

## Ombudsman's Determination

Applicant	Mr N
Scheme	Royal London (formerly Scottish Life) – Talisman Pension Plans <b>(the Plan)</b>
Respondents	Royal London Group ( <b>Royal London</b> )

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 complains that he was not informed that the increased contribution of £70 he made to the Plan in 1997 did not attract a Guaranteed Annuity Rate (**GAR**). He says he was not informed of the rule change implemented in 1994 and, if he had been, he would have made different investment choices.
4. Mr N has suggested the following solutions to resolve his complaint:
  - That the GAR applies to the whole Plan contributions to date and all future contributions at the current level through to completion in 2024.
  - That the GAR applies to the whole Plan contributions to date, and to reduced future contributions of £80 a month through to completion in 2024.
  - That he be put in the position he would have been in had he made the additional contributions to a different scheme.
  - That the standard annuity element of the Plan be available for immediate transfer at no penalty.

### Background information, including submissions from the parties

5. In August 2018, following receipt of an offer to Mr N from Royal London to forfeit the GAR on his Plan contributions in exchange for an immediate uplift in retirement benefits, Mr N asked why his contribution increases after January 1995 did not attract a GAR. He explained that he held no documentation to show that he was informed of this.

6. Royal London responded to Mr N's complaint and explained it had sent a letter to all Plan holders in December 1994 informing them of the changes that would be introduced from 1 January 1995. Royal London provided a copy of the mailing that explained the GAR had been withdrawn from new policies since February 1992 and, with effect from 1 January 1995, a GAR would not be applied to any future single contributions or increases in regular contributions. Therefore, Mr N's increase in contributions made in 1997 did not attract a GAR.
7. Dissatisfied with Royal London's response Mr N brought the complaint to us.
8. In Royal London's formal response to us, it said that:
  - The letter issued in 1994 clearly outlined that any increments in Plan contributions from 1 January 1995 would not attract a GAR.
  - It referred to a previous Ombudsman's determination, PO-7724, to support its position as it addressed similar points.
  - Its records show that it held the correct address for Mr N and that it has not changed over time. While it did not have the actual letter issued to him it was confident that the letter was sent to Mr N.
  - Statements issued state, "any guaranteed annuity rates which apply to all or part of your plan" and Mr N did not contact them to enquire further about this.
  - Mr N did not find out about the implications of paying additional contributions to the Plan before he started making them.
  - It was allowing customers, like Mr N, to treat the two parts of their Plan differently. For example, they may choose to purchase a GAR annuity with the GAR portion and transfer the non- GAR portion to another provider to take as a lump sum.
9. Mr N provided his comments on Royal London's formal response. He said that:
  - His address had not changed and he did receive all his annual statements for the Plan at the time.
  - The Ombudsman's determination, PO7724, implied that the Ombudsman's view was that a single Royal Mail letter was an infallible means of communication.
  - It is unfair to Plan members for Royal London to rely on a single communication and for it not to make further communications about Plan changes when they become relevant.
  - Statements and the application form for additional contributions received after the change to the Plan made no attempt to highlight the changes to the GAR.

- The Ombudsman determination, PO7724, also referred to the December 1994 letter and that this could suggest that there were issues with Royal London's mailing process at the time.
- The phrase "any guaranteed annuity rates that apply to all or part of your plan" was misleading and this could have been clarified on the statements. Therefore, Royal London was withholding information.
- When he made the contribution increase in 1997, he was advised by his independent financial advisor (**IFA**) to pay more into the Plan. His IFA's letter of advice does not mention changes to the GAR and suggests that the IFA was not informed of the changes.
- In the Plan correspondence he received from Royal London, there was no mention of the changes to the GAR.

### **Adjudicator's Opinion**

10. 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 below:-

- Royal London had acted in accordance with the Plan terms and conditions in making the changes to the GAR. Mr N was only entitled to benefits in accordance with the Plan rules.
- Due to the amount of time that had passed there was limited evidence available to show whether Mr N received the 1994 letter.
- Royal London had provided a copy of the letter that would have been sent to members of the Plan, including Mr N, that would have informed him of the changes.
- As Royal London held the correct address for Mr N and he confirmed that he received all the Plan statements, it is more likely than not that Mr N would have been sent the letter.
- Royal London could not be held responsible if external issues with Royal Mail meant Mr N did not receive the letter.
- The available evidence showed that Royal London informed members of the Plan about the changes by sending out the December 1994 letter. The Adjudicator believed that it was reasonable for Royal London to have assumed that the Plan members would have read the letter and been fully informed about the changes. Royal London was under no obligation to provide further communications to Plan members in this regard.

11. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further 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.
12. In response to the Adjudicator's Opinion, Mr N said that:
  - The successful receipt of Plan statements should not be used to support the likelihood that he was sent the December 1994 letter.
  - He has all correspondence and statements received and if he had received the 1994 letter he would still have it.
  - He concluded that the probability that he was not sent the letter was 85%.

### **Ombudsman's decision**

13. Royal London has supplied a copy of the 1994 letter that informed members of the changes to the GAR. Royal London has confirmed that it held Mr N's correct address at the time. On balance, I am satisfied that as Mr N was affected by the changes the letter was sent to him.
14. Mr N says that he did not receive the December 1994 letter. However Royal London cannot be held responsible for any issues with the postal system.
15. Royal London has offered Mr N the option to treat two parts of the Plan separately, it is open for Mr N to consider his Plan options.
16. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 June 2019