

The complaint

Mrs M says that The Royal London Mutual Insurance Society Limited mis-sold a whole of life policy to her and her late husband, Mr M. She says they were not made aware that a death benefit claim could have a value that is less than the total premiums paid into the policy.

What happened

Mr and Mrs M each took out a with-profits whole of life policy in 2004 for the benefit of one another through Co-operative Insurance Society (now Royal London). They originally sought a £6,000 sum assured each, to pay for funeral expenses in the event that either of them passed away. However, the quoted premium was too expensive for Mr and Mrs M.

So, they agreed a monthly premium of £25. This premium provided a sum assured of £3,324 for Mr M under Mrs M's policy, and £4,708 for Mrs M under Mr M's policy. However, on underwriting, a loading applied to Mr M's cover, meaning the premium was increased to £32.20 per month for Mrs M's policy. Mr M's policy for Mrs M retained the £25 premium.

The premiums were payable for the first 17 years, up to December 2021. Thereafter, the policies were 'fully paid'. This meant no further premiums were added to the policy. The sum assured continued to attract bonuses, until a claim was made or the policy surrendered, whichever was the earlier.

In July 2021, Mr M sadly passed away. Mrs M made a claim to Royal London under her policy. She was paid the £3,324 sum assured plus bonuses accrued to date, along with a final bonus. This gave a total claim value of £5,827.99. She also surrendered the other policy as she did not wish to be the owner of Mr M's policy.

Mrs M then complained to Royal London. She said she had paid £6568.80 into the policy, and this exceeded the value of her claim payment. She believed this was unfair and told Royal London that if it had made herself and her late husband aware of this prospect, they'd have never taken out either policy in the first place.

In January 2022, Royal London rejected the complaint. It said the claim value was correct. It also explained how the policy premiums were invested in its Long-Term Business fund.

Mrs M then brought her complaint to this service, where it was considered by one of our investigators. She believed the complaint ought to succeed. She said she thought it was clear that Mr and Mrs M had to compromise and reduce the level of cover they required, in order to pay for a funeral. She agreed with Mrs M that had she known the premiums could exceed the agreed sum assured when she came to make a claim, Mrs M would not have taken out the policy.

Mrs M agreed with our investigator. However, Royal London disagreed and asked for the complaint to be referred to an ombudsman. In summary, it said:

- Mr and Mrs M would have been aware that the total premiums payable for the 17 year term far exceeded the policy's sums assured;

- the policy documentation made clear that the sum assured was only payable upon death, not after the end of premium payments;
- though Mr M sadly passed away shortly after the end of the 17-year payment term, this could have been known from the outset;
- a policyholder may live for many years beyond the end of the premium term and therefore the sum assured would continue to accrue bonuses throughout the intervening years;
- it takes the view that this is a matter relating to loss of expectation that the bonuses were not higher, rather than concerns about what was said to Mr and Mrs M from the outset;
- the policy is designed to accrue bonuses that are added to the sum assured, with a final bonus at the point of claim, and therefore has done what it was set up to do;
- the premium loading for Mr M also affected matters as if the policy had begun on standard terms, the premiums payable to the date of the claim would have been £5,100.

Our investigator considered Royal London's further comments, but she wasn't persuaded to change her view on the complaint. She said Royal London's adviser had told Mr and Mrs M that these policies had no consequences or disadvantages. She did not think it was Mrs M's responsibility to calculate how much she and her late husband may pay in, compared to the claim value, particularly since bonuses weren't guaranteed and the values of the bonuses could not be known at the point of sale. So, she felt Mr and Mrs M couldn't have worked out that they may pay more in premiums than the value paid out upon a claim, in the event either of them passed away.

Though it didn't have any other comments to make, Royal London still disagreed with the outcome of the complaint. The complaint has now been passed to me.

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'd like to thank the parties for their patience whilst this matter awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld.

In summary, my findings are:

- though I refer to Mrs M and the late Mr M in my background and the findings of this decision, this complaint concerns Mrs M's policy – where Mr M was the life assured;
- that is because Mrs M has only complained to Royal London about her policy;
- in order to make a suitable recommendation for Mr and Mrs M, the adviser needed to take into account their circumstances, knowledge, financial situation and objectives;
- neither party disputes that Mr and Mrs M required cover for the event of funeral expenses;
- so, I believe that the recommendation broadly addressed that objective;
- similarly, the adviser took account of what Mr and Mrs M could afford to pay for their policies in order to meet their requirement for funeral expenses to be met, in the event either of them passed away;
- it was on this basis that a reduced premium of £25 was proposed, as Mr and Mrs M couldn't afford to make a larger financial contribution to meet their need;
- nonetheless, in the round, I disagree that this advice was suitable for Mrs M;
- I do not believe that the features of the policy were made clear to Mrs M;

- I haven't seen any evidence of a specific recommendation or suitability letter;
- however, there is a financial review document which gives some brief bullet points as to the advice received and why the policy was recommended;
- there is also a fact find document which reiterates the recommendation made;
- in the review document, it confirmed that two important points should be noted by Mrs M – those were:
 - that there may be an income tax liability on early surrender if Mrs M was a higher rate taxpayer or in receipt of age allowance at that time;
 - the adviser said he had highlighted the possibility of continuing stock market volatility with Mrs M, noting how any illustration of the past performance of the policy should not be used as a reliable guide to future performance.
- this document did not refer to any possibility of Mrs M paying more in premiums than the value of a claim for the death of the life assured;
- in the other fact find document, it is set out that "*there were no consequences or disadvantages identified for this product*";
- Mrs M was also given an illustration of the potential fund value, key facts information and Royal London's policy terms;
- within these policy documents, risk factors were set out which explained that:
 - Mrs M may receive a payment that is less than the illustrations the adviser had given for the policy's value after ten years;
 - Mrs M would not get full benefit if she ceased paying premiums before the end of the agreed term;
 - if Mrs M was forced to cash the policy in, she may not get back what she paid in;
- however, none of the documentation addressed Mrs M's situation – that she could receive a payment of the policy's death benefit (including bonuses) from year ten onwards that was less than the premiums paid, such as the 17-year premium payment sum of £6,568.60;
- I also note that the fact find had some inaccurate information within it – for example, it set out that Mr M (as the life assured) had no children, which was incorrect;
- Royal London's adviser didn't set out if he had established Mrs M had the necessary experience or knowledge to understand how the recommended policy operated;
- and as I've said above, no specific warning was given in relation to the prospect of a claim (after ten years) being less than the premiums paid;
- whilst it may be obvious to Royal London that the investment value from bonuses beyond the guaranteed sum assured of £3,324 could fluctuate, I don't believe Mrs M understood or that she understands that now;
- consumers seeking advice generally do so because they don't have enough knowledge or experience to make investment decisions unaided;
- with that in mind, I believe the adviser ought reasonably to have taken further steps to explain the risk involved relating to performance of the underlying fund;
- I also have not seen any correspondence which gave the total premiums payable for the 17-year term as a set figure;
- Instead, warnings were only given for the early years of the policy, and illustrations as at year 10;
- given affordability was paramount for Mr and Mrs M, I would expect the adviser to ensure that his recommendation was appropriate and clearly explained;
- I consider, on balance, that Mrs M would not have accepted the recommendation for the policy if she had properly understood how it operated;
- I also do not believe Mrs M would have accepted that, after the 17-year premiums were fully paid, the claim value could fall short of the total payments into the policy;

- on that basis, I believe the correct approach is to put Mrs M in the position she would have been in, had the policy not begun at all in 2004 – and redress is set out below.

Putting things right

Royal London must calculate the value of the total premiums Mrs M paid into the policy. To this calculation, it must add interest. This should be at a gross annual rate of 8% simple, less tax (if properly deductible), from the date each premium was paid, to the date of settlement.

It can then deduct the claim value already paid to Mrs M from the above calculation. The remaining balance should be paid to Mrs M.

If Royal London considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mrs M may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

I uphold this complaint. The Royal London Mutual Insurance Society Limited must pay Mrs M the redress I've set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 May 2023.

Jo Storey
Ombudsman