

## The complaint

Mr F says Royal London Mutual Insurance Society Limited gave him incorrect information about his tax liability when he was exploring cashing in a 'small pot' personal pension.

## What happened

There's broad agreement between the parties about what happened in this case.

On 13 July 2023 Mr F called Royal London to enquire about cashing in a small pension. Our Investigator transcribed the relevant elements of the conversation which gave rise to his later complaint:

*Mr F - "...I'm considering taking it as cash to help pay a tax bill – can you confirm if that's possible and also what the amount after tax will be?"*

*Agent- "You're looking to potentially cash in the full funds and just wondering what the value would be if you were to do that?"*

*Mr F- "I've a supplementary question. I assume 25% is tax free and I'll pay tax on the remaining 75%. Are you able to tell me what it would actually be worth?"*

*Agent – "So the tax is worked out at basic rate, which is currently at 20%. So the tax is at 20%. I'll get you the exact figures now."*

The agent said Royal London needed to send Mr F an information pack and following that it would send him an illustration of the figures. Within the illustration would be a link to an online form for him to complete and the funds would be released within 10 working days.

The agent read a script about how the withdrawal affected Mr F's money purchase annual allowance and lifetime allowance.

*Agent - "When you take a pension under the small pot rules first 25% is tax free then 75% is taxed at basic rate."*

*Mr F – "That's great. So basically I'm just gonna pay 20% on this money?"*

*Agent - "yeah"*

*Mr F – "...and it doesn't affect me doing anything else?"*

*Agent - "doesn't affect you doing anything no 'cos it doesn't trigger that MPAA or lifetime allowance either"*

The agent provided the figures - value £7,901.60 – tax £1,185.20, Net payment £6,716.40 - "so that's how much you should get after tax".

*Mr F – "I thought I got 25% tax free and then would pay 40% on the rest. So I thought it would be worth £5,600 so that's very good news if that's the way you guys work it out".*

Royal London followed up the call by sending Mr F a benefits options pack; a risks & rewards leaflet; a time to choose booklet and a Pensionwise leaflet. These included an illustration of his benefits and an application form. The cover email message Mr F received from Royal London also said:

*“When you take a pension under the Small Pot rules, the first 25% is tax free, and the remaining 75% is taxed at the Basic Rate (currently 20%).”*

Mr F proceeded to access the funds from his pension. However, in August 2024 he received a tax bill from HMRC for £1,189. As this wasn't something he had budgeted for and was unaware that it was due, he complained that Royal London should've been clearer about his tax liability. He feels its agents should've qualified that 75% of the pension would be taxed at source at 20% and additional tax may be due depending on his marginal rate of income tax.

Royal London responded to Mr F noting that it didn't provide advice on tax matters and that it had correctly applied the 20% tax deduction in line with the small pot rules. Mr F wasn't satisfied and he brought his case to this Service.

An Investigator considered Mr F's case. In summary, she concluded that Royal London's agent had provided him with incorrect or misleading information. But she also found that he should take some responsibility for what had happened because the information he was sent subsequent to the call made clear that the tax he'd pay would depend on his personal circumstances. As she thought the case was finely balanced, she concluded it would be fair for Royal London to pay half of Mr F's tax liability.

Royal London responded in the following terms:

*“Further to our recent emails on this case I accept the view for Royal London to pay 50% of the tax charge £594.54, we accept this view on the basis of the telephone conversation you reference where the tax position could have been clearer, however I do feel that our literature is clear. In the Risk and Rewards section provided, it does state:*

*'How will my income be taxed?*

*The first 25% of each cash payment will be paid tax-free. You may need to pay income tax on the remaining 75%. If we don't have an up to date tax code for you, we may need to initially take off too much (or too little) tax from your cash payment. You'll need to reclaim - or pay the difference - directly with HMRC.”*

On the other hand Mr F didn't think the Investigator's recommendation went far enough. He said:

*“...I believe that Royal London should put me in the position they told me I would be in: that is, without any further tax liability for this transaction, for the following reasons:*

*My call to Royal London was a purely 'fact-finding mission', as I really didn't know what my position would be with regard to taxation and tax-free allowances, as evidenced by the number of naive, uninformed questions I asked on the call. I was unequivocally - and repeatedly - told that 25% was tax-free and that I would pay 20% tax on the remainder, which would be paid directly to HMRC on my behalf, leaving the sum I received as mine to do with as I wished.*

*When I told their call handler that was "very good news", as I thought I might have had to pay 40% tax, he failed to react in any way. This suggests to me that he believed what he told me: that 20% was the only correct deduction. I had no reason to disbelieve him, and proceeded to take the money on that basis, and in absolute good faith.*

*“...That being the case, I would like Royal London to take full responsibility for their clear failings, and pay the entire outstanding amount to HMRC.”*

As both parties couldn't agree with the Investigator's view, Mr F's case has been passed to me to review afresh and provide a decision.

## 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr F's complaint, but not to the extent he'd like. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Royal London for Mr F. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr F's case.

It's not in dispute that Royal London handled Mr F's enquiry in July 2023 badly. Although when making the enquiry about accessing his pension funds he thought he might have to pay marginal tax of 40%, I've no doubt after his call to the firm he was left with the impression he would only have to pay 20%.

Further, I note this impression would've been reinforced by the cover message Mr F received from Royal London in its email.

On the other hand, Mr F was told at the end of the phone call to read the information Royal London would send him very carefully before proceeding. And this was a message reinforced in the covering email he received, which noted it couldn't give him financial advice and that it strongly recommended he took financial advice before accessing his pension savings.

The first of the documents sent to Mr F included information explaining his retirement options. In the section 'Pension Plan Risk Warnings' it stated:

*"Tax – Whilst some of your pension savings can normally be taken tax-free, the rest are taxed. You could pay more tax than you expected if you take out large amounts in a single tax year on top of any other income you have."*

In the section: 'Your Taxable Bits' there was a clear diagram should income tax bands for different levels of income. In the accompanying narrative it stated:

*"...The table also highlights how taking large cash sums could push you into a higher rate tax bracket – meaning you'd pay more in tax."*

In the section "Take it all as Cash" it stated:

*"It'd all be paid to you as a cash lump sum, minus any tax you'd need to pay. You should be aware that a large lump sum would likely be paid at an emergency rate – though you would be able to claim some of this back..."*

*"...Taking large sums from your retirement savings could push you into a higher tax-bracket..."*

In the "Your personal pension information" document it stated:

*"Alternatively, you can usually take up to three retirement savings plans with a value of £10,000 or less (a small pot lump sum) as cash, regardless of any other retirement savings you have. 25% of the amount you take will be tax-free and the rest will be taxed as income."*

The declaration on the "Your chosen retirement option" document stated:

*"You understand that only 25 % of the cash lump sum is paid to you tax-free, the rest is taxed as earned income."*

*"If the value of your policy is less than £10,000, and you have not taken any previous partial payments, you may be able to take it under the Small Pot rules. You are able to take up to three small pot payments in a lifetime from non-occupational schemes. When you take a pension under the Small Pot rules, the first 25% is tax free, and the remaining 75% is taxed at the Basic Rate (currently 20%). As a result of this, the figure which you receive may differ from the figure on the Benefit Options Pack and the Key Features Illustration attached."*

The problem for Royal London in all this is that, as it accepts, its agent gave misleading information to Mr F about his tax liability. Its covering email reinforced what he'd been told and some of the documentation contained similarly unclear statements. And I think he perhaps reasonably formed the impression that taxation of small pots were treated quite differently for PAYE purposes.

The problem for Mr F is that he was advised he would need to read all the information he was sent. And there was some very clear information provided that the pension funds he was accessing would be treated as income for tax purposes. Arguably this should've alerted him to the fact the tax he would need to pay would depend on his personal circumstances. And at the very least it might be thought this should've triggered him to clarify again what his tax liability would be.

So, I can understand why the Investigator attributed some responsibility for what happened to both Royal London and Mr F. I think that was fair.

I've gone on to consider what would've happened had Royal London provided Mr F with the right information in the phone call he had with its agent.

I note Mr F seems to have approached Royal London about taking funds from his pension with the expectation he'd need to pay a marginal rate of tax of 40% (after allowing for tax-free cash of 25%). So there's an argument it was likely his intention to proceed with the transaction in any case.

That said when Mr F initially spoke to the Investigator and she asked him about his decision making had Royal London provided a better service he told her:

*“My initial intention was to pay a tax bill, which turned out not to be necessary, as all of my self-employed tax is now settled. Instead, my wife and I both took some small pots and money out of Premium Bonds to buy our camper.”*

*“But had I known I would be taxed at 40%, I suspect I would have left the Royal London money where it was or put it into my personal pension, and either taken an extra £6000 out of premium bonds or bought a slightly cheaper camper.”*

Further, in responding to the Investigator’s view about what he’d have done if Royal London had given him proper information. He told her:

*“I can’t say with 100% accuracy what decision we would have taken at the time regarding our camper van purchase, had I been given the correct information by Royal London. However, I can state with 100% certainty that I would never have left myself open to an unexpected tax bill. I would have either left the small pot where it was, transferred it into my private pension, or had the complete 40% tax bill paid at the time, with the former options seeming more likely than the latter.”*

Mr F accepts he can’t be certain about what would’ve happened had he received effective information from Royal London’s agent. But I’m persuaded he and his wife had sufficient flexibility to have arrived at a different decision with regard to taking his small pot pension funds. And based on the information I’ve seen I think Mr F would’ve done so.

Of course another uncertainty is that we can’t know what tax liability Mr F’s pension funds would’ve attracted had they been left in a plan. They would’ve likely incurred some liability, but it’s impossible to know with certainty the timing, financial circumstances or indeed the applicable tax rates at such a notional future time.

### **Putting things right**

I’m upholding Mr F’s complaint. Usually I’d require a firm to return him to the position he’d have been in now, or as close to that as reasonably possible, had it not been for Royal London Mutual Insurance Society Limited’s failings. But arriving at fair redress is sometimes not a scientific matter. And that’s the case here where I’ve concluded both parties have some responsibility for what happened. And so the proposed redress is necessarily pragmatic.

I’ve decided that Royal London Mutual Insurance Society Limited should honour its acceptance of the Investigator’s award, that is it should meet 50% of the additional tax charge Mr F incurred as a result of its failure to give him clear information during the phone call he had with its agent. I understand this equates to £595.

When I’m considering a complaint like Mr F’s I think about whether it’s fair to award compensation for distress and inconvenience. This isn’t intended to fine or punish a business – which is the job of the regulator. But when something’s gone wrong, recognition of the emotional and practical impact can make a real difference.

We’re all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm’s actions was greater than just a minor inconvenience or upset.

I’ve concluded that given the nuanced outcome of Mr F’s complaint, it wouldn’t be appropriate or fair for me to award any further compensation in this case.

**My final decision**

For the reasons I've set out, I'm upholding Mr F's complaint. I now require Royal London Mutual Insurance Society Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 April 2025.

Kevin Williamson

**Ombudsman**