

The complaint

Mr N complains that The Royal London Mutual Insurance Society Limited (Royal London) failed to provide him with the opt out information he needed so that he could opt out of his company pension scheme. And then refused to refund his pension contributions. He feels that this has caused him a financial loss.

What happened

Mr N worked for an employer I'll refer to as employer V. I understand that he joined employer V in January 2021. And that his employer auto-enrolled him within its company pension scheme on 12 January 2021.

I understand that Royal London wrote to Mr N on 7 May 2021. It said that shortly after Mr N's enrolment it issued documentation – a "Postponement Pack" - to the address employer V had supplied to it for Mr N. It said it later sent a "Joining Pack" to this address in April 2021, when Mr N was due to make his first contribution into the plan. Royal London said that the Joining Pack stated that the opt out window was between 12 April 2021 and 11 May 2021.

Royal London said that it received notification through returned mail on 23 April 2021 that Mr N was no longer at this address. It said the mail that was returned was the Joining Pack document. It said it emailed Mr N's employer to let it know about the returned mail. And told it that it was mandatory for it to update his address on the company dashboard so that Royal London could issue any future correspondence to Mr N.

Royal London said it had also asked Mr N's employer to forward to him any "*necessary Automatic Enrolment communications*". It said employer V had access to these documents on its company dashboard. As at the date of its email – 7 May 2021 - Royal London said employer V had yet to update Mr N's address.

Royal London explained that The Pension Regulator considered that it was an employer's duty to ensure that all information (including address details) are kept up to date to ensure efficient and timely communication of documentation and changes that may affect a member's plan. It therefore felt that employer V was responsible for the fact that Mr N hadn't received the documentation that would've made him aware of the opt out period.

Royal London issued an annual statement to Mr N on 16 May 2023. This covered the period between 1 April 2022 and 31 March 2023. The value of the pension as at 31 March 2023 was shown as £4,013.62. The statement said that Mr N's employer's contributions totalled £4,034.25. And that total plan growth after charges had been -£20.63

The statement included a paragraph on "*Salary Exchange*". This said:

"You have an agreement with your employer to make your contributions via salary exchange. This means you give up part of your salary for a non-cash benefit, in this case an additional employer pension contribution. As your salary is reduced, you pay less tax and National Insurance Contributions. Contributions made by salary exchange will be shown as employer contributions on your pension statement."

I understand that Mr N left employer V in January 2024.

I understand that Mr N asked Royal London to cash in his pension in March 2024.

Royal London replied to Mr N in April 2024. It said that Mr N's opt out window had run from 12 April 2021 to 11 May 2021. As this had passed, and as he wasn't over age 55, he was unable to get a refund of his contributions.

Mr N complained to Royal London in April 2024. He said he'd never been told about his opt out options. He said he'd never intended to stay in the UK and would've opted out immediately if he'd known he could. He wanted a full refund of his contributions.

Royal London issued its final response to the complaint in May 2024. It still didn't think it'd done anything wrong. It provided some background into automatic enrolment. And explained that it hadn't been its decision to enrol Mr N into the employer V pension. It said it was simply the provider of the pension product employer V had chosen. Royal London therefore suggested that if Mr N was still unhappy that he'd been auto-enrolled, he should take this up with employer V.

Mr N was unhappy with Royal London's response. So he brought his complaint to this service in June 2024. He said he's not a UK citizen and therefore lacks familiarity with the intricacies of the pension system. He felt that Royal London had failed to provide him with adequate information. And should've supported him given his lack of familiarity with the UK pension system.

Mr N said he'd been enrolled into a Royal London pension through employer V, without his explicit consent. And that he'd not been made aware of the opt-out option in a timely manner.

Mr N acknowledged that it's not possible for him to encash his pension as he's not over age 55. But said he never willingly opted into his pension scheme. He said he wasn't provided with clear information about the opt-out period, which he now understood to be one month. He said all of this had been made worse because the address Royal London held for him wasn't correct. And this had led to him missing important communications.

Mr N said that Royal London's failure to properly inform him about his pension scheme had led to a significant financial loss for him. He said that because of the incorrect address Royal London held for him and miscommunications, he wasn't aware that the money was being deducted.

Mr N would like Royal London to return the money in his pension back to him. He'd also like compensation for the stress and inconvenience its failure to communicate properly and its lack of support has caused him.

Our investigator considered the complaint, but didn't think that Royal London had done anything wrong. She explained that it would've employer V's responsibility to inform Mr N about the company pension and to provide Royal London with accurate information about him. She said that Royal London hadn't made an error when it'd set Mr N's pension up.

Our investigator also felt that Royal London had provided evidence that it tried to send the welcome documents to Mr N. She acknowledged that he hadn't received them. But felt that this didn't change the fact that once the opt out period had expired, Mr N's pension would be subject to UK pension laws which meant that he couldn't access his pension benefits unless he was over age 55. She said that Royal London couldn't make any exceptions for Mr N, despite the valid points he'd made.

Mr N didn't agree with our investigator. He made the following points:

- He felt that there'd been significant miscommunication and lack of transparency throughout this process. He didn't think it was acceptable that he hadn't been given information about his enrolment or given adequate notice of his right to opt out.
- He felt that as the Joining Pack had been returned to Royal London as undeliverable it had been clear that the information he'd needed hadn't been communicated. He didn't think Royal London's attempt to reach out to employer V for updated contact details meant that it didn't have responsibility to ensure that he, as its policyholder, was adequately informed. He said that this failure had led to his lack of awareness about the opt-out period and the subsequent contributions being made without his informed consent.
- He didn't agree that his contributions couldn't be returned under the law, as he felt he'd suffered from malpractice. He felt that as he'd not been told about the opt-out period, it must still be possible. He wanted Royal London to consider a refund of his contributions due to the exceptional circumstances and the apparent communication failures.

Our investigator considered Mr N's points, but they didn't change her view.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it, for largely the same reasons as our investigator. I know this will be disappointing for Mr N. I'll explain the reasons for my decision.

The crux of Mr N's complaint is that Royal London failed to send him important information about his opt out rights; that this failure led to contributions being taken without his consent; and that this led to the money he'd inadvertently built up in a UK-pension scheme being tied up. I've considered each one of these points to see if I think Royal London did anything wrong.

Did Royal London fail to send Mr N important information about his opt out rights?

Mr N said there'd been significant miscommunication and lack of transparency throughout the process. And that it was unacceptable that he'd not been informed about his enrolment or his opt out rights.

The evidence shows that Royal London sent Mr N information about his opt out rights on 12 April 2021. And that the letter explained that the opt out window was between 12 April 2021 and 11 May 2021. Subsequently, Royal London was notified through returned mail on 23 April 2021 that Mr N was no longer at the address it'd written to.

Given the importance of that letter, I would've expected Royal London to take action when it was returned. And the evidence shows that it did. Royal London then emailed employer V to let it know about the returned mail. And told it that it must update Mr N's address on the company dashboard. It also told employer V to forward to him any "*necessary Automatic Enrolment communications*". The evidence shows that on 7 May 2021 – almost at the end of the opt out window – employer V had yet to update Mr N's address.

Based on the evidence, I'm satisfied that Royal London took reasonable steps to ensure that Mr N was informed about his opt out rights. I say this because when it received the returned mail, it informed employer V and told it what it must do to ensure that Mr N received the information he needed. I also say this because it was employer V's responsibility under UK pension regulation to inform Mr N about his pension and to provide Royal London with accurate information about him. It wasn't Royal London's responsibility. Therefore I can't reasonably hold Royal London responsible for failing to send Mr N important information about his opt out rights.

As I've decided that Royal London wasn't responsible for the failure to send Mr N his opt out rights, I can't reasonably hold it responsible for his contributions being taken without his consent or knowledge.

In any event, given Mr N's contributions were deducted on a salary exchange basis, I consider that it's more likely than not that he had to complete paperwork with employer V to agree to his contributions being deducted in that way. So I think it's more likely than not that Mr N did complete paperwork agreeing to have contributions deducted. Having said that, UK pensions are complex, and it's possible that with a non-UK background, Mr N wasn't clear what the salary exchange paperwork was for.

I next considered whether Royal London should try to return Mr N's contributions, given no one provided him with his opt out rights in time.

Should Royal London refund Mr N's pension to him?

Mr N felt that there must be a way to return his contributions to him. While he acknowledged that his contributions couldn't be returned to him under UK pension law, he felt that as he'd not been told about the opt-out period in time, a refund should still be possible due to the exceptional circumstances.

As Royal London has already explained, under UK pension law, it's not permitted to return pension contributions outside of specified opt out windows unless the policyholder is over age 55, and therefore eligible to access his pension.

Although I appreciate that Mr N wasn't given his opt out rights in time for him to exercise them, I explained earlier in my decision why I was satisfied this wasn't Royal London's fault. In any event, Royal London has no way to return his pension contributions to him at the present time, as it must comply with UK pension law. Therefore I can't reasonably require it to refund the contributions.

As I've not found that Royal London did anything wrong, I can't reasonably uphold the complaint.

My final decision

For the reasons explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 10 October 2024.

Jo Occleshaw
Ombudsman