DRN-2980768

The complaint

Mr C complains that The Royal London Mutual Insurance Society Limited has acted unreasonably in cancelling his reviewable whole of life policy, then lapsing it without value.

What happened

The policy was originally taken out in February 1993 through a third party financial adviser. It was sought with Scottish Provident, which is now part of Royal London.

The policy was set up on a standard cover basis and had an indexation option on the sum assured and monthly premium, which was set at £148 after underwriting. Reviews were due to take place after the policy's tenth anniversary and every five years thereafter. Mr C was the main life assured, with four additional family members included within the policy.

In November 2016, Mr C contacted Royal London after it had cancelled his September 2016 direct debit without explanation. He was told the matter would be reviewed and a letter of explanation would be issued, but he did not hear anything more from Royal London.

Mr C therefore contacted Royal London again in May 2017. It replied to him in writing to explain that there had been a software error made earlier; it appeared Mr C's cover had mistakenly been changed to maximum cover. It sent another holding letter in September 2017 noting it was continuing to provide cover whilst it looked into the issue further.

In 2020, Mr C contacted Royal London again, noting he still hadn't heard about his policy.

In August 2020, Royal London told him that the policy had in fact lapsed in September 2016 because the premium he had been paying was not sufficient to meet the cost of providing the cover. It also realised now that it had been undercharging Mr C throughout the policy.

Royal London explained that, for some unknown reason, its systems had switched Mr C's cover from standard cover basis to a maximum cover basis in 1999. And thereafter reviews which ought to have happened in accordance with the policy terms also were missed.

It also explained that it had mistakenly made the policy 'paid up' in 2003 – after Mr C had requested a surrender value dated June 2003. Though this mistake was identified in October 2003 and the policy was put back in place, Royal London failed to reinstate the policy reviews. This meant the 2003 review and the next reviews due in 2008 and 2013 did not take place and it caused the issue of undercharging which continued to 2016.

Royal London told Mr C that it couldn't restart the policy or offer further cover as it was no longer providing new policies of this type to customers.

So, Mr C complained. He said he should not suffer through the catalogue of errors caused by Royal London. He also failed to understand how he could have been told earlier in 2016 that his policy had a sum assured in excess of £220,000. He felt Royal London should return all of his premiums.

In 2021, Royal London issued a reply to the complaint. It accepted that it had made unreasonable errors, though it said it had always provided him with cover up until August 2020 at no further cost to Mr C. It explained how, because of the underpayment issue, Mr C paid £65,582 in premiums for duration of policy but he should actually have paid £149,021.

In response to the complaint it reconsidered its previous reply and offered to reinstate Mr C's policy with a full sum assured of £259,024 and not ask Mr C for any backdated premiums. However, this would mean that going forward Mr C would have to pay the correct revised premium of £891.10 per month.

Royal London also told Mr C that it could alternatively reconstruct the policy reviews which should have happened in 2008 and 2013. It could then let Mr C determine what he would have done at those times.

However, Mr C was not happy with either option. He brought the complaint to this service.

In April 2021, Royal London considered Mr C had lost faith in it and its service. Royal London therefore paid him £5,000 in compensation for the upset all of its combined errors had caused. It wasn't prepared to refund Mr C's policy premiums because it had calculated that he had actually underpaid for cover by some £83,439 as well as being in receipt of life and critical illness cover until 2020.

An investigator considered the complaint and thought it should be upheld. He asked Royal London for the correct values at the review of 2003 if the cover had never mistakenly been switched to a maximum value basis. He then put the various options at the reconstructed review to Mr C. Mr C said he would have most likely surrendered the policy in 2003 because of the increased cost to maintain the cover.

Though Mr C had asked our investigator to refund all of the premiums he had paid since 2003 with interest, the investigator did not believe this was the appropriate redress for Royal London's errors. He said that Mr C had the benefit of the cover, and he had wanted to have that, albeit at a level he could afford.

In his view, the right outcome for the complaint was for Royal London to treat the policy as if it had paid the surrender value in February 2003 and add simple interest to that value. He did not think any further compensation should be paid; he felt £5,000 was a reasonable sum given Mr C had awaited an answer for several years, not knowing if he had cover or not.

Royal London agreed to the proposal made by the investigator. Mr C said he would agree, but he wanted to know what the surrender value was. Royal London therefore sent him a retrospective calculation of the 2003 surrender value.

Mr C said he was unhappy because though he agreed with the option to treat him as if he had surrendered the policy in 2003 was fair, he thought the interest backdated from that time would be compound interest, not simple interest – as had been verbally suggested to him.

Our investigator explained that he considered Royal London ought to pay simple interest, not compound interest –though he had verbally agreed otherwise during a conversation with Mr C, this was in error and his initial view regarding simple interest was correct.

Mr C remained unhappy. He said though Royal London had calculated redress at £14,130, he had worked it out to be £25,000 or £26,000 with compound interest and he would only have agreed to close the complaint if this was the amount he was going to receive. He said that on this basis, he wanted his complaint to be referred to an ombudsman.

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.

I'd like to thank the parties for their patience whilst this matter awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld – and on the same basis as put forward by our investigator.

In February 2016, Royal London sent Mr C a policy statement confirming that he had a monthly premium of £328.87 and a sum assured of £220,862. Despite this, it then went on later that year to lapse the policy without value and failed to tell Mr C of that until 2020.

It is clear that the loss of cover and the fact it has taken several years to explain what has happened has caused significant concern to Mr C. For that reason, Royal London put forward a considerable payment of £5,000 for compensation for the impact of its combined errors. I believe that is a fair and reasonable proposal in the circumstances.

Turning to the redress for the errors in the reviews, it is clear that Mr C's policy should have offered cover on a standard basis and it was Royal London's error to have changed the type of cover basis to maximum in 1999. Nonetheless, the first review in 2003 would have failed, meaning Mr C would have been given one of four options in relation to the policy. He could have maintained the sum assured either with or without indexation for increased premiums of £361 and £342 respectively, reduced the sum assured to £97,519, kept the policy the same until it lapsed without value or surrendered it.

Mr C has provided information to our investigator about his circumstances in 2003. By this time, the monthly premium was £217. And given his particular business, personal and financial affairs, it is clear he couldn't have afforded the raised premium, and that it did not meet his particular needs at that time by carrying on the cover with a reduced sum assured.

I believe that likely also considering that Mr C's financial adviser obtained a surrender value on his behalf for the policy. At that time, Scottish Provident wrote to him with a surrender value of £7,128, as of June 2013.

I agree that if Mr C had been presented with the correct options, taking into account the error from 1999 onwards, he'd have most likely surrendered the policy in 2003.

I also agree with our investigator that I do not believe a further return of premiums is due to Mr C. Though with redress we would look to place a person in the position they would have been in had a business not made errors, Mr C confirmed to Royal London that he wanted the cover throughout and would not have surrendered it but for its mistakes.

I do not believe it appropriate to return those premiums to Mr C on that basis. To do so would treat the policy as if it ought never to have existed. Rather, Mr C has had the benefit of the cover provided by the policy until 2020, at a lower cost (though I know this has happened through Royal London's error) and a valid claim would have been met up to that date.

Putting things right

Royal London ought to calculate the surrender value as at February 2003 on the correct basis that Mr C's policy had failed the ten-year review. It should then pay this sum to Mr C along with interest at gross rate of 8% simple per annum from the date the of the failed review to the date of settlement.

If Royal London considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr C may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

I note Mr C has queried the interest calculation, arguing that he feels it ought to be calculated on a compound basis. However, that is not the type of interest this service would award for redress of this nature. In awarding interest, we account for the fact that Mr C ought to have had this sum at an earlier date and therefore has been deprived of it until settlement. The calculation for interest is set at a rate of 8%, which is the current rate on judgment debts used for court cases. This is awarded on a simple basis, not a compound basis.

My final decision

I uphold this complaint. If it has not done so already, The Royal London Mutual Insurance Society Limited must pay the redress set out above to Mr C. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 March 2022.

Jo Storey
Ombudsman