

The complaint

Mr Y complains that The Royal London Mutual Insurance Society Limited ('RL') failed to give him the information he requested to enable him to make an informed decision about whether to take the benefits from his Section 226 Retirement Annuity Contract he held with them.

What happened

Mr Y held a Section 226 Retirement Annuity Contract (RAC) written as a deferred annuity that was taken out in 1988 with a firm that was subsequently acquired by RL. The RAC was made up of three elements, a guaranteed basic annuity, annual bonuses and a terminal or final bonus, the latter of which wasn't guaranteed and could be changed at any time.

In February 2024, RL wrote to Mr Y, explaining that with the addition of annual bonuses, the RAC would provide a guaranteed annuity of £1,667.12 paid yearly in arrears from Mr Y's 65th birthday in March 2024. They explained that a final bonus could also be added which could amount to a further £1,144, providing an annual income of £2,811 at that particular time.

As part of RL's communication strategy, ahead of Mr Y's 65th birthday, they contacted him to discuss his objectives and how he may wish to take his benefits. That's because, whilst Mr Y's plan was held with RL, he didn't have to take his annuity with them if an alternate provider could offer a higher income than them. In addition, had he wished, Mr Y could also retain the RAC and defer the annuity until his 75th birthday. After completing an initial telephone appointment with RL, Mr Y raised a number of queries about his existing RAC. Mr Y wanted to understand what optional bonuses RL had applied to policies such as his in the previous five years, so he could make an informed decision about whether to defer payment of his pension for another two years.

A further meeting between RL and Mr Y was undertaken on 17 May 2024 and an application pack for an annuity with a different provider was issued. The income quotation had an expiry date of 30 June 2024, which after Mr Y had completed and signed was received back by RL on 26 June 2024. As Mr Y's fund value had expired, RL had to requote the annuity and the application was submitted to the new provider, who then submitted an Origo request to move the monies to them on 16 July 2024. After a number of queries were addressed, Mr Y's retirement claim was paid on 2 August 2024.

Shortly afterwards, Mr Y decided to formally complain to RL. In summary, he said that he was unhappy RL had failed to provide details of the past performance that he'd asked for. Mr Y said that without that information, he'd not been able to make an informed decision about his options and felt forced into accepting the annuity to preserve its value, rather than deferring – that's despite him still working and being subject to 45% income tax.

After reviewing Mr Y's complaint, RL concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they'd followed their correct process in helping ensure Mr Y was provided with the right information to base his decision making on. RL also said that whilst Mr Y raised a number of additional questions with their retirement team, they

were satisfied those questions were answered sufficiently enough to enable him to make an informed decision.

Mr Y was unhappy with RL's response, so he referred his complaint to this service. In summary, he said that he didn't think RL had provided the information he'd asked for and as a consequence, he'd had to take his pension sooner than he'd have liked, rather than potentially deferring it.

The complaint was then considered by one of our Investigators. He concluded that RL hadn't treated Mr Y unfairly and that's because he felt that he couldn't reasonably conclude that even if Mr Y had received the information that he'd asked for from RL, he on balance would not have done anything differently to what he did.

Mr Y, however, disagreed with our Investigator's findings and asked the Investigator to pass the case to an Ombudsman for a decision.

After carefully considering matters, I explained that I was issuing a provisional decision on this case as whilst I was minded to broadly agree with our Investigator's initial view, I wanted to add wider reasoning and also ask Royal London to take some action.

What I said in my provisional decision:

I have summarised this complaint in less detail than Mr Y has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr Y and RL in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, whilst I'm planning on upholding Mr Y's complaint, I'm not doing so for the reasons he's asked - I'll explain why below.

The crux of Mr Y's complaint is that he wanted to understand what final bonuses RL had applied to policies such as his in the previous five years – and there doesn't seem to be any dispute that Mr Y asked RL for this information during their telephone discussions. Mr Y says that he's currently a 45% taxpayer but at age 67, that'll likely not be the case, so he wanted to make an informed decision about whether to defer payment of his pension for another two years. Mr Y says that because he didn't receive the final bonus information that he needed prior to RL's decision deadline, he had to take the pension using the open market option to preserve its value. Having carefully reviewed all the evidence presented to me, whilst RL say that they understood "the final bonus rates information had already been shared with the customer", I've not seen any evidence that that's the case. It would therefore seem that Mr Y had to base his decision purely on the information that RL had already provided.

Whilst the RAC could be deferred until Mr Y's 75th birthday, he says he was only considering delaying taking payment until his 67th birthday, so in a further two years. Whilst it's unclear what final bonus if any RL would've paid at the end of those 24 months, we do

know that they would've revalued his basic annuity at 114%. In practice, that would mean Mr Y's guaranteed minimum income would increase to £1,116.06 (£979 x 1.14) and his annual bonuses would be revalued in line with that to £784.46 (£688.12 x 1.14) giving him a guaranteed minimum annuity at age 67 of £1,900.52 (rather than £1,667 at age 65). He'd also see his guaranteed tax-free cash increase to £5,701 (3 times the annuity income) at age 67. Given the modest difference in income between taking the RAC at age 65 and age 67 (and ignoring any final bonus), Mr Y would've had to have waited over a dozen years (£1667 x 2 / £233) before he'd see any benefit in foregoing the gross income of £1,667 at age 65. The c14 years is clearly a rudimentary calculation because obviously Mr Y says that in two years' time his income tax position will differ, but it highlights the limited benefit in deferring. And, in any event, Mr Y took the open market option where he benefited from a higher income elsewhere, so he wasn't entitled to RL's terminal bonus anyway.

Details of the revaluation rates that RL would use in calculating the guaranteed annuity and annual bonus rates were provided to Mr Y in a letter to him on 20 February 2024. But, what Mr Y couldn't establish, is what, if any, terminal bonus would be paid, and given it made up c40% of his income at age 65 (if he took the annuity with RL), I can well understand his motivation in wishing to know, but I'm not persuaded that having that insight would be as useful as Mr Y may believe.

According to the terms of Mr Y's policy, it would seem that any final bonus was only payable in the event that he took an annuity with RL. In reality, Mr Y actually took his annuity with another provider using the open market option, so he didn't benefit from a final bonus at age 65 with RL anyway. And there's no certainty that even if he did defer taking his RL RAC until his 67th birthday, that he would benefit from a final bonus, because RL don't offer any warranties that one will be provided. Even if Mr Y had deferred taking benefits until age 67 and RL did provide a terminal bonus, it's entirely possible that it wouldn't have been beneficial for him to take his income with them anyway. That's because, depending upon annuity rates at the time of crystallisation, Mr Y may find that he could still get a better deal on the open market (as he did at age 65), which means he wouldn't be entitled to RL's final bonus at age 67, thereby making the whole exercise academic.

I can't reasonably conclude that the absence of the legacy final bonus information has resulted in Mr Y being made worse off financially. Even if RL had provided Mr Y with the previous year's figures for similar policies to his, having looked at that information, I'm of the view that it's inconclusive what's likely to happen in the future and any decisions made off the back it would simply be guess work. Importantly, it doesn't necessarily follow that just because RL have paid a bonus in prior years, that one will definitely be paid when he reaches age 67.

Even if Mr Y had receipt of that information, I think he would have also needed to have some notion of what may happen to annuity rates on the wider market in the future to gain a full appreciation of whether it would be worthwhile to forego the income from the RAC at age 65 to risk waiting for the potential of a higher income in two years' time. That's relevant because whilst Mr Y would be able to determine what income he could secure at age 67 under the guaranteed income and annual bonus elements, and he might be able to 'hazard a guess' at what any terminal bonus might be, he wouldn't be able to determine how favourably that might compare to rates under the open market option as they alter so frequently. But, there was always the very real possibility that even after waiting for two years, he may not qualify for any terminal bonus – and even if he did, if he exercised the open market option, he wouldn't have been entitled to it anyway.

Having thought about matters carefully, I'm not persuaded that even if RL had provided the legacy bonus information to Mr Y, that it would've made a difference to his decision to take

the income at age 65. Based on the evidence presented to me, I think on balance, it's more likely than not that Mr Y would've still taken the same actions that he did. I'm of the view that he would've exercised the open market option at age 65 because he was already aware of how RL would revalue his pension over the coming two years and the modest difference that it would make to his basic income in that period. And, I think given Mr Y was only considering deferring his income for such a very short window (of 24 months), it's likely that he knew full well that despite being an additional rate tax-payer at present, he'd need to have to wait around a decade or more to recoup the income that he would've lost by waiting those two years.

Mr Y says that RL placed him in a position where the risk of deferring was something that could not be assessed, but I don't agree. Even though Mr Y is an additional rate taxpayer, I'm satisfied that he knew full well the impact that this would have on his income at age 65, and was well aware that he'd benefit from prescribed, guaranteed increases to the RAC, he still chose to crystallise his pot two years sooner rather than defer it. And, whilst Mr Y also explained that he 'wouldn't have taken his pot had RL demonstrated that the part of this which was subject to variable market rises and falls was at no higher risk than any other age-appropriate fund' – this ignores the fact that RL have been very explicit in their communications with Mr Y that any such bonuses are not a certainty. In any event, whilst Mr Y says that he had to take his annuity at age 65 to preserve the value of his pot, that's not entirely accurate. Had he left it with RL, the value would've only grown because of the revaluation rates.

Whilst I've not seen any evidence to persuade me that Mr Y has suffered a quantifiable financial loss, I am going to uphold his complaint and that's because I'm of the view that he has been inconvenienced. I'm of the opinion that in the specific circumstances of this case, on balance, the consequence of the missing information hasn't impacted Mr Y, but in different circumstances, the absence of that insight may have. But, I do need to acknowledge that Mr Y had to contact RL on a number of occasions to source the information that he asked for, RL failed to provide that information in a timely manner and I don't think that request was unreasonable. Therefore, I'm of the view that RL needs to make a payment of £150 to Mr Y to recognise for the trouble and upset that their inaction has had on him in trying to resolve this matter. I believe that is fair and reasonable in the circumstances of this complaint.

Responses to my provisional decision:

After reviewing the provisional decision, RL said that they accepted the outcome. Mr Y, however, explained the point of his complaint had been missed. He went on to say that the statement: "The crux of Mr Y's complaint is that he wanted to understand what final bonuses RL had applied to policies such as his in the previous five years" is completely incorrect; Mr Y said it was the opposite.

In addition, Mr Y explained that assumptions which had been made about the information he'd had to hand were also incorrect, although he didn't specifically state which.

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.

In light of Mr Y's comments, I've revisited both his complaint form that he submitted to this service along with all of the associated documents. On his complaint form, Mr Y stated that:

“As these types of pensions are a financial loss maker for the companies that offered them, I was unsure about leaving the pension for another two years, as the ‘non-guaranteed’ part of the pension could easily be run down in an attempt to recover losses. Before making my decision I spoke (by phone) to multiple individuals in customer service requesting the past performance of the optional bonus component for the people that deferred their pension of this type.... Royal London were never able to produce this data and so I ended up taking the pension ‘now’ in order to preserve its value, as the data I needed to assess the likely risk was never supplied”.

In addition, on his complaint form, Mr Y also stated:

“The individual dealing with my complaint has noted that I raised the issue of not receiving any information on past performance of these pensions when deferred, and claims they acted correctly. I can’t see how they can come to this conclusion as I still don’t have any data on previous performance of the non-guaranteed portion of these table-P regulated pensions, and ended up taking my pension early through lack of it”.

Having carefully considered Mr Y’s comments again, I’m satisfied that both our Investigator and I have addressed the core of the issue as it was set out – the likelihood of a terminal bonus being paid and the impact of the missing information. However, if I consider Mr Y’s additional comment, my decision is no different.

Mr Y says that he wanted the historic data because he is concerned that RL could run down any terminal bonus on the plan to cover the prescribed, guaranteed increases to his RAC. And, by having sight of that data, would indicate whether that’s the case. But, as I’ve already explained, even if RL had provided that insight before he’d made a decision to exercise the open market option, having looked at the data, I don’t think it would’ve provided any meaningful direction to Mr Y. And, whilst Mr Y may have wished to satisfy himself that RL didn’t have a track record of running bonuses down in scenarios such as his (where customers wish to defer), this is an area that the industry regulator, the Financial Conduct Authority (FCA), pays close attention to.

With profits funds have historically attracted criticism for their complexity and perceived lack of transparency – it can be very difficult for policyholders to understand often complex and lengthy documentation and to be satisfied that they are receiving their proper entitlement under the terms and conditions of the particular product. But those difficulties do not necessarily mean that RL has done something wrong or is not acting in accordance with its regulatory obligations. The FCA recognises that with profits fund providers have a considerable amount of discretion about how they operate those funds. So, the regulator has made providers accountable for the way in which these funds are managed. The regulator’s Principle 6 requires that regulated firms “...must pay due regard to the interests of its customers and treat them fairly”. Furthermore, the Conduct of Business Sourcebook (COBS), and specifically COBS 20, contains specific rules and guidance for businesses on the operation of their with profits funds.

COBS 20.2.1 states:

- With- profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.

And COBS 20.2.3 states:

- A firm must have good reason to believe that its pay-outs on individual with profits policies are fair.

RL is accountable to the regulator for the way in which it operates its with profits fund and the regulator monitors the management of with profits funds. Businesses are required to appoint a with profits Actuary and the regulator provides rules and guidance on their duties. An independent with profits committee is also required – its remit is to protect the interests of the with profits policyholders and to ensure that they are treated fairly. The amount of bonuses paid, if any, is determined by RL's investment objectives which are consistent with its regulatory obligations. That's to allocate bonus amounts as fairly as possible to all its investors in its with profits fund with the aim of providing a competitive return at the end of the term.

It's important to recognise that I'm not aware of RL adopting any such practices of reducing terminal bonuses for consumers that choose to defer their pensions and I've seen nothing to suggest that this is an area the regulator has concerns about at RL either. But in any event, RL have always been very explicit with Mr Y – they've never provided any guarantee that they'll pay a terminal bonus anyway.

As I've already set out, Mr Y was aware that a large part of his income was guaranteed to grow if he deferred taking benefits at age 65. And, as I've already explained, whilst Mr Y says that he had to take his annuity at age 65 to preserve the value of his pot, that's not entirely accurate. Had he left it with RL, the value would've only grown because of the guaranteed revaluation rates, and by exercising the open market option, Mr Y didn't benefit from a terminal bonus anyway. Whatever Mr Y's personal tax position, he was also well aware of any taxation implications of taking the annuity when he did. Despite all of this knowledge, Mr Y still choose to crystallise his plan when he did.

It therefore follows that as I've been presented with no new evidence that's made me change my mind, I've reached the same conclusion for the reasons that I've set out above.

Putting things right

RL should pay to Mr Y £150 for the inconvenience caused. I'm satisfied that this is a fair and reasonable outcome in the circumstances.

My final decision

I'm upholding Mr Y's complaint and I require The Royal London Mutual Insurance Society Limited to take the step above to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 7 June 2025.

Simon Fox
Ombudsman