

The complaint

Mr L complains that The Royal London Mutual Insurance Society Ltd (RLM) didn't make him aware of the Open Market Option (OMO) or enhanced annuities when he bought two annuities in 2007.

Mr L was represented in his complaint by a claims management company (CMC), which has now ceased trading. But I'll only reference him in my decision.

What happened

Mr L had two pension policies with RLM. He told RLM he wanted to use the policies' benefits to buy annuities. RLM told Mr L it didn't offer annuity policies. But that it could facilitate the purchase of annuities with another business, who I'll refer to as business P.

After Mr L had taken a 25% tax-free cash lump sum from each of his pension policies, he used the remainder to purchase two annuities with business P. He signed completed annuity income payment forms on 4 June 2007. Both were purchased on a non-advised basis.

RLM told Mr L that his two annuities had been set up. And the first payments under each of the annuities were made to Mr L on 11 June 2007.

Mr L said he didn't remember being provided with information about the OMO. He also considered that he hadn't received adequate advice about the importance of shopping around the open market. Mr L also felt that RLM had failed to make reasonable enquiries about his lifestyle habits or health status. And that it didn't tell him about the possible eligibility for enhanced annuity policies. So he complained to RLM through his CMC.

To put things right, Mr L wanted a refund of the income he hadn't been paid in the years since he bought the annuities, plus 8% annual interest. And future annuity payments that reflected the position he felt he should've been in.

RLM said it received a forwarded complaint on behalf of Mr L on 23 July 2021. But that as his CMC hadn't submitted a letter of authority (LOA) on Mr L's behalf, it asked for one to be completed while its complaint investigations proceeded. It said it prepared a draft final response to the complaint on 24 September 2021, but then noted that Mr L had gone away from the address it had on its records. As no new address had been provided by the CMC, RLM said it hadn't sent the draft final response letter. And that it closed the complaint on 24 September 2021, having never received the requested LOA.

RLM said it received a further letter of complaint on 10 November 2021, again with no LOA on Mr L's behalf. So it said it replied to say it still couldn't issue a response without an LOA. It said it still hadn't received one.

Mr L brought his complaint to this service in September 2022.

RLM didn't give this service permission to investigate the matter as it felt it had been brought more than six months after it produced its final response.

Our investigator issued a jurisdiction view in which he felt that this service could consider the merits of the complaint. He felt that the complaint hadn't been brought to this service more than six months after RLM had sent Mr L its final response letter, as it hadn't yet sent him one.

Our investigator issued his view on the merits of the complaint in February 2023. He felt that although RLM had made Mr L aware of the OMO, it hadn't made him aware of enhanced annuities. He felt Mr L would've qualified for an enhanced annuity at the time. And that he would've chosen to buy one if he'd known. He felt that RLM should put Mr L back to the position he would've been in, had he been provided with the full information the relevant regulatory rules or guidance at the time required. He also felt RLM should pay Mr L £150 for the distress and inconvenience it'd caused him.

Our investigator issued a further jurisdiction view in July 2023 in which he explained why he felt the complaint had also been brought to us within the "six and three" time limits. Our investigator felt that Mr L had only first thought there might be an issue when he heard an advert about mis-sold pensions from the representatives who brought his complaint.

RLM accepted our investigator's view on the jurisdiction of this complaint. But didn't agree with his view on its merits. It made the following points:

- The annuities were both purchased on a non-advised basis. No financial advice was ever provided to Mr L.
- It had told Mr L that he might have the chance of receiving a higher income. It referred to documents it had sent Mr L where the OMO was referenced.
- It said it always enclosed the FSA factsheet: *"Your Pension: It's time to choose"*. And that this specifically referenced enhanced annuities. And although it couldn't evidence that this had been included in Mr L's retirement pack, it said it was always a given that this was to be enclosed as part of the pack.
- It said business P only ever offered RLM customers guaranteed annuities - no enhanced annuity was ever available under this arrangement. So if Mr L had ever mentioned any current illness or lifestyle that might suggest he would benefit from an enhanced annuity, it would've made clear to Mr L that he should seek independent financial advice.
- RLM didn't agree with our investigator's interpretation of the regulatory requirements at the time of the sale. It said that although he'd said that it had to explain to customers from March 2007 that they might receive a higher income through enhanced or impaired life annuities, there was no requirement to issue anything on enhanced annuities when the annuities had been set up. It also provided evidence which showed that the requirements to do so came in after the annuities had been set up.
- It said that it had always made Mr L's OMO clear. And it had also recommended seeking independent financial advice. It noted that the retirement packs it'd issued to Mr L on 31 May 2007 had stated the following:

"Neither [RLM] nor [business P] can advise you which option best suits your individual circumstances. You should consider taking advice from a financial adviser".

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 25 July 2023. It said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't intend to uphold it. I agree with our investigator that this service considers that all insurers should meet the ABI's best practice for non-advised annuity sales. And that at the time of the sale in May 2007, this included mentioning enhanced or impaired life annuities to customers. As Mr L may have already known about the health complaints he now suffers from, and as he had been a smoker for some time, I also agree that he may have had the potential to receive higher income from an enhanced annuity.

But I don't agree with our investigator that RLM didn't meet the ABI's best practice requirements at the time of the sale. I think it was more likely than not that RLM sent Mr L the FSA factsheet: "Your Pension: It's time to choose", which specifically referenced enhanced annuities, and therefore met the best practice requirements. I say this because RLM said it always enclosed this factsheet. I know my decision will be disappointing for Mr L. I'll explain my reasons for it.

I've taken into account the law, any relevant regulatory rules and good industry practice at the time in my decision. I've also carefully considered the submissions both Mr L and RLM have provided. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words, I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to have happened.

Mr L complained that RLM had failed to make reasonable enquiries about his lifestyle habits or health status. So I first considered if there is any evidence that RLM should've obtained information from Mr L to determine whether he might've been eligible for an enhanced annuity.

Should RLM have determined whether or not Mr L might be eligible for an enhanced annuity?

To do this, I need to consider the basis on which RLM sold the annuities to Mr L.

I've not seen any evidence that Mr L's annuity sale was on an advised basis. I say this because there's nothing to show Mr L's circumstances were discussed in any detail – there's no fact find, or personalised recommendation, for example.

I've also seen the 31 May 2007 retirement pack that RLM sent to Mr L. At the start of this, it stated: "You can buy your annuity from any annuity provider". Then, in a section before three options were detailed, it said: "Neither [RLM] or [business P] can advise you on which option best suits your individual circumstances. You should consider taking advice from a financial adviser".

One of the documents RLM included with the retirement pack was "Key Facts about our services". This included a section: "Which service will we provide you with?". This stated:

"You will not receive advice or a recommendation from us about the purchase of your annuity. You will need to make your own choice how to proceed. You must ensure that the product you select is suitable for your needs; if you are in any doubt and feel you require advice you should speak to a financial adviser".

I'm satisfied that this shows that RLM didn't provide Mr L with any advice. And that RLM was

clear that if Mr L wasn't sure whether the annuities he was choosing was suitable for him, he should seek financial advice.

OMO

Although I acknowledge that Mr L said he didn't remember being provided with information about the OMO, I'm also satisfied that the information in the retirement pack did make this option clear. I say this because the 31 May 2007 retirement pack included the OMO as the second (of three) options. It said:

"2. To buy an annuity from another annuity provider through the Open Market Option. This means not using your [RLM] pension fund to buy a [business P] annuity but buying an annuity from any annuity provider".

It also stated:

"Different companies offer different annuity rates and different types of annuity, so you may be able to get a higher annuity or one more suited to your specific needs by shopping around".

And explained the steps Mr L would need to take if he wanted to take his OMO.

Page 5 of the Key Features of a Guaranteed Pension Annuity document RLM sent to Mr L also stated that Mr L could take his annuity:

"From any company. This is known as using your 'Open Market Option'. It gives you the freedom to select an annuity provider that best meets your personal circumstances. Annuity providers do offer different rates and products and it is very unlikely that one provider can offer the best deal for everyone".

However, I agree with Mr L that there's nothing in the retirement pack that states he could be eligible for enhanced annuity policies.

Enhanced annuities

RLM said business P couldn't offer RLM's customers enhanced annuities. So if Mr L had told it about any lifestyle or medical conditions that might suggest he would benefit from an enhanced annuity, it would've told him he needed to seek independent financial advice.

It's clear that Mr L was going through some serious health issues just after he bought his annuities. And that he had other health conditions, and had been a smoker, before he decided to buy his annuities. But I've not seen any evidence that Mr L told RLM about his health and lifestyle at the time of the sale. I'm also persuaded that if he had, RLM would've told him he needed to get independent financial advice, as it couldn't help him to access an enhanced annuity if he needed one.

I'm not persuaded that RLM should've asked Mr L about his health and lifestyle at the time of the sale. I say this because it wasn't providing a recommendation. Neither it - or business P - offered enhanced annuities at that time on Mr L's pension policy. So I don't think that, by failing to take account of Mr L's health and lifestyle when it provided the annuity quotations, RLM treated him unfairly.

But RLM was still required to fulfil certain obligations regarding the information it provided to Mr L in the run-up to his retirement. So I've gone on to consider whether it did so.

RLM's obligations at the time of sale

RLM said that although our investigator felt it had been required to explain to customers from March 2007 that they might receive a higher income through enhanced or impaired life annuities, that requirement wasn't yet in place.

RLM also said that it always enclosed the FSA factsheet: "Your Pension: It's time to choose", which specifically referenced enhanced annuities.

In March 2007, the ABI updated its Statement of Good Practice on Pensions Maturities. The 2007 version said that providers should mention "enhanced and impaired life annuities".

I agree with our investigator that this statement stated that businesses should include information showing: "The availability of different types of retirement income product such as index-linked annuities, investment-linked annuities and enhanced and impaired life annuities and whether these can be purchased from the current Provider". I also agree with our investigator that the retirement pack didn't itself do this.

However, the ABI statement also stated that it wasn't necessary to include this information if the FSA's factsheet "Your pension: It's time to choose" was sent out with the retirement pack.

RLM said that this factsheet was always sent out to customers in Mr L's situation. So, on balance of probability, I'm persuaded that it was sent out to him. Therefore I consider that RLM did meet the requirements at the time. I say this because FSA's factsheet included the following information on enhanced and impaired life options:

"You may also be able to benefit from an enhanced annuity or an impaired life annuity, which pays a higher income, depending on your state of health and lifestyle".

The factsheet also included a flowchart which contained the question: "Do you have a history of poor health?"

It then said:

"If yes, "Check if you are eligible for an impaired life annuity. This pays out a higher income if you have a health problem that threatens to shorten your life. You may be able to get an enhanced annuity if you are overweight, a smoker, have done some manual jobs or live in a particular part of the country. So this is worth checking".

I think the factsheet was most likely sent to Mr L. By sending this factsheet, RLM fulfilled its requirements, under the relevant regulations, to tell Mr L about how he might be able to benefit from enhanced annuities. Therefore I'm satisfied that Mr L was given the information he should've been given regarding his retirement options.

Mr L also felt that he hadn't received adequate advice about the importance of shopping around the open market.

FSA's factsheet contained information on the OMO. It said, within a section called: "How can you shop around for the best deal?", "Some people have found they have been able to increase their income by as much as a third by shopping around for their annuity".

I consider that there was sufficient information in the retirement pack, and in FSA's factsheet, for Mr L to have been able to make an informed decision about whether to exercise his OMO or not.

I know this will be disappointing for Mr L, but, for the reasons I've explained, I'm satisfied that RLM did enough at the time of the sale to make Mr L aware of both the OMO and enhanced annuities. Therefore I don't intend to uphold the complaint.

Response to my provisional decision

RLM had no further comments.

Mr L still felt that, considering his health problems, he should've been entitled to more.

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.

As no new information has come to light to change my opinion, I remain of the view I set out in my provisional decision.

My final decision

For the reasons set out above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 September 2023.

Jo Occleshaw
Ombudsman