Ombudsman's Determination

Applicant	Mrs Y
Scheme	Policy 0899… (**the Policy**)
Respondent	Utmost Life and Pensions Limited (**Utmost**)

Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by Utmost.

Complaint summary

2. Mrs Y said that her late husband, Mr Y, was of unsound mind, due to terminal cancer, when he opted to take a retirement annuity. She complained that Utmost knew Mr Y had a health condition but did not mention an ill health lump sum option.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. Mr Y's Policy had a selected retirement date (**SRD**) in April 2017, when he reached age 75.

5. On 31 May 2016, Utmost wrote to Mr Y suggesting that he consider his pension options as there was less than a year before he reached his SRD. As relevant, Utmost said:

> "With less than a year until your selected retirement date, it is important to think about your retirement options.
>
> You have built up a pension fund with us, and so, in time, you will need to decide what to do with the money you have saved. The decisions you make with regard to your pension benefits will form a key part of your retirement planning.
>
> To help you understand what you can do with your pension pot when you retire, the government has introduced a free and impartial Guidance Service to provide information on your retirement options and how they will work.

Full details of the Guidance Service are attached to this letter.

We strongly recommend that you make use of the Guidance Service or seek professional advice prior to taking your retirement benefits."

6. On 26 November 2016 and 21 February 2017, Utmost wrote to Mr Y with information on his pension options. As relevant, Utmost said in both letters:

"Your selected retirement date is fast approaching and you now need to decide what to do with the money you have saved with us.

…

How to access Pension Wise – the free and impartial government guidance service

Pension Wise is a service available from the Government, which offers free and impartial pensions guidance to help you understand your options at retirement. We have included a letter to you from the Government, headed 'Pension Wise', which explains what the service offers.

Pensions guidance may be accessed on the internet, by telephone or face-to-face. To find out more about Pension Wise go to www.pensionwise.gov.uk/ or telephone 030…

We strongly recommend that you arrange a free Pension Wise guidance session before making a final decision about what to do with your pension pot.

Alternatively, or in addition, you could seek professional advice from an authorised financial adviser who specialises in financial planning. You can find an authorised financial adviser in your area by visiting www.unbiased.co.uk , or www.moneyadviceservice.org/directory. However, please be aware that financial advisers may charge for their service.

What you can do with your pension pot(s)

We have enclosed with this letter a copy of the Money Advice Service booklet: Your pension; it's time to choose, which provides details of the options that you now have.

In summary these options are: [his **pension options**]

- **Keep your pension savings where they are** – and take them later. … You should bear in mind that if you don't decide what to do with your pension pot before your 76th birthday then your choices will be restricted.

- **Use your pension pot to buy an income for life** – called a lifetime annuity. The income is taxable but you can choose to take up to 25% of your pension pot as a one-off tax-free lump sum at the outset….

- **Use your pension pot to provide a flexible retirement income**…

- **Take your pension pot as a number of lump sums**…

- **Take your whole pension pot in one go** – the first 25% will be tax-free and the rest is taxable…

- **Mix your options**…

Before you make a decision you should think carefully about a number of issues, including: the tax implications, your health, life expectancy and whether you need to provide for dependents when you pass away.

We strongly recommend you to shop around before making your decision. Other pension providers may offer products that are more appropriate for your needs and circumstances and may offer a higher level of retirement income.

…"

7. Utmost's letter of 21 February 2017 stated the current Open Market Option value of Mr Y's pension pot was £65,170.16.

8. On 29 March 2017, Utmost wrote to Mr Y again as his SRD was now "imminent". Details about Pension Wise and how to use its service were included in the letter.

9. On 9 May 2017, Utmost wrote to Mr Y. As relevant, Utmost said:

"Our records show that you have now passed your 75th birthday and we've sent you out some paperwork giving you details of the value of your pension pot and what you can do with it.

…

It's important that you decide what to do with your pension pot or if you pass away then your beneficiaries may face tax charges from Her Majesty's Revenue.

…"

Information about Pension Wise was also included in this letter.

10. On 23 May 2017, Mr Y completed an information request form and sent it to Utmost. He requested two quotes: an Open Market Option (**OMO**) (to transfer his policy which would enable flexible retirement income), and an 'Income for Life' policy quote for a lifetime annuity. Mr Y indicated he wanted the annuity to have a ten-year guarantee period, nil annual escalation, and 100% of the monthly income to be paid in the event of his death before the end of the guarantee period to Mrs Y.

11. On 5 July 2017, Utmost sent Mr Y the requested quotes. The covering letter included details of Pension Wise and a section, 'Shopping around', which said:

"Finally, please also remember that if you are thinking about buying an income for life, you do not have to buy it from us and you should use your personalised quotation to compare retirement income with other companies. The [OMO] value shown on your quotation is the amount available for you to buy an income for life with a different company."

12. On 24 July 2017, Utmost sent Mr Y a reminder to make his choices and enclosed blank application forms to take his benefits as a lump sum or to transfer to another pension provider. Pension Wise details were also included in the letter.

13. On 9 February 2018, Mr Y requested Utmost provide a lifetime annuity quotation with a ten-year guarantee period, taking 25% as tax-free cash.

14. On 12 February 2018, Utmost wrote to Mr Y and provided the current OMO value of his pension (£65,953.36), his pension options and details of Pension Wise.

15. On 20 February 2018, Mr Y telephoned Utmost. He requested to take 25% tax-free cash and leave the balance in the Policy. Utmost notified Mr Y that this was not an option, and he would need to transfer the Policy to another provider who offered that option. He was informed that he could take a lump sum and income for life with Utmost and that he should contact Pension Wise.

16. In June 2018, Mr Y was diagnosed with terminal cancer. He was then 76.

17. On 3 September 2018, Utmost sent Mr Y a blank Information Request Form for him to select his pension options.

18. On 1 November 2018, Mr Y completed and returned the form to Utmost. Mr Y requested a lifetime annuity quotation. He specified a ten-year guarantee period, Retail Prices Index (**RPI**) subject to a maximum of 5% escalation, and 100% of the monthly income to be paid to Mrs Y in the event of his death during the guarantee period. He ticked 'No' to four other options, which included "Take your pension pot as a number of lump sums" and to "Take your pension pot in one go".

19. On 22 November 2018, Utmost provided Mr Y with the requested annuity quotation. This showed an annual income of £1,857.

20. On 29 November 2018, Mr Y and Mrs Y both signed an Income for Life Plan application form based on the quotation provided on 22 November 2018. In answer to the question: "Have you received guidance from Pension Wise on your decision to take an income for life?", Mr Y ticked 'No'. In answer to the question "Have you received advice from a financial adviser on your retirement options?", Mr Y ticked 'No, I have not received advice". In answer to the question "Have you shopped around and compared the amount of income you could receive from other annuity (income for life) providers?", Mr Y ticked 'No'. In answer to the question "Health Risks – Do you smoke, are you on medication or do you have a medical condition?", Mr Y ticked 'Yes or unsure'. Below this, was stated "If yes or unsure, read this warning – If any of the above health risks apply to you and you shop around, you could receive a higher income than we are able to provide."

21. On 5 December 2018, the completed Income for Life Plan application form was received by Utmost.

22. On 18 December 2018, Mr Y telephoned Utmost. Utmost's note of this telephone call says the value of the annuity, the tax-free cash amount and the annual income were confirmed to Mr Y. Then the following conversation took place:

> "Utmost Call handler (**CH**): "Just one or two things to go over on your form, you ticked with regard to pension guidance and financial advice, you ticked No to both. Did you not have any?"
>
> Mr Y: "Yes I had a word with a financial adviser."
>
> CH: "So you spoke to a financial adviser?"
>
> Mr Y: "Yes, he actually filled the forms in with me."
>
> CH: "Oh right, so you did that face to face did you?"
>
> Mr Y: "Yes"
>
> CH: "Oh, right, it's just that section on the form was ticked No. That's fine. Also, at the bottom you have ticked the bottom you have ticked the section for shopping around that you have not shopped around or compared the quotes with any other pension provider."
>
> Mr Y: "No, no, I have not. I'm quite happy with them."
>
> CH: "Ok, we just need to make you aware that another provider may be in a position to offer you a higher income for more than we can currently offer."
>
> Mr Y: "Yes, ok"
>
> CH: "And they might be able to offer you different options too which may be more suitable for you. So, if you would like to hold off and not go ahead yet we are quite happy for you to speak to other pension providers."
>
> Mr Y: "No, no, just go ahead with it as it is."
>
> CH: "Ok, there is just one more thing that I need to discuss with you and that is about health risks. You have ticked 'Yes/Unsure' under the question "Do you smoke or are you on medication or do you have a medical condition?""
>
> Mr Y: "Yes I have a medical condition."
>
> CH: "Ok, all I have to do is make you aware that we do not offer enhanced rates, but other pension providers do."
>
> Mr Y: "Yes, I appreciate that."
>
> CH: "So they might be able to offer you a different option to your pension if you would like to, if you did want to speak to others."
>
> Mr Y: "Well the financial advisor I was face to face with, we just said to go ahead with it as it is."

CH: “Ok, so you are happy to go ahead with the figures I have quoted.”

Mr Y: “Yes, yes”

CH: “Ok, that’s fine, we will put that into payment for you.”

Mr Y: “Sorry?”

CH: “That’s absolutely fine. We will put that into payment for you.”

Mr Y: “Any idea when it comes into operation?”

CH: “So, it will be backdated to 5 December so you will receive the first annuity payment in the next 3-5 working days along with the lump sum, then every month on the 5th.”

Mr Y: “So when is the first one?”

CH: “In the next 3-5 working days”

Mr Y: “Ok, thanks Bye”.”

23. On 20 December 2018, Utmost sent the policy document to Mr Y confirming his annuity had been set up. The commencement date was 9 April 2017. The letter included the following wording:

“You have chosen your annuity from us without seeking or having been given advice from [Utmost], or a financial advisor, on its suitability for your circumstances. As a result, you are responsible for this decision should it prove to be unsuitable.

You will need to let us know within the next seven days if you do not wish to go ahead with the annuity.

…”

24. On 26 December 2018, the 25% tax free cash lump sum of £16,488.34 was paid to Mr Y. On the same date, he was also paid 21 backdated monthly annuity payments to cover the period since reaching his SRD in April 2017 (£3,304.92 gross). Five subsequent monthly payments were paid from 9 January 2019. The first payment was £160.83. This increased to £166.13 from 9 April 2019.

25. On 14 April 2019, Mr Y died, aged 77.

26. On 17 May 2019, Utmost sent an Annuity Death Information Form to Mrs Y. The covering letter from Utmost, as relevant, said:

“**Income payments for annuity 08-----5 for the guarantee period**
There are income payments due to be paid in accordance with the will, or if there is no will then to the next of kin.

These payments will continue until the end of the period which was chosen by the deceased when the income payments started, known as the guarantee period.

…

The deceased chose to have annuity payments continue after his or her death to a reversionary annuitant.

…The reversionary annuity was named by the deceased when the annuity was taken out. The reversionary annuity is due to be paid to [Mrs Y] … and will continue to be paid throughout their lifetime….

The full details are on the enclosed statement."

27. The enclosed statement, as relevant, said:

"The annuity will continue to be paid under the guarantee from 9 May 2019 at £1,993.56 per annum increasing each April [by RPI to a maximum of 5%] in equal monthly instalments until 9 March 2027 inclusive.

…

Assuming that [Mrs Y] is still living, a reversionary annuity of £2,537.04 per annum increasing each April [by RPI to a maximum of 5%] will commence on 9 April 2027 payable in equal monthly instalments throughout the lifetime of [Mrs Y].

The net amount of £163.93 credited to [bank details redacted] on 9 May 2019 should be reimbursed as it was paid after the date of death. Please make your cheque for £163.93 payable to [Utmost].

…"

28. On 29 May 2019, Mrs Y telephoned Utmost to ask why she had to repay the overpayment if she was going to receive annuity payments anyway. Utmost said the payment could be delayed by one month instead if she wished.

29. On the same day, Mrs Y telephoned Utmost and asked if it required sight of the grant of probate. Utmost said this was necessary to pay her the guaranteed payments.

30. On 7 June 2019, Mrs Y telephoned Utmost. She asked if it was possible for her to be paid the annuity payments without probate as its approval was delayed due to a backlog. Utmost said that probate was required but she could submit the Annuity Death Information Form in the interim, then once it received confirmation of probate the payment could proceed.

31. On 12 June 2019, Utmost received the Annuity Death Information Form completed by Mrs Y, including her bank details for the annuity payments for the guarantee period.

32. On 23 September 2019, Mrs Y telephoned Utmost and asked about the annuity. Utmost confirmed it started on 9 April 2017, was guaranteed for ten years, then a reversionary pension was payable from April 2027.

33. On the same day, Mrs Y telephoned Utmost again and asked about the annuity. Utmost confirmed the annuity was effective from 9 April 2017 when the policyholder, Mr Y, reached 75 years old.

34. On 27 November 2019, Mr and Mrs Y's daughter telephoned Utmost on behalf of Mrs Y. She said the annuity should be nullified because Mr Y was not of sound mind when he chose it due to cancer. Utmost said Mr Y had not made it aware of his condition. Utmost said it would not ask about specific medical conditions if a policyholder did not inform it because it did not offer the option of enhanced rates on its annuities for any medical conditions, unlike other providers. Utmost said Mrs Y had also signed the annuity application form. Mrs Y's daughter said Mrs Y did not know what she was signing. She asked for copies of all paperwork and telephone calls concerning the discussions relating to Mr Y's pension options and the annuity purchase.

35. On 28 November 2019, Utmost wrote to Mrs Y to acknowledge her daughter's telephone call the previous day and said it would be treated as a complaint.

36. On 29 January 2020, Utmost responded to the complaint. It said it would not be possible to alter or cancel the annuity as the seven-day cancellation period had expired. Utmost enclosed all correspondence sent to Mr Y from 31 May 2016 to 20 December 2018. Referring to this, Utmost said it had examined the correspondence and had listened to all of the telephone calls with Mr Y and had found no evidence that Mr Y was not of sound mind when he took out the annuity. It did not uphold the complaint.

37. On 17 February 2020, Utmost sent Mrs Y recordings of the telephone calls between Mr Y and Utmost in 2017 and 2018.

Mrs Y's position

38. Mrs Y submits:-

- Mr Y was not of sound mind when he decided to buy an annuity in November 2018. This is evidenced by Mr Y wrongly indicating on the Income for Life application form that he smoked when he did not. It was also shown by Mr Y wrongly stating that he had spoken with a financial adviser during a telephone call with Utmost on 18 December 2018.

- She had discussed with Mr Y taking 25% of his pension fund as tax-free cash and the remainder as an ill health lump sum at the lower tax rate or being paid over 10 years.

- She was unaware Mr Y had purchased the annuity policy until February 2019 when the first annuity payment was received in their joint bank account. At the same time, Mr Y was admitted to hospital suffering from confusion and Mrs Y found out the cancer was extremely aggressive and had migrated to his skull.

- Utmost never told Mr Y he would be eligible to withdraw his money as a serious ill health lump sum at a lower tax rate. Utmost knew he had a health condition but did not present this option to him even though it would have been more appropriate.

Utmost's position

39. Utmost submits:-

- There was no indication that Mr Y was not of sound mind when he took out the annuity.
- Mrs Y signed the annuity form herself on 29 November 2018.
- A serious ill health claim would not receive more favourable tax treatment than taking the benefits as a lump sum because Mr Y was over 75 at the time.
- The seven-day cancellation period has passed so it is not possible to cancel or alter the annuity.

Adjudicator's Opinion

40. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Utmost. The Adjudicator's findings are set out below:-

- Mrs Y contended that Mr Y was of unsound mind when he purchased the annuity with Utmost. Mrs Y said that Mr Y's decision was different to what they had discussed, and that he had provided contradictory information to Utmost that he smoked when he did not, and that he had sought financial advice when he had not. Mrs Y considered that Utmost knew Mr Y had a health condition but did not mention an ill health lump sum option to him when he purchased the annuity.
- Mrs Y said she and Mr Y discussed taking 25% as tax-free cash and the remainder as an ill health lump sum at the lower tax rate or being paid over 10 years. In fact, Mr Y opted to take 25% as tax-free cash and an annuity with a 10-year guarantee. Mrs Y also said she was unaware Mr Y had purchased the annuity until the first payment was received. Although the Adjudicator did not doubt Mrs Y's recollection of what she discussed with Mr Y, both she and Mr Y signed the Income for Life Plan application form on 29 November 2018 and so, in the Adjudicator's opinion, Mrs Y should have been aware that an annuity was being purchased.
- Mrs Y said that Utmost knew Mr Y had a health condition and should have offered him the option to withdraw his money under the serious ill health lump sum at a lower tax rate. The Adjudicator did not agree because, during the telephone call on 18 December 2018, although Mr Y said he had a medical condition, he did not

say what it was or more importantly, that his life expectancy was less than 12 months[1].

- During the telephone conversation with Utmost on 18 December 2018, Mr Y confirmed that he had completed the application with the assistance of a financial adviser. During the same call Utmost raised the fact that Mr Y had ticked ‘Yes or unsure’ in answer to the question “Health Risks – Do you smoke, are you on medication or do you have a medical condition?”. Mr Y said he had a medical condition. Utmost pointed out that another provider might offer a higher annuity or an alternative option. Mr Y replied that his financial adviser had informed him to go ahead with the annuity. Utmost offered to put the matter on hold if he wished to shop around. Mr Y replied that he wanted to proceed with the annuity. Given Mr Y’s responses, in the Adjudicator’s view, it was not unreasonable that Utmost processed Mr Y’s annuity request.

- Mrs Y said Mr Y was admitted to hospital in February 2019 suffering with confusion. It was then found out that Mr Y’s cancer was extremely aggressive and had spread to his skull. That was some time after Mr Y had completed his application and confirmed to Utmost that he wished to proceed with the annuity. In the Adjudicator’s view, from the evidence provided there was no reason for Utmost to consider that Mr Y was not of sound mind when he informed it that he wished to proceed with the annuity.

- In the Adjudicator’s opinion, Utmost properly provided information to Mr Y regarding his pension options and abided by his decision to purchase the annuity.

41. Mrs Y did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mrs Y provided her further comments which are summarised below:-

- In the letters Utmost sent to Mr Y on 26 November 2016 and 21 November 2017, there was no mention of the serious ill-health lump sum option for people who are terminally ill.

- The Information Request Form returned to Utmost on 1 November 2018, was completed by Mr Y’s financial adviser. One letter in Mr Y’s surname is incorrect on the form.

42. I have considered Mrs Y’s comments, but they do not change the outcome, I agree with the Adjudicator’s Opinion.

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[1] The first condition that must be met in order for a payment to be treated as a serious ill-health lump sum is that the scheme administrator has received written evidence from a registered medical practitioner confirming that the member is expected to live for less than one year. https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063400#IDAFLIBC

Ombudsman's decision

43. Utmost's letters of 26 November 2016 and 21 November 2017 to Mr Y, were sent before he had been diagnosed with terminal cancer.

44. Both letters, and a subsequent letter from Utmost to Mr Y dated 5 July 2017, recommended that Mr Y take financial advice about his pension options, provided details of how to access Pension Wise and strongly recommended that he shop around to get income comparisons of what he might receive from other providers before making any decision.

45. The Income for Life form signed by both Mr Y and Mrs Y on 29 November 2018, informed them that smokers, those on medication and those with a medical condition should shop around because they could receive a higher income elsewhere than Utmost were able to provide.

46. Mrs Y previously said that her husband had not taken any financial advice and that his reference to having done so in a telephone call with Utmost on 18 December 2018 was an indication that he was not of sound mind. However, Mrs Y later said a financial adviser did complete the Information Request Form. So, it appears that Mr Y did take financial advice before deciding to purchase the annuity.

47. During the same call on 18 December 2018, Utmost made Mr Y aware again that he could shop around and that he might be offered an enhanced annuity rate elsewhere due to his medical condition. Mr Y said he had discussed this face to face with a financial adviser and was happy with the quote from Utmost and wished to proceed with it.

48. From the evidence provided I find that Utmost was under no obligation to provide Mr Y with details of the serious ill-health lump sum option, nor did it have a reason to do so, as at no time before Mr Y's death was it made aware of his medical condition or that his life expectancy was less than 12 months .

49. I have seen no evidence that Utmost should not have proceeded with the instructions provided by Mr Y in relation to the purchase of an annuity.

50. I do not uphold Mrs Y's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

17 April 2024