key facts about our service”. This stated, under “Which service will we provide you with?”:

- *You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.*

It also said that HLAM wouldn’t:

- *conduct a full assessment of your needs*
- *offer advice on whether a non-stakeholder product may be more suitable*

On 7 December 2009, Mr A called HLAM. The call recording is no longer available. But the call notes recorded that Mr A told HLAM he’d been ill in the past. So he didn’t think he would live for a long time. Therefore he wanted to know how his wife could benefit from his annuity. He also wanted to take a tax-free cash lump sum.

On 9 December 2009, HLAM sent Mr A a further quote and an application form. A number of statements from earlier correspondence was repeated. And the following important additional points were made: -

- *Please check the quotation carefully, and read the key features and other insurance company documents.*
- *Please check that the annuity quoted meets your requirements, as once set up an annuity cannot normally be cancelled or amended.*
- *What you need to send to us: Completed application form and non-advisory declaration.*
- *This service does not offer you advice and if you are not sure this annuity is right for you, you should seek advice – please contact us and we can put you in touch with an advisor.*

Mr A signed his annuity declaration on 14 December 2009. This confirmed he'd not received any financial advice from HLAM about the suitability of the annuity. And that he'd made his own decision about it.

Mr A's chosen annuity provider received his annuity application on 21 December 2009. The annuity was set up on 14 January 2010, but backdated to 9 December 2009.

Mr A complained to HLAM about the annuity sale, through his CMC, on 13 January 2023. It made the following complaint points:

- Mr A had medical conditions which might've meant he was eligible for an enhanced annuity.
- Despite this, HLAM hadn't made Mr A aware of this potential eligibility. It had therefore breached COBS 19.9.6A.
- Mr A had made a loss as a result of HLAM's negligence. He wanted compensation for his losses plus statutory interest.

Mr A's CMC also brought his complaint to this service in March 2023.

HLAM issued its final response to the complaint on 14 April 2023. It didn't think it had done anything wrong. It said it hadn't provided Mr A with any advice on his annuity. And that it had been Mr A's responsibility to consider his options, including whether an enhanced annuity may have been suitable. It also said it was confident that it had made Mr A aware of the potential for extra income for people with medical conditions. But said that Mr A hadn't sent it a completed medical questionnaire, so his annuity had proceeded on a non-enhanced basis.

Our investigator asked Mr A when he'd first become aware that he had cause for this complaint. His CMC said that he was nearing pensionable age over the last couple of years, so had wanted to check everything was in order. It said Mr A hadn't been aware until recently that he could make a complaint.

HLAM gave this service its consent for us to look at the complaint.

Our investigator didn't think the complaint should be upheld. He felt that HLAM had been clear that it hadn't provided Mr A with any advice. And that it had made Mr A aware that enhanced annuities were available. And provided him with a health questionnaire to

complete if he wanted.

Our investigator acknowledged that Mr A had told HLAM during the 7 December 2009 call that he suffered from ill-health. But said that the onus was on him to make HLAM aware of any health issues which could be considered. And noted that he hadn't done that, as he hadn't completed the health questionnaire.

Mr A's CMC told this service that it'd asked HLAM for all of the documents that'd been referenced in our investigator's view. It said it was concerned that HLAM hadn't provided it with these documents before. And that Mr A had never seen any of this information and that it hadn't been previously sent to him.

Therefore he hadn't received the medical questionnaire HLAM said it'd sent him at the time of the sale. And this was why he hadn't completed it. It felt that although HLAM had acted on an execution only basis, it had breached its duty of care to Mr A.

Our investigator considered the new information. But it didn't change his view. He said his understanding was that Mr A didn't dispute receiving other paperwork from HLAM. And that if this was correct then on the balance of probabilities, although he didn't remember receiving it, he most likely had received the health questionnaire.

But even if he hadn't received it, he felt the other paperwork had made many references to ensuring all of the details provided were correct, and the quote didn't mention that it was enhanced. And the quotation pack had made it clear that he might benefit from completing a medical questionnaire if he or his spouse had medical conditions.

Therefore, even if he hadn't received a medical questionnaire, he could've questioned why that was the case before he'd proceeded with the transaction. Our investigator felt Mr A knew he should have received a medical questionnaire, and that enhanced rates wouldn't be applied unless he returned one.

HLAM told this service that it couldn't see any request from Mr A for the information his CMC had said it had failed to share. And that if Mr A had wanted any of the information, he could've asked for it. And HLAM would've been happy to send it to him.

As agreement couldn't be reached, the complaint has come to me for a 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'm not going to uphold it. I understand this will be disappointing for Mr A. I'll explain the reasons for my decision.

Our investigator noted in his view that HLAM no longer held copies of all the documents it'd sent to Mr A at the time of the sale. He felt this wasn't uncommon given how much time had passed. And noted that it wasn't a regulatory requirement to retain all of this information for so long. I agree with our investigator on these points. However, HLAM did retain example documents relevant to this complaint. I've considered the information in these in making my decision.

Mr A's position is that HLAM should've requested health information from him. And then offered him the opportunity to purchase an enhanced annuity. He feels HLAM breached COBS 19.9.6A.

HLAM's position is that it didn't provide Mr A with any advice. It provided him with a medical declaration and made him aware that enhanced annuity rates were available. But that as Mr A hadn't completed the medical declaration, it didn't proceed with an enhanced annuity.

COBS 19.9.6A covers the information providers must now give out to enable consumers to understand whether it would be better for them to buy an annuity or draw out their pension in a less guaranteed way. I agree with our investigator that COBS 19.9.6A didn't come into force until March 2018, several years after Mr A's annuity sale. So I've not considered this part of Mr A's complaint further.

Instead, I've considered the regulator's rules about what an annuity provider was required to do at the time of the annuity purchase. The rules required a provider to mention that annuity enhancements weren't just for someone in poor health, but might also cover lifestyle conditions such as being overweight, having high cholesterol or smoking.

I next looked at the information HLAM provided to Mr A. I needed to decide whether I considered he'd been given enough information about enhanced annuities. And also whether he'd been given the information the regulator had required him to be given at the time of the annuity purchase.

I acknowledge that Mr A disputes receiving some of the information HLAM said it sent him as part of the annuity process. But it's clear that he received at least some of the paperwork. I say this because he signed and dated a number of documents, allowing the annuity purchase to go ahead.

Mr A said he never received a medical questionnaire. I can't know for certain whether he did or didn't receive this document. HLAM said it would've been sent with the quotes, which I'm confident Mr A did receive.

In any event, I agree with our investigator that, regardless of whether or not Mr A received a copy of the medical questionnaire alongside his quotes, there was enough information in the documentation he did receive about enhanced annuities for him to have asked for one to complete before he'd proceeded with the transaction. I also consider that the information made it clear that it was Mr A's responsibility to let HLAM know if he had any medical conditions he wanted to be considered for his annuity. And that the information Mr A was provided with would've made him aware that he should've received a medical questionnaire, and that enhanced rates wouldn't be applied unless he completed and returned one.

As I mentioned earlier, the rules at the time of the annuity purchase required a provider to give a consumer information about enhanced annuities. They needed to mention that annuity enhancements weren't just for someone in poor health, but might also cover lifestyle conditions. I'm satisfied that the information HLAM sent to Mr A did this.

I acknowledge that Mr A did tell HLAM during his call with them on 7 December 2009 that he didn't expect to live for very long. But there was no requirement for HLAM to do anything with this information unless Mr A asked it to. And it could only use such information as the basis for a potential enhanced annuity quote if Mr A had formally disclosed his medical conditions on a medical declaration.

Based on the above, I'm satisfied that HLAM ensured that Mr A received the information required under the rules in force at the time. I say this because I'm satisfied that given Mr A's existing health conditions, the information provided would've given him reasonable awareness that he might get a better pension if he completed a medical questionnaire and tried to buy an enhanced annuity. Once he had that awareness, it was then up to him whether or not to submit a completed medical questionnaire.

In my view, HLAM provided Mr A with clear, and not misleading, information that it wasn't providing him with any advice. And that it wouldn't make any comment on the suitability of the annuity he chose. It was also clear that it was up to Mr A to decide what sort of annuity was suitable for him. And that if he wasn't sure, he should seek independent financial advice.

Based on what I've seen, HLAM did make Mr A aware that there might be a possibility he could buy an enhanced annuity. I haven't found any evidence that HLAM acted incorrectly. So I don't uphold the complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 October 2023.

Jo Occleshaw
Ombudsman