

The complaint

Mr and Mrs S' complaint is about a mortgage endowment policy they had with The Royal London Mutual Insurance Society Limited. They are unhappy about the maturity value they received due to how much short of the target value it was. Mr and Mrs S have said they believe Royal London should pay part of the shortfall because the endowment '*was not proven as being fit for service as well as we believe questionable management of the policy.*'

In addition, they have raised that they were unaware of a problem with the policy premium calculated in 1998. They effectively said this meant that the policy was misrepresented to them and supported their thought that the policy had been poorly managed.

The policy was arranged with a different life assurance company, but it is now owned by Royal London, and it has responsibility for this complaint. As such, for ease, I will refer to Royal London throughout.

What happened

Mr and Mrs S took out their policy in 1998 as the repayment vehicle for their mortgage. It was a with-profits mortgage endowment policy with a target of £35,000 over a term of 25 years.

In 2000 the then industry regulator decided that life assurance companies should provide regular updates to mortgage endowment policyholders. This was due to a general downturn in investment performance and to ensure that policyholders were aware of how their policies were performing and the likelihood of them reaching target at maturity. Mr and Mrs S' policy was part of this exercise. Mr and Mrs S were told by the product provider in 2001 and 2003 that there was a significant risk their policy wouldn't reach its target value. The next letter they were sent was in 2005 and thereafter they were told annually that there was a high risk the policy would not reach its target value of £35,000 at the end of the term.

Mr and Mrs S complained to the lender that had sold them the policy that it had been mis-sold because of the risks associated with it. The lender upheld the complaint in 2005 and paid them redress. The redress was calculated following the Regulator's guidance for such cases.

Despite having believed the policy had been mis-sold to them, Mr and Mrs S kept the policy as their mortgage repayment vehicle.

When the premium payable was calculated by Royal London in 1998 it made a mistake. So Mr and Mrs S were paying less than they should have been until 2011. In light of this, Royal London calculated what the additional premiums would have added to the maturity value, had they been paid when they should have been. This sum was added to the maturity value. Royal London explained this to Mr and Mrs S in January 2023 when they questioned what the 'subsidy' that made up part of the maturity value was.

The policy matured in March 2023 and Mr and Mrs S were paid just over £24,500. When they became aware of the size of the shortfall, Mr and Mrs S complained to the lender and Royal London. They wanted each of the businesses to pay part of the shortfall.

Royal London responded to the complaint in letters of 22 April 2023 and 1 September 2023. It didn't uphold the complaint. It explained how the policy worked and that its value was dependent on the growth of the fund it was invested in. That growth could not be guaranteed. Royal London highlighted that the performance of investments had not been what was anticipated it would be when the policy was sold. It also highlighted that it had been sending Mr and Mrs S 'high-risk' warning letters and the latter ones had explained that the impact of poor performance would be greater the closer to the maturity it was, due to the lack of time to recover afterwards.

Royal London also confirmed that it had no responsibility for the sale of the policy and its suitability for Mr and Mrs S. It provided details of the lender's complaints department for them to raise a mis-selling complaint with the lender. As for Mr and Mrs S' recollection that they had been advised not to surrender the policy, Royal London confirmed that it was not authorised to provide financial advice and so could not have advised Mr and Mrs S about what to do with their policy. Royal London explained in the letter of 22 April 2023 that Mr and Mrs S had the right to refer their complaint to this Service, and that they needed to do so within six months of the date of that letter. No new referral rights were given when it commented further in September 2023.

Mr and Mrs S contacted this Service in January 2024 to ask us to consider their complaint. They told us that around 2016/17 they had contacted Royal London and had been advised not to surrender the policy. As such, their ongoing decision to maintain the policy as the repayment vehicle for their mortgage had been Royal London's responsibility.

Mr and Mrs S referred their complaint outside of the six-month window to do so. However, Royal London consented to us considering the complaint, despite it being referred late.

One of our Investigators considered Mr and Mrs S' complaint, but he didn't recommend that it be upheld.

Mr and Mrs S didn't accept the Investigator's conclusions. They remained of the view that it was unfair that they had to deal with the shortfall alone, despite there being three parties involved with the policy. They reiterated their comments about Royal London telling them to keep the policy around 2016/17 and said that they would look for paperwork they believed they had which supported this was its recommendation. No further documentation was provided. Mr and Mrs S also repeated their comments about the performance of the policy and the information they had been given about predicted values and shortfalls. They asked that the complaint be referred to an Ombudsman.

Our Investigator confirmed to Mr and Mrs S that he had not questioned that a conversation had occurred in 2016/17 with Royal London. Rather that he was not persuaded that even if their understanding of the conversation was what they had described, that would have overridden the numerous letters they'd received telling them that their policy was underperforming and was highly unlikely to meet its target value.

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.

Before I consider the merits of Mr and Mrs S' complaint against Royal London, I would confirm that I can't consider the recommendation they received to take out the policy against Royal London. I can consider the factual information they were provided by Royal London, e.g. the illustration as its content was produced by Royal London. However, that does not make it responsible for the suitability of the policy for Mr and Mrs S' circumstances in 1998.

The policy in question here is a mortgage endowment invested in a unitised with-profits fund. This meant that at maturity the policy would pay out the value of the units allocated to it, which would have included the annual bonuses that had been paid over the term. To that figure it is also possible that a final or terminal bonus would be added.

As Royal London has explained not all growth in the fund each year is allocated to policies as bonuses. Some growth is held back to cater for years where there is little or no growth on the fund. So when a policy matures, its value from the units held may not be a true reflection of the value of its share of the fund. This is where a final or terminal bonus comes in and pays that additional amount. Royal London will take into account such issues as the bonuses already declared, any benefits that have to be paid under policies, previous investment returns and what returns may be possible in future before deciding the level of bonus to be applied. Final bonus rates are reviewed regularly, normally at least every six months, and sometimes more often if there are significant events that have affected financial markets, such as the Covid-19 pandemic or the Ukraine invasion.

Unfortunately for Mr and Mrs S the returns for such policies have been much lower than when they took out their policy in 1998. This has led to a reduction in the annual bonuses applied and the terminal bonus rates. Future bonuses levels were never guaranteed and there was no absolute requirement to pay any level of bonus.

I do appreciate why Mr and Mrs S have raised these concerns and it is very unfortunate that performance of the fund has fallen so much compared to when the policy was taken out. However, that isn't, in itself, evidence of mismanagement or Royal London necessarily acting incorrectly.

As Mr and Mrs S have highlighted, they and Royal London entered into a contract. Mr and Mrs S agreed to pay a monthly premium and Royal London agreed to provide life cover during the term. It also agreed to provide an investment which, if anticipated growth rates were met, would reach a "target" amount. This is where the problem has arisen. The hoped-for growth rates haven't been reached - far from it - but they were never guaranteed. A shortfall was always possible. Of course, no-one thought that would happen in 1998, but it doesn't change the nature of the contract. This is not an issue isolated to Royal London - most businesses and investment classes suffered the same issues over the 25-year term of Mr and Mrs S' policy.

Mr and Mrs S paid their premium each month and Royal London had to invest the premium, taking costs as and when required from the fund. As far as I can see that is exactly what it did. Growth over the policy term has turned the premiums paid into a maturity value which unfortunately was less than hoped for.

Mr and Mrs S were warned about the progress of the policy. It was made clear that the policy was not performing as expected and was unlikely to reach its target value, so the shortfall was unlikely to have been a surprise when the policy came to mature in 2023. They were also encouraged to take action to deal with this situation from as early as 2001.

Being able to say that, looking back, different investment decisions would have been more profitable than the ones actually taken is a statement of the obvious. To make judgments like that, however, would be to use hindsight. I cannot use hindsight in making a decision. A very

large number of decisions over a 25-year period relating to investments, costs and charges have been made by the investment managers at Royal London. Those decisions were made in a regulated environment with layers of governance, independent scrutiny (such as by actuaries and the Regulator) and oversight. Some of the factors influencing returns were outside its control. Even if I were to try and “drill down” to individual decisions it is very unlikely that I could point to an individual decision or set of decisions which were, without using hindsight, so manifestly bad or wrong that redress should be paid. It’s unlikely to have been in the interests of the fund managers to perform badly and I am sure Royal London would have wanted the fund to do as well as possible. I haven’t seen anything to persuade me that Royal London mismanaged the fund or acted negligently.

I am afraid the simple fact here is that Mr and Mrs S invested in an investment product which hasn’t performed as well as hoped. I have seen no grounds for upholding this aspect of the complaint.

Mr and Mrs S have highlighted that Royal London broke down the anticipated value of the policy in September 2022 and included an item labelled ‘subsidy’. Royal London has explained what this is and given what happened, calculating the value of the policy assuming the correct premium was paid is what I would have expected it to do. The fact that this ‘subsidy’ is only mentioned in that document, and wasn’t in previous and subsequent ones, was almost guaranteed to raise questions. However, I don’t think there is anything wrong in what Royal London did in most of its correspondence – it expressed the unit holding of the policy has a whole, rather than splitting it down into the units Mr and Mrs S paid for and those Royal London paid for to compensate for its initial error.

Mr and Mrs S have said that in around 2016/17 when they were asking questions about the final bonus payable on the policy, Royal London recommended that they maintain their policy to maturity. In order to uphold this complaint point I must be satisfied that their account is more likely than that of Royal London. Royal London has chosen not to be authorised by the Regulator to provide financial advice. Telling Mr and Mrs S to keep their policy to maturity would constitute financial advice, which Royal London quite simply could not give them. While I accept that Royal London may have said something that Mr and Mrs S interpreted as advice to keep their policy, I am not persuaded that in the circumstances it is more likely that it did give such advice. As such, I can’t uphold this part of their complaint.

My final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 9 September 2024.

Derry Baxter

Ombudsman