

The complaint

Mr C complains that The Royal London Mutual Insurance Society Limited failed to action his request to make alterations to his pension contributions in a timely manner. Mr C also states that Royal London failed to remove his previous adviser as servicing agent when asked and took payments from his bank account when they shouldn't.

Mr C would now like Royal London to refund the bank charges and adviser fees along with the losses he says he's suffered because of their inaction.

What happened

In April 2017, Mr C took out a new Royal London pension to accept the contributions from his limited company. Later that year, he switched from working under that limited company arrangement to a sole trader. On 17 November 2017, he emailed Royal London explaining to them his limited company had ceased trading on 7 November 2017. He also explained the company's most recent contribution to the pension needed altering to reflect that it had been made by himself and not the limited company. He also asked for future payments to the plan to be treated as having been made on a personal basis rather than as company contributions.

Mr C says he wrote to Royal London asking them to remove the financial adviser from his plan and stop paying that firm a servicing fee shortly thereafter.

In 2021, Mr C discovered that Royal London hadn't made the alterations to his plan that he'd asked for in November 2017. So, in April 2021, he decided to formally complain to Royal London. In summary, he said that he was unhappy they'd not made the changes he'd requested three and half years earlier. He felt he'd lost out financially as a consequence of their inaction.

After reviewing Mr C's concerns, Royal London initially rejected his complaint as they explained they'd seen no evidence he'd wished to make the alterations he said. However, after providing a copy of the email he'd sent to them at the time, Royal London conceded shortly thereafter that they'd made a mistake and agreed to try and remedy things for him.

In trying to put things right for Mr C, Royal London explained they'd need to set up a new policy to rectify the business premiums that had been taken in error and apply them as personal payments to the new plan. Mr C explained to Royal London that he wanted to contribute £80 per month from 17 November 2017, which was then to be increased to £500 per month from 11 September 2019.

In September 2021, Royal London explained to Mr C they'd taken additional premiums from his account in error. As well as agreeing to refund those premiums (which amounted to £3,000), they also explained they'd be happy to refund any bank charges if he were to send in evidence of the fees he'd suffered because of their error. In May 2022, Royal London also offered Mr C £500 for the trouble and upset they'd caused him.

Unhappy with the service he'd received from Royal London, Mr C decided to switch his pension to a new provider. On 27 June 2022, Royal London transferred the monies from his plan to his new pension elsewhere.

Mr C was unhappy with Royal London's response so in August 2022, he referred his complaint to this service. In summary, he repeated the concerns that he made to Royal London. That was, he was unhappy they'd not actioned his request to alter his monthly pension premiums from a limited company basis to personal payments when asked and he'd suffered bank charges as a consequence of them trying to put things right. Mr C went on to say he was also unhappy about the length of time it had taken Royal London to resolve things and was upset they'd continued to pay his previous adviser a fee from his pension despite him asking them not to.

The complaint was then considered by one of our Investigators. He concluded that Royal London had treated Mr C fairly and the £500 they'd offered him appeared reasonable for the trouble he'd suffered.

However, Mr C disagreed with our Investigator's findings. In summary, he said he didn't feel the Investigator had got to core of his concerns. He said that his primary issue was around how Royal London had handled the alteration of his company payments to personal premiums, not the subsequent timeliness of the switch to a new provider. He also didn't feel his concern around the bank charges had been sufficiently addressed.

Our Investigator was not persuaded to change his view as he didn't believe Mr C had presented any new arguments he'd not already considered or responded to.

Mr C then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering Mr C's concerns, I issued a provisional decision explaining that I was planning to uphold his complaint in part. For completeness, I've set out the findings I made in full below.

My provisional decision:

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

I have summarised this complaint in far less detail than Mr C has done and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issues here:

Amending company pension payments to personal premiums

What's at the heart of this complaint is Royal London failing to follow a consumer request and the knock-on effect from that. Mr C had wound up his limited company and as such, wanted his monthly pension payments amending to ensure they were properly reflected as a personal as opposed to a company payment. That would ensure he'd receive tax relief on the premiums. Mr C sent Royal London an email in November 2017 but the request was never processed. Royal London have subsequently established they did receive Mr C's request and agreed to try and put things right for him. I asked Royal London what steps

they'd taken to correct the mistake and also how they satisfied themselves that Mr C was not financially disadvantaged by the error.

Royal London explained Mr C's policy has now been remedied. In reaching that point, they explained they had to set up a new plan for him. They then re-applied the previous premiums at their respective investment dates to ensure the new plan was in the same position that had been originally intended. They also explained that was completed on 18 May 2022 and subsequent premiums were then collected and applied on their intended investment dates subsequent to that.

I asked Royal London how they'd accounted for the difference in tax relief. That's because a company contribution is paid gross of tax and a personal payment is made net of tax. Basic rate relief is then collected from HMRC by Royal London on behalf of the consumer and added to the plan, usually in the following month. Royal London went on to explain in correcting the case, they'd applied the payments as gross contributions and made a separate declaration to HMRC to remedy the position. Whilst I've not checked Royal London's calculations, they have shared evidence of the rework they've undertaken and from what I've seen, I'm satisfied they've put things right for Mr C.

From raising the complaint with Royal London in April 2021, it took them over a year to put things right. Royal London have admitted they got things wrong, have said sorry and in doing so they offered Mr C £500. I can well understand Mr C's frustration in having to wait as long as he did. He said the numerous telephone calls he had to make and follow-up emails impacted his mental health.

I've thought carefully about the £500 Royal London have offered Mr C and the impact this element of his complaint has had on him. Whilst we look at every complaint on its individual merits, I do have to be consistent when making awards for the trouble and upset businesses have caused when things go wrong. However, it isn't the role of this service to punish businesses when mistakes happen, that's the responsibility of the regulator. Our role is to help put consumers back in the position they would've been in had the mistake not occurred. So, it seems that Royal London have done just that by amending the premiums in the manner they have done. And, I'm of the view the £500 offered is fair and reasonable for the trouble Royal London have caused Mr C by not actioning his request to alter his premiums and the inconvenience they caused when debiting too much from his bank account.

Refund of bank charges

When Royal London tried to put things right for Mr C, they incorrectly debited £3,000 from his bank account in direct debits. Mr C explained this resulted in his account suffering charges totalling £128 on 1 September 2021. Royal London have said they told Mr C on 8 September 2021 they'd be happy to reimburse those charges if he submitted a statement to them evidencing the costs he'd incurred. In his correspondence with Mr C, our Investigator also explained that he'd be happy to ask Royal London to reimburse any charges he'd suffered because of the direct debit error but he would need to see evidence from Mr C beforehand. However, Mr C explained that he'd sent his bank statements in as part of his original complaint to this service in August 2022.

After reviewing the complaint file, I can find no record of those bank statements having been previously provided. Subsequently, Mr C submitted copies of his bank statements to the Investigator on 31 March 2023. In their correspondence with this service on 12 April 2023, Royal London stated at that point, Mr C had not provided them with the evidence of the bank charges he'd suffered. On 17 May 2023, Royal London confirmed to me they were happy to cover the bank costs Mr C has incurred as a result of the direct debit error. Royal London have now been provided with evidence of those costs for their records.

Had they not already offered to do so, I would have instructed Royal London to reimburse Mr C the £128 in bank charges.

Other costs linked to the direct debit error

In his complaint to this service, Mr C explained that because of the actions of Royal London, his bank account had become overdrawn. However, Mr C stated that he'd not just suffered bank costs, he explained that he also had to delay paying his staff wages as Royal London took three days to refund the direct debits they'd taken in error. I've listened to the recorded call Mr C had with Royal London when they were attempting to resolve the direct debit issue. He explained to them twice during that discussion he'd been unable to pay his staff wages on time. So, it appears Royal London's error not only impacted Mr C but others too and they failed to identify that in their interactions with him.

In shaping my decision, I asked Mr C if he was aware if there had been any wider financial consequences of that issue. Mr C said the error resulted in him having to pay his Administrator £100 for the inconvenience this caused them in receiving their wages late.

Ordinarily, I would instruct Royal London to refund Mr C the £100 but for me to make an award, I need to be satisfied the cost has been incurred. To be clear, that's not to doubt Mr C's version of events, it's to ensure fairness to both parties. I've asked Mr C on several occasions for evidence that he paid the £100 but I've not received a response to that request. Therefore, I am not making an award in respect of that cost Mr C says he's incurred.

Refund of adviser fees

As part of his complaint to this service, Mr C explained he's unhappy that Royal London failed to follow his instruction in removing his financial adviser from the plan. That meant the financial adviser continued to receive fee payments from Mr C's pension after the relationship had ended.

When a consumer complains to this service, I can usually only consider complaint points that have already been raised by them to the business. That's to ensure fairness to both sides and importantly, gives the business the opportunity to respond to the concerns raised. However, Royal London have explained that in Mr C's original complaint to themselves in 2021, he didn't raise the issue of adviser charges.

Ordinarily, I would have to send the complaint back to Royal London and ask them to investigate Mr C's point. However, I am satisfied that based on what I've seen, I am able to form a decision on this issue. I'm doing this because, having liaised in with Royal London on this point, I'm content I have enough insight to reach an outcome I believe is fair and reasonable. I'm also minded that this approach is in everyone's interest given this service is here to help resolve complaints as quickly and informally as possible.

In his correspondence with this service, Mr C stated he asked Royal London to remove the Financial Adviser from his plan on 17 November 2017. In failing to take his former adviser off the policy, Mr C believes he's paid £246.11 in unnecessary charges to them. However, in the letter he shared with this service, it appears he requested that alteration be made on 9 September 2019 rather than in November 2017. Having reviewed their systems, Royal London have stated they have no record of either that letter or a request from his financial adviser at the time. Royal London say they were only advised by Mr C of his wishes on 15 July 2020 in a telephone call he made to them. Royal London explained they made the change a month after they received his July 2020 request. They went on to explain they re-

credited £6.37 to Mr C's plan and they don't believe he's suffered a financial detriment as a consequence.

However, I don't agree with Royal London's observations on this issue. In the email Mr C sent to Royal London on 9 September 2019, it included two attachments. The first letter asked them to increase his premium from £100 to £500 per month. The second attachment asked them to remove his adviser from the plan. Royal London say they didn't receive that message but I think it's more likely than not that they did. I say that because on the file there's a copy of the premium increase letter having been date stamped (on 11 September 2019 at their Wilmslow office) with comments attached to it. So, I think it improbable they received one and not the other, especially when the adviser removal request letter was attached to the same email.

Whilst I've not seen any evidence Mr C asked for the adviser to be removed in 2017, I am satisfied he asked for the removal in September 2019. As such, I am upholding this part of his complaint and require Royal London to refund the adviser fees he paid from September 2019 onwards.

Performance

In a later submission to this service, Mr C explained that he believes he's lost around £4,000 because of the performance of the funds he invested in with Royal London. I explained to Mr C that as he'd not originally raised a complaint point about performance, he'd first need to discuss this with Royal London to provide them with the opportunity to respond.

I also explained to Mr C that whilst I can consider complaints about investment performance, in most instances, I would need to see evidence that Royal London had done something wrong and can't just rely on actual or perceived poor performance. That's because even if the fund has underperformed compared to the rest of the market, we don't usually think this proves the fund was mismanaged.

So, whilst I was willing to consider Mr C's additional complaint point about adviser charges because I had all the key information readily to hand in the file, I won't be giving a decision on his supplemental point about performance. That's because Mr C would need to provide new submissions and evidence to Royal London first.

Responses to my provisional decision

After reviewing my provisional decision, Royal London replied explaining they accepted the full outcome with the exception of one issue; the complaint point about Mr C's request to remove the financial adviser ongoing charge in September 2019. In summary, Royal London explained they received Mr C's letter to amend the regular payment but not his letter to remove his financial adviser as the servicing agent on his plan. They went on to explain that having received his letter to alter the premium (by post rather than email), they wrote to his financial adviser at the time to inform him and sought confirmation of the increase. Royal London said that Mr C's adviser confirmed back to them that the ongoing charges should continue.

Royal London also said they wrote to Mr C at the same time pointing out the revised premium and, in their letter, it showed an ongoing cost going to his existing adviser – they say he never responded to that letter. Royal London went on to say that if they'd received a request to remove the adviser, they wouldn't have sought clarification from that business about the new premium increase.

Mr C didn't provide a response to the provisional 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.

Royal London have stated they only disagree with one element of my provisional decision. I have therefore focused my attention on that single point – that of when Mr C asked Royal London to remove his adviser from his pension and to stop paying them an ongoing servicing fee.

What's in no doubt here is that Royal London received Mr C's letter of 9 September 2019 asking them to amend his premium. However, Royal London state they have no record of receiving the second letter asking for the adviser fee to be stopped. Mr C says he emailed both letters to Royal London and has shared a copy of that email and the two letter attachments.

Royal London said that after receiving Mr C's 9 September 2019 letter (by post) asking them to amend his contribution, they wrote to him on 2 October 2019 confirming the change. Royal London explained their October letter showed they were still paying an adviser charge but Mr C didn't raise it as a concern at that time. Whilst I appreciate Royal London's letter does include the fact they're paying an ongoing adviser fee from the pension, that information isn't mentioned until the back of an 11 page letter they've sent him about the premium revision. However, just because the information was included in their letter, I don't think that's the end of the story.

Royal London also stated that when they told his adviser of the revised premium in October 2019, the adviser didn't explain they were no longer working for Mr C. However, I think it likely that Mr C hadn't unreasonably concluded that by cancelling the agency on the plan with Royal London, would be sufficient to end his relationship with the adviser. But, just because his adviser wasn't aware of his wishes to remove them as his agent, it doesn't necessarily mean Mr C hadn't told Royal London to take his advisers servicing rights off the plan.

I shared a copy of Mr C's email with Royal London that he says he sent to them in September 2019. The email included two attachments: a letter covering the request to amend the premium and another to remove his financial adviser as servicing agent, asking Royal London to cease all further payments to them.

Royal London have explained they've been unable to either validate or trace the email that Mr C stated he sent them on 9 September 2019. However, just because Royal London can't find Mr C's email in their system, doesn't mean he didn't send it. His email of 9 September 2019 was sent to the same email address that he used to send his 17 November 2017 email to. And, Royal London haven't stated that email address is invalid or had since changed. Royal London also later conceded they had received Mr C's November 2017 email when he sent evidence of that message to them. So, I find it more likely than not Mr C did send Royal London the email on 9 September 2019, covering both the premium revision and importantly, the request to stop paying his adviser a fee. And as I've already explained, I think it improbable Royal London received one letter and not the other, especially when the adviser removal request letter was attached to the same email.

Finally, from what I've seen, Mr C's communication with Royal London has predominantly been via email and telephone so, despite what Royal London say about having received his

premium alteration letter through the post, from the evidence I've seen, I'm persuaded he did send the email to Royal London on 9 September 2019 that also included the request to remove his existing adviser and stop paying them a fee.

So, as I've already explained - whilst I've not seen any evidence Mr C asked for the adviser to be removed in 2017, I am satisfied he asked for the removal in September 2019. As such, I am upholding this part of his complaint and require Royal London to refund the adviser fees he paid from September 2019 onwards.

Summary

I have therefore reached the same decision for the reasons I've already set out above and as such, require Royal London to take the following actions to put things right for Mr C:

Putting things right

Fair compensation

My aim is that Mr C should be put back as closely as possible into the position he would probably now be in if had not been for Royal London's error.

I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

As I've already explained, in addition to the actions below, Royal London must also:

- Pay Mr C the £500 for the trouble and upset they've caused (if they've not already done so).
- Refund the £128 in bank charges.

Adviser Charges - What must Royal London do?

To compensate Mr C fairly Royal London should:

- Refund the adviser fees Mr C paid on his plan from 9 September 2019 onwards. The refund should take account of any growth those fees would've benefited from had they remained invested (in the funds they were debited from) to the date the pension was switched away.
- Despite the fact the consumer has switched their pension away, any further loss Mr C has suffered on those fees needs to be brought up to date. To keep things simple for both parties, rather than asking Royal London to seek out third party information from Mr C's new provider calculating what would've happened with those fees in the new plan, I'm satisfied that adding 8% simple interest per year on any loss from the end date (which is the point at which the pension switched away) to the date of settlement is a fair award.

Royal London should pay into Mr C's pension plan, to increase its value by the amount of the compensation. Royal London's payment should allow for the effect of charges and any available tax relief. Royal London shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Royal London are unable to pay the compensation into Mr C's pension plan, they should pay that amount direct to Mr C. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Provide the details of the calculation to Mr C in a clear, simple format.

Income tax may be payable on any interest paid. If Royal London considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they have taken off. Royal London should also give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Why is this remedy suitable?

I've chosen this method of compensation because:

Mr C had asked Royal London to stop paying charges to his financial adviser in September 2019 but they failed to action his instruction. The calculation ensures Mr C is put back in the position he would've been in had those fees not been debited.

My final decision

I'm upholding the complaint and I require The Royal London Mutual Insurance Society Limited to put things right in the manner I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 July 2023.

Simon Fox
Ombudsman