

The complaint

Mr M complains about the advice given to him by The Royal London Mutual Insurance Society Limited (Royal London) to transfer an occupational defined benefit (DB) pension and commence a personal pension instead. Mr M has stated that his DB pension would have provided higher benefits in retirement and believes he should be compensated for his losses.

What happened

Mr M was a member of a DB pension scheme with a previous employer between 1984 and 1989.

Mr M received advice from United Friendly (now Royal London) on this pension in 1993. This advice resulted in Mr M transferring this DB scheme.

The documentation from 1993 shows that Mr M was:

- Aged 33, married with one dependent child.
- Employed with an expected retirement age of 65.
- Had income of £500 per month which covered expenditure with no disposable income each month. Savings levels were noted as “small” with the only area of financial planning considered important at that time being recorded as retirement planning.
- The adviser recommended a V.I.P. Personal Pension Plan for the transfer of Mr M’s DB scheme with the Managed Fund being selected as the underlying investment by Mr M.

The advice to transfer was confirmed in a letter to Mr M dated 25 May 1993. The letter stated that:

“I have contacted the administrator controlling your pension and have received detailed information relating to your existing benefits. These have been objectively compared against the investment potential of the V.I.P. Personal Pension Plan and I am happy to advise you that there is no known reason why you should not immediately sign the application form and transfer your cash equivalent.

Despite using a set of cautious measurements for our own personal pension plan, the figures produced recommend a transfer of benefit to the V.I.P. Personal Pension Plan.”

Mr M accepted the advice and transferred his DB pension into the Royal London policy.

Having become concerned that the advice he received was not suitable, Mr M complained to Royal London on 9 March 2023.

Royal London issued their response to this complaint on 14 April 2023. This explained that the 1993 advice received by Mr M had been included in the industry wide Pension Review.

As part of this review firms were obliged to review advice given between 29 April 1988 and 30 June 1994 where consumers had been advised to transfer benefits into private pensions.

Royal London stated that they had written to Mr M in January and February 1999 to offer a review of the 1993 advice. As no response was received the review was never completed.

Royal London also explained that the end date for the Pension Review was 31 March 2000 and that the financial services regulator (the FSA in 2000, now called the FCA) had highly publicised this throughout February and March 2000.

As such, whilst Mr M may have felt the advice he had been given was unsuitable, Royal London confirmed they were of the opinion that the complaint had been made too late. As such they did not believe the advice needed to be investigated and did not consent for the issue to be considered by this service.

Mr M referred his complaint to this service in May 2023.

Our investigator looked into things and concluded that the complaint was one which could be considered further.

Royal London accepted this outcome and asked the investigator to continue and consider the merits of Mr M's complaint and the suitability of the 1993 advice.

Our investigator concluded that there was insufficient evidence on file to demonstrate the adviser from 1993 had adequately ensured the suitability of the advice, and as such the complaint was upheld.

Mr M accepted the outcome however no response to these findings has been received from Royal London.

As no agreement was reached, the complaint was passed to me. I issued a provisional decision which stated:

"Given Royal London accepted our investigators conclusion that Mr M had made his complaint in time, I have not considered our jurisdiction in this case any further and have focussed solely on the suitability of the 1993 advice.

This advice was given a significant amount of time ago and it is the rules which were in place at the time I must consider when assessing the suitability of the advice.

The documentation from 1993 confirms that Royal London was a member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). LAUTRO advisers were bound by a Code of Conduct at Schedule 2 to the rules. This required advisers to exercise "due skill, care and diligence" and "deal fairly with investors".

Additionally, Paragraph 6 of the Code of Conduct required advisers to give "best advice", which included that they should not:

- Make inaccurate or unfair criticisms of other investments, or of any occupational or state pension.*
- Advise the investor to convert, cancel or allow to lapse any investment contract, occupational or state pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages.*

Finally, Paragraph 8 of the Code of Conduct required an adviser to consider “the investor’s financial position generally and to all other relevant circumstances” - which included their rights under occupational and state pensions.

Based on the rules detailed above, and the content of the advice file from 1993, I have reached the same conclusion as our investigator – the advice given to Mr M was unsuitable.

The documentation from 1993 does show Mr M’s financial circumstances were discussed. A fact find was completed and details of his personal and financial circumstances were recorded. However, there is little information on the file as to why the transfer was recommended, with the only reason being given is that the “figures produced” recommended the transfer. However, as explained by the investigator, there is no documentation to show Mr M’s wider circumstances were considered.

Whilst the figures produced by comparing the DB scheme to the V.I.P. pension may have supported the advice, Mr M’s circumstances (for example his little or no investment experience, low savings levels, family circumstances) do not seem to have been considered.

The transfer exposed the benefits accrued by Mr M to investment risk and charges that had not previously applied. Ancillary benefits such as spouses and dependents pensions were also subject to change as a result of the advice. There is no evidence that these wider implications of the advice were considered or explained to Mr M.

In line with the above there is no evidence of these relevant consequences and disadvantages of the transfer being discussed with Mr M before he accepted the advice. As such I do not believe Mr M was put into a fully informed position before agreeing to the transfer of his DB pension.

Given this I have concluded that the advice given to Mr M was unsuitable.

I would note here that this outcome would appear consistent with Royal London’s own approach to the advice they gave between 29 April 1988 and 30 June 1994. The complaint response letter issued to Mr M in April 2023 confirmed that during the Pension Review they conceded liability and entered straight into loss assessment for those customers who opted into the review.

As such, I have gone on to detail the redress required.

Putting things right

A fair and reasonable outcome would be for The Royal London Mutual Insurance Society Limited (Royal London) to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme.

Royal London should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator’s handbook in DISP App 4.

For clarity, Mr M plans to retire at age 65 in line with his state pension age at the time of advice. So, compensation should be based on Mr M taking these benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator’s expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following

receipt of notification of Mr M's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Royal London should:

- *calculate and offer Mr M redress as a cash lump sum payment,*
- *explain to Mr M before starting the redress calculation that:*
 - *redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and*
 - *a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension*
- *offer to calculate how much of any redress Mr M receives could be used to augment the pension rather than receiving it all as a cash lump sum,*
- *if Mr M accepts Royal London's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of the redress augmented, and*
- *take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.*

Redress paid directly to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Royal London may make a notional deduction to allow for income tax that would otherwise have been paid. Mr M's likely income tax rate in retirement is presumed to be 20%.

However, if Mr M would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%."

In addition to the outcome explanation and redress instructions above I went on to ask both parties to provide any additional evidence or commentary they wanted me to consider by 27 October 2023 before a final decision was issued.

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.

No response to the provisional decision has been provided by Royal London.

Mr M responded to the provisional decision and queried the redress instruction stating the redress calculation should be based on benefits being taken at age 65, noting that his state pension age had since been changed from 65 to 66 years of age.

In addition, Mr M noted that as well as his occupational pension being transferred, he was also opted out of the State Earnings-Related Pension Scheme (SERPS) and questioned whether he had an additional Royal London policy containing these contributions.

With regard to his retirement age, whilst I note that Mr M's state pension age has been changed to age 66, I remain of the opinion that the redress calculation should be run based

on an assumed retirement age of 65.

Whilst it may be the case that Mr M will not now retire until age 66, 65 was the age at which Mr M expected to retire at the time the advice was given. Additionally, this was also the Normal Retirement Age (NRA) for the occupational scheme transferred and as such it is considered most likely, had it not been transferred, that benefits would have been taken at age 65 had this scheme not been transferred in 1993.

With regard to Mr M's SERPS provisions, this decision has focussed solely on the advice given to transfer his occupational DB scheme, with Royal London's evidence containing only their files in relation to this advice. There is no documentation on file about any advice received regarding SERPS, nor any information about an additional Royal London policy. Should Mr M have further questions about any other Royal London policies he may have, these should be directed to Royal London in the first instance.

Overall, I remain of the opinion that both the outcome and redress instructions outlined in my provisional decision remain fair, as such I am not making any changes to them.

Putting things right

The Royal London Mutual Insurance Society Limited must calculate and pay redress in line with the instructions included within my provisional decision (copied above).

My final decision

I am upholding this complaint against The Royal London Mutual Insurance Society Limited and require them to complete the redress process outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 December 2023.

John Rogowski
Ombudsman