

The complaint

Mr C complains about the advice The Royal London Mutual Insurance Society Limited gave him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

At the time of the events complained about it was a different firm which gave Mr C advice. Royal London has since acquired that advising firm and it's confirmed that it is responsible for responding to the complaint. So in this decision I will refer to the advising firm as Royal London.

Professional representatives have helped Mr C to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr C's.

What happened

Mr C says that Royal London approached him in 1995 offering financial advice. In October 1995 it completed a fact-find and recorded information about Mr C's circumstances and attitude to risk. Amongst other things it recorded that:

- Mr C was aged 34, living with his partner and they had a son aged one.
- Mr C was employed earning around £720 a month.
- He rented his home.
- He had no savings, investments or unsecured debt.
- His partner received benefits of £240 a month and together they had a disposable income of £218 a month.
- He had a "*preserved pension*" from his previous employer.
- Mr C had a medium/high attitude to risk.

Under a heading of "*recommendations for you*" Royal London recorded – amongst other things – "*pension provisions*". And it later noted that it was recommending:

"Stage one pension transfer to compare preserved pension with personal pension with intention of investing in one with greater control and potential for growth in the long term."

Royal London then gathered information about Mr C's DB pension from the scheme administrator. It produced a pension transfer analysis report on 1 December 1995. Amongst other things it recorded: that Mr C's DB pension had a transfer value of £9,581, which would pay him a cash lump sum at age 60 of £19,500 together with a yearly pension of £4,600. It said the growth rate required for an alternative pension to match that would be 11.4% each year. Royal London's fee for arranging a transfer would be £582 in total, which would be deducted from the transfer fund.

Two of Royal London's staff met with Mr C on 13 December 1995. They have recorded that they advised Mr C not to transfer out of his DB scheme as he would lose guaranteed benefits, the growth rate required was "assumed" too high and it was an unacceptable risk.

Mr C signed a form that day confirming that he wished to go against Royal London's advice not to transfer and acknowledged that it was not in his financial interests to do so.

The form was pre-printed to say that Mr C wanted

"To move my retirement benefits away from my previous employer. This is because..."

Then hand written in ink it says:

"I LOOK TO THE FUTURE"

Mr C signed the appropriate forms to complete the transfer of his DB pension benefits to a personal pension provided by Royal London the same day.

A week later, on 20 December 1995, Royal London wrote to Mr C. As well as enclosing pension transfer review papers, it said its recommendation was that he should not transfer his pension because:

"You would lose guaranteed benefits and the required growth rate required to match these benefits is too high.

You have elected to transfer your personal pension as this is money you have now received and you wish to take the risk over a long period to improve the pension benefits."

On 28 December 1995 Royal London wrote to Mr C. It said he'd completed the arrangements to transfer his pension. It again said it was enclosing the results of its pension transfer review. It added that he had 14 days to change his mind.

The administrators of the DB scheme later confirmed it had completed the pension transfer.

In 2021 Mr C complained to Royal London about the suitability of the transfer advice. Amongst other things he said:

- Royal London's advice to transfer was negligent.
- It didn't advise him of the guaranteed benefits he would lose.
- It advised him that his DB scheme may cease to exist in the future and this was a factor in his decision to proceed with the transfer
- It told him that by reinvesting his pension fund he would enjoy a better return.
- It didn't tell him that an alternative plan would have to perform particularly well to match the benefits of the DB scheme.
- Royal London should have advised him not to transfer.
- He had a cautious attitude to risk, a low capacity for loss and no previous investment experience and a transfer was not in his best interests.
- By transferring, Mr C would have to pay fees that he wouldn't need to pay by remaining in the DB scheme.

Royal London didn't uphold Mr C's complaint. In summary it said that its advice was that Mr C should *not* transfer out of his DB scheme.

Mr C brought his complaint to us. Amongst other things he said that Royal London didn't explain the nature of his DB scheme to him.

Mr C referred his complaint to our service. We spoke with Mr C, amongst other things he told us that he didn't recall Royal London advising him not to transfer out of the DB scheme.. He

described Royal London's staff as "*door-knockers*". He said the pensions transfer was Royal London's idea from start to finish and it had been a hard sell. It had told him that everyone was transferring away from his former employer's DB scheme.

We sent Mr C a copy of the form he signed to say that he was going against Royal London's advice. Mr C replied and acknowledged that it was his signature on the form. But he said that while the form did say in print that he was going against Royal London's advice it hadn't made it clear that he shouldn't transfer his pension. He said the complete opposite was true.

One of our investigators reviewed the complaint. He upheld it and required Royal London to pay compensation, including redress of £200 for Mr C's distress and inconvenience. In short the investigator said:

- Two of Royal London's staff had met with Mr C which supported his argument that it was a hard sell.
- There was a form titled "*Application to transfer the pension plan*" on file dated earlier than the meeting with Mr C which implied that the transfer was already going ahead.
- He wasn't convinced that it was Mr C's own handwriting on the form agreeing he was going against Royal London's advice.
- Its letter advising Mr C not to transfer was sent after Mr C had already signed forms to say that he wanted to go ahead with the transfer and didn't give Mr C a fully informed position.
- He didn't think that Mr C was an insistent client.

Royal London disagreed. Amongst other things it said:

- At the time it was usual practice for two of its staff to attend such meetings.
- The *Application to transfer the pension plan* form was an internal memo which includes a list of the documents required. It was sent by its pensions section to its advisers to be completed and returned after the meeting. So it was not an indicator that the transfer was already going ahead.
- Royal London didn't put pressure on Mr C to complete or sign any papers and there's no evidence in the file that was the case.

The investigator wasn't persuaded to change his opinion, so the complaint was referred 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.

Both Mr C and Royal London have made a number of points in bringing the complaint and in replying to it. And I've considered carefully everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues that I see as being at the heart of Mr C's complaint and the reasons for my decision.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've decided to uphold the complaint for broadly similar reasons to those given by our investigator.

At the time Royal London gave Mr C advice it was regulated by the Personal Investment Authority ('PIA'). The PIA had adopted the rules from the previous regulators, which had issued guidance to firms in 1994 about dealing with "*investors who reject the advice of the firm*". Of relevance to this complaint that guidance said:

"it is always open to the member to refuse to become involved in executing the instructions of the investor. However, if the member is prepared to proceed with the arrangement, then the following steps should be taken.

- A. The investor should have the position fully explained to him, including the implications of his choice, and this advice should be confirmed in a letter.*
- B. The investor's decision to override the advisor's recommendation should also be credibly evidenced. Disclaimers forms and pre-printed letters using stock phrases should not be used since they cast doubt upon the genuineness of the process. A note from the customer in his own words is best.*

The current regulator (the Financial Conduct Authority – FCA) refer to consumers who go against a firm's advice as '*insistent clients*'. Although that wasn't a term the PIA used, and I'm not applying the FCA's current advice when considering Royal London's actions at the time, for the purposes of this decision I have adopted the phrase *insistent client* as I think it fits Mr C's situation.

So in order for Royal London to fairly treat Mr C as an insistent client it needed to fully explain the implications to him of going against its advice. And show credible evidence that Mr C had chosen to go against that advice using his own words and without using a pre-printed reason.

The transfer analysis report produced on 1 December 1995 showed that it was extremely unlikely Mr C could match the benefits from his DB scheme by transferring to a personal pension. Both of Royal London's advisers who met with Mr C on 13 December 1995 have recorded that their advice was that he shouldn't transfer out of the DB scheme. So it's not in dispute that it wasn't in Mr C's best interests to transfer. What is in dispute is the advice that Royal London gave to Mr C at the time.

I note that in its initial meeting with Mr C in October 1995 Royal London had recommended considering a pension transfer so Mr C could enjoy "*greater control and potential for growth in the long term*". So, at the initial meeting Royal London had already sowed the seed that Mr C could be better off by transferring his pension.

Royal London then met with Mr C again and has recorded that it advised him not to transfer. In contrast Mr C believes that Royal London's advice throughout the process was that he should transfer his pension. Clearly, I wasn't there when Royal London met with Mr C, so I don't know exactly what information was exchanged. And in those circumstances I need to decide, on the balance of probabilities, what's more likely than not to have happened.

There is evidence on file supporting Royal London's version of events. It has the notes from its two advisers saying that they advised Mr C not to transfer. There's also the form Mr C signed saying that he was going against its advice because:

"I LOOK TO THE FUTURE"

But I'm not persuaded by the paperwork that Royal London had fully explained the position to Mr C or the implications of his going ahead with the transfer. In coming to that conclusion I've noted that Royal London gave its advice, which it says was for Mr C not to transfer, on the same day that it decided to treat him as an insistent client and he signed the papers for the transfer to go ahead. There's no clear evidence of exactly what it discussed with Mr C, beyond saying that the growth rates and risk were too high. And it hasn't recorded any actual detail about what advantages Mr C thought there were in going against its advice. Similarly there's no record of Royal London challenging Mr C's apparent decision to go against its advice. And in order to credibly evidence that it had fairly advised Mr C about the implications of his acting as an insistent client I think it needed to do that.

I say that because Royal London had apparently initiated the advice process itself. Mr C says this wasn't something he was looking to do or had previously considered. He had no investment experience, no savings, no other pension provision and was earning a modest salary. He had nothing to fall back on if an alternative pension arrangement failed. That is he had very little capacity for loss. But there was virtually no risk of any loss whatsoever by remaining in the DB scheme. And by transferring he would immediately be subject to a deduction of Royal London's charges for arranging the transfer, which were about 6% of the entire fund. And he would then incur regular charges from a personal pension which he wouldn't have had to pay from the DB scheme. So it clearly wasn't in Mr C's best interests to transfer out of his DB fund, as by doing so he was almost certainly ensuring he would be worse off in retirement.

Mr C's memory of events is that Royal London were positively encouraging him to transfer. I appreciate that Royal London gave its advice around 27 years ago and memories fade and are coloured by the passage of time. And it's clear that Mr C can't remember everything which took place, as – for example – he didn't recall signing the form saying he was going against Royal London's advice, when there's clear evidence that he did so. But his recall about the thrust of Royal London's advice is persuasive that it sold the idea to him that he would be better off by transferring. And I find it difficult to understand why someone with no investment experience and very little in the way of capacity for loss would go against the advice of financial professionals if they had clearly explained to him that he would, almost certainly, be worse off by going against their advice.

And had Mr C been insistent on doing so, then, as I've said above, I would have expected Royal London to keep a clear record of what it had done to dissuade him from that position. Royal London's role was to find out what Mr C's wants and needs were and why. Its role wasn't simply to do what Mr C thought he wanted without appropriate analysis and challenge of his motives for doing so with the implications of taking those actions with him. But there's very little evidence of such a challenge.

Also Royal London's evidence is that it advised him not to transfer and then got him to sign forms to go ahead with that transfer on the same day. In other words it's clearly told him that, regardless of what its advice actually was, it could make the transfer happen anyway. And while Royal London knew that wasn't in Mr C's best interests, the transfer would see it earn a significant fee. But there's no evidence it gave Mr C copies of its papers at the time. So it's not clear how much information it gave to him in order to ensure he was making a fully informed decision. For example there's no evidence that it pointed out the effect that the charges and fees applicable to the personal pension would have on reducing his pension funds in the future. So I'm not convinced that Royal London did all that it needed to in order to fully and clearly explain the implications of transferring out of the DB scheme.

Further, while Mr C undoubtedly signed the form saying he was going against Royal London's advice, it's apparent that Mr C actually believed that Royal London's true advice was that he should go ahead with the transfer. I say that as his evidence is clear and

persuasive that he understood Royal London's overarching message was that he should transfer. And, as I've said above, unless he was given the impression that he would potentially be better off by transferring he had no reason whatsoever to take a risk with his pension.

The form Mr C signed was pre-printed to say that he was going against Royal London's advice, and the handwritten note about looking to the future doesn't explain why he'd want to do that. Looking to the future would, I believe, for most individuals involve taking the option that was most advantageous to them. Not one that would almost certainly see them worse off. But all the evidence in the paperwork is that Mr C was likely to be worse off by transferring. So I can only imagine that Mr C thought that in *looking to the future* he'd be better off by transferring. And I think it's likely, on the balance of probabilities, that he arrived at that conclusion because of the manner in which Royal London presented its advice to him. That is, whilst it might have said that it may not be in his best interests to transfer, it's also given him the impression that by doing so he could be better off. So I think it's likely that it gave him mixed messages about what was genuinely in his best interests. And Mr C concluded having spoken to Royal London's professional advisers, that he would be better off in a personal pension.

Royal London then wrote to Mr C on 20 October 1995 again advising him that its recommendation was not to transfer. It's notable that the regulator required Royal London to write to Mr C to confirm its advice. So this letter would tick that particular regulatory box. But the reasons Royal London gave for its recommendation were brief. It said that Mr C would lose guaranteed benefits and the growth rate to match those was too high. The letter said nothing about the effect of fees or charges. And it didn't spell out that he was almost certain to be worse off by transferring. Neither did it refer to potential volatility of the markets and what that could mean for him in the long-term. And by this time Mr C had already signed the forms to say he wanted to go ahead with the transfer because he clearly thought that was in his best interests. Also, as I've already said above, I'm persuaded he did so based on what Royal London had told him previously. So I think Royal London's letter was too little too late.

Further, Royal London's letter said that Mr C's reasons for going against its advice was because:

"...this is money you have now received and you wish to take the risk over a long period to improve the pension benefits."

But Mr C hadn't *received* the money. It was invested for him by his DB scheme. It was not a sum that was available to him to do what he wished with. So having *received* the money clearly can't have been an accurate reason for him wanting to transfer the benefits out of the DB scheme. I find that comment misleading.

Also, the reference to taking long-term risk to improve his pension benefits indicates that this is clearly something Royal London had discussed with Mr C. That is it had told him that he could be better off in the long run by reinvesting his DB scheme funds into a personal pension. And it seems likely that it was this discussion that persuaded Mr C he would be better off by transferring. Given his previous lack of investment experience, I don't think that's a position he's likely to have arrived at without the involvement and comments of Royal London's advisers.

It follows that I think Royal London led Mr C to believe that overall, its advice was that he should go ahead with the transfer. And in doing so Royal London was simply paying lip-service to the process of deciding that he was an insistent client. So I don't think Royal London did enough to establish that Mr C was a genuine insistent client. And I don't think it treated him fairly. If it had done so and provided the clarity of advice that I think it

should have, it's unlikely Mr C would have transferred out of his DB scheme at that time as he had little to gain, and much to lose, by doing so.

In light of the above, I think Royal London should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Further, as Royal London's actions have clearly been a source of distress and inconvenience for Mr C, I think it's fair and reasonable that Royal London pay him £200 in redress for that.

Putting things right

A fair and reasonable outcome would be for Royal London to put Mr C, as far as possible, into the position he would now be in but for Royal London's unsuitable advice. I consider Mr C would have most likely remained in his DB scheme if Royal London had given suitable advice.

Royal London must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr C whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr C.

For clarity, as far as I'm aware Mr C has not yet retired, but he could have accessed his DB scheme funds at age 60. So, compensation should be based on his normal retirement age of 60, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's

expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of the decision.

Royal London may wish to contact the Department for Work and Pensions (DWP) to obtain Mr C's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr C's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr C within 90 days of the date Royal London receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Royal London to pay Mr C.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

My final decision

Determination and money award: I uphold this complaint and require Royal London Mutual Insurance Society Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Royal London Mutual Insurance Society Limited to pay Mr C any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Royal London Mutual Insurance Society to pay Mr C any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Royal London Mutual Insurance Society Limited pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts this decision, the money award becomes binding on Royal London Mutual Insurance Society Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 November 2022.

Joe Scott
Ombudsman