

The complaint

Mr F complains that The Royal London Mutual Insurance Society Limited mis-sold him a personal pension and contracted him out of the State Earnings Related Pension Scheme (SERPS) without his knowledge.

What happened

Mr F's recollections are that a trainee adviser, known to Mr F, came to his door after he'd agreed to take out an ISA to help his sales figures. Mr F recalls he was told that his National Insurance contributions would be put into an ISA and the government would match it. He says at no point was a pension mentioned. Mr F believes he put about £1,000 into the ISA but closed it shortly after as he was made redundant.

He says Royal London continued to send him letters but as he knew he didn't owe them anything and hadn't taken out a pension, he disposed of those letters.

More recently he spoke to a friend who knew about pensions and who told him if he'd been contracted-out of SERPS he'd not receive a full state pension. This is when he discovered he'd been contracted out between 2001 and 2008 and contacted Royal London to complain.

Royal London didn't uphold his complaint, it said it had been made too late. And it said in any event it had sent him statements showing he'd taken out a pension and was contracted-out. And at the time the policy was sold he would've received documents confirming this. So if he didn't want the policy, he ought to have raised this then. It also said it felt the policy was suitable for his circumstances.

Our investigator looked into matters and didn't uphold the complaint. He said that it's reasonable to assume Mr F would've been given information setting out the plan and separate to any ISA – and that Mr F likely completed separate forms for both. But in any event, on the balance of probabilities had the plan been explained clearly, as there was a good chance Mr F would benefit from it, he would likely have taken it out in any event.

Royal London could find no evidence relating to the ISA. But this wasn't unusual in the circumstances as Mr F said it closed shortly after inception. As that was more than seven years ago it may have deleted the information regarding this plan from its systems in line with data protection rules. It could also not find any of the documentation from the sale of the pension plan.

Mr F disagreed with the investigator's findings. He wanted to be clear he'd never been told anything about a pension. And the investigator had referred to assumptions and his beliefs about what Mr F would've done – but he is adamant he wouldn't have taken out any plan that affected his state pension.

He re-iterated he'd only been sold an ISA. It was a quick sale with limited information provided and he did this to help out a friend. He said the adviser was a trainee, so likely didn't have the required knowledge to sell these products.

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.

The evidence that Royal London did something wrong is Mr F's testimony about the sale. I don't doubt that what he has told us is his honest recollections. But I do have to take into account this is his recollection of a meeting which occurred over 20 years ago. It would be very unusual for someone to be able to recall this perfectly that many years later, as it is not a particularly significant event. That said I've thought about what he has said, he does recall being told about his National Insurance contributions being re-directed but thought this was into an ISA – and that he was told the government would double it. This isn't a million miles away from what contracting out of SERPS was. So, I think its possible the adviser did specifically sell Mr F a pension but it either wasn't explained well or Mr F's understanding/memory could be different to what was explained. The third option is it was sold nefariously. But it would seem unusual that the adviser would've explained some parts of what contracting-out of SERPS was, such as the redirected National Insurance contributions, if this was the case.

Contracting out of SERPS redirected national insurance contributions from the SERPS into a personal pension instead. The rebate level paid into the pension was expected, if you met certain criteria, to grow to an extent that it could provide a better pension in retirement than remaining in SERPS. However, this wasn't guaranteed and from my knowledge of how these policies were sold and the information provided, this would've been explained in the documentation that accompanied the sale. Whether the alleged misinformation about the policy(s) Mr F was sold was due to error on the part of the adviser or a misunderstanding/memory gap on Mr F's part is difficult to say, as we have no corroborating evidence. All we have is Mr F's testimony many years later. So, it is very difficult to determine exactly what happened at the time of sale. We also have no corroborating evidence of the existence of a separate ISA product being taken out but this doesn't mean it didn't exist. Due to the time that has passed and data protection laws, it could have been deleted from Royal London's records.

In situations such as these, my role requires me to consider what is likely on the balance of probabilities – and to consider the evidence we do have to come to a fair and reasonable outcome. Regardless of the conduct of, and what the adviser told Mr F, a pension was setup with Royal London for Mr F and he was contracted out of SERPS. For that to have happened, some form of paperwork would've had to be submitted by the adviser to Royal London for the policy to have commenced. And the set up of the policy would've triggered paperwork including the policy documents to be sent to Mr F. Mr F's told us he did receive mail from Royal London but he disregarded/discarded any paperwork in later years as he knew he didn't have a policy with Royal London after closing the ISA. But at this point when the pension was setup, Mr F would've been expecting paperwork as he thought he'd taken out the ISA. Mr F says he never received anything from Royal London about a pension plan but on the balance of probabilities I think documentation would've been sent at the outset of the plan. As we know from the evidence that Royal London sent annual statements etc. So it raises the question, why if Mr F had not wanted a pension didn't he raise this earlier? Where a mistake has happened, customers have a requirement to mitigate their position if they are able to, and not reading post represents a failure to do this. If Mr F hadn't wanted a pension (i.e. it was set up without his agreement or through a mis-understanding) and had read his post from Royal London, he would've been able to let Royal London know much earlier that he hadn't wanted the pension plan. And he could've contracted back into SERPS.

Even in the event no sales documentation was sent to Mr F, the evidence shows Mr F was

sent annual statements and other communications for many years, and likely for the whole 20+ years since this plan was taken out. Mr F told us that Royal London kept sending him mail despite him moving addresses, for Mr F to not realise he'd taken out a pension means he must have discarded all of this post without reading it. So whilst I am sympathetic towards what Mr F has told us about the sale, Mr F failed to mitigate his position so in any event it would be unfair and unreasonable to uphold Mr F's complaint as if he'd never been contracted out of SERPS.

With regards to the above, whilst I've said the evidence doesn't support a conclusion that Royal London needs to put right the sale of the pension based on Mr F's testimony, I also need to consider the suitability of the product for Mr F. And what he likely would've done if he'd been given all the correct information.

As the investigator explained, Mr F met the criteria for someone who could've benefitted from contracting out of SERPS. His age and earnings meant, and the way in which the rebates were designed alongside estimates of future growth potential minus the charges applicable to the plan, he could end up better off contracting out. So I don't think contracting-out was unsuitable for Mr F.

Furthermore, there were other benefits of contracting-out. By contracting out, Mr F can access this pension from age 57 whereas within SERPS it would be age 67. He will be able to take a tax-free lump sum from the policy of 25% and he can access those benefits flexibly such as taking it all as a lump sum from age 57. Within SERPS Mr F would've received it in small increments paid monthly with no tax-free lump sum. And on death if any money remains, Mr F will be able to pass this on to beneficiaries whereas within SERPS no money will be payable upon death. I think had it been explained to Mr F at the time that there was a good chance he would be better off and the way in which he could take his benefits would be more flexible (although the option to take the whole value as a lump sum wasn't in place at the time), I think someone in Mr F's position would likely agree to contracting-out as the potential benefits outweighed the potential negatives.

I've not seen Mr F's state pension forecast but a reduced state pension doesn't mean he's going to be worse off for contracting out. What he'd also need to consider is the value of any pension he will receive from Royal London (and I understand he also contracted out through an employer later) and any other contracted out pensions, compared to the deduction from the state pension. As I've said above, even if he is worse off in monetary terms for contracting out, the fact he has contracted out benefits means he can benefit from flexible ways of accessing his pension. Such as a lump sum from age 57 which to some would be very appealing and useful for retirement planning. I can see that Mr F's pension fund with Royal London is worth more than double the rebates paid into it, so the performance of his plan hasn't been bad.

Ultimately, whilst I have some sympathy for what Mr F has told us about the sale, I cannot conclude on his testimony alone and when considering what happened after, that Royal London made an error that needs putting right. I appreciate finding out his state pension will be reduced may have come as a shock but this is only reduced because he will receive the benefit of these National Insurance contributions within his Royal London pension (and his workplace pension) instead.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 October 2024.

Simon Hollingshead
Ombudsman