DRN-3852169

Financial Ombudsman Service

The complaint

Mrs R complained, through a claims management company (CMC), that The Royal London Mutual Insurance Society ('Royal London') provided unsuitable investment advice in 1999 when it recommended Mrs R to invest into a Platinum Bond Plus.

To put things right, Mrs R wants more compensation than Royal London offered to pay.

The investment advice was provided via a financial business trading under a different name. But, to keep things simpler, as Royal London is responsible for dealing with the complaint, I will refer to it as the financial business that provided the advice and sold the investment complained about.

What happened

In November 1999, Mrs R took financial advice from Royal London when she acquired a lump sum on taking early retirement. She was advised to invest £37,000 into a Platinum Bond Plus - a with-profits bond – which she did.

This investment was surrendered in April 2006 for £32,818.45. Mrs R received £8,686.86 in income payments throughout the duration of the policy.

Mrs R felt the bond was mis-sold and she was mainly unhappy because she believes:

- her attitude to risk was not fully assessed
- the amount of her free assets invested was inappropriate
- her future needs and objectives were not considered, and
- she was sold an investment with limited early access which was not appropriate for her circumstances

Mrs R's representative said she should have been advised to place her funds in fixed rate bonds which were paying over 7% at the time and would have provided far greater access with minimal (if any) penalty.

Royal London upheld Mrs R's complaint in part. It said that although it was satisfied that the type of investment sold to Mrs R was suitable, the sum she was advised to invest was too high a proportion of her capital and half the sum she invested should have remained on deposit. So Royal London worked out redress according to a formula intended to put Mrs R into the position she would have been had she just invested £18,5000 in the Platinum Bond Plus and left the other £18,500 on deposit.

Mrs R didn't feel this went far enough to put things right – she feels redress should be based on the full amount of her investment. So she brought her complaint to us.

The investigator didn't feel this was a complaint he could recommend upholding. In brief summary, he said Royal London's fact find showed that, based on Mrs R's circumstances and objectives at the time, the bond wasn't unsuitable as it met her needs for income and growth without too much risk to capital. As withdrawals could have been accessed first, before it became necessary to surrender the whole bond, our investigator didn't feel he could fairly say the market value adjustment (MVA) that was applied in line with the product terms and conditions (which reduced the value of the bond on surrender) was unfair. And as he thought it more than likely Mrs R *would* have invested some of her available funds (as opposed to leaving them on deposit), he felt Royal London's approach to redress was fair and reasonable.

Mrs R didn't agree with the investigator and said that key issues had been overlooked. Her representative reiterated the following main points, which I have summarised as follows:

- the product was not suitable for Mrs R's needs as she was advised to invest a significant amount of her available money into the Platinum Bond Plus when she was still adjusting to life changing circumstances and reliant upon disability benefits and a small pension, which left her with little disposable income.

- Even an £18,500 investment would still have represented an unsuitably high percentage of Mrs R's free assets in 1999 considering she still had an outstanding mortgage and she faced the likelihood of increased costs and expenses plus outlay on essential home improvements to suit her changed circumstances.

- Mrs R had around £1,000 in other savings and it's likely she held a total of £42,000 at the time she met with the adviser.

- Given that this was a new situation for Mrs R it was impossible to know or assess what her future costs and expenses would be.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"Royal London has consented to us looking into Mrs R's complaint about what happened in 1999 when it sold the investments, so I am satisfied that I can consider the complaint.

I'm sorry that Mrs R doesn't feel the investigator addressed the complaint issues fully. I've looked at the complaint afresh and I've independently reached the same conclusions as our investigator. I'll explain my reasons.

I've looked carefully at what I know about Mrs R's overall financial situation at the time. I think it's reasonable for me to rely substantially on the documentation completed at the time to give me an insight into Mrs R's circumstances and financial situation and an understanding of her wishes and intentions when she met with the adviser in 1999.

This is what was recorded about Mrs R's circumstances and financial situation when she met with the adviser:

- Mrs R owned her own home subject to mortgage which cost her £352 per month and had an outstanding balance owing of around £39,000 with 16 years still to run.
- She had no dependants.
- Her income comprised pension and invalidity benefit of around £795 per month.

- A breakdown of her monthly expenditure showed Mrs R was managing within her means but she had just £18 disposable income left after paying all her monthly outgoings.
- She told the adviser the amount of savings she held was £41,000 plus a further amount (Mrs R's representative says this was £1,000) in "NAS SAVINGS".

Royal London now says that Mrs R should only have been advised to invest £18,500 in the Platinum Bond Plus in order to leave her with ready access to the rest of her capital so she could draw upon this if needed. Mrs R on the other hand feels that she shouldn't have been advised to invest any amount into the Platinum Bond Plus.

Mrs R had a potential investment pot of at least £41,000 (or £42,000 including the NAS Savings). I accept that some of Mrs R's future spending needs were uncertain and hard to quantify. But investing £18,500 – approximately 45% of her lump sum/savings – would still have left her with ample spare capital available to meet a range of potential spending requirements.

Paying off her mortgage doesn't seem to have been priority for Mrs R. When discussing her mortgage, the adviser asked Mrs R about any "*Home needs or objectives*" and, offered Yes/No options, Mrs R indicated 'No'.

Bearing in mind that her mortgage monthly repayments were affordable out of income and the likelihood that Mrs R might need to use her capital for some of the other purposes outlined by her representative, it seems reasonable to me that Mrs R wouldn't have wanted to use her lump sum to clear her mortgage. Doing this would have left her with just a few thousand pounds, which risked being insufficient to cover her anticipated capital spending needs and it didn't give enough of a financial cushion to fall back on in case of emergencies. I think this would have been an important consideration as Mrs R had no means of rebuilding savings out of income.

So I think Mrs R was in a strong enough financial situation to be able to invest £18,500, given that her day to day needs were being met out of income and she was using her lump sum to fund this investment.

Mrs R needed to be comfortable that the level of risk associated with the recommended investment reflected her attitude to risk.

The fact find records, under 'Attitude to risk', given the options of 'Cautious', 'Balanced' and 'Adventurous', the adviser has ticked 'Balanced'. So I'm satisfied that risk would have been discussed. There's nothing to show that Mrs R raised objection at the time, which I'd have expected her to have done if she disagreed with the adviser's assessment of her attitude to risk.

It's recorded that the adviser also gave Mrs R a Key Features Document and an Illustration. These documents explained the nature of the investment recommended, associated risks and charges and outlined possible returns based on standard growth rates used throughout the industry.

Mrs R told the adviser she wanted to "*invest money held in Building society for growth and income*". And she appears to have selected options designed to identify her investment needs and objectives as follows:

"*You need a flexible with profits contract providing a regular income and the potential for capital growth*", and

“*Maximise the income you receive from your capital*”.

The Platinum Bond Plus offered Mrs R investment growth over the medium term (described as ‘*five years or preferably longer’)* and Mrs R was free to cash in the bond at any time or keep it for as long as she wanted. The bond allowed her to take a regular income if she wished. It looks like this was something Mrs R discussed with the adviser – he explained that she had the option of taking up to 5% of the bond value as income and Mrs R told the adviser she only wanted to take 4% “*to help cover costs and help growth”*

So, as far as I can see, Mrs R was prepared to invest for the medium term and for at least five years. This is borne out by the fact that in the event she kept the bond more than 6 years.

The funds were invested in a “…*wide range of stock exchange and other investments*…”.

Looking at the available information, I think Mrs R would’ve had a reasonable understanding of the basic principle that risk was commensurate with growth potential and, in choosing to invest, she needed to balance her investment objectives against the risk she felt comfortable taking with her money.

Even though things didn’t work out in the way Mrs R was hoping when she made this investment, the way the investment performed is outside the scope of this complaint – I am looking at whether this was a suitable investment when it was recommended to Mrs R.

Whilst I’ve been mindful not to make an assessment with the benefit of hindsight, overall, having considered everything, I am persuaded that Mrs R was not exposed to more risk than she wanted to take.

I think that Mrs R understood and accepted the risk of the investment that Royal London advised her to invest in. The Platinum Bond Plus provided the potential for capital growth she was looking for. It also gave her all the income she said she wanted at the time – plus the option of taking some additional income if she so wished in future. Her circumstances and financial situation meant she was likely looking at this capital providing for her financial needs for the long term so I think she would have expected to keep this investment running for at least five years and likely longer, which matched the product recommendation. Given the spread of investments within the Platinum Bond Plus, I think it's fair to say the diversity of individual funds mitigated investment risk whilst offering Mrs R the chance to grow her money as she hoped to do.

I appreciate that Mrs R felt the MVA made the bond unsuitable for her – but I don’t agree. This feature was clearly explained in the product literature along with clear warnings that the actual bond value depended on a number of factors and there was a risk that the MVA could mean getting back less than had been paid into the bond if it was held for fewer than 10 years.

I’ve seen nothing to suggest that Mrs R didn’t intend to keep the bond for the long term when she invested in it or that she couldn’t have known, or didn’t understand, that cashing in the bond before ten years were up could mean the MVA being applied on surrender. When Mrs R chose to encash the bond early, I find the MVA was applied fairly, after a “*prolonged or deep fall in Stockmarket values*” triggered the MVA clause, in line with the bond terms and conditions. Mrs R could have avoided the MVA if she had kept the bond for another three years or so before surrendering it and just taken up to 5% income instead. All in all, whilst the impact of the MVA was unfortunate, this isn't enough for me to say that the Platinum Bond Plus was unsuitable for Mrs R so it doesn't affect my decision.

For all the reasons I have set out more fully above, I haven't seen enough to make me think that the Platinum Bond Plus was too risky for Mrs R or otherwise unsuitable. I find it met Mrs R's identified needs and investment objectives and would have been a suitable investment for £18,500 of her capital. Investing this amount would still have left Mrs R with ample readily accessible funds to provide for emergency costs arising or unplanned spending needs.

This leads me to conclude that the offer made by Royal London to put Mrs R in the position she would have been in had she only invested £18,500 in the bond and taken no risk with the remainder of her investment pot was fair and reasonable.

Royal London used the fixed rate bond index to provide a reasonable indication of what sort of return Mrs R might have achieved when she wasn't looking to take any risk with her money. This reflects what the CMC said would be a fair benchmark and the sort of investment return Mrs R could have obtained with little risk to her capital. So the way Royal London calculated redress seems fair to me and was a reasonable approach to take in order to put Mrs R in the position she would broadly be in now had she only invested £18,500 in the Platinum Bond Plus."

What the parties said in response to my provisional decision

Mrs R felt a key issue hadn't been given sufficient weight so far, namely the fact that the product was set to pay an immediate income even though she was being charged a 4% initial charge and any bonuses wouldn't be declared for at least a year. The CMC put it this way: "*Effectively she was being advised to take out this supposed "income" immediately but it was in fact her own capital – less a 4% set-up charge."*

The CMC also reiterated the point that on Royal London's advice Mrs R had '*locked away'* her capital in this investment before she had a proper chance to assess her future financial needs.

Royal London said it had nothing further to add.

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 appreciate that Mrs R feels strongly about her complaint and she holds a different view to me. I would like to assure her that I've taken carefully into account everything that's been said, including the comments made in response to my provisional decision.

Mrs R understood that taking income from the bond impacted on the potential for capital growth. This was something she specifically discussed with the adviser. Whilst she was aware she could elect to take up to 5% income, she wanted to take less '*at present to help cover costs and help growth'*.

Mrs R elected to take a monthly income of £123.33 from the bond. The annual bonus she was accruing was calculated on a daily basis.

On reaching the first anniversary of the bond, she had withdrawn a total of £1,479.96 and she received an annual bonus plus an anniversary bonus totalling £2,482.37.

So even if Mrs R hadn’t properly understood the full extent of all the consequences of taking money out of the bond during the first year, I don’t consider this caused her to lose out to the extent that would make it fair for me to uphold this complaint. She had the benefit of the income as well as the chance to grow the balance invested in the bond and at the end of the first year, she still received a return on her investment.

When she took out the bond she told the adviser that she might put ‘*other money in the Post Office’* into an ISA the following year. So it doesn’t look like she had any big spending plans in mind at that stage.

After taking carefully into account everything that’s been said in response to my provisional decision, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it’s fair not to uphold this complaint for the reasons I explained in my provisional decision.

Putting things right

To put things right The Royal London Mutual Insurance Society Limited should pay the offer it made to settle Mrs R’s complaint.

My final decision

The Royal London Mutual Insurance Society Limited previously made a fair offer to settle Mrs R’s complaint. So my decision is that The Royal London Mutual Insurance Society Limited should pay this offer to Mrs R, if it has not already done so. If the offer is paid already, I do not require The Royal London Mutual Insurance Society Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 6 January 2023.

Susan Webb
Ombudsman