DRN-4536305

The complaint

Mr S1 complains that incorrect information provided by National Farmers' Union Mutual Insurance Society Limited when he wished to purchase an annuity caused him a financial loss.

Mr S1 is represented by his brother, Mr S2.

What happened

Mr S1 had two retirement annuity contract pension plans with National Farmers' Union Mutual Insurance Society Limited ("NFU"), policy *086 commenced in 1978 and *317 in 1982, both invested in NFU's with-profits fund. This type of legacy plan came with guarantees with regard to the minimum annuity Mr S1 would be entitled to, increasing annually from age 60 to 75, regardless of annuity rates or how the underlying investments performed.

In March 2022 a financial planner (Mr C) from the advised arm of NFU visited Mr S1 to discuss his pensions, as he'd be turning 65 in June. Mr S1 is a busy farmer, so his brother Mr S2 helps with his financial affairs and was present at this meeting. Mr S1 didn't have his policy documents to hand, and Mr C couldn't access these, so he ordered wake-up packs to be sent out.

The wake-up packs issued later in March included indicative valuations for both policies: (*086 was around £95,985 and *317 was around £56,375), which weren't guaranteed, so could go up or down. The pack set out that NFU guaranteed to pay the minimum amount of pension each year for life, as detailed in the policy documents, but they don't have guaranteed annuity rates ("GAR"). As the policies were valued at over £30,000 it's a legal requirement that Mr S1 would need regulated financial advice if he intended to transfer the policies away from NFU to take benefits flexibly. Mr S1 was recommended to consult the free *Pensionwise* service to help him make a decision.

NFU issued quotes to Mr S1 based on him taking benefits from the policies immediately, releasing the maximum 25% tax-free lump sum and using the balance to purchase a single life annuity with no escalation. But the quotes were a lot lower than the £11,500 Mr S2 said had been discussed in the meeting. Mr C suggested it might benefit Mr S1 to wait until after his 65th birthday due to the annual uplift, so he'd order new quotes in May, as "immediate vesting" quotes can only be requested within 30 days of the birthday, outside this period quotes would simply be "*hypothetical and rather inaccurate".* NFU issued new quotes in May, June and July, and Mr S2 was told he could discuss Mr S1's options with NFU's pension option support team, if Mr S1 gave his authority.

In the meantime Mr S2 had engaged "R" an independent annuity broker, to research the open market, which asked NFU for details of Mr S1's plans and whether they came with any guarantees. NFU caused some confusion here, as its reply to R on 22 June included an irrelevant fact sheet relating to GARs. On 5 July R asked NFU about the GMP, and on 7 July NFU replied explaining how the income guarantee on the policy worked. R said they could calculate the GAR themselves but would need NFU's assistance to calculate the GMP. On

14 July NFU clarified that Mr S1's policies came with guaranteed minimum income levels at various ages from age 60 but didn't have GARs.

Mr S1 had started the application process for an enhanced annuity with provider S. NFU clarified that Mr S1's policy came with a guaranteed minimum income but didn't have a GAR or a traditional Guaranteed Minimum Pension ("GMP") which generally arises had Mr S1 contracted out of the State Earnings Related Pension Scheme (SERPS). But R was under the impression Mr S1 would need financial advice, so it told NFU on 20 July 2022 it couldn't help Mr S1, as it only offered a non-advised service.

Around the same time, Mr S2 consulted the free *Pensionwise* service, which explained that regardless of the particular guaranteed benefit Mr S1's policy had (GMP, GAR or the minimum income guarantee), the rules around transferring to take benefits flexibly were the same, and he'd need financial advice. But it clarified that there's no requirement to seek financial advice if Mr S1 simply wanted to purchase an annuity using the open market option. Finally on 28 July R confirmed its compliance team was satisfied they could arrange an open-market annuity for Mr S1. NFU provided new quotes to R on 12 August guaranteed for 30 days, and R recommended Mr S1 purchase his annuity from provider A.

NFU said it could set up Mr S1's annuity on a non-advised basis, as long as he was prepared to go through two telephone meetings, an initial call to run through his options including a medical questionnaire to check his eligibility for an enhanced annuity, and a second brief call to confirm the option he wished to take. To avoid delay provisional appointments were booked for Mr S1 on 26 and 28 July, but he decided to proceed with using R.

Mr S2 complained to NFU about its poor service, saying providing the wrong information to R had caused confusion and unnecessary delays to Mr S1's annuity being set up. He asked if the policies could be disinvested to protect the value, which NFU said wasn't possible. NFU sent its final response direct to Mr S1 in August 2022, as they didn't hold his formal authority to deal with Mr S2. The response set out the sequence of events and explained NFU's annuity quotes are only valid for 30 days, but the annuity could've been set up sooner if Mr S1 had simply accepted one of the quotes. A letter of authority was enclosed for Mr S1 to sign enabling them to deal with Mr S2. And they apologised for the confusion arising from providing the wrong fact sheet, for which they paid Mr S1 £200 compensation.

On 23 September NFU wrote to Mr S1 with the final values for each policy used to calculate his tax-free lump sums and the balances sent to A to purchase the annuity (*086 £85,478 and *317 £50,120). The annuity provides him with annual income of around £7,448.

In December 2022 Mr S2 told NFU it was unhappy the information it provided had caused R to stop the annuity purchase, and that Pensionwise had confirmed it should have gone ahead. NFU agreed the same regulations apply whether a policy has a GMP or a minimum income guarantee, but they don't apply when purchasing an annuity. So it said R had stopped the process when it didn't need to, at no point did NFU stop the process.
In February 2023 Mr S2 referred Mr S1's complaint to this service. He still held NFU responsible for the delay and subsequent £17,000 fall in value of Mr S1's plan. Our investigator looked into what had happened, and obtained information from R. He was satisfied it was made clear the policy value could fluctuate until benefits were finally taken, and NFU hadn't told R to stop the original annuity. He initially thought NFU had caused a seven working day delay between 5 July when R queried the GAR and 14 July 2022 when NFU responded. But valuations for the two dates showed the delay hadn't led to a financial loss, as Mr S1's policy had actually increased slightly in that period, and annuity rates had remained stable. And he didn't think NFU was responsible for any further delays during the process, so he didn't require them to pay more compensation than the £200 already paid.

Mr S2 didn't think £200 was sufficient to recognise the poor service provided by NFU. He said a competent adviser should've had all the facts and figures of Mr S1's policy available at the initial visit in March. And the Mr S1's annuity provides lower income than Mr C had led him to expect. He didn't understand why NFU required a month's notice for quotes when other providers can issue them the same day. And he thought the loss calculation should compare the valuations at the initial meeting in March to the ones used when the annuity was finally set up.

The investigator didn't think that was reasonable, as some figures given were estimates rather than actual final calculations. Setting up an annuity takes time, and as the process involved third parties, some of that was outside NFU's control. He also explained compensation could only be awarded to Mr S1 as the policyholder, not for inconvenience experienced by Mr S2 as his representative.

Mr S2 didn't accept this. He'd wanted things progressed as quickly as possible in case the policy values dropped. He said the NFU adviser had provided initial quotes within 48 hours, so thought the 30-day rule was "*nonsense".* And he pointed out the £200 had been paid quite early on, but the service since then had continued to be awful.

As agreement couldn't be reached, the case has come to me.

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.

Mr S2 wanted to help his brother through the process of taking benefits from his NFU pension, as I understand he's been finding things difficult financially. And around the relevant time he'd been unwell, so may have been thinking of retiring earlier than anticipated. Usually a wake-up pack would be sent out to the policy holder a few months ahead of their selected retirement date. But I can't say NFU is responsible for the pack not being sent out in advance, as Mr S1's retirement date had been deferred to age 75 in 2032.

There's no record of the discussion Mr S2 says took place at the initial meeting, where he recalls Mr S1 being told he could expect pension income of around £11,500. Mr C's recollections were that he made some general comments about prevailing annuity rates, not specific to Mr S1's policy. It's unfortunate the policy documents weren't available, but the wake-up packs were issued shortly afterwards, so I don't believe this disadvantaged Mr S1. The valuations in the pack were only indicative, they weren't firm quotes which would be guaranteed for 30 days. And despite the potential income discussed in the meeting, Mr S2 later said he believed any of the big providers would beat NFU, which is why he decided to consult R.

R's role as an annuity broker is to research the open market to ascertain the most appropriate annuity for a client, but they aren't permitted to give financial advice. So their email to NFU specifically asked about any guarantees or factors which may mean financial advice was needed. I can see that NFU including an irrelevant fact sheet with its response to R would have caused confusion, as it gave the initial impression the policy may have had a GAR. Regardless of the type of guaranteed benefits Mr S1's had, the regulations would've required him to take regulated financial advice if he intended to transfer to another provider in order to take benefits flexibly, such as a drawdown plan. But those regulations specify the circumstances when there is no advice requirement, one of which is the "*purchase of an annuity from another provider rather than taking up the GAR offered by the member's existing provider".* And this was confirmed to Mr S2 by *Pensionwise.*

NFU clarified to R that the policies didn't have a GAR on 14 July, but as they came with guaranteed benefits, R decided to halt the setting up of Mr S1's annuity and check with their compliance team. If R didn't understand that financial advice wasn't required for the purchase of an open-market annuity, I think they'd have been equally cautious even if NFU hadn't sent the unnecessary GAR fact sheet, as the policies did have guaranteed benefits, just not a GAR or typical GMP. I've seen no evidence NFU instructed R not to proceed, and although I understand Mr S2's concern that the value could fall further, I can't hold NFU responsible for any delays while R clarified whether it could help. It wasn't until 28 July that R was finally satisfied it could proceed, by which time the preferred option was an annuity from provider A. It seems R had warned Mr S2 of possible processing delays with A, but once NFU had remitted the funds, the time it took A to set up the annuity was outside their control. I agree with the investigator that Mr S1 wasn't entitled to the valuations in the wake-up pack as these were only indicative, and he'd been warned they weren't guaranteed.

As well as the incorrect information provided by NFU, Mr S2 is unhappy it can't issue future quotes at the press of a button, as other providers can. He's had some experience having successfully set up pensions for himself and another brother. I can't comment on that, as those plans may not have involved complicating factors such as guarantees. But Mr S1's plans with NFU were a particular type of legacy pension, which came with a guaranteed element which increased every year from age 60 to 75.

NFU's response to R which included a copy of the policy schedule and an explanation that Mr S1's policy was a retirement annuity contract which didn't work in the normal way of building up a fund with the retirement income being dependent on the annuity rate at the time. It said "*A minimum amount of pension income was guaranteed when the pension was taken out for each retirement age between 60 and 75. On top of this, annual bonuses may have been added through the life of the policy. Once these have been added they cannot be taken away. Also depending on market conditions when benefits are taken, a terminal bonus may be payable. The basic pension amounts assume a single person pension that is guaranteed to be paid for at least ten years*. If a different annuity option is required the *figures will be adjusted accordingly. If the benefits are taken earlier they will be appropriately reduced. All the figures are based around the guaranteed minimum pension amounts, so it is not possible to project a fund value. This is not created until the benefits are taken from the policy. At this stage our actuaries apply a set of factors so we can quote an open market option value".*

Accurate quotes based on taking benefits immediately can be produced on demand. But quotes based on taking benefits more than 30 days in the future will only be indicative, and not necessarily accurate. Due to the complexity involved with the guarantee which increases at each birthday, a manual actuarial calculation is required. So to ensure accuracy NFU will only produce a guaranteed quote within 30 days of when benefits are to be taken.

I think Mr S1 could have taken benefits from his policies closer to his 65th birthday if he'd been prepared to accept the quotes he'd been given. I think it was reasonable for Mr C to suggest obtaining quotes based on Mr S1 being 65, but for the reasons explained above, couldn't request those until May, as this was within 30 days of Mr S1's birthday. I realise this was frustrating, but I don't think Mr S1 was treated unfairly here, if NFU cannot produce accurate quotes outside of that timeframe.

The investigator considered NFU may have caused minor delays in late May/early June. Unfortunately Mr C's diary's diary is no longer accessible as he's subsequently left NFU's employment, and there was a two-day Jubilee bank holiday the first week of June 2022. But NFU issued quotes in May and June, and to avoid unnecessary delays, provisionally booked the calls for July. So I think there would've been sufficient time to proceed with the annuity through NFU, if Mr S1 wanted to, but instead he chose to utilise R.

I can see it was frustrating that the annuity took so long to be set up, particularly if Mr S1 was in poor health and financial difficulty. But other than NFU initially providing R with an irrelevant fact sheet, for which it apologised and paid £200, I don't think they caused additional unreasonable delays. And I'm satisfied NFU wasn't responsible for R putting the original annuity purchase on hold. The initial valuation in the wake-up pack wasn't guaranteed, and it was always a risk that later quotes would fluctuate and not necessarily to Mr S1's benefit. So while I realise this will be disappointing news, I don't uphold this complaint in the sense that the compensation paid by NFU is sufficient to put things right.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 February 2024.

Sarah Milne
Ombudsman