

Ombudsman's Determination

Applicant	Mr K
Scheme	Talisman Personal Pension (the Plan)
Respondent	Royal London

Outcome

1. I do not uphold Mr K's complaint and no further action is required by Royal London.

Complaint summary

2. Mr K has complained that the pension he receives from the Plan is not index linked. It was his understanding that the pension benefits could be taken on an index linked basis and he has now been told this is not possible. He is also unhappy that the value of the Plan is less than he was promised at the time it was set up.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 3 July 1989, Mr K established the Plan with Royal London (formerly Scottish Life). The Plan consisted entirely of Protected Rights benefits and included the benefit of a Guaranteed Annuity Rate (**GAR**). According to Royal London's records, Joseph W Burley & Partners Ltd was acting as Mr K's financial adviser at the time.
5. When the Plan commenced, Royal London issued a Members Guide to Mr K. This stated the following with regard to taking retirement benefits:

“Except for any lump sum paid as described above, your Fund must be used to buy a pension. This pension will normally be paid monthly in advance and may be level, may increase regularly and may be guaranteed payable for a fixed period of up to 10 years. Other options are available and full details of these are available on request.”
6. Royal London has checked its archived records and the earliest statements it has been able to locate are dated from 1 December 2001. This is because its policy

records were transferred to computerised record keeping at that time. The 2001 and 2002 annual statements that were sent to Mr K did not include pension projections at retirement. The 2003 annual statement detailed the following information regarding the pension that Mr K might expect to receive when he reached his Normal Retirement Age (**NRA**) of 65 in January 2020:

“Your final fund could be £35,000 which could give you a taxable pension each year of £1,290.

These figures are only examples and are not guaranteed - they are not minimum or maximum amounts. What you get back depends on how the investments grow and on tax treatment of the fund. You should consider getting further information or advice before taking any action on the information provided in this statement.

We have used standard assumptions required by law to assume that:

- You will buy a pension that will increase each year in line with inflation (the Retail Prices Index)
- The value of your investments will grow by 7% every year and inflation will be 2.5% every year
- When you die you will either be single or you will be married to someone three years younger than yourself who will receive half of your pension
- Your pension will be paid at the beginning of each month.”

7. On 9 May 2018, Mr K telephoned Royal London and requested some information. He asked for his original policy documents, an explanation as to how the Plan had grown, and a projection of his monthly pension as from the age of 65. He also asked if the pension benefits would be index linked but was told this was not an option that was available to him. In addition, he was informed that there would be a penalty charge applicable if he set the annuity up earlier than his stated retirement date.
8. On the same day, Royal London emailed Mr K the following:

“Let’s take a basis on monthly in arrears, single life, level, no guarantee, no tax-free cash as an example.

So for age 64 the GAR percentage would be 7.78% and for age 65 it would be 7.98%.

Let me know if you’d like any quotes or any more information regarding this at all, I’d be happy to help. I have forwarded your request for projections to age 64 and 65 to be emailed to you directly from the policy information team, the turnaround time is typically 3-5 working days for them. I have also requested your original policy documents from our administration team so I will keep you posted on it when I hear back from them.”

9. On 31 July 2018, Mr K emailed Royal London as he had not received a further response from it.
10. On 11 October 2018, Royal London received notification from Mr K that he wished to opt out of the GAR. Mr K informed Royal London that he had taken the decision to opt out in view of Royal London's failure to provide a response to his queries.
11. On 15 October 2018, Royal London sent Mr K a projection of some annuity rates he might expect to receive when he reached his NRA of 65. This letter stated the following:

"Please find below annuity rates that relate to your Royal London Guaranteed Annuity Rate. These rates are shown on a number of different basis [sic] and the basis can be tailored to best suit your circumstances when you decide to take your retirement savings. All rates are shown at the age of 65.

Single life, paid yearly in arrears staying level with no guarantee period you would receive £82.92 per £1,000 or 8.2%.

Single life, paid monthly in arrears staying level with no guarantee period you would receive £79.89 per £1,000 or 7.9%.

Joint life (with a 50% widower's annuity) paid monthly in arrears staying level with a 5 year guarantee period you would receive £77.03 per £1,000 or 7.7%.

Joint life (with a 50% widower's annuity) paid monthly in arrears staying level with a 5 year guarantee period you would receive £74.53 per £1,000 or 7.4%.

Unfortunately to retain your Guaranteed Annuity Rates on your plan it cannot be index linked. However you can have an escalation anywhere from 0.5% to 8.5%. I have included 2 rates below showing how this would impact your rates per £1,000.

Single life, paid yearly in arrears with a 3% escalation and a 5 year guarantee period you would receive £60.48 per £1,000 or 6.8%.

Joint life (with a 50% widower's annuity) paid yearly in arrears with a 3% escalation and a 5 year guarantee period you would receive £56.23 per £1,000 or 5.6%."

12. On 22 October 2018, Royal London responded to Mr K's query. It sent him copies of the Policy Conditions, Members Guide and Product Particulars, but it said it was not able to locate a copy of the original Policy Schedule.
13. Royal London apologised for the time it had taken to respond and said it was disappointed to note that this failure impacted on Mr K's ability to make an informed decision on the GAR. As a result, it offered to extend the time Mr K could decide on whether or not to opt out of the GAR until 30 November 2018. It also offered to provide subsidised financial advice. In respect of the time it had taken to respond to

Mr K's request, Royal London offered him £350 as a gesture of goodwill, which he did not accept.

14. On 1 December 2019, Mr K received an annual statement. It stated the following:

"Your final fund value could be £43,300.

These figures are only examples and are not guaranteed – they are not minimum or maximum amounts. You should consider getting further information or advice before taking any action on the information provided in this statement.

Among other things, your final pension will depend on whether you choose to buy a fixed pension or one that increases each year and what allowance, if any, you make for a pension for your spouse."

15. On 3 July 2020, Mr K contacted Royal London to register a complaint. He made the following points:-

- He was disappointed that there would be a penalty charge applicable for setting up the annuity early. However, he said he had not wanted to take the pension early, but he wanted to have everything in place for when he reached age 65.
- He was also upset that he was told he could not take an index linked pension as Royal London did not provide that option. He was offered a 3% increasing pension but at a vastly lower starting level.
- He was unhappy that not all policy documents had been provided and he considered this impacted on his decision to opt out of the GAR.
- He felt the pension had been mismanaged as it produced very poor returns.

16. On 2 October 2020, Royal London issued its final response to Mr K's complaint. It said:-

- A charge may be applied if pension benefits were taken before a selected retirement age had been reached, and it was sorry if this came as a shock to Mr K.
- Royal London was not party to the advice Mr K received at the time the policy was taken out regarding index linked options that would be available when the benefits were taken. Royal London said that the illustrations it sent to Mr K were projections and were not guaranteed.
- With regard to the query Mr K had about the GAR, Royal London said that it considered the offer it had made to extend the deadline, as well as the offer of subsidised financial advice, meant that it had provided sufficient resource for Mr K to make an informed decision.

- Royal London maintained that it had sent regular statements to Mr K since 1989 which outlined the performance of the Plan. If Mr K had any queries concerning the performance then he could have contacted it at any time to discuss these.
- Nevertheless, as Royal London could not provide a copy of the original Policy Schedule, and in respect of the time it had taken to respond to the complaint, it offered Mr K a further £150.

Adjudicator's Opinion

17. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal London. The Adjudicator's findings are set out as follows:-

- The Members Guide that was issued to Mr K at the time the Plan commenced did not state that pension benefits could be taken on an index linked basis.
- The annual statements that were issued to Mr K by Royal London included pension projections outlining what he might expect to receive when he reached his NRA. Some of the statements, including the one issued in 2003, detailed that Royal London was required by law to use standard assumptions when issuing its projections, including that Mr K would buy a pension that would increase each year in line with inflation (the Retail Prices Index).
- The Adjudicator's opinion was that this information might have given Mr K the expectation that he would be able to receive his benefits on an index linked basis. However, in his opinion, the Adjudicator felt the statements clearly indicated that the figures provided had been calculated using standard assumptions and they were not guaranteed.
- It was the Adjudicator's opinion that there was no evidence that Royal London provided information to Mr K, which stated he definitely would be able to take his pension benefits on an index linked basis.

18. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided some further comments in response to the Opinion. Mr K said:-

- He had assumed that all the examples Royal London gave in its emails were what the GAR would give as a starting point for the index linked pension.
- He confirmed he contacted Royal London on 9 May 2018, but the advisor did not tell him that he could not have an index linked pension. The advisor said he would send him some information and that he would request documentation for the policy.
- He was never told either verbally or in writing that he could not take an index linked pension until 12 November 2019, when he spoke to Royal London in

response to a letter suggesting he contact it as he was approaching his retirement date.

- He was unhappy that the growth on his benefits within the Plan was below what he was told in 1988. And also below figures in the Plan literature, where Royal London used average investment growth of between 8.5% and 13%. He attached a spreadsheet in which he had detailed his Plan values from statements and the percentage growth each year.
- He was disappointed Royal London had been unable to produce a signed copy of the policy document used to set up the pension.
- Joseph W Burley & Partners Ltd was not his financial advisors, they were brought in by his then employer, Ancon Ltd in early 1988.
- He contacted, what is now, Burley Financial Services and found that it had no historical records relating to himself or the policy, and it only had one correspondence from Royal London dated 2018 on its system. That was the first contact he had with them since early 1988.
- The Adjudicator stated that the policy was established on 3 July 1989. Mr K said if he had signed a policy it would have been early in 1988. In July 1989 he says he was working for a different employer.
- He noted that on page one of the Talisman Personal Pension Plan booklet, it said the Plan was constituted on 12 May 1988. He has asked if these were the correct documents or if there was an earlier plan.

19. Royal London also provided some further comments in response to the Opinion. It said:-

- It checked its system and confirmed that the Plan was placed on risk on 3 July 1989. It included a screenshot of its system as evidence. It added that as the Plan was only set up to receive contracted out rebates, the details of Mr K's employer were not relevant and were not recorded on its system.
- The policy documents it has already provided are the standard generic documents that were issued to all policyholders. It does not issue specific policy documents to each policyholder. At the time the Plan was set up, Mr K would not have signed a policy document, but an application form with the financial adviser. It was not able to provide a copy of the signed application form.
- It confirmed that there is no evidence of an earlier plan taken up by Mr K.

20. I have considered the additional points raised by both parties, however, they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

21. Mr K has complained that the pension he receives from the Plan is not index linked. It was his understanding that the pension benefits could be taken on an index linked basis and he has now been told that this is not possible. He says he had assumed that all the examples Royal London gave in its emails were what the GAR would give as a starting point of the index linked pension.
22. Mr K says he contacted Royal London on 9 May 2018, but the advisor did not tell him that he could not have an index linked pension and told him he would send him some information and that he would request documentation for the policy. Mr K says he was never told either verbally or in writing that he could not take an index linked pension until 12 November 2019. That was when he spoke to Royal London in response to a letter suggesting he contact it as he was approaching his retirement date.
23. Mr K received a Members Guide at the time the pension commenced. He was also sent regular Annual Statements which stated that the projected figures provided had been calculated using standard assumptions. Neither of these documents, or any others I have seen, state that Mr K's pension benefits could be taken on an index linked basis.
24. Furthermore, Royal London also made it clear to Mr K, on 15 October 2018, that the Plan could not be index linked if he chose to retain his GAR, but that he could instead opt for an escalation rate of between 0.5% and 8.5%.
25. In the absence of further submissions, I find that there is no evidence Royal London led Mr K to believe that he could take his benefits on an index linked basis.
26. Mr K is also unhappy that the value of the Plan is less than he was promised at the time it was set up. He has provided a spreadsheet in which he detailed his policy values provided on his annual statements and the percentage growth each year, which I have reviewed.
27. Royal London sent regular statements which included projections of what Mr K's pension might be worth when he retired. The notes section of the statements detailed that the figures were only examples and were not guaranteed. These statements therefore gave Mr K an expectation of what he might receive, but the value of the Plan when Mr K retired was dependent on a number of factors, for example investment returns and Plan fees. I find that Royal London provided pension projections to Mr K and made it clear to him that the returns were estimates and were not guaranteed.
28. Mr K noted the Adjudicator stated that the policy was established on 3 July 1989. Mr K said if he had signed a policy, it would have been early in 1988. In July 1989 he says he was working for a different employer. He also noted that on page one of the Talisman Personal Pension Plan Guide it said the Plan was constituted on 12 May 1988 and asks if these were the correct documents or if there was an earlier plan.

CAS-59413-Y8J0

29. Royal London has provided evidence that the Plan was established on 3 July 1989. It also confirmed that there is no evidence of an earlier policy. I have no reason to believe that the Plan commencement date provided by Royal London was incorrect or that there is any other policy held by Mr K.
30. I find there is no evidence of maladministration on the part of Royal London. In respect of the time it took to respond to his complaint, Royal London has offered Mr K a total of £500, which I find is reasonable when taking into account the circumstances. Should Mr K wish to accept this offer he should contact Royal London direct.
31. I do not uphold Mr K's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

25 October 2023