DRN-4317537

The complaint

Mr M complains that Royal London Mutual Insurance Society Limited hasn't made it sufficiently clear that the advice he's required to take by law before transferring his pension policy only needs to be specific to the issue of the safeguarded benefits contained in the policy, and doesn't have to involve a 'full financial review' of his circumstances. Unless Royal London does this, he believes it's going to be difficult for him to find someone to advise him at an acceptable cost.

What happened

Mr M has a pension pot with Royal London worth £100,000 which benefited from a Guaranteed Annuity Rate (GAR). In November 2022 he was looking to transfer it internally within Royal London to access it on a flexible basis, which involved giving up the GAR. Because the size of the fund subject to the GAR was over £30,000, it was required under the Pension Schemes Act 2015 to check that he'd received independent advice on the transaction before it could proceed to make the transfer.

This requirement applies even though, as Mr M says Royal London told him in its own literature, his GAR wasn't 'in the money' at the time. In other words, he appeared to be able to secure a higher annuity on the open market rather than at the guaranteed rate.

As part of its transfer information, Royal London included an Appropriate Advice Declaration (AAD) for any adviser Mr M approached to sign. Amongst other things, this said that the client *"…must get advice before they can do either of the following…*[transfer away or access benefits flexibly]*"*. And the adviser must have permission from the Financial Conduct Authority of 'Advising on pension transfers and pension opt-outs'. Specifically, the form said that the advice Mr M received *"MUST relate to what* [he] *wishes to do with* [his] *pension pot".*

Mr M says that he'd talked to six financial advisers and none of them were willing to simply give him advice specific to the transaction being proposed. All of them insisted that they were required to give 'full financial advice' and charge between 2-3% of the fund, rather than (as he hoped) charge a nominal amount to 'rubber stamp' what looked to him to be an obvious case for transferring. One of the advisers Mr M approached indicated that they should be able to sign the form after a brief review, but after looking into things further they specifically quoted the phrases used in the AAD as meaning 'full advice' would be required.

Mr M said that he'd specified on two online portals designed to match him with an adviser that I he only required confirmation that he had been given advice specific to giving up his safeguarded rights, and received no interest from anyone in advising him. And when he spoke to an adviser and laboured this point, they became angry with him – which again he feels Royal London could have done more to prevent happening.

One of our Investigators considered the complaint. He concluded that the wording in and alongside Royal London's AAD made it sufficiently clear that the advice Mr M obtained didn't have to be *in favour of* transferring (and the Act does not require this). He suggested that if Mr M had encountered a problem with a particular adviser that he'd like to complain about, he could complain to them separately.

Mr M didn't agree with the Investigator. In summary, he said:

- The Investigator had focused on the wrong issue and hadn't addressed that Royal London was misleading advisers into thinking they had to provide 'full advice'.
- He hadn't considered the written evidence Mr M had from one adviser saying it was the wording on Royal London's AAD that caused this.
- The form should stipulate the minimum level of advice that was required.

I note that Mr M does appear to accept that the point the Investigator was making (about the advice not needing to support the transaction) also has some relevance. He notes a more helpful explanation of this is given in the Adviser section of Royal London's website and says this should be contained on the form itself:

> *"The adviser does not necessarily have to agree with the proposed transaction to provide this confirmation. They are simply confirming that they have provided advice on the proposed transaction to the individual."*

Mr M says that if Royal London had done this, he would have had no reason to complain.

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.

Whether Royal London can permit Mr M to transfer or flexibly access his policy is specifically governed by secondary legislation under the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015. The Regulations set out that the member should be informed in advance (as Mr M has in this case) of the form in which confirmation of the advice given is required. That form is as follows:

> *"(a) that advice has been provided which is specific to the type of transaction proposed by the member or survivor;*
> *(b) that the adviser has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on the regulated activity in article 53E of the Regulated Activities Order;*
> *(c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the FCA to carry on the regulated activity in article 53E of the Regulated Activities Order; and*
> *(d) the member's or survivor's name, and the name of the scheme in which the member or survivor has subsisting rights in respect of safeguarded benefits to which the advice given applies."*

Having considered the AAD Royal London provided to Mr M for his adviser to sign and the accompanying request for documentation alongside that form, I'm satisfied that it met these requirements.

I'm unable to see how the wording on that form is misleading an adviser into providing more extensive advice than they actually need to provide – for the reason that any adviser of the type required by the form (i.e. authorised by the FCA to give advice on pension transfers) will know that their advice is subject to the FCA's rules and guidance. There's no ability under those rules, if they're correctly being followed, to give partial advice that in some way only 'rubber stamps' what Mr M already wants to do.

Mr M has said, "*The intention is not that I be required by law to take full financial advice, or that the adviser takes on the risk and/or responsibility for any decision I make"*. There are two statements here that need to be uncoupled. Firstly, Mr M is correct that the Act requiring Royal London to check he's received appropriate independent advice doesn't stipulate how 'full' or 'brief' the advice needs to be (other than that it needs to be on the specific transaction he is contemplating). But that's because the Act was laid down by Parliament whereas matters as to the suitability of advice, and particularly what needs to be taken into account to ensure that advice is suitable, are reserved to the FCA. Secondly, any risk or responsibility taken on by the adviser is essentially determined by whether it has correctly followed the FCA's rules and guidance. The Act says nothing about what an adviser should do, as only Mr M's pension provider Royal London is subject to its provisions.

The FCA's rules covering financial advisers require them to take reasonable steps to ensure that the advice they provide is suitable for the client's circumstances and objectives (COBS 9.2.1R in the regulator's handbook). And to gather sufficient information from the client to give them a reasonable basis for believing that the client can understand and bear the risks inherent in the transaction being contemplated (COBS 9.2.2R).

It isn't going to be possible for an adviser to know whether their advice would be suitable without firstly going through these steps, and for that reason the different concepts of 'full' or (in some way) 'partial' advice that Mr M is suggesting have no basis under this core part of the regulator's handbook. It would be difficult to demonstrate that advice on a pension is suitable if, at the very least, all matters relevant to that client's overall pension provision were not taken into account.

The regulator does permit a form of limited advice, known as 'abridged advice', to give clients an early indication of the advice that will likely be given on a potential transfer from a scheme where the guarantee is expressed as an annual monetary amount (such as an employer's defined benefit pension scheme). Mr M isn't transferring from such a scheme, and those rules put beyond doubt at COBS 19.1A.2R *"A firm may not give abridged advice to the extent that the safeguarded benefits involved are guaranteed annuity rates"*.

More relevantly however, even where abridged advice *can* be given the regulator says at COBS 19.1A.5R, *"A firm must not provide a confirmation for the purposes of section 48 of the Pension Schemes Act 2015 unless it has provided full pension transfer or conversion advice"* (meaning, in effect, a thorough review of all matters pertaining to that client's pension provision alongside the guarantees they are entitled to under their scheme).

This underlines the point that the regulator would not agree it would be sufficient for a financial adviser to advise in favour of (or for that matter, against) a transfer after only a cursory review of the provider's paperwork. That principle still stands even if the only benefit involved was a GAR. As I've said above, any adviser Mr M approached, by virtue of the fact that it was regulated, ought to have been familiar with what its regulator required. So I'm unable to say that anything Royal London did reasonably caused the advisers Mr M met to indicate that they could provide this type of cursory review, or that the specific form of the AAD Royal London provided then reasonably caused them to change their position.

The fact that one adviser specifically gave Royal London as their reason for their change in approach doesn't mean I'm bound to agree. Royal London articulated the requirements that always existed: for advice to be given that was specific to the transaction being contemplated. It was always a matter for the adviser to ensure that the advice they gave met their own regulator's requirements and to explain what those were to Mr M.

It also doesn't seem to me that all of the advisers have refused to assist Mr M. Some may not have been prepared to if they perceived that their advice might be to retain the GAR and

they didn't want to be in the position where Mr M might be seeking to act against that advice. There are rules in the FCA's handbook covering so-called 'insistent clients' and so it isn't correct to say that giving advice in this area is without risk: rules can inadvertently be breached whether advice is given in favour of transferring or not. And the terms of a firm's professional indemnity cover may set out what services it is insured to provide.

If some of the firms Mr M met thought at first glance they might be able to advise in favour of transferring, they would still always be required to go through the steps in COBS 9.2.1R and 9.2.2R before they could deliver that advice. So there's no particular reason to assume they would agree to give that advice for a lower fee. It's open to Mr M to try to negotiate on fees as he's been doing, but I expect the advisers will be taking into account the sorts of risks I've set out above in deciding whether to agree to a lower amount. Whilst I have sympathy with Mr M's position, if Royal London has already identified that the GAR on his policy wasn't 'in the money', none of that changes the fundamentals of what I've said here.

Mr M says: *"It appears it is now standard practice in the Financial Advice industry to falsely represent the requirements of the Pension Schemes Act* [2015] *to justify charging clients a significant percentage of their pension pots for services that are not actually required by the law."* I'm not in a position to know whether that is happening as Mr M describes, but if it were that wouldn't be a matter for Royal London to address. Mr M himself summarises that a part of his complaint is against 'the whole industry' and he thinks it needs to be addressed by the FCA. He says he doesn't know how he can do that other than by referring a complaint against Royal London to this service.

My role is to consider individual disputes between consumers and their pension providers (or advisers). If Mr M is looking to bring about the change he appears to be seeking in how financial advisers are regulated, that is a matter he'd need to refer to the FCA directly.

My final decision

I do not uphold Mr M's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 October 2023.

Gideon Moore
Ombudsman