

The complaint

Mrs M complains about the delays caused by The Royal London Mutual Insurance Society Limited (Royal London) when she switched her personal pension plan and took tax-free cash from her plan benefits. Mrs M is also unhappy with the overall customer service she has received.

What happened

On 18 January 2023 I issued a provisional decision on this complaint. In it I set out the background to this complaint as follows:

In September 2019 Mrs M initiated the switch of her personal pension plan benefits from two different providers, which I will refer to here as A and B, to a new arrangement with Royal London.

The switch was not immediately actioned, so after chasing Royal London throughout January 2020, and with the switch still outstanding, Mrs M complained to it on 24 February 2020.

On 2 March 2020 Mrs M emailed Royal London requesting an update on her transfer. She also told them that she had decided not to transfer her policy from B to Royal London “as the process has taken too long.”

Unhappy with Royal London’s handling of her complaint and with the switch from A still not complete, Mrs M brought her complaint to the Financial Ombudsman Service in July 2020. In August 2020 Mrs M was provided information about Royal London’s Income Release Plans and she let it know she wanted to proceed with the flexible income release pension product on 21 August 2020.

Royal London subsequently accepted that its service had been extremely poor and that it caused delays. And by email on 23 April 2021 it explained to Mrs M that:

once the drawdown plan has been arranged and the payments paid that you require we will outline compensation for you both for the delays you have most certainly experienced and the time taken to realise the funds you wanted out of a drawdown arrangement

On 24 May 2021 the drawdown plan set up was complete and Mrs M received payment of her tax-free cash lump sum.

On 11 June 2021 Royal London made an offer to put things right. It explained that had things gone as they should have; the income release plan could have been set up and tax-free cash paid the week starting 6 January 2020. On that basis, Royal London offered to do the following:

- *Pay interest at 8% simple per annum on the tax-free cash Mrs M would’ve received from 6 January 2020 to 24 May 2021 (tax-free cash paid £17,685.16)*

- *Establish any loss on the fund from A over this time i.e. compare the transfer value in January 2020 to what was actually received from A in May 2021.*
- *Establish any loss on the Royal London CIS stakeholder plan transfer value in January 2020 to what was actually transferred to the new income release plan.*
- *Pay the difference in value of the plan with B on 8 January 2020 to the value on 2 March 2020.*
- *Pay trouble and upset of £1,000*

One of our investigators considered this offer in light of the total circumstances surrounding the complaint with the aim to put Mrs M in the position she ought to be in had Royal London not delayed things. And she thought this offer was fair. Mrs M initially agreed but later asked for an ombudsman's decision as redress wasn't paid within 28 days and she didn't think she'd been redressed for the fact that she'd been unable to take drawdown payments for years because of Royal London's actions.

Accordingly, the case was passed to me for a final decision.

I then considered the merits of Mrs M's complaint, setting out my findings as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm currently minded to reach an outcome different from the investigator because I consider that additional compensation is required.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

It is not in dispute that Royal London provided Mrs M with extremely poor service and that she lost out as a result. So the only thing I need to decide is how this loss should be redressed.

Royal London said if things had gone as they should have, the switch would have completed the week commencing 6 January 2020. Mrs M hasn't said this isn't correct and I've seen no evidence which leads me to conclude otherwise, so I agree that redress should be based on this date.

I've also looked at what Royal London said it would do to ensure Mrs M hasn't lost out. It said it would:

- *Pay interest at 8% simple per annum on the tax-free cash Mrs M would've received from 6 January 2020 to 24 May 2021 (tax free cash paid £17,685.16)*
- *Establish any loss on the fund from A over this time i.e. compare the transfer value in January 2020 to what was actually received from A in May 2021.*
- *Establish any loss on the Royal London CIS stakeholder plan transfer value in January 2020 to what was actually transferred to the new income release plan.*
- *Pay the difference in value of the plan with B at 8 January 2020 to the value at 2 March 2020.*
- *Pay trouble and upset of £1,000*

I think this is fair and reasonable and in line with what I would award if this offer had not been made. And it seems that Mrs M doesn't think the proposed redress is wholly incorrect,

and in the main, she accepted it. But when payment wasn't promptly made, Mrs M realised that the proposed compensation was incomplete. Having considered the circumstances, I agree.

Specifically, Mrs M has said that she has not been redressed for potential drawdown amounts she could have taken tax free from her flexible income plan had it started on 6 January 2020 (as the parties agreed should have been the case).

I've reviewed the offer made by Royal London and I can see that while in April 2021 it told Mrs M that it would compensate her for the delays in accessing her funds through the drawdown arrangement this doesn't appear to have been included in the redress offer as set out above.

Unfortunately, given the evidence I've been provided to date, I'm unable to say what amount Mrs M would have taken from her income drawdown plan and when, each year if things had gone as they should have. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

In this case I consider it more likely that not that Mrs M would have maximised the amount of funds she could access without exceeding her personal allowance in tax years 2019/2020 and 2020/2021. Mrs M said she would have been able to take approximately £6,500 per year from her drawdown account. As she wasn't able to do this because the drawdown arrangement wasn't set up until May 2021, I consider she has lost out on access to these funds. Generally when concluding that a consumer has been deprived of access to funds, we award 8% for the period of deprivation. But given the amount of time that this complaint has been ongoing and that it may prove difficult, if not impossible, to arrive at a sum certain for this part of Mrs M's loss, I consider a fair solution would be to say Royal London should pay Mrs M a further £1,000 as redress for this deprivation.

Furthermore, I agree Mrs M should not be responsible for any tax owing as a result of the compensation paid here. So if Mrs M provides Royal London with evidence of tax owed, it should compensate her for this amount as well.

Putting things right

To fairly compensate Mrs M, I propose that Royal London:

- *Pay interest at 8% simple per annum on the tax-free cash Mrs M would've received from 6 January 2020 to 24 May 2021 (tax free cash paid £17,685.16)*
- *Establish any loss on the fund from A over this time i.e. compare the transfer value in January 2020 to what was actually received from A in May 2021.*
- *Establish any loss on the Royal London CIS stakeholder plan transfer value in January 2020 to what was actually transferred to the new income release plan.*
- *Pay the difference in value of the plan with B at 8 January 2020 to the value at 2 March 2020.*
- *Pay £1,000 for the deprivation of drawdown income*
- *Pay £1,000 for the trouble and upset caused*

Provisional decision

For the reasons given, I intend to uphold this complaint and direct Royal London Mutual Insurance Society Limited to compensate Mrs M as set out above.

I invited both parties to respond to my provisional findings.

Mrs M responded saying in relevant part:

- Royal London chose the date of 6th January 2020; she had no choice with this date. If everything had gone to plan with her original request in September 2019, she thought it would have been done sooner. In her opinion, “this date was chosen because plan values would possibly be lower at this time of year.”
- The Income Release Plans were provided to her in August 2020 as an alternative to her original plan request which was a service Royal London had withdrawn. She felt she had no option but to accept the drawdown plan offered by Royal London “as compensation would not have been considered if [she]’d not proceeded.”
- She wasn’t happy with the offer of £1,000 for trouble and upset but said she was advised by us that this was Royal London’s final offer.
- She asked for an ombudsman’s decision because the full redress had not been paid within 28 days and the tax implications; and she is “still awaiting payment for points 2 and 3 from the original offer list.” She said Royal London told her nothing further would be done as her complaint was with an ombudsman.
- Royal London didn’t reply when she asked it to reword the tax certificate which has had tax implications.
- She was happy the decision included £1,000 for the deprivation of drawdown income.
- She would like 8% interest added to all monies still outstanding from the redress acceptance and that full payment be made within 28 days.
- She also asked that Royal London provide her with a hard copy of all the data they have on her “with regards to this whole process.”

Mrs M’s response was provided to Royal London. They replied to my provisional decision and Mrs M’s comments saying insofar as is relevant:

- They didn’t apply the date of 6 January 2020 because the value would be lower, Mrs M accepted the basis of the view issued and this service then closed the complaint.
- The “closing decision was received on 19 July 2021, and on 22 July 2021” Royal London paid to Mrs M £4,001.22 by direct credit. This was made up of:
 - Interest at 8% simple on the tax-free cash from 6 January 2020 to 24 May 2021 (£1,562.88 net)
 - £1,000 for trouble and upset; and
 - The difference on the loss on the plan with B (£1,438.34).
- Mrs M didn’t have to accept the income drawdown plan with Royal London and could have taken drawdown with any other drawdown provider.
- £1,000 was fair for the trouble and upset caused in the circumstances.
- The tax certificate wasn’t reworded because “the offer while already paid as above was then rejected and we awaited a further Provisional/Final Decision at Mrs [M]’s request.” It further clarified that this money was not returned, and Mrs M has had it since July 2021.
- Royal London agreed to the additional award of £1,000 regarding the drawdown issue.
- A GDPR/SAR request had been made and “this will be with the customer shortly (if not already).”

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 sides have had the chance to consider my thoughts on this case and to respond. And I've considered all the of the comments provided in response to my provisional decision carefully. Having done, I see no reason to depart from the conclusions reached and explained in that decision.

However, given some of the further points raised, I feel further clarification of some matters is required. But I've not provided a detailed response to all the points raised by the parties. 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 necessary to reach a fair resolution to this complaint.

First, Mrs M has now said she doesn't agree that the soonest things could have been done was 6 January 2020 and believes this date was chosen by Royal London because it provided a lower fund value. I appreciate why Mrs M might feel this way, but I've seen no evidence that this is the case. Furthermore, lacking evidence to suggest otherwise, I am unable to conclude that the switch could have been completed before the week commencing 6 January 2020 as stated by Royal London. This is not an unreasonable timeframe in the circumstances. Therefore, the redress calculations should be based on this date as set out in in Royal London's original offer and endorsed in my provisional decision.

I also note that Mrs M provided the fund value of the plan with B on 8 January 2020 for purposes of compensation. This was accepted without question by Royal London. And again, without evidence that things could have been completed sooner, I see no reason to change this date either.

Mrs M has also said that she felt she had to take the income drawdown plan with Royal London in order to receive compensation. That the income drawdown plan might have been mis-sold has been raised for the first time in response to my provisional decision and so is therefore outside of the scope of this decision. But I've seen no evidence that Royal London conditioned its offer on Mrs M starting a drawdown plan with them.

I also want to clarify that once Mrs M asked for her complaint to be reopened so that an ombudsman could decide matters, this meant she had no longer accepted the redress offer so Royal London were no longer required to provide redress at that time. Nevertheless, Royal London said it paid her compensation in July 2021, meaning Mrs M has had the benefit of these funds while awaiting resolution to her complaint so an award for being deprived of these funds isn't required.

And I can see that Royal London had also calculated the loss on the transfer of funds from Mrs M's former CIS plan and offered to pay this into her income release plan or direct to her on 28 July 2021. I've no evidence that Mrs M responded and at this point her complaint was being reopened. So I don't consider it appropriate to make an award for interest. Instead, Royal London should do as it offered on 28 July 2021 and arrange for a loss calculation had the funds from the former CIS plan been received on 6 January 2020.

As far as I'm aware, redress has not yet been awarded for any identified loss on the funds transferred from the plan with A. The evidence I've seen suggest this is mainly the result of Royal London's inability to get the necessary information from A. And once this information

has been received Royal London has agreed to conduct a loss calculation, which would bring the plan value up to date, so an interest award would not be warranted at this time.

Furthermore, in the circumstances of this complaint, I don't consider it unreasonable that Royal London didn't reword the tax certificate or engage in further discussions with Mrs M about her complaint while it has been with this service. But as explained in my provisional decision, Mrs M should not be responsible for additional tax as a result of the compensation paid here. So if Mrs M provides Royal London with evidence of tax owed, it should compensate her for this amount as well and/or make the necessary changes to the tax certificate so that Mrs M's tax position is not negatively impacted.

Putting things right

My aim is that Mrs M should be put as closely as possible into the position she would probably now be in if things had gone as they should have when Mrs M initiated the switch.

I take the view that had things not been delayed Mrs M's income release plan would have been set up and the funds from A and her former CIS plan would have been received on 6 January 2020.

On this basis, Royal London has already paid redress as offered below:

- Pay interest at 8% simple per annum on the tax-free cash Mrs M would've received from 6 January 2020 to 24 May 2021 (tax free cash paid £17,685.16)
- Pay the difference in value of the plan with B at 8 January 2020 to the value at 2 March 2020.
- Pay £1,000 for the trouble and upset caused.
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As such, no further compensation is owed in this regard.

In order to fully redress matters, Royal London must also now:

- Pay Mrs M £1,000 for the deprivation of drawdown income.

And Royal London needs to:

- Establish any loss on the fund from A between 6 January 2020 to what was received from A in May 2021 and conduct a loss calculation to determine what those funds would be worth now if they'd been received by the income release plan on 6 January 2020.
- Establish any loss on the Royal London CIS stakeholder plan transfer value in January 2020 to what was actually transferred to the new income release plan and conduct a loss calculation to determine what those funds would be worth now if they'd been received on 6 January 2020.

This compensation amount should if possible be paid into Mrs 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 Mrs M as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. Mrs M has already taken her tax-free cash from this pension, so the entire remaining fund would be subject to income tax at her marginal rate.

If payment of compensation is not made within 28 days of Royal London receiving Mrs M's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Royal London must take reasonable efforts to obtain the necessary information from A, which may require action by Mrs M.

Income tax may be payable on any interest paid. If Royal London deducts income tax from the interest, it should tell Mrs M how much has been taken off. Royal London should give Mrs M a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons I've given here and in my provisional decision, I uphold Mrs M's complaint and direct Royal London Mutual Insurance Society Limited to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 April 2023.

Jennifer Wood
Ombudsman