DRN-4135850

## The complaint

Mr D is unhappy because errors were made by The Royal London Mutual Insurance Society Limited (Royal London) in connection with his pension plan which took time to correct. Mr D says as a result of the delay he was unable to switch his pension fund out of Royal London's Enhanced Cash Plus Fund.

## What happened

I issued a provisional decision on 17 April 2023. I've recapped what I said about the background to Mr D's complaint and my provisional findings.

'*Mr D's pension policy with Royal London was set up in June 2016 when Mr D transferred the value of benefits he held in an employer's pension scheme. Mr D's attitude to risk had been assessed as adventurous (9 out of 10) and the transfer proceeds were invested in Royal London's Governed Portfolio 8 (GP 8) which was rated as adventurous. Mr D has Fixed Protection 2016. On 9 September 2019 Mr D switched his fund into Royal London's Enhanced Cash Plus Fund.*

*In April 2021 Mr D wanted to take his tax free cash (TFC) and a further lump sum from his pension. To do so he had to switch to a different product with Royal London. On 24 April 2021 he returned Royal London's 'Simplified Application Form for a Pension Portfolio with Income Release'.*

*In his covering letter he said he wanted to drawdown his 'maximum cash position' from his pension fund. Mr D set out that his full TFC with his Fixed Protection 2016 (which gave him a Lifetime Allowance (LTA) of £1.25 million) was £312,500. He also wanted to take, as a taxed lump sum, the value of his pension fund over £1.25 million which, based on the previous month's valuation of £1,814,000, was £554,000. Mr D said he understood he'd have to pay tax at 55% on that sum so he'd get a net payment of £249,300 which, added to the £312,500, would give him a total payment of £561,800. Mr D added:*

*'Finally, once my residual fund has been crystalised, I will review the various Royal London Governed Portfolio choices and switch the invested funds away from cash. This is to be done so the funds have the potential for some growth until I am 60, this being the likely date that I will start to draw an income from my Pension, as always planned.'*

*Unfortunately things didn't go smoothly. Royal London made some errors. The amount of the TFC was wrong and Royal London also made an income payment of £554,000 (gross) that Mr D hadn't asked for. There were exchanges about what had happened and how it could be put right. That entailed Mr D returning all of the money he'd received to cancel the previous payments and start the process again. Mr D received a payment totalling £566,678.31 on 20 May 2021. It then took a very long time to correct the errors that had been made and so that when Mr D viewed his account online it reflected the corrected position. There were a large number of exchanges between Mr D and Royal London. I've just referred to a very small number which are directly relevant to the issue I'm deciding.*

*<u>Mr D's email of 31 May 2021</u>: Mr D referred to the timescales for the 'residual funds' fix. He*

*said, once that was known, checked and confirmed he wanted to switch his residual fund to another Royal London Governed Portfolio as he'd advised in his letter of 24 April 2021, the relevant section of which he quoted. He said a cash fund clearly didn't suit his investment strategy going forward – seeking to build his fund prior to any future initial drawdown. He added he was now over a month out of the market, given he had no access to his fund to make a suitable investment choice.*

*<u>Mr D's email of 20 June 2021</u>: Amongst other things he confirmed he was able to see his residual funds through his online account. It seems he noticed from that the 'fix' hadn't been done correctly as it had been done on the basis he'd been invested in Royal London's Cash Plus Fund, not the Enhanced Cash Plus Fund.*

*<u>Royal London's email of 6 July 2021</u>: Royal London accepted that it hadn't handled the matter well and offered compensation.*

*<u>Mr D's email of 7 July 2021</u>: Amongst other things he said he'd been unable to invest his residual pension funds for growth for over two months. He added:*

*'To date, whilst I have researched what funds I propose to invest in, I am holding off making any switch now as, given my continued dissatisfaction with Royal London, I am seriously considering switching providers, another conversation I will hold with [Mr D's financial adviser].'*

*<u>Royal London's email of 8 July 2021</u>: Royal London noted Mr D hadn't completed a switch as yet and he'd said he was holding off making any switch as he'd lost confidence in Royal London.*

*Things still weren't sorted out and the exchanges continued. By November 2021 Mr D wanted to transfer to a new provider. It wasn't until 26 January 2022 that Royal London sent the transfer value of £934,984.85 to the new provider.*

*Royal London upheld Mr D's complaint about the time taken to correct his plan. Royal London apologised and offered compensation of £2,650. That included £135.52 which was the difference in transfer values between 21 November 2021 (£935,120.37) and 26 January 2022 (£934,984.85). Mr D was also seeking compensation for lost investment growth between 31 May 2021 and 26 January 2022. Royal London didn't agree to pay that. Royal London said there was no clear instruction from Mr D confirming he intended to switch to a specific fund.*

*Mr D referred his complaint to us. His position was that, but for Royal London's multiple errors, he'd have been able to have invested his residual fund with effect from no later than 31 May 2021. He says it was made clear to Royal London that, after he'd withdrawn his TFC and pension commencement lump sum (PCLS), his residual fund would be invested for growth in one of Royal London's Governed Portfolio Fund – probably GP 8. Instead he was 'trapped' in Royal London's Enhanced Cash Plus Fund. He was seeking the difference between the transfer value paid on 22 January 2022 and what that value would've been had his residual fund been invested.*

*Mr D explained how it came about that in September 2019 he'd transferred to a cash based fund. He'd wanted to grow the fund as quickly as possible until his 55th birthday when he'd take his maximum tax free cash to buy a second property. That strategy worked well and by September 2019 the fund had grown significantly and had reached a value in excess of £1.8 million which was sufficient to support the second property purchase, budgeted at £500,000. But no suitable property had been found. So Mr D switched to a cash fund to protect the growth achieved and especially as external economic conditions could've (and would've)* *impacted the fund value.*

*Mr D found a suitable property which was being redeveloped. His fund remained in cash. That wasn't a reflection of his attitude to risk but the need to protect capital for a known transaction. The property purchase completed in May 2021 which meant Mr D took his TFC and a PCLS leaving a residual fund of £937,500. He was still working and wouldn't need to make any further income withdrawals until he reached age 60. He referred to what he'd said in his letter dated 24 April 2021 and his email of 31 May 2021 as evidence of his plan to review the Governed Portfolios and reinvest his fund for growth.*

*Mr D also explained why he'd remained in a cash based fund since the transfer of his fund away from Royal London. He's setting up a SSAS (Small Self Administered Scheme) with the aim of lending to small businesses which, although the lending will be secured, isn't a low risk strategy. And he pointed to uncertain global economic conditions which meant retaining funds in cash was necessary to protect capital awaiting investment.*

*Our investigator upheld the complaint. Amongst other things she said Royal London's offer of £135.52 was restricted in time from when the process to transfer to a new provider started and the transfer being executed. Which itself took over two months, as Royal London still needed to resolve issues on Mr D's plan, some six months after his initial instructions had been executed incorrectly. The investigator accepted Mr D had made it clear to Royal London that, post withdrawal of his TFC and PCLS, the residual fund would be invested in a Governed Portfolio Fund. That was supported by his letter dated 24 April 2021 and his email of 31 May 2021. The investigator said Royal London should've asked Mr D to nominate a Governed Portfolio knowing his plan hadn't been corrected and it was unclear when that would be.*

*The investigator also said Mr D had been invested in GP 8 on 9 September 2019 and remained in that Fund before transferring to drawdown in April 2021, which further supported what Mr D had said about the Governed Portfolios suiting his needs and objectives. As I've noted below, that wasn't in fact the case – Mr D had been invested in GP 8 but he'd switched in September 2019 to the Enhanced Cash Plus Fund.*

*The investigator considered what Royal London had said about why it didn't agree Mr D was entitled to lost investment growth. But the investigator maintained it was highly likely Mr D would've invested in one of the Governed Portfolios. So redress on the basis Mr D had proposed – based on the average return achieved for all nine Governed Portfolios between 31 May 2021 and 26 January 2022 – was fair and reasonable.*

*Royal London didn't agree and made the following points:*

- *The application form for the Income Release plan asked for the choice of investment funds to be completed. Mr D didn't do that and said in his covering letter he'd review and likely choose one of the Governed Portfolio Funds.*
- *There were issues with the setting up of the Income Release plan and on 31 May 2021 Mr D emailed again to say he'd review and choose the appropriate fund once the errors were fixed. He'd made no decision at that point and certainly no decision to invest in GP 8.*
- *Although there were problems when Mr D's Income Release plan was set up, there was nothing stopping him from reviewing the available funds and making a selection. Royal London would've then been able to invest his funds accordingly on completion of the fix and backdate to the date of confirmation.*
- *Royal London referred to an email in June 2021 that Mr D was able to review his wife's plan and value as he was invested in the same cash fund and so confirm if*

*Royal London's 'fix' was correct. That further demonstrates Mr D was aware of the correct value and could decide which fund to invest in.*

- *Mr D is an experienced investor. He's aware of market conditions and does his own research. He'd transferred into a low risk fund in September 2019 when there was market uncertainty due to Brexit. And, when he transferred to his new provider, he remained invested in low risk deposit funds which Royal London suggested was due to continuing market uncertainty. Royal London didn't think Mr D would've invested in GP 8 when market conditions were as volatile as they were during Covid and continuing today.*
- *Royal London isn't authorised to give advice and must act on the instructions of the policyholder or appointed adviser. On 31 May 2021 Mr D made it clear he was still to review the available funds. Mr D could've informed Royal London of his chosen fund but he didn't do that. He has a background in financial services and complaints handling and could've made a decision about fund choice.*
- *What the investigator had said about Mr D being invested in GP 8 until April 2021 wasn't correct.*
- *Royal London said, given we were impartial, it was strange that Mr D had put forward his suggestions for redress and we'd accepted that.*
- *Royal London said Mr D had failed to review the available funds and make a selection. Although there were ongoing issues there was nothing to stop Mr D from making a decision and communicating it to Royal London. Particularly as he had sight of his wife's plan throughout. Mr D was benefiting from hindsight and the errors that had been made.*

*As agreement couldn't be reached the complaint was referred to me to decide.*

***What I've provisionally 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 understand that Mr D has had to make three complaints to Royal London. After trying to take his TFC and PCLS, which entailed switching to a different product, he encountered multiple issues and service failings as well as very significant delays in putting things right. I don't really understand why the errors that had been made took as long as they did to resolve. And I'm not sure that things were always properly 'fixed'. For example it seems the wrong fund (the Cash Plus Fund and not the Enhanced Cash Plus Fund) was initially used to correct Mr D's account. So I can certainly sympathise with Mr D and I can see why he's very unhappy with what happened and how long it took to sort things out.*

*That said, I understand all of Mr D's issues have been largely resolved, aside from his claim for compensation for lost investment growth. I say that on the basis that Royal London has offered Mr D compensation of £2,650, made up as I've set out above. I don't think that's actually been paid to Mr D as he didn't accept it because he was also claiming lost investment growth. But I'm assuming the offer remains open and that Mr D can accept it if he wishes. All I'm considering here is his complaint that, because of Royal London's failings, he missed out on investment growth from 31 May 2021 to 26 January 2022.*

*To uphold that complaint I'd need to be satisfied that Mr D would've switched out of the Enhanced Cash Plus Fund during that period into another fund or funds and that he was unable to do so because of Royal London's failings. I reach my decision about that on the balance of probabilities – that is what I think is likely to have happened based on the evidence I've seen and the wider circumstances of the complaint.*

*Having considered everything, I've reached a different view to the investigator. First I don't think the situation that arose meant that Mr D was precluded from giving a fund switch instruction. As Royal London has pointed out, he could've instructed a fund switch which would've been taken into account and backdated once the issues on Mr D's account had been 'fixed'. I can perhaps understand that Mr D may have been reluctant to introduce another factor which might complicate things and perhaps even further delay his account issues being resolved.*

*As Mr D will appreciate, deciding to switch funds always carries an element of risk, particularly where the switch is from a low risk to a higher risk fund and especially during a period of market volatility. I think if Mr D had made a settled decision that he was losing out because his fund was held in Enhanced Cash Plus Fund he should've communicated that clearly to Royal London and said that he wanted to switch to a named fund(s) so that could be taken into account once the ongoing account corrections had been finalised.*

*The investigator relied on Mr D's letter of 24 April 2021 and his email of 31 May 2021. But I don't think they demonstrate a settled decision to switch funds. Although the Governed Portfolios are mentioned, there are nine in total. Mr D had been invested in GP 8 but he'd switched out of that Fund over eighteen months earlier. Mr D didn't specify which Governed Portfolio(s) he wanted to switch into. It would seem he hadn't reached any firm decision to switch.*

*That's consistent with Mr D's email of 7 July 2021. He expressly states that he was 'holding off' making any switch. So he'd been thinking about whether he should invest his fund differently but he'd decided against any switch. Mr D did say that was because of his continuing dissatisfaction with Royal London. But the fact remains that Mr D had decided against making any switches. He was discussing the issues that had arisen with his financial adviser and so it would seem that his decision not to go ahead with any fund switch was made with the benefit of financial advice.*

*I haven't seen anything to suggest Mr D's position changed because of the continuing delays. As I've said if Mr D was concerned by the continuing delay and that he was losing out on investment growth I think he should've communicated that unequivocally to Royal London and nominated the Fund(s) he wanted to switch into.*

*I've considered all Mr D has said about what prompted his switch to the Enhanced Cash Plus Fund. It may have been that up until then Mr D was happy to pursue an adventurous investment strategy but he's referred to global events which meant he wanted to preserve the growth his fund had achieved. I don't think much has changed. Various global economic factors, coupled with the pandemic, have meant that investment conditions have remained difficult and volatile and are likely to have impacted on any decision to reinvest. Mr D has said he wanted to achieve growth on his residual fund until his 60th birthday (in 2025) but I think he'd still have paid attention to prevailing investment conditions. He'd be dependent on his residual fund for income in retirement and the continuing uncertain may have made him wary of reinvesting.*

*Once the transfer to the new provider had been completed Mr D's fund wasn't reinvested in line with an adventurous attitude to risk. Again Mr D has explained why he'd remained in a cash based fund pending the setting up his SSAS. But I don't really see why, if Mr D was concerned about having lost out on investment growth and considered economic conditions were favourable, he didn't reinvest in the interim. Again he's pointed to continuing uncertain global economic conditions which meant retaining funds in cash was necessary to protect capital awaiting investment. I think that tends to suggest that the uncertain investment conditions which have prevailed throughout would've made a decision to reinvest unlikely.*

*It may be that with hindsight switching would've paid off but I'm not looking at things with the benefit of hindsight. I need to decide on the balance of probabilities what Mr D is likely to have done in 2021. I'm not convinced that he'd made a settled decision to reinvest and he didn't give a clear investment instruction to Royal London.*

*Lastly, I'd just mention Royal London's point about the investigator having recommended the redress that Mr D suggested. As I'm not upholding Mr D's complaint about lost investment growth, any redress for that falls away. I don't think, because the investigator was prepared to adopt Mr D's suggested redress, that indicates we're not impartial. On our complaint form we ask the complainant to say how they'd like the business to put things right for them. If we think that the redress suggested by the consumer is fair and reasonable then we'll ask the business to pay it. That's much the same as where a business has accepted it was at fault and has taken steps to compensate the consumer. If we think what the business has done is fair and reasonable then we'll usually say the business doesn't need to do anything more.*

*That's really the situation here. I don't agree that Mr D should be compensated for lost investment growth and I think what Royal London has offered – £2,650 – is fair and reasonable.*'

Royal London accepted my provisional decision and didn't want to add anything. Mr D didn't agree that the lost income offer of £135.52 was fair or reasonable. Amongst other things, he said:

- Some statements were incorrect and/or had been given disproportionate weight. His stated position had never been that he was invested in anything other than the Enhanced Cash Plus Fund at the relevant time.
- He's a non advised investor. He had an adviser in place but for administration purposes only. So saying he chose not to go ahead with any fund switch was with the benefit of financial advice was incorrect and the adviser could confirm that.
- Historically he'd switched funds on line but that functionality wasn't available to him. Every time he was told things had been corrected, his own review identified further or continuing errors. That effectively removed the opportunity to select a Governed Portfolio to meet his stated investment strategy.
- That situation persisted for almost all of the nine months it took Royal London to correct and finally transfer his fund to his new SIPP provider. On almost every call with Royal London he'd requested urgency as he was being kept out of the market.
- Mr D referred to a call on or around 21 November 2021 where the complaint handler asked Mr D to advise as to the fund selection he wished to make and expressed surprise he hadn't been asked to do that earlier. Mr D chose GP 8. It wasn't until he got the final complaint resolution email that he realised the offer of redress was limited to the date from when he'd advised Royal London he'd be transferring and to the date the transfer took place and didn't include the six months or so prior to that.
- The timeline in question was 31 May 2021 to 26 January 2022. What he'd decided to do after he'd transferred away from Royal London wasn't relevant. His decision at that specific time was based on what was happening in the economy then. In particular, inflationary pressure was becoming obvious which would lead to interest rate rises and meant holding in cash had again become a sensible strategy.
- Although he accepted there had to be some assessment on the balance of probabilities, the facts didn't support the conclusion reached. It was a matter of record that he'd said in his letter of 31 May 2021 he'd be investing in a Governed Portfolio. He'd repeatedly told Royal London that cash funds no longer suited his investment strategy and the delays were keeping him out of the market. And, when he was given an opportunity in November 2021 to select a fund, he chose GP 8.
- He'd said, in his email of 7 July 2021, that he'd been unable to invest his residual

fund for growth. Royal London, when replying, should've given him the opportunity to select a fund and as was offered some four months later.
- After his withdrawals of TFC and PCLS he should've been left with a fund of £937,500 to invest freely via on line access (which was one of the main reasons Royal London was selected in the first place).

Mr D also provided a copy of a document he completed for his new SIPP provider on 23 December 2021. Section 3 of the form asked about Mr D's future investment strategy and how he intended to invest his SIPP. He indicated it would be invested 50% in stocks and shares and 50% in cash – the latter being reserved for the new SSAS Mr D was looking to set up for secured lending and which he's since put in place. It had then taken Royal London another month to transfer his fund by which time he'd decided, due to market conditions at the time, to remain in cash.

**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.

In considering Mr D's complaint again, I've paid particular attention to what he's said about why he doesn't agree with my provisional decision.

Mr D has said that his stated position has never been other than that he was in the Enhanced Cash Plus Fund at the relevant time. I agree. I was just noting that the investigator had made an error in saying that Mr D had remained in GP 8. My decision is based on Mr D's correctly stated position – that he was in the Enhanced Cash Plus Fund when he decided to take his TFC and PCLS.

I said, in my provisional decision, it seemed any decision not to go ahead with any fund switch(s) was made with the benefit of financial advice, which Mr D has said wasn't the case. I accept that. But the fact remains, in his email of 7 July 2021, Mr D expressly stated he was holding off making any fund switch(s). I don't think it matters whether he'd reached that decision on his own or with the benefit of financial advice. Or if his decision was, in part, due to dissatisfaction with Royal London. The point is, for whatever reason, he didn't want to switch funds at that stage.

Mr D has said the lack of online access (his preferred method of switching funds) effectively removed his ability to select an appropriate fund and that his repeated requests for urgency weren't met. But Mr D knew he couldn't switch funds on line. He also knew he was in the Enhanced Cash Plus Fund (where he'd been invested since September 2019 and had been apparently happy with that Fund). He was aware of the time it was taking to correct the errors that had been made. If, taking into account investment conditions generally (and which, as I've noted, were uncertain) and his objectives, he was concerned he was missing out on investment growth, he could've given a clear and definite switch instruction to Royal London which would've been backdated.

Mr D has said the facts don't support the conclusions I've reached. Although he's pointed to what he said in his letter of 24 April 2021, his later email sent on 7 July 2021 records that by then he'd decided against making any switch. Mr D has said, in response to his email, Royal London should've requested details of the fund(s) he wanted to switch into. But Mr D said in his email he'd researched things and didn't want to switch at that time. I don't see it would've been logical for Royal London to ask Mr D for switch instructions then.

Mr D has pointed to what happened in November 2021 when Royal London got in touch about his complaint and asked him to nominate a fund. It seems Mr D was hopeful then that

Royal London would offer redress on the basis he'd switched funds (to GP 8) during the period he was waiting for Royal London to correct the errors made. But Royal London said it couldn't meet Mr D's request for compensation for the lack of growth his SIPP had achieved when there'd been no clear instruction from Mr D to switch to a specific fund. That was disappointing for Mr D but I don't think Royal London did anything other than indicate it would consider the claim.

I've considered the complaint from a slightly wider perspective – not just if Mr D did nominate a fund switch but whether, if there hadn't been problems, he would've done. Mr D says what he decided to do after the transfer went ahead isn't relevant and his decision to remain in a cash based fund was taken in the light of the then prevailing economic conditions. But I think the overall picture is relevant.

Mr D selected a cash based fund in September 2019 and again after he'd transferred at the end of January 2022. In effect he's saying there was a window, from the end of May 2021 until when he transferred, when he'd have been invested for growth. And, in his letter of 24 April 2021, Mr D did say he'd be reviewing the various Governed Portfolios and he'd be switching away from cash.

But, as I've pointed out, it seems by 7 July 2021 Mr D had revised that and was holding off making any switch. I'd need to be convinced that sometime after then he'd have instructed a switch. That's a relatively short window, taking into account that, when he transferred away from Royal London, Mr D selected a cash based fund. Although he's said his decision about his new SIPP was based on the then economic situation, I think the prevailing investment conditions had been and remained difficult throughout.

I've considered the document Mr D has provided and which he points to as confirmation that, during the period of his claim, he was looking to invest for growth. I think, if anything, it indicates that his investment decisions were (and understandably) subject to change, depending on investment conditions. Over the longer term Mr D may have been planning to invest for growth but that depended on market conditions generally and, when it came to investing his fund with his new provider, Mr D opted for a cash based fund.

I don't disagree with Mr D's comment that, post withdrawing his TFC and PCLS, he should've been able to invest via on line access. But the issue is what is likely to have happened if Royal London had dealt with things as it should've done and whether Mr D would've switched funds. I can understand why, given the errors and the time taken to put things right, he feels very let down by Royal London. But, to award compensation for lost investment growth, I'd need to be satisfied a fund switch would've been requested and be able to say when and what fund(s) would've been selected.

For the reasons I've explained, I can't say, on balance, that would've been the case. So I'm not persuaded it would be fair to say that Royal London should be required to pay redress for lost investment growth for the period Mr D's pointed to. I think what Royal London has offered is fair and reasonable. I don't think Royal London needs to do any more.

## My final decision

The Royal London Mutual Insurance Society Limited has already made an offer to pay £2,650 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that The Royal London Mutual Insurance Society Limited should pay that sum to Mr D.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 19 June 2023.

Lesley Stead
**Ombudsman**