

The complaint

Mr S's representative has complained, on his behalf, that The Royal London Mutual Insurance Society Limited didn't provide information relating to an uplift in the value of a with profits policy Mr S held with it.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In February 2022, Royal London wrote to with profits policyholders notifying them of a proposal to uplift their policies by 25%, and asking for feedback on that proposal. It said that, if implemented, this would take effect from 31 December 2022.

In August 2022, Mr S switched his with profits policy out of Royal London following advice provided by his representative. This meant that the policy was no longer qualified to receive the uplift.

In February 2023, the complaint was raised with Royal London that accurate information hadn't been provided in relation to the policy. The representative said that it wouldn't have recommended a switch if it had been provided with information relating to the uplift.

Royal London provided its final response on 10 February 2023. In summary, it said it had written to Mr S in February 2022 regarding a proposal to change the way it invested in his Royal Liver with profits policy and provided details of an uplift to policy values. It also said Mr S provided feedback to it, following this.

On 21 February 2023, the representative responded to Royal London and referred to information that had been provided to it following the provision of a letter of authority from Mr S. It said that there had been no mention of any potential uplift to policy values.

The representative further said that it had been kept in the dark by Royal London's failure to disclose important information about the policy. As a result, it said, Mr S had been financially disadvantaged by around £5,000.

Following a discussion of the complaint on 17 March 2023, Royal London confirmed that it believed that it had acted correctly. But as a gesture of goodwill Royal London offered £1,000 to Mr S to resolve the matter. Following discussions with Mr S, however, this was rejected by the representative on 24 March 2023.

Mr S's complaint was referred to this service in June 2023. And in a response to this service on 18 September 2023, the representative clarified that it wouldn't have recommended that Mr S switch out of his policy if Royal London had provided what it considered would have been full and correct details relating to the plan.

Having considered the matter, our investigator didn't think it should be upheld. She said the following in summary:

- Royal London had said that it provided enough information to Mr S regarding the proposed changes to his policy and the uplift in its value. Although Mr S had disputed receiving this, Royal London had checked its records and confirmed that it mailed information to Mr S between 21 and 25 February 2022. It said it also had a weekly "production call" during that mail out period and so was satisfied that it sent Mr S the information.
- The information was sent to the correct address and Royal London had also provided evidence of Mr S providing feedback after the February 2022 mailing.
- Having reviewed the information sent to Mr S, the investigator was satisfied that the 25% uplift in the policy value was reiterated throughout the "Guide to the proposal" booklet. This ought to have provided Mr S with enough information to share with his representative.
- Although the representative has said that Royal London had a letter of authority to share information with it, this was confirmed as being received by Royal London in April 2022. And it provided the policy information which the representative had requested.
- Whilst the representative had also said that it should have been provided with information relating to the uplift, this had already been provided to Mr S and so he could have discussed this with the representative.
- The investigator noted the representative comments querying as to whether Royal London had employed deliberate obstruction to financial advisers in not providing the information, but he didn't consider that this was the case. The FCA had been involved in reviewing Royal London's communications and if it had any concerns relating to this, then it was likely that it would have investigated further.

Mr S's representative made further submissions in summary as follows:

- It had already submitted Royal London's own evidence that Mr S's policy switch was in advance of Royal London's client information/voting request letters.
- It provided documents, one of which was a timeline of events, and another a "plan information and projected benefits illustration" which Royal London sent to it in April 2022. This failed to make any mention of the proposed uplift and so failed to illustrate what Mr S might expect to receive in pension benefits at age 65.
- The letter of authority to provide plan information was sent to Royal London in March 2022 (signed by Mr S on 23 March 2022). The proximity of the feedback request letter and Mr S's letter of authority was of great relevance to the case.
- Mr S was meticulous in his record keeping and had been in terms of all policy information received with previous advising firms as well. He was entitled to believe that Royal London would provide full policy information to be given to his current adviser (the representative) and shouldn't have been expected to provide the policy information himself.

- Royal London had admitted that it didn't provide the information relating to the uplift to the representative – the information was only sent to policyholders.
- Mr S quite rightly believed that Royal London would have provided his representative with all the relevant policy information and both the representative and Royal London were bound by the Consumer Duty regulations.
- Royal London had a long standing history of not sending full information, for example inconsistencies in sending annual benefits statements.
- The representative then referred to an instance of it taking different action with another plan on the basis of it having additional benefits (a guaranteed annuity rate), but that there had been no clue as to the additional benefits attached to the policy in question here. This supported the position that, had it known of the proposed uplift, it would have advised Mr S differently.
- Royal London's "Supplementary Chief Actuary Report" set out that the voting mailing was sent to customers over a six week period between 17 August 2022 and 29 September 2022, and so debunking the assertion that Mr S had received that letter before he transferred.

The investigator considered the additional points, but wasn't persuaded to change her mind, saying the following summary:

- She reiterated that the authority to provide information to the representative wasn't in place when the information was sent to Mr S in February 2022. It was in Mr S's interests to be mindful of the information which had been sent, and although Mr S had said he didn't receive the information, Royal London had provided sufficient evidence that Mr S provided feedback after he'd received it.
- The feedback forms had themselves been destroyed after three months had expired after the High Court Order to implement the proposal (following internal legal advice) but Royal London still had a system record of Mr S having provided feedback.
- The event complained of predated the introduction of Consumer Duty requirements, but Royal London had in any case done what it needed to do in terms of contacting Mr S with the relevant information.

The representative, and Mr S, disagreed however, adding the further following points in summary:

- Mr S hadn't denied receiving the information from Royal London in February 2022, but the volume of the information was part of the problem.
- The assertion that the feedback forms had been destroyed after three months following the High court Order wasn't credible and the existence of the legal advice was queried. Further, the representative said, if Royal London had access to the information relating to the feedback, it queried as to why it couldn't provide that detail when the complaint was first raised.
- The voting mailing was dispatched between August and September 2022, as demonstrated by the Chief Actuary's Supplementary Report. The communication in February 2022 was a three page letter from the Group Chief Executive. It said that Mr S's distribution from "the estate" was currently uncertain.

- Although the representative would have been able to understand the content, it was unlikely that Mr S would. And Mr S would have expected the information to be provided to his financial adviser.
- There were 35 days between the provision of the Feedback Request letters in February 2022 and the letter of authority, but it was apparently not relevant for Royal London to mention the “very relevant and live active Policy Fund Uplift”.
- The projected benefits illustration didn’t include any detail of the fund uplift. The factsheets sent relating to the alternative funds available to Mr S were also a trap – if Mr S switched to an alternative fund, he would no longer have qualified for the uplift.
- Royal London had failed its own Assessment of the Fairness of the Scheme by not sending the information to Mr S’s representative. Royal London was able to send bonus information dating back to 1999, but was seemingly unable to provide details of the ongoing regulatory proposal which was being actioned both before and after the letter of authority was provided.
- Royal London had never sent detail relating to the uplift for the plan which Mr S retained with it, and further, despite sending Mr S a projection detailing projected pension benefits from March 2024, Mr S would be disqualified from receiving the guaranteed annuity rate applicable on that policy if he took benefits before age 60.

The investigator noted the comments, but said that the additional information hadn’t changed her view. She also noted the points raised about the second policy which contained the GAR, and said that this would need to be raised as a further complaint with Royal London as it hadn’t yet been investigated.

The investigator then confirmed that, although she didn’t think that she could uphold the substantive issues of the complaint, she noted the offer of £1,000 from Royal London and thought that this was fair and reasonable in the circumstances.

The investigator enquired as to whether Mr S would like the matter referred to an ombudsman for review.

Mr S responded to say that he thought that the offer of £1,000 had been a “take it now” offer, but given his own difficulties in receiving replies to his complaint and requests for information, he queried as to what communication had taken place between the investigator and Royal London.

But Mr S added that he would take the issue as far as he could, including beyond this service if necessary.

There then followed a conversation between Mr S and the investigator, in which they discussed the matter. Mr S requested that he be sent the evidence which Royal London had sent. Mr S said that he either he, his representative, or Royal London, were responsible for the loss. It was agreed that the investigator would determine whether the offer from Royal London of £1,000 was still available.

At Mr S’s further request, the investigator then requested the following from the business:

- Confirmation that the offer of £1,000 was still available to Mr S, and whether Royal London would be prepared to increase this.

- Confirmation of the first point at which the representative provided authority for Mr S to request information relating to his policy.
- Mr S maintained that no uplift information was provided to his representative, and so the investigator requested the “Guide to Proposal Booklet” so that she could send this to Mr S.

The investigator then sent Mr S the booklet and confirmed that the letter of authority was signed in March 2022 and provided to Royal London in July 2022 (although my understanding is that it was in fact earlier than this).

Royal London then responded as follows:

- It confirmed that the offer of £1,000 was still available, but that it wouldn't be increasing that.
- It mailed the “appetite pack” information to Mr S for both of his policies in February 2022. The voting pack would have been sent between 24 and 20 August 2022.
- It provided two system records of Mr S returning feedback regarding the uplift proposal.

The investigator conveyed this to Mr S, and in response, Mr S said that that he'd researched Royal London's regulatory obligations and had determined the following:

“Under the UK FCA's regulations, informed consent means that customers must receive clear, accurate, and relevant information when making a decision. Generic advice provided to all customers in the past does not fulfil this requirement if it pertains to a possibility that could significantly influence a decision. To ensure informed consent:

1. Timeliness and Relevance: Information must be provided at the decision point, not just generically in the past. It should be relevant to the specific decision the customer is making.

2. Explicit Reminders: If a possibility (such as a risk or change in terms) could significantly impact a decision, customers should be explicitly reminded of it at the time they are making their decision.

3. Clarity and Comprehensiveness: The information must be clear, specific, and easy to understand, ensuring that customers grasp the full implications of their decision.

4. Customer Understanding: Firms must ensure that customers understand the information provided, which may involve additional explanations or reminders.

If customers might have made a different decision with an explicit reminder, failing to provide that reminder could mean the consent is not truly informed. Firms must provide explicit, specific, and timely information about important possibilities or risks to ensure customers make fully informed choices.”

Mr S's representative also commented further as follows:

- The information contained in the “appetite mailing” couldn't reasonably be considered to have conveyed the important information to Mr S. It said that “nothing is happening to your policy” and that, if Mr S was interested in the proposal, he may wish to speak

to an IFA. The mailing further said that the estate was currently uncertain and that it was unclear as to whether the proposal would go ahead.

- Royal London elected to ensure that the representative wasn't informed of any potential uplift to Mr S's pension policies.
- Mr S was entitled to expect his representative to have been fully informed of the policy information, including the uplift.
- Mr S was fully informed of just one certainty – that his letter of authority to Royal London requested that it send the representative full policy information.
- The representative also asked further questions of the investigator as follows:
 - What reason did Royal London give for not informing the representative about the proposed uplift?
 - How could Royal London be described as having informed the representative of all the relevant policy information?
 - If, as suggested by Royal London itself in the mailing, Mr S had engaged a financial adviser, but hadn't informed it of all the relevant policy details, and that financial adviser was acting on his behalf, how could Mr S be said to be in a fully informed position?
 - Why did Royal London misinform this service as to the date on which it informed Mr S of the uplift proposal?
 - Would Mr S not have had the right for his financial adviser to be fully informed about his policy?
 - Was this a "chargeable" case as far as this service was concerned?

Mr S commented that he believed the questions asked by the representative to be fair.

In response, the investigator said that she remained of the view that Royal London had provided sufficient and clear information which explained the uplift. It was apparent that, although Mr S could have discussed this with his adviser, this hadn't happened, she added.

As her view remained unchanged, the investigator requested confirmation as to whether Mr S wished for his case to be referred to an ombudsman for review.

Mr S expressed disappointment at what he considered to be the investigator's failure to respond to the further points and questions raised, and requested details as to the next steps in the process.

The investigator expressed her view that she'd provided detailed explanations as to her position on the matter, and that her view was based upon the available evidence.

As agreement couldn't be reached on the matter, it's been referred to me for review.

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.

I would firstly say that, although I've noted that additional questions have been posed by Mr S and his representative, I consider that there's sufficient evidence on this case to reach a fair and reasonable conclusion. This decision won't necessarily address every point or query which has been raised in the course of this complaint, but will focus upon what I consider to be the salient aspects.

To firstly address then the matter of the information provided by Royal London, I don't think it's disputed that, whilst Royal London contacted Mr S with the "appetite mailing" in February 2022, it didn't provide details of this to his representative.

But in thinking about whether it erred in not informing the representative of the uplift proposal, as far as Royal London was concerned, it provided policy information as was applicable at that time. No court order had been made and the voting hadn't even by the time of the provision of the "appetite mailing", nor indeed the transfer of the policy, taken place. As noted by the representative, within the February 2022 mailing it said that Mr S's distribution from the estate was currently uncertain. And so it couldn't incorporate uplift information which simply didn't apply at that point.

The representative has also referred to the opacity of the document sent in February 2022 and the extent to which Mr S might have understood the content. But Mr S nevertheless felt able to provide feedback on it. And I think the system evidence provided by Royal London is credible to the extent that, albeit in the absence of the "hard copy", in my view it's more likely than not that this is indicative of feedback having been given. I think it's unlikely that Mr S would have done this if he didn't understand it. Had the latter been the case, and Mr S was inclined to respond to the mailing, it seems more likely than not that he would instead have contacted Royal London to request further clarity – and the means of doing so was made clear within the mailing.

The representative has further said that, as the policy uplift was "very relevant and live", this information should have been volunteered by Royal London as policy information in addition to the usual detail. But I don't think it can have this both ways. Either the information was so "relevant and live" that Mr S would also have considered it to be relevant, given the proximity of the announcement to letter of authority (noted as being highly relevant by the representative) and indeed his feedback on the proposal, that he would, or ought reasonably, to have talked about it with his financial adviser (as was recommended within the mailing) - or it wasn't so "relevant and live", as suggested by the representative's counter-comments about nothing happening to the policy at that time, in which case, it wouldn't have been appropriate for Royal London to include details of what was at that stage an as yet unimplemented (and in fact unelected) uplift proposal.

I've also noted the representative's comments relating to the timeline and when information was sent to Mr S. I think it's possible that there has been some confusion during the course of the complaint as to what was sent and when. But I'm satisfied that the timeline is now clear, in that the appetite mailing was sent in February 2022 and the voting mailing was sent in August 2022.

And having reviewed the information (by which I'm referring to the three page covering letter) sent in February 2022, my view is that this was set out in a clear and understandable fashion and that it was clearly expressed that, if the proposal went ahead, it was likely that the value of Mr S's policy would be increased. It also said that if retirement savings were removed from the policy before the expected implementation date of 31 December 2022, then the policy would no longer qualify for the uplift. Royal London recommended that Mr S speak to a financial adviser about this if this was something he was planning. And so I think Mr S

ought reasonably to have understood both the proposal itself (as demonstrated by the record of his feedback) and the implications of transferring his policy away from Royal London.

As to the assertion that Royal London failed its own Assessment of the Fairness of the Scheme, and I think this also addresses Mr S's research and point about Royal London's regulatory obligation in the provision of information, the commitment was to ensure fairness for all policyholders and that the mechanics of the scheme were supportive of those fair outcomes. But although the scheme details may not have been sent to the representative, they were sent in a sufficiently clear and detailed manner, over the course of several mailings in 2022, to Mr S. So I don't think that Royal London has failed in that regard.

The representative has also cited the Consumer Duty as it felt that Royal London hadn't met its obligations under that duty.

The Consumer Duty is a new standard for firms which was introduced by the FCA. It sets a higher standard for firms in terms in their treatment of customers, and it applies to events from 31 July 2023. What Mr S is unhappy with happened before 31 July 2023, and so, as set out by the investigator, the duty wouldn't apply.

I would, however, like to assure Mr S and his representative that Royal London has always been subject to the FCA's Principles and rules which were essentially to act in Mr S's interests and treat him fairly. In reaching my decision I've taken these Principles and rules into account.

Summary

The crux of this matter is clearly whether Royal London should have provided the representative with details of the proposed uplift, and the representative has said that this would have had a bearing on the policy projections at Mr S's retirement age. But whilst I agree that it would have been helpful for it to do so, it would have been reasonable for it to consider that it had provided that particular information clearly and understandably, and very recently, to the policyholder – Mr S – directly.

Further, as the uplift proposal was quite nascent at the time of the information request, I don't think Royal London would reasonably have been expected to incorporate uplift details (which, as I've said above, at that stage were a proposal rather than a firm prospect) into the information it provided.

Indeed, if it had, and the proposal didn't then go ahead, or the uplift was significantly smaller than had been assumed, then Royal London could have faced complaints that it was including as yet unconsolidated increases into the projections.

I appreciate that the representative considers that general information about the uplift should at the very least have been provided, but as I've said above, I think that Royal London had met its requirement by sending the policy information in a clear and understandable format to Mr S, and it responded comprehensively to the representative's request for policy information, as was applicable to the policy at that time.

And as with the representative, I do think the proximity of the "appetite mailing" and the letter of authority is relevant, but without, I'm afraid, the assistance which it considers this lends to Mr S's case. I take the opposing view, which is that, if that initial mailing was as indicative of a future uplift as has been argued, then it might reasonably have been expected that Mr S would discuss this information, as fresh as it would have been in his mind, with his representative, as had been recommended by Royal London in the mailing.

And so, for the reasons given above, and whilst I know this will disappoint Mr S, on a fair and reasonable assessment of the available evidence, I don't think the complaint should be upheld.

However, I've noted that Royal London's offer of £1,000 still remains open to Mr S and so I leave it to him to decide whether to accept this.

In closing, as with the investigator, I've noted the further comments relating to Mr S's other policy which contains the GAR and the representative's concerns about the information provided about this, but this will need to be raised with Royal London as a separate matter. If Mr S remains unhappy with that outcome, then he may refer it to this service for review.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 September 2024.

Philip Miller
Ombudsman