

The complaint

Mr G says The Royal London Mutual Insurance Society Limited (Royal London) is responsible for providing him with incorrect information - on several occasions and over an extended period of time - about how he could utilise his pension funds. He says he relied on the erroneous information in planning for his retirement and that he's suffered financial detriment, trouble and upset as a result of its actions.

What happened

Mr G began exploring his retirement income options with Royal London in October 2020. As at November 2020, it recorded a transfer value for his policy of around £240,000. By August 2021 this had increased to about £ 273,000.

Mr G's pension pot had two sets of important attributes. The first was whether his funds attracted a guaranteed annuity rate (GAR), or not. Based on the November 2020 valuation, about £206,000 of his pension plan had a GAR attached and around £34,000 didn't. The second was whether his funds had protected rights, or not. At the time about £131,000 of his pension had protected rights with the balance of funds being unprotected.

Mr G wanted to take the GAR and non-GAR elements of his benefits separately. His plan was to use the former to purchase an annuity, and then place the residual funds into a separate personal pension with flexibility to drawdown income as and when required.

Royal London confirmed Mr G could take his GAR and non-GAR benefits separately or failed to inform him properly about restrictions on his plans on several occasions. This happened between November 2020 and when he submitted his application for an annuity with Canada Life at the beginning of August 2021.

Unfortunately, after Royal London contacted Canada Life to arrange Mr G's annuity towards the end of August 2021, it discovered it had made a mistake. It informed him that it wasn't able to separate out the various elements of his pension pot in the way it had previously led him to believe was possible.

After Mr G submitted his annuity application and Royal London discovered its error, an alternative annuity provider submitted a quote that would've provided him with an annual income that was £45 more than the equivalent Canada Life proposal. Mr G decided to stick with the firm he'd initially chosen because he felt changing would've led to a further delay in securing the income he needed.

Mr G had several concerns about what had happened, including the pattern of incorrect information he'd received from Royal London over a period of 10 months. He said he'd already had a bad experience with it in relation to his occupational pension and was hoping things would work out more smoothly for his personal pension. But he was left frustrated and anxious about trying to put in place arrangements for his income in retirement. And he had to spend a great deal of time trying to get things sorted.

Mr G noted Royal London had never sent him any documentation which showed why he couldn't treat the GAR and Non-GAR elements of his pension separately.

Mr G raised his concerns with Royal London on 25 August 2021. It responded to him on 20 January 2022, concluding in the following terms:

"Having investigated the details of your complaint it is clearly evident that we have made mistakes, and that we have let you down. There has also been delays in investigating and resolving this matter for you."

"...I fully acknowledge that the level of service and customer care that we have provided to you with regards to this plan falls well below the levels that you expect to receive from us. I can therefore appreciate that the recent experience that you have had with us will have given you a very unfavourable impression of our Company, for which I am truly sorry."

"I would like to reassure you that the details of your complaint will be fed back to the relevant business area, and that we will learn from the mistakes that we have made. There will be checks implemented in the process so that policyholders whose plans contain GARs are informed correctly the options available to them when taking the proceeds."

"Finally, I can appreciate that our handling of this plan will have caused you inconvenience and frustration. There by way of our apology we would like to offer you an ex gratia payment of £1,000.00 in full and final settlement of your complaint..."

Mr G wasn't satisfied with Royal London's response. He brought his complaint to this Service saying:

"The issue relates to the taking of the Non-GAR element of my pension plan. I was told at various times and by different personnel within Royal London that I could put the Non-GAR element into a separate Pension Plan with income release. This would leave these monies invested for drawdown at a later date. This was confirmed in writing, verbally and by action by several Royal London representatives at various points during a period running from November 2020 to August 2021."

"Having completed the forms in order to take the GAR related portion of my fund as an Annuity in early August 2021 I was then contacted by Royal London some three weeks later to be advised that I could not do what I was proposing. This despite being advised on several occasions previously by Royal London that I could. This included being sent a written illustration from Royal London of how the plan would look with the aforementioned Non-GAR element added..."

Mr G produced a schedule setting out the compensation he wanted from Royal London for the things it had got wrong. This totalled £23,033 and had four elements:

- A 50% refund of the arrangement fee, equating to £1,375.
- Projected loss over a 25-year period on the difference between the annuity benefits he was able to secure on the non-Gar element of his pension, compared to what he believes he could've achieved had he been able to place the equivalent funds into a draw-down product. The loss he calculated was £18,083.
- Compensation for the time he'd spent liaising with Royal London trying to get matters sorted out. He estimated 45 hours of his time charged at £35 per hour, a total of £1,575.
- Recognition of the considerable stress and inconvenience Royal London had caused him, for which he sought £2,000.

An Investigator considered Mr G's case but didn't uphold it. He agreed Royal London had made serious errors, and over an extended period of time. But he thought its offer to put things right was reasonable.

Mr G disagreed with the Investigator's findings and conclusions. He didn't think Royal London had produced telling evidence showing what rules applied to taking benefits from his policy in 2021. He also made the following points:

- Although he was presented with an alternative annuity quote around 24 August 2021, which would've provided an uplift of around £45 a year, Mr G says it wasn't really an option because he wanted his annuity to start from his 60th birthday (monthly, in arrears). He wasn't confident that going through the application process with a different firm would've been completed in time. He sought additional financial compensation, stating Royal London should make good the difference between the contract he secured and the higher quote available for the period of an average life expectancy, equating to £1,125.
- Royal London's handling of his retirement planning arrangements impacted many aspects of his life, he gave examples of having to take his pension paperwork with him whenever he travelled, to be able to deal with matters arising while he was away. This impinged on already stressful events, such as when a close relative had been in hospital receiving treatment.
- He reiterated the amount of time he'd spent on trying to get his pension arrangements resolved.
- He estimated that Royal London would've received about £6,000 from the transaction, and reflected on whether this was reasonable given the level of service he'd received.
- He raised a concern that Royal London had confirmed a member of its staff who dealt with him didn't have the necessary knowledge of his pension plan to give him proper information.

In summary, Mr G didn't believe the £1,000 offered by Royal London to put things right represented fair redress.

As both parties couldn't agree with the Investigator's view, Mr G's complaint has been passed to me to review afresh and to provide a 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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr G's complaint. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Royal London for Mr G. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Royal London. As such, I need to have regard to them in deciding Mr G's complaint.

At the heart of Mr G's complaint is his desire to have been able to take his GAR and non-GAR pension benefits separately. Royal London has now provided him with documentation it says is relevant to his policy which sets out how his benefits can be taken. For example, its information note on GARs dated November 2014 says the following:

"Our current annuity rates will be used to calculate the annuity income in respect of any portion of the plan value that does not attract guaranteed annuity rates. That portion of your plan cannot be transferred separately from the portion that benefits from guaranteed annuity rates."

And I've not seen anything in the original terms and conditions of Mr G's plan that suggests anything different.

I note that when Mr G complained to Royal London in September 2021 he said:

"Whilst I accept that the original plan conditions do state that the GAR and non-GAR have to be taken "contemporaneously" and as an annuity. It is quite clear from my requests and discussions, that I had asked for an illustration for the non-GAR element to be moved into a separate Personal Pension Plan with Income release..."

Mr G says that given the major reforms to pensions over the years, including the pension freedoms legislation in 2015, it's hard to believe that in 2021 his pension plan hadn't been updated to offer him the flexibility he wanted.

While I understand Mr G's frustration here, I would note that pension freedoms were provided under "enabling" legislation only. That means providers didn't have to offer any further flexibility by law if the rules of the consumer's policy didn't already allow an option such as drawdown. Firms weren't compelled to change existing schemes because the nature of pension contracts requires long-term asset and liability planning.

Mr G has provided the terms and conditions of a Group Personal Pension Plan that was part of the same stable of products as his personal pension. The document dated 2019 does suggest members of that scheme had greater flexibility about how their benefits were taken. The problem for Mr G is that this doesn't apply to his pension plan.

So, I've seen no evidence that makes me think Royal London hasn't applied the terms and conditions from Mr G's pension plan correctly.

Turning to Royal London's service to Mr G while he was trying to finalise his retirement arrangements. There's no dispute between the parties that he received incorrect information about how he could take his pension benefits, and over an extended period of time.

Royal London apologised to Mr G, provided feedback to the business area concerned and put in place checks to ensure customers with enquiries about GAR's received accurate information. It also offered him a payment in recognition of the trouble and upset it had caused.

Mr G wasn't satisfied with Royal London's response and he has argued for more redress. I've thought carefully about each area of his claim and have concluded in the following terms:

- *A refund from the arrangement fees (£1,375)* – while its clear Mr G didn't receive the service he should've, Royal London did carry out work to ensure an annuity was established for him and he started to receive the income from it in line with his desired timetable. So, I don't think it would be reasonable for me to direct a return of fees paid here. The clear failings of service can be addressed in an award for distress and inconvenience.
- *Projected pension loss over 25 years (£18,083)* - I don't think Royal London should be expected to honour the estimated potential loss he identifies as resulting from the incorrect information he was given about how his benefits could be taken. That's because it wasn't something to which Mr G was ever entitled. Any loss of expectation he's experienced can be addressed in an award for distress and inconvenience.
- *Loss of income due to not taking highest annuity quote (£1,125)* – While I recognise Mr G was anxious about getting his annuity in place and he had concerns that moving to a different provider late in the day could've caused delays, I think it's more likely than not any delay would've been minor. It was Mr G's decision not to take the better quote and Royal London can't reasonably be held responsible for any loss arising.

Mr G has also made a claim for the trouble and upset he's been caused. He wanted £1,575 for the time he'd spent dealing with Royal London. And a further £2,000 for the considerable stress and inconvenience he'd experienced.

Some of Mr G's arguments about redress have merit. When I'm considering a complaint like his I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Royal London's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Royal London offered Mr G £1,000 for the poor information it provided about how he could take benefits from his plan, and for the service issues he experienced. This is a substantial award and having reviewed the available evidence and arguments, I think it was a reasonable offer.

If it hasn't done so already, The Royal London Mutual Insurance Society Limited should now make arrangements to pay Mr G the redress it offered originally.

My final decision

For the reasons I've set out, I'm not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 April 2023.

Kevin Williamson

Ombudsman