

## The complaint

Mr M complains about the advice The Royal London Mutual Insurance Society Limited gave 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 M advice. Royal London has since acquired that advising firm and 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 M to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr M's.

## What happened

Royal London has provided us with extremely limited evidence concerning the pension transfer. Mr M has also given us some information about what he recalls about the transfer. So the detail below is taken from those two sources

In 1989 Mr M was working as a trainee insurance agent for the advising firm. He told us that his employer advised him to transfer his DB pension as that would be better for him in the long-term.

In September 1989 Royal London gathered some information from Mr M and from the DB scheme administrators. Royal London completed a "personal profile" document. It also completed two separate forms about details of the transfer. Both forms are dated on the same day. The policy number is the same on both forms but the "proposal number" is different. Amongst other things Royal London recorded that:

- Mr M was almost 23 years old and living with his partner.
- They owned their home with an outstanding mortgage of around £20,500 with 23 years remaining on the mortgage term.
- Mr M was working and earning around £9,000 a year.
- One transfer form says that the existing DB pension had a transfer value of around £1,963. The second transfer form said the transfer value was around £839.
- It recorded that Mr M's pension was "*frozen*".
- It noted that the "*advice given*" was to "*transfer frozen pension*".

That month, September 1989, Royal London sent an instruction to Mr M's DB scheme administrators to transfer his pension funds to a personal pension policy Royal London provided. It seems that process was completed on 1 October 1989.

Mr M later transferred the funds to a different arrangement from another provider in December 1991.

In January 2021 Mr M complained to Royal London. He said he believed he would have been in a better financial position had Royal London not given the advice to transfer his DB

scheme benefits to one of Royal London's products. He said the advice to transfer wasn't in his best interests.

Royal London replied in February 2021. It said it had invited Mr M to take part in an industry-wide review of potential mis-selling of pensions in 1999 but Mr M hadn't replied. It added that, at the time of the review, if it found that a client had transferred preserved pension benefits then it conceded liability and immediately went to a loss assessment. So it said the circumstances of the sale weren't relevant. But, as Mr M hadn't replied to its invitations to take part in the review he was now out of time to complain.

Mr M brought his complaint to us. One of our investigators initially looked into it noting that Royal London believed Mr M had brought it out of time. Mr M provided evidence, which the investigator passed to Royal London. That showed that Mr M hadn't lived at the address Royal London sent its pension review invitation letters to for some seven years. As such Mr M hadn't been in a position to respond to its review invitation. Eventually Royal London consented to us looking into the complaint. It added that it "*cannot defend the sale of this policy*".

As our original investigator had left our Service another investigator looked into the merits of the complaint. While commenting that we had extremely limited information, the investigator noted that the advice and transfer took place around 1990. He felt that we should uphold the complaint as the advice to transfer wasn't in Mr M's best interests. So, he said Royal London should pay Mr M appropriate compensation.

As Royal London didn't reply to our investigator's assessment, 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. 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.

#### *The applicable rules, regulations and requirements*

At the time of the advice the regulator was the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). Its code of conduct said advisers should not advise customers to convert, cancel or allow to lapse any occupational pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages of doing so. LAUTRO's rules also required firms to keep records to show their compliance with the regulatory requirements.

#### *The pensions review*

In 1994, the Regulator at the time established an industry-wide review of particular pension business carried out by authorised firms between 29 April 1988 and 30 June 1994. It was generally known as the "Pensions Review". The intention was for the advising firms concerned to invite affected customers to take part in the review.

As Mr M had changed address by then he didn't receive Royal London's invitation for it to review the sale of his pension in 1989. But Royal London wasn't aware of that, so it closed down its file and the opportunity to review his pension at that time was lost. That means that Royal London didn't carry out a review of the sale or a loss assessment based on the assumptions at the time. There was no requirement for Royal London to take steps to ensure that Mr M had received its pension review invitation letters. So it did nothing wrong in closing its file at that time. But that doesn't mean that the advice it gave to Mr M – over nine years earlier – was suitable for him. So, I will look at the suitability of its advice by considering its requirement to act in Mr M's best interests at the time.

### *Was Royal London's advice in Mr M's best interests?*

At the time of the advice, which was in 1989 and not 1990 as mistakenly noted by our investigator, Royal London should only have advised Mr M to transfer his pension if it genuinely believed it was in his best interest to do so. And, in explaining the reasons for its recommendation Royal London was required to clearly disclose the advantages and disadvantages of doing so. It was also required to keep records showing that it had met its regulatory requirements.

The documents Royal London has provided are extremely limited. It hasn't provided papers from the DB scheme administrator showing the benefits that Mr M would be giving up by transferring. It also hasn't provided the details and benefits of the scheme he would be transferring to. Similarly, I haven't seen any form of comparison of those benefits or analysis setting out why Royal London believed it would be in Mr M's best interests to transfer.

I note that Royal London has told us that it couldn't defend the sale of the policy. And it seems that Royal London has conceded that, it was more likely than not, that the transfer wasn't in Mr M's best interests. So, given that concession and the lack of information available I don't intend to attempt an in-depth analysis of why I think the transfer most likely wasn't in Mr M's best interests.

But for completeness I'll note that I'm aware that at the time Royal London gave its advice, investment growth levels were significantly higher than they have been more recently. So it's possible that given Mr M was still around 42 years away from retirement, Royal London might have thought that investments in a personal pension had sufficient time to grow to meet Mr M's needs in retirement. But there's no evidence on file to demonstrate whether that level of growth would have been sufficient for Mr M to have exceeded the level of income his DB scheme would have provided at retirement. So, for this reason alone, I don't think the evidence supports the transfer was in Mr M's best interest.

Furthermore, there's no evidence that Royal London made it clear to Mr M what the advantages or disadvantages were of him transferring. Similarly, there's nothing to show that it pointed out to him that by transferring out of his DB scheme he would be giving up a guaranteed and index linked income in retirement and instead would be investing in a product that was subject to investment risk and the volatility of the financial markets. So I'm not satisfied that Royal London did all it needed to do to ensure that Mr M was aware of the consequences and disadvantages of transferring out of the DB scheme. It follows that I don't think Royal London gave Mr M all the information he needed in order to make an informed choice about whether or not he wanted to transfer out of the scheme.

Of course it's possible that if Royal London had given Mr M all the appropriate information he needed in order to make an informed choice he might have decided to transfer. But based on the limited evidence I've seen, I don't think it would be fair for me to second guess, even on the balance of probabilities, what decision Mr M would have come to if Royal London had given him all the appropriate information. And as there's no evidence it gave him enough

information to make a fully informed decision I'm satisfied that its advice was not in Mr M's best interest. And but for that advice its likely he would not have transferred out of his DB scheme. So I think Royal London should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

On 2 August 2022, the current regulator, the Financial Conduct Authority ('FCA') launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA 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 published a policy statement on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

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

I'm satisfied that a calculation in line with FG 17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr M.

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

For clarity, as far as I'm aware Mr M has not yet retired, and has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, 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 M's acceptance of this decision.

Royal London may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M'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 M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, Royal London should pay the compensation if possible into Mr M'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 M 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 M 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 M.

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. 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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Royal London Mutual Insurance Society Limited to pay Mr M 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 M 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 Limited to pay Mr M 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 M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 4 January 2023.

Joe Scott  
**Ombudsman**