

## **The complaint**

Mr A complained that WPS ADVISORY Ltd (WPS) has refused to set up a fixed term annuity for him to take his pension benefits, despite initially recommending it to him.

He would like WPS to accept a disclaimer from him to allow the annuity to be set up.

## **What happened**

Mr A held deferred benefits with an occupational pension scheme which had an arrangement with WPS to provide advice to members wanting to take their benefits from the scheme.

Mr A first contacted WPS in October 2021 to ask for an appointment with a financial adviser (FA) to discuss the options available to him for taking his pension benefits. The initial meeting took place on 12 January 2022 and WPS subsequently undertook a full fact find with Mr A on 7 June 2022

Further meetings and conversations took place between WPS and Mr A between June 2022 and October 2023, during which a number of retirement options were discussed.

On 27 September 2023 WPS called Mr A to discuss further the options for taking his pension benefits. It was explained to him that as he was over 75 he would need to transfer his benefits to a personal pension in order to take tax free cash and then either drawdown or buy an annuity with the remainder.

On 12 October 2023 Mr A contacted WPS and asked to proceed on the basis of a seven-year fixed term annuity that would have no maturity value at the end of the contract. WPS agreed to process this request and provide benefits on this basis.

WPS undertook subsequent Internal checks and decided that the recommendation it had made of a seven-year fixed term annuity would not be suitable for Mr A and would also be against WPS's own policy of not recommending fixed term annuities with no residual value for clients in Mr A's position.

WPS contacted Mr A on 19 October 2023 to tell him that it was unable to process his request and to recommend other options for him to consider, including an annuity for five years with a residual value equivalent to five years income. Mr A was unhappy with this response and raised a complaint with WPS on 23 October 2023.

Mr A also offered to sign a disclaimer to absolve WPS of any responsibility about the consequences of him taking out the annuity with no residual value. WPS did not agree to act on this basis.

WPS investigated Mr A's complaint and responded to it on 1 November 2023, not upholding his complaint. It said:

*Whilst I can understand why you feel you have a limited number of active years ahead of you and therefore want to maximise your income for that period, the reality is that it is very difficult for anyone to predict what their life will be like in seven years' time. No-one knows what their health will be like, what their income needs will be, what levels of state benefits will be available et cetera. And for this reason, we cannot recommend an arrangement that leaves you with a huge drop in income in the future and no means of replacing it if needed.*

It also said:

*Whilst our aim is to help our clients achieve their financial objectives, we have to consider the potential for a poor outcome. This has always been embedded in our approach to giving advice and has been reinforced by the recent introduction of the FCA's Consumer Duty. This includes a key principle of 'avoid foreseeable harm'.*

It agreed that its FA should have been aware of WPS's own policy relating to fixed term annuities with no residual value and should have not suggested this option to Mr A. It apologised for this error.

Unhappy with this response, Mr A brought his complaint to this service.

Our investigator reviewed the information provided by both parties and formed the view that the key element of Mr A's complaint about not providing access to the seven year annuity should not be upheld. They did, however, recommend that WPS pay Mr A £150 in respect of the distress and inconvenience it had caused him because of the error the FA had made in making an unsuitable recommendation to him. WPS agreed with this view and paid Mr A £150 compensation.

Mr A remained unhappy with this, so the complaint has been passed to me to make a final 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.

Having done so, I agree with our investigator and do not uphold this complaint.

Having said that, I can appreciate that this will be disappointing to Mr A, so I will explain how I have reached my decision.

Essentially, I have to decide if WPS should allow Mr A to access his pension benefits by providing him with the seven year annuity with no residual value that it originally recommended to him. On balance, I don't think that it should.

There is no doubt that WPS made this option available to him when discussing how he could take his benefits, and that this is an option which is commercially available. So WPS would be able to do this, as Mr A was told.

Having said that, this isn't an option that WPS would recommend to someone in Mr A's circumstances and so it made a mistake when he was told that this option was available to him.

WPS has explained that it has a policy not to recommend or provide fixed term annuities with no residual value to customers who need the income and have no way to replace it once the annuity expires.

It also stated in its response to Mr A's complaint that it felt that to allow Mr A to access his benefits in this way would run counter to its obligations under the Financial Conduct Authority's (FCA) rules.

WPS has explained that it has chosen to comply with these obligations in Mr A's circumstances by limiting the recommendation for fixed term annuities to exclude those which do not have a residual value when they expire. It also explained that this is because it would have the effect of dramatically reducing his future income at a time when he had no way to replace it. I cannot see that it has done anything wrong in taking this approach.

Mr A has said that he is willing to provide an undertaking to WPS that he would not seek to complain about the unsuitability of the fixed term annuity with no residual value at any time in the future. WPS has declined to do this, as it has chosen not to deal with what the FCA calls 'insistent clients'. These are defined by the FCA as

*a client should be considered an insistent client where:*

- 1) The firm has given the client a personal recommendation;*
- 2) The client decides to enter into a transaction which is different from that recommended by the firm in the personal recommendation; and*
- 3) The client wishes the firm to facilitate that transaction.*

In the circumstances of this complaint, I think that Mr A does fall within the FCA definition of an 'insistent client', as he is seeking to ask WPS to facilitate a recommendation that was made to him in error. As our investigator made clear, it is not the role of this service to direct a firm to act in any particular way except where it has made an error. The error WPS made was to recommend an option that it should not have done, and it subsequently corrected that error by withdrawing the recommendation. Given that, I can't see it has acted incorrectly in refusing to deal with Mr A on an 'insistent client' basis.

I've also reviewed the information that Mr A provided on the delay WPS has caused in him being able to access his pension benefits. I can also see that this has caused him a measure of distress and inconvenience. Having considered this carefully, I agree with our investigator that £150 compensation in respect of this is appropriate in the circumstances.

### **My final decision**

For the reasons explained above, I do not uphold Mr A's complaint.

WPS ADVISORY Ltd does not need to do any more than it has already offered to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 July 2024.

Bill Catchpole  
**Ombudsman**