

Ombudsman's Determination

Applicant	Mr N
Scheme	Scottish Life Personal Pension Scheme (the Scheme) - Talisman Group Pension Plan (the Plan)
Respondents	Royal London

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Royal London.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint against Royal London is about an early exit charge which will be applied to the Plan if he transfers his benefits away from the Scheme more than five years before his selected retirement date.

Background information, including submissions from the parties

4. As part of his employment, Mr N was able to join the Scheme. On 10 December 1998, using the services of a financial adviser, Mr N signed the application form to become a member of the Scheme.
5. Section 4 of the member application form has a cover sheet stating the name of the scheme 'Talisman group pension plan'. The form headed 'Talisman group pension: application form' contains a declaration in section 4, which said "I hereby apply for membership of [the Scheme] and agree to be bound by the Rules of the Scheme". Immediately below Mr N's signature date 10 December 1998 in the box provided for the purpose, the form says in capitals "the Policy terms and conditions and the Scheme rules are available on request."
6. The Plan Key Features document said on its first page under the heading 'risk factors': "If you either take your pension or transfer your pension elsewhere before the date originally selected you may not get the best value from your Plan". It goes on to explain "Our charges may increase, reducing the value of your Plan". Under the heading "Can I take my money out early?" on page 3 it says "You can choose to

transfer your fund to another pension scheme. If you do choose to do this the value of the Plan may be reduced”.

7. Schedule 3 of the Talisman Group Pension Plan – Policy Conditions (the **Policy Conditions**) , Part A (Unit Linked Account), Rule 6 (Value of Account) says –

“At the date of retirement, being the Selected Retirement Date...the value of the Unit Linked Account will be the value of all the relevant units allocated to the Policy as at that date calculated on the Bid Prices of the appropriate funds at the valuation date next preceding that date together with such Additional Units...and loyalty bonus if any that shall apply...On any other date before Retirement Date other than for the purposes of Section 7 below, the value of the Unit Linked Account will be as described above but this may be reduced by an amount determined by the Actuary”.

8. Royal London says that an illustration dated 4 January 1999, was also provided to Mr N. This said that the “Policy Conditions attaching to [the Plan] govern the basis on which your transfer value is calculated”.
9. In June 2013, Mr N and his independent financial adviser (the **IFA**) complained to Royal Life about the early exit charge of about £80,000 that he had been informed would apply to the Plan in the event of a transfer. On reviewing the matter, Royal London said that four contributions received from Mr N’s employer were allocated to the Plan as regular lump sum contributions, instead of single contributions. This had caused the amount of the early exit charge to be overstated.
10. On 2 August 2013, Royal London sent an email to the IFA saying that the exit charge “would reduce *by* £22,417.36” (emphasis is mine). On 29 August 2013, Royal London wrote to Mr N, apologising for the error and the delay in dealing with the enquiry. It said that the contributions would be amended to reflect the correct basis and, once completed, “the early exit charge will reduce *to* approximately £22,417.36” (emphasis is mine). The correct position was that the exit charge would reduce by £22,417.36 but there is no suggestion that both parties were aware of the error until March 2016. In the meantime, Royal London offered a goodwill payment of £150 to Mr N for the distress and inconvenience caused to him by the incorrectly allocated contributions. Mr N accepted the offer.
11. In May 2014, Mr N asked Royal London for a calculation of the early exit charge of £22,417.36. There followed a long period of correspondence between Mr N and Royal London. On 3 June 2014, Royal London sent an email to Mr N with a breakdown of the exit charge.
12. On 23 March 2016, Royal London wrote to Mr N saying that its letter of 29 August 2013 had incorrectly stated that the early exit charge was £22,417.36. It said the letter should have said that the early exit charge was to be reduced by £22,417.36, meaning that the charge was actually £56,179.77. Royal London said that factors such as term to retirement, commission taken at the outset by the financial adviser

and when the last premium was paid, all contributed towards the calculation of the early exit charge. It pointed out that there would be no exit charge in the last five years before Mr N's selected retirement date. Royal London said it would have expected his adviser to have discussed the costs of transfers or for taking benefits earlier than his retirement date. It also said that it had sent an email to his financial adviser on 2 August 2013, correctly pointing out that the early exit charge would reduce by £22,417.36.

13. Mr N disagreed with Royal London and brought his complaint to us. He said that:

- His original complaint to Royal London in 2013 was regarding the incorrect allocation of contributions.
- The copy of the terms and conditions provided by Royal London is barely legible and is dated January 1999 i.e. after he signed the application form in December 1998, so it was not in force at the time he commenced the Plan.
- He was not given a copy of the applicable terms and conditions relating to the Plan at the point of sale, and Royal London only provided these during the course of his complaint. The application form he signed refers to the "Rules of the Scheme" but Royal London has only provided a document titled 'the Talisman Group Pension Plan – Policy Conditions'.
- The terms and conditions Royal London relies on are unfair and unenforceable under the Unfair Terms in Consumer Contracts Regulations 1994 (the **UTCCR**).

14. In its formal response to us, Royal London said that Mr N signed the Plan application in December 1998 but the Plan actually "went on risk" on 6 January 1999, so the correct Plan conditions have been provided. In any event, it provided a copy of the Plan conditions dated July 1998. Royal London also said that, with effect from 31 March 2017, it will only apply an early exit charge of 1% on policyholders over aged 55. However, Mr N does not qualify for this as he is under 55. Royal London says it is unable to provide Mr N's actual Plan Schedule, but it has provided a sample copy of what it says would have been provided to him at commencement of the Plan.

Adjudicator's Opinion

15. Mr N'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 summarised briefly below:-

- Mr N was aware of the existence of the early exit charge in 2013 (at the latest) and his objection at the time was only about the amount of the charge.
- The Adjudicator was not satisfied that Royal London did not inform Mr N that a charge would be applied - in the event that he chose to transfer his benefits to

another provider before his selected retirement date, or that Royal London was seeking to apply a transfer charge contrary to the requirements of the Plan's terms and conditions.

- Initially, Royal London provided a copy of the Plan Conditions dated 1999 but it subsequently provided a copy dated July 1998 – a date prior to the commencement date of the Plan.
- In the absence of any other document, the Plan Conditions would appear to contain the “Rules of the Scheme”. The wording used by Royal London could have been clearer, but there is no evidence that Mr N was unaware of the applicable terms and conditions when he took out the Plan.
- The application form signed by Mr N mentioned that he would be bound by the Rules of the Scheme and that copies were available on request and it is expected that such documents would have been provided to him, at the point of sale, by the financial adviser that handled the application. While I accept that there is no evidence that a copy was provided, on balance, the Adjudicator was satisfied that would have been the case.
- An illustration and the Key Features document were provided to Mr N which referred to the Plan Conditions and a possible reduction in Plan value in the event of a transfer. Consequently, Mr N should have been aware that the Plan value could be reduced if he transferred his benefits before his selected retirement date.
- There was no reason to set aside the early exit charge on the basis of the UTCCR.
- It was sufficient at the time for Royal London to say that the amount would be determined by the Actuary. The existence of the early exit charge was made clear and if Mr N had any concerns regarding this, it would be reasonable to expect that he would have queried this matter at the time of setting up the Plan.
- There was maladministration in that Royal London informed Mr N of the incorrect amount of the early exit charge on 29 August 2013. However, Royal London did inform the IFA of the correct amount and Mr N has not incurred any financial loss as a result of the error. While the error has caused some distress and inconvenience to Mr N, I do not consider that further compensation is warranted on this occasion.

16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has largely reiterated his previous comments, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

17. Mr N says that he was never provided with the Policy conditions. I accept that there is no proof that he was. The terms of the application form incorporated the Policy terms by reference.
18. Mr N refers to misquotes from Royal London. In reaching my conclusions I have looked directly at the documents listed above. He says they contain no reference to

the Talisman Group Pension Plan Policy Conditions. They may not list that phrase out altogether but they do incorporate the 'Policy Conditions' by reference, and the identity of the plan to which those conditions relate is clear from the application form. Plainly there were underlying conditions and their existence was brought to Mr N's attention.

19. Mr N says that awareness of the reference to the terms and conditions governing the Plan is not the point; awareness of the actual terms and conditions is the issue. I agree that the terms needed to be transparent and the existence of any particularly onerous term needed to be given prominence. However, I consider that the existence of the relevant term was brought to his attention in the key facts documentation. He was on notice that there would be charges for early redemption of the policy. He could have asked to see the term by which the charge would be set. There is no evidence that he did so.
20. Mr N says that the UTCCRs mean that such terms cannot be permitted to work against him because it was not sufficiently brought to his attention. I disagree for the reasons stated above. He says that the exit charge is unfair and unenforceable on several grounds. He has argued it should be unenforceable as a penalty and complained that there is no agreed mechanism for quantifying the penalty.
21. . I am not of the view that the exit charge is unfair just because it is stated as being calculated on the advice of the Scheme Actuary i.e. because no pre-estimate or more specific calculation method is provided in the terms and conditions. The use of an actuary necessarily involves the use of an actuarial method and it would be difficult to set out that method in any meaningful level of detail or to make it comprehensible to a consumer. Royal London has informed Mr N that the exit charge will differ based on several factors, such as how long the Plan has to run before retirement etc.
22. The UTCCR does not say that exit charges in themselves are wrong, but if the charge is disproportionate it may be unfair. In 2015, the fund value was £183,990 compared to an exit charge of £56,179. The valuation of the Plan issued to Mr N on 23 March 2016, put the fund value at £258,469 and the exit charge was £63,219. While the exit charge is a significant amount, it is not clearly excessive in the sense of out of proportion to the early exit.
23. I note that there is no exit charge if the Plan is transferred or taken in the five years prior to the selected retirement date. Royal London has also acknowledged that the exit charge will be a maximum of 1% for policyholders aged over 55 years old, which cap is now legally binding.
24. Having carefully considered the complaint, I am satisfied that the terms and conditions of the Plan allow for the early exit charge under the circumstances provided for it.
25. Therefore, I do not uphold Mr N's complaint.

PO-14441

Karen Johnston

Deputy Pensions Ombudsman
29 September 2017