

The complaint

Mr W complains that he was provided incorrect information from The Royal London Mutual Insurance Society Limited about the exit charge for his Group Personal Pension ('GPP'). He says that mistake caused him to decide not to transfer his pension to a different product, which caused him a potential loss in investment performance.

What happened

In 2005 Mr W became a member of his employer sponsored GPP through Royal London. This product was the Talisman GPP version 2. The original terms of the policy included an exit charge for transferring the pension fund.

In April 2014 Mr W emailed Royal London asking about how he could challenge the application of the exit charge. His fund value was around £37,000 and the exit charge was around £8,000.

Royal London responded to explain that the exit charge shown on his statement was correct. In the course of further correspondence Royal London explained the formula that the exit charge was calculated by.

Royal London explain that the terms of the Talisman GPP were modified during 2016 which affected the exit charge. This change in terms meant that the charge would not apply to members who had left the relevant employment prior to the employer terminating the scheme. As Mr W's member contributions stopped in December 2006, but the scheme continued until 2013, the exit charge would not have applied to him after these changes.

In March 2017 Mr W emailed Royal London again asking when his transfer charge would end. Mr W chased an answer but does not appear to have been responded to. Royal London's annual statements to Mr W continued to show the fund value and the potentially reduced transfer value.

On 2 December 2023 Mr W contacted Royal London asking about the historic fund performance of his GPP and querying whether his understanding that the exit charge would stop when he reached age 55 was correct.

Royal London replied to Mr W on 5 January 2024 and confirmed to him that exit charges did not apply to his policy and he was already free to transfer his fund value which was around £56,000 at that time.

Mr W complained to Royal London about being misinformed about the existence of charges. He said that he would have transferred back in 2014 if he'd known there was no exit charge.

Royal London responded to Mr W's complaint on 26 April 2024. It told him that the exit charge had still been applicable and had only ceased when he reached age 55, as he had understood. It apologised for the inconvenience and delay he'd suffered and offered to pay him £300 in compensation.

Mr W didn't accept Royal London's answer and requested further information. Royal London responded to Mr W again on 5 June 2024 with a different explanation. In this correspondence it explained that Mr W's exit charge had actually ceased to apply in February 2016 when the policy terms and conditions were changed. It accepted that Mr W would therefore have likely transferred this GPP if he'd known that at the time. So offered to calculate his loss based on its assumption that it would have transferred to the same pension scheme that he'd transferred another pension to in December 2015. It asked for details of the pension so that it could compare the performance.

Mr W was not satisfied with Royal London's proposal and asked our service to resolve his complaint. This case was looked at by two of our investigators who were ultimately unable to resolve the question of what Royal London needed to do to put things right. So this case was referred for an ombudsman's decision.

What I said in my Provisional Decision:

I issued a provisional decision to explain why I thought Mr W's complaint should be upheld and what I thought Royal London should do to put things right. In summary, the reasons I gave for my provisional decision were:

- The GPP had been set up with exit charges.
- The information that Royal London gave Mr W in 2014 was likely correct as the rules applicable to the exit penalty didn't change until 2016.
- In 2016 the exit penalty would have ceased to apply to Mr W, but there was no evidence that Mr W had ever been informed,
- When Mr W asked about the exit charge in 2017 Royal London failed to respond to him.
- Mr W's correspondence with Royal London persuaded me that he would likely have transferred this GPP when the exit charges ceased to apply if he'd been correctly informed of that.
- I agreed with Royal London's suggestion that it should compensate him from February 2016 when the exit charge stopped. But didn't agree that had to be based on a transfer to the SIPP it identified.
- I was not convinced that there was clear evidence of where Mr W would have transferred to or how he would have invested. So I suggested that it would be fair and reasonable to use an index to calculate a fair value for his pension if he'd transferred earlier, in order to determine if that would have been more than the actual value of his GPP.

Responses to my Provisional Decision:

Royal London agreed with my provisional decision and was prepared to put things right in the way I had set out.

Mr W did not agree with the index that I had chosen. He asked me to consider asking Royal London to use an index with a higher amount of volatility and that had performed better over the period in question.

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.

There is little dispute with the findings that I reached in my provisional decision. My final decision therefore is that Mr W's complaint should be upheld for the same reasons and that I

reiterate below. The only remaining issue of disagreement with my provisional decision is Mr W's disagreement with how I suggested things should be put right. I will explain below why I haven't been persuaded to change my mind.

There is no longer a dispute about the fact that this GPP initially had an exit charge when Mr W started his policy. Mr W seemed to understand that when he challenged it in 2014. The answer that he received provided him with the calculation and I've seen no evidence that would suggest there was anything wrong with the information Mr W received then. Put simply, the exit charge would have been applied if he'd transferred his GPP to another provider at that time. But I think that Mr W's query was clear evidence of his intention to have moved the pension but for that exit charge. It is not evidence of where he would have transferred to at that time, however.

Royal London have provided us with evidence that the policy terms were updated in 2016. This is in the form of a document entitled "Talisman Group Pension Plan / Continuation Plan Improvement". It contains a section about exit charges if the member leaves the service of their employer. That explained that no exit charge would be applied in exactly the circumstances that Mr W was in. It means that the exit charges ceased when this policy change was applied.

Royal London have not provided any evidence that Mr W was sent an update or copy of this in 2016 when it was introduced. And I would have expected it to have done so as it contained important changes to his GPP. It's evident that Mr W contacted Royal London in 2017 about the exit charges, so was still unaware about the change at that time. In the absence of information from Royal London to show that it sent this information to Mr W, the evidence overall persuades me that it most likely wasn't sent.

The document I have referred to is dated September 2016. This was the published date so not necessarily the date that the change to the terms was enacted. But it doesn't include that date. I have asked Royal London for evidence of when the terms changed in order to determine when Mr W could have transferred without the exit charge. It explains that it would have been February 2016 in line with his selected retirement age. And it offered to calculate a loss from this date. In the absence of evidence to the contrary I am inclined to accept Royal London's explanation of this. I think that this date would be a fair point at which to assume Mr W would have moved his pension from the GPP – as Royal London suggested.

Royal London explain that it accepts that Mr W would most likely have transferred because he had done just that with another product that he had with it. In seeking to offer Mr W a resolution Royal London assumed that Mr W would have also transferred this GPP to the same pension which was a self-invested personal pension. On the face of it this is not obviously unfair and I recognise Royal London's effort to put this right in what it thought was a sensible way. Of relevance here though is that it never asked Mr W, at any time in this case, if that is where he would likely have transferred this GPP.

Mr W has explained to us that he has different pensions, and that he didn't intend to transfer this GPP to that SIPP. He has provided evidence of another pension that was another defined contribution occupational pension. He has shown statements going back to 30 January 2014. So I am satisfied that this pension was likely a viable option to receive the transfer value in February 2016. The SIPP that had received the other transfer similarly appears to have been a viable option as Royal London identified.

Mr W has provided evidence of the performance in his Zurich pension as being superior to his Royal London pension. But has not provided evidence of the performance of his SIPP or other pensions. In response to my request for information about the performance of his SIPP, instead of providing evidence of the way it had been invested, he explained as follows:

“This is one of several pension funds I hold, each with a different mix of assets. [the SIPP] has a higher mix of cash, while others are heavier on funds and equities. I spread my risk and growth profile across these various funds.”

When he raised this complaint, Mr W did not give any indication of what he would have done with this GPP had he been able to transfer it without penalty. His original complaint suggested potential losses based on the performance of high-risk equities that, with hindsight, had performed very well in the period in question. But there was no evidence that Mr W would have made those investment choices. Or that the destination for this GPP would have been his Zurich pension and not one of his other funds. But I agree that he similarly may not have invested in the SIPP. It appears more likely that, overall he was taking a more balanced risk across his whole range of investments. So a comparable index for a medium overall attitude to risk still seems to be a more fair and reasonable way to assess the potential loss he may have suffered, than selecting the highest risk of his pension products, that Mr W now knows had high performance.

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr W would have transferred his Talisman GPP and invested it differently. As I've set out above, I don't think it's now possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must Royal London do?

To compensate Mr W fairly, Royal London must:

- Compare the performance of Mr W's Talisman GPP with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable.

If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- Royal London should also add potential investment loss on the compensation from the 'end date' until the date of my final decision using the performance of the Scottish Widows pension that received the transfer value of the Talisman GPP. Mr W has provided statements that show that the Scottish Widows pension is invested in 'SW BlackRock 60/40 Global Equity Index CS1'.
- If there is a loss, Royal London should pay into Mr W's Scottish Widows pension (which received the transfer) to increase its value by the amount of the compensation and any investment loss. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Royal London is unable to pay the compensation into Mr W's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount - it isn't a

payment of tax to HMRC, so Mr W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr W £450 for the distress and inconvenience he was caused in failing to correctly inform him of the updated condition of his policy. This award reflects the fact that the opportunity to correct this misinformation was further missed when Mr W made enquiries in 2017. And then after his complaint he received incorrect responses before eventually getting to the bottom of the issues.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Talisman GPP	No longer in force	FTSE UK Private Investors Income Total Return Index	Date GPP could have transferred without exit fee	Date Talisman GPP was transferred

Actual value

This means the actual amount paid from the Talisman GPP at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr W wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr W's circumstances and risk attitude.

Royal London must provide Mr W with its loss calculations in a clear format.

If payment of compensation is not made within 28 days of Royal London receiving Mr W's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Royal London deducts income tax from the interest, it should tell Mr W how much has been taken off. Royal London should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr W's complaint. The Royal London Mutual Insurance Society Limited should compensate Mr W in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 May 2025.

Gary Lane
Ombudsman